

**Submission to the UN Forum on Minority Issues  
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*by*

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On behalf of AfriForum, I thank the Forum for the opportunity to make this submission.

**Introduction**

AfriForum is a South African civil rights organisation, established in 2005, comprising 215 558 individual members (exact figure on 28 November 2018), each making a monthly contribution. Its focus is civil rights, especially, but not exclusively, the rights of the Afrikaner minority in South Africa. In order to promote the rights of minorities in South Africa, AfriForum has national and local campaigns that focus on issues such as language rights, education, property rights, municipal service delivery, anti-corruption activities, safety, maintenance of the rule of law and environmental issues, to name but a few. It has also established a private prosecuting unit, that ensures that when the state, for whatever reason, decides not to prosecute, violators of human rights are held accountable, in order that no-one may claim to be above the law. AfriForum condemns any form of racism and is working peacefully within the framework of the law to help create a society based on a culture of mutual recognition and respect, where all residents of South Africa may live in freedom, safety and prosperity.

**Submission**

According to the UNHCR, the main cause of most cases of large-scale statelessness, is discriminatory policies.

It is the duty of the international community to prevent statelessness, and therefore also policies that may engender it.

In South Africa, AfriForum is especially concerned about an issue that may eventually cause a dramatic increase of statelessness in our region.

The South African ruling party, the ANC, adopted a programme of property expropriation without compensation as party policy, allegedly to ensure land reform, at its national conference in December 2017.

In February 2018, the National Assembly then adopted a motion to amend the South African Constitution to allow the state to expropriate private property without compensation.

During the 1990s, the international community played a crucial role in encouraging the various parties in South Africa to reach a settlement, and for this reason we feel free to request the international community, including the members of this forum, to play a role in ensuring that the settlement that was negotiated at that time, will not be violated. Amending Section 25 of the South African Constitution in order to allow for the expropriation of property without compensation will amount to a violation of the negotiated settlement of the 1990s.

AfriForum is not appealing for the exertion of pressure by means of sanctions. This would cause ordinary people in South Africa to suffer. However, we are fully aware that investors withdraw once property rights in a country are violated, as has happened repeatedly in many countries where similar programmes have been adopted. With the purpose of protecting ordinary South Africans who would suffer, should the economy be harmed by a disregard for property rights, we however need the assistance of the international community to warn the South African Government of the negative consequences of a policy of expropriation without compensation, so as to ensure that the governing party will dispense with its plans to amend the Constitution in order to allow for such a process.

The South African Government has repeatedly denied the threat posed by expropriation without compensation. The findings of a much disputed government land audit is used to justify the need for a drastic deviation from the state's former land reform programme (for independent and verified research results in this regard, see <https://www.politicsweb.co.za/opinion/ramaphosa-and-the-effs-dodgy-land-stats> and <https://www.afriforum.co.za/wp-content/uploads/AfriForum-Land-and-land-reform-1.pdf>) and no reference is made of an official land reform report, issued under the leadership of former State President Kgalema Motlanthe, that acknowledges that neither white landowners, nor the Constitution can be blamed for the state's failed land reform programme. The report emphasises that the failure of the programme to date has inter alia been due to corruption and state incompetence. The report can be accessed at [https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High\\_Level\\_Panel/HLP\\_Report/HLP\\_report.pdf](https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/HLP_Report/HLP_report.pdf).

A process of public consultation re the amendment of the Constitution was announced by Parliament, but on 31 July 2018, State President Cyril Ramaphosa made a late-night announcement on television to the effect that he and the ANC had decided to

proceed with the amendment thereof in order to allow for expropriation without compensation. With this announcement to change the South African Constitution's provisions regarding property rights, the President also violated his oath of office, as well as Section 83(b) of the Constitution, which stipulates that the President of South Africa must uphold, defend and respect the Constitution. This announcement was the tenth instance of President Ramaphosa publicly expressing his support for expropriation without compensation. The fact that this announcement was made while the South African Parliament's open-ended public participation process had not even been completed yet, reduced it to a farce.

The ANC is attempting to sell its plans to the international community by saying that the process of expropriation will be executed legally and constitutionally, and that there will be no land grabs. If the Constitution is amended to allow for expropriation without compensation, the ANC could argue that it is being done "constitutionally", which certainly does not mean that it would be right. It would amount to legalizing the violation of property rights as a human right and a breach of the negotiated settlement of the 1990s. It also flies in the face of the internationally recognized right not to be deprived of property without fair compensation.

Contrary to what the government is professing to other countries and international bodies, land grabs are already taking place in South Africa. According to an investigation by the South African Sunday newspaper *Rapport*, there have been 263 land invasions in the Western Cape Province, 161 in Ekurhuleni Municipality and 1 470 in the Tshwane Metro area since January this year, to mention but a few areas. Although these land invasions had not been committed by the South African Government itself, it is happening on a continuous basis that the South African Police Service refuses to act against the people invading said land. For example, AfriForum recently obtained a court order to have a private security company remove land invaders from the farm of Dr Motodi Maserumule, because the police had refused to act. This was done at great cost.

AfriForum recognizes the injustices concerning land ownership in the past, with legislation such as the 1913 Land Act and the 1950 Group Areas Act, and is in favour of efforts to give black South Africans wider access to land ownership. The current restitution and land reform legislation however already provides for this to happen, if administrated properly.

Government is forging ahead with the process to legalise expropriation without compensation, despite independent research warning against the economic and social consequences thereof, and indicating that the majority of South Africans want viable employment, not land.

International pressure is therefore essential to prevent this process from being carried through.

I emphasize once more that AfriForum does not oppose a responsibly executed land reform programme. However, if the principle of willing seller, willing buyer, is waived, all residents of the country and food security in the Southern African region will suffer.

Minorities in South Africa are currently being subjected to scapegoating to conceal the government's inability to properly implement land reform.

Several senior government representatives have stated that the proposed expropriation process will target white landowners. They therefore run the risk of becoming a stateless minority – if they are targeted for being stripped of their private property rights, their citizenship might well be disputed next. Already they are often referred to as “settlers / colonialists of a special kind” and face mounting pressure against their constitutionally recognised cultural rights, such as language and education rights, even though they were born in South Africa with families having been born and living in what is today known as South Africa for generations, dating back to the seventeenth and eighteenth centuries.

The risk is not limited to this minority only. If the South African economy and food supply crashes, all citizens will be affected detrimentally and run the risk of becoming stateless, which is why the support of the members of the Forum and the international community against a programme of expropriation without compensation is of crucial importance to all South Africans.

## **Conclusion**

AfriForum thanks the Forum for the opportunity to bring this matter to the attention of the international community.

We also applaud you for providing governments and NGOs with a platform where we can share ideas, voice concerns and learn from international best practices. May the activities of the eleventh session of the Forum provide solutions to existing cases of statelessness and prevent the increase of this tragic phenomenon.

With sincere appreciation

***Alana Bailey (Ms)***

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