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INNOVATION

INTERNATIONAL PROPERTY RIGHTS INDEX 2025

EXPROPRIATION OF PROPERTY WITHOUT COMPENSATION: THE CASE OF SOUTH AFRICA AND INTERNATIONAL WORST PRACTICE

CASE STUDY

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INTRODUCTION

In 2020, a case study authored by the late Jacques Jonker and myself on South Africa undoing property rights appeared in the *International Property Rights Index*.² Since then, the Constitution Eighteenth Amendment Bill, which sought to amend the substance out of the compensation clause of the property provision (section 25) of the South African Constitution, failed to be adopted by Parliament.³

Nonetheless, it was reported on 23 January 2025⁴ that the President of South Africa, Cyril Ramaphosa, had assented to the Expropriation Act,⁵ an ordinary piece of legislation.⁶ In practice, the Act achieves what the failed constitutional amendment sought to achieve: making it legally possible for the state to confiscate private property without necessarily being required to pay compensation.

This event appears to have been the straw that broke the camel's back as far as the United States' posture toward South Africa was concerned. Rapidly after Ramaphosa's signing of the Act, President of the United States Donald Trump began signalling changes to the relationship between the two countries. After years of adopting foreign policy adversarial to the interests of the United States and its allies, this domestic conduct by the South African government has proven catalytic.

The questions then arise: what is the Expropriation Act, and why has there been such a severe reaction to it both from the Americans and many in South Africa itself?

In this case study, the Expropriation Act is explained in light of the socio-political context in which it was adopted. The Act is problematic in general as relates its undermining of property rights in various ways. For the purposes of this contribution, however, only one aspect – arguably the most important – is considered: the Act's approach to compensation, and in particular its allowance for expropriation without compensation.

Thereafter, a thorough consideration of the phenomenon of "nil compensation" in the Act and the discourse follows.

The fundamental importance of property rights and why the Act is especially damaging to it is then elaborated.

How other countries, specifically the United States, Switzerland, and Singapore, approach the question of compensation for expropriation, is thereafter considered. In this respect, the case study will also touch on why the United States federal government has been perturbed by the Expropriation Act and how South Africa's eligibility under the African Growth and Opportunity Act has been jeopardised.

Finally, various practical alternatives to the policy of expropriation without compensation, as a supposed mechanism of redress for historical injustices, are set out.

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2. Jonker, J., and M van Staden. 2020. Undoing 26 years of progress: Property rights in South Africa. *International Property Rights Index 2020*. atr-ipri2017.s3.amazonaws.com/uploads/Case+Studies+2020/IPRI+2020+South+Africa+Case+Study.pdf.

3. Mokoena, S. 2021. National Assembly fails to pass Constitution Eighteenth Amendment Bill. Parliament of the Republic of South Africa. parliament.gov.za/news/national-assembly-fails-pass-constitution-eighteenth-amendment-bill.

4. The Act – and by implication, the *Government Gazette* – claims that the presidential assent occurred on 20 December 2024. This decision, however, only became publicly manifest on 23 January. The public did not know and would not have known that the President had done so until it was revealed in the *Gazette*.

5. Expropriation Act (13 of 2024).

6. Magwenya, V. 2025. President Cyril Ramaphosa assents to Expropriation Bill. South African Government. gov.za/news/media-statements/president-cyril-ramaphosa-assents-expropriation-bill-23-jan-2025.

THE EXPROPRIATION ACT AND ITS CONTEXT

LAND REFORM

Land reform has been a recurring item in South African public discourse since at least 1990 when Albie Sachs, who would go on to be one of the first justices of the Constitutional Court, wrote:

*“In the past three decades, more than three million South Africans have been forcibly removed from their homes and farms, simply because they were black. Apartheid law then conferred legal title on owners whose main merit was that of having a white skin. ... Looked at from the perspective of human rights, who has the greater claim to land — the original owners and workers of the land, expelled by guns, torches, and bulldozers from the soil ... or the present owners, frequently absentee, whose rights are based on titles conferred in terms of the so-called Native Land Act and the Group Areas Act?”*⁷

These two examples, the Natives Land Act⁸ and Group Areas Act,⁹ usefully serve to sketch the (ostensible) historical foundations of contemporary land reform interventions.

The Natives Land Act was adopted in 1913, and created, in effect, a “white South Africa” and a multiplicity of black reserves, later called “homelands.” It prohibited whites and other racial minorities from acquiring land in the reserves, and blacks from acquiring land outside of their assigned reserves.

The Act was the foundation stone of what came to be regarded as “Grand Apartheid” – the idea of political separation of racial groups in South Africa into their own fully sovereign political units. Ultimately, the black reserves represented only between 7-13% of South Africa’s surface area.

The Group Areas Act and its various incarnations applied primarily *inside* “white South Africa” and sought specifically to determine which areas could be occupied for residential or commercial purposes by the various racial groups. If an Indian-descended South African was found to be living in a designated coloured (mixed race) area, they would be legally required to move, and if they did not move, they would be evicted. In this process, many thousands of people, as individuals, families, and groups, were forcibly relocated from their homes and business premises to “their” new areas.

It is trite and beyond disputing that South Africa’s recent and distant past – like in much of the world – is one of unjust dispossession of property from its rightful owners.¹⁰

The post-Apartheid government, that is to say the government led primarily by the socialist African National Congress (ANC), has made much ado about land reform to “redress” these injustices.

“Correcting” inequitable “patterns of ownership” has been a key item of political discourse and policy, with it arguably reaching its climax at the decision of February 2018 to amend the Constitution (discussed below).

Despite this, research conducted by the South African Institute of Race Relations periodically over more than two decades reveals that land reform is one of the *least* important priorities for ordinary South Africans, with the polls being demographically representative. The latest survey was conducted in December 2024, and reveals that only 1% of respondents picked land reform as one of their two most important issues.¹¹ There is no “hunger for land,” as South African politicians often would wish society to believe there is.

Land reform, in other words, appears more an ideological imperative for the political elite, than an issue of concern for the population.

Even then, one must hasten to add, the land reform budget allocation for 2025/26 was only some R5 billion (US\$285.4 million),¹² compared to the some R12 billion (US\$685.1 million) allocated for the Department of Sports, Arts, and Culture.¹³

Whereas much rhetorical ado is made by the political class about land reform, therefore, they do not, as it were, put their money where their

mouths are.

Furthermore, with the money South Africa’s fiscus loses to corruption alone, government could have purchased most agricultural land in the country on the open market (i.e., with compensation) many times over. Between 2014 and 2019, this amount was estimated around R1.5 trillion (US\$82.5 billion).¹⁴ In February 2025, the South African Broadcasting Corporation reported that the Unemployment Insurance Fund alone paid out approximately R57 billion (US\$3.1 billion) in fraudulent claims.¹⁵

This goes to show that there is no shortage of funds within the government ecosystem to fully prosecute its land reform agenda, while paying owners their deserved market-based compensation. The supposed fear of market-based compensation is a matter of political expediency, not true fiscal constraint.

However, perhaps most notably is the fact that, since the state’s redistribution programme began, the government has acquired some 2.5 million hectares of land (i.e., in addition to what the state already owned) and held it. This is a growing number, and amounts to a landmass about the size of the Gauteng Province. The political elite, therefore, hoards land under state ownership whilst decrying the lack of an equitable distribution of land among the peoples of South Africa.¹⁶

7. Sachs, A. 1990. *Protecting Human Rights in a New South Africa*. Oxford University Press. 10-11.

8. Natives Land Act (27 of 1913).

9. Group Areas Act (41 of 1950). Further Group Areas Acts followed the initial 1950 statute.

10. See Van Staden, M. 2021a. *Fraus legis* in constitutional law: The case of expropriation “without” or for “nil” compensation. 24 *Potchefstroom Electronic Law Journal*. 9-10. perjournal.co.za/article/view/10406/16815.

11. Pretorius, H. 2024. Hope, opportunity, unity, and new common ground: Findings of IRR polling 2024. South African Institute of Race Relations. 14. irr.org.za/reports/occasional-reports/files/irr-polling-2024.pdf.

12. Of which R4 billion is allocated to the restitution programme, and a meagre R1 billion is allocated to other land reform initiatives.

13. Budget Review 2024. 2024. National Treasury of the Republic of South Africa. 49. treasury.gov.za/documents/national%20budget/2024/review/FullBR.pdf.

14. News24. 2021. SA lost R15 trillion to corruption in five years and continues to bleed – report. news24.com/fin24/sa-lost-r15-trillion-to-corruption-in-five-years-and-continues-to-bleed-report-20210623.

15. SABC News. 2025. Cosatu calls for UIF overhaul after R57bn fraud scandal. abcnews.com/sabcnews/cosatu-calls-for-uif-overhaul-after-r57bn-fraud-scandal/.

16. Kirsten, J., and W. Sihlobo. 2025. Land reform in South Africa doesn’t need a new law: the state should release property it owns – economists. *Democracy in Africa*. democracyinafrica.org/land-reform-in-south-africa-doesnt-need-a-new-law-the-state-should-release-property-it-owns-economists/.



Descendants of historically dispossessed owners were granted necessary relief in the form of the Restitution of Land Rights Act.¹⁷ This Act, rightly premised on the common law *rei vindicatio* action, simply requires that anyone (including descendants) who believes they are entitled to a certain piece of property, must prove in law that they are the rightful owners and that the property was unjustly dispossessed. If this is proven, they are entitled to receive the property back, or to be financially compensated by the state for the loss.

Of course, the current owners of the property, as a matter of right, are required to be compensated if they must part with the property. Their hands are clean, and for the law to punish the for conduct they never engaged in would be profoundly unjust.

Restitution (to be firmly distinguished from *redistribution*), in other words, has been successful to the degree that it has been capacitated by the state's meagre budget allocation. This programme has the potential of satiating any real "hunger for land," but it is doubtful that it would be pursued to the fullest extent given that, unlike expropriation without compensation, it grants the state no new powers and simply brings about justice.

Since 1998, shortly after the restitution programme began, some 64,354 claims have been settled in favour of the complainants, compared to 5,755 in favour of respondents. Of these successful claims, only 11.8% of complainants chose to take possession of the land, compared to 88.2% opting for financial reparation.¹⁸ This is further illustrative of how there is no real "hunger for land" among ordinary South Africans.

OTHER LEGISLATION

The Expropriation Act must be seen in light of the ANC's general anti-property rights posture.

Many have sought to view the Act in isolation to calm investor sentiment, but this misses the forest for the trees. The fact is that since 1994, the ANC has taken concrete steps to undermine security of property rights that must be borne in mind when considering the sentiment behind the Expropriation Act:

- In 1998, the ANC-controlled Parliament adopted the National Water Act, which nationalised all privately-owned water resources and placed them under the so-called "trusteeship" of the central government. Access to water is now a licence-based system. In 2023, the government mooted the possibility of racialising access to these licences, proposing to require that farmers have 25-75% black shareholding before they may be granted water licences.¹⁹
- In 1998 and 2003 respectively, the government adopted the Employment Equity Act and Broad-Based Black Economic Empowerment Act which, ultimately, set aside the commercial discretion of private enterprise and replaced it with racial-engineering imperatives. Companies in South Africa must, as a matter of law, take into account the racial and ethnic and gender characteristics of the people they employ, promote, demote, contract with, and sell shares to or buy shares from.

- The 2018 amendment to the 1998 Competition Act further made it a matter of consideration that private companies must take the "spread of ownership" (in racial terms) into account when merging with other companies. Where a "transformed" (largely black) company decides to merge with an "untransformed" (largely white) company, for example, the competition authorities might stop that merger on the basis that the merger would dilute the "transformed" status of the former. This means that even black South African businessmen's commercial determinations are set aside at the altar of racial engineering.
- In 2002, the government adopted the Minerals and Petroleum Resources Development Act, which nationalised all privately-owned minerals and petroleum in South Africa and placed it under the so-called "custodianship" of the central government.
- In 2015, the government adopted the dangerously misnamed Protection of Investment Act, which ended all South Africa's bilateral investment treaties. These treaties afforded special protections for foreign property ownership in South Africa. Now this Act ensures that the same dangers that face South Africans' property rights face the property rights of investors and international firms. In particular, it ended the institution of guaranteeing market-based compensation to foreign investors, and made compensation subject to the discretionary evaluation of what is "just and equitable" in the circumstances.

17. Restitution of Land Rights Act No. 22 of 1994.
18. Western Cape Expropriation, 1999-2000, complainants choose money instead of property, [citizen.co.za/news/south-africa/land-restitution-property/](https://www.citizen.co.za/news/south-africa/land-restitution-property/).

19. Bega, S. 2023. Race-based water licence allocations draw ire of farmers. *Mail & Guardian*. mg.co.za/news/2023-06-08-race-based-water-licence-allocations-draw-ire-of-farmers/.

- The Expropriation Act must also be considered in light of the fact that the government is gradually introducing a parallel “Land Court” structure that can – but does not yet – in time, become responsible for adjudicating property disputes in land reform cases.²⁰ The Act must also be seen in light of historical and contemporary desires to adopt a Redistribution Bill (its most recent incarnation, an Equitable Access to Land Bill), which might explicitly make it a matter of law that racial groupings may only own property in accordance with the percentage of the population that they represent.²¹

Bearing all of this in mind – each one an ANC initiative, supported in principle by many nominal opposition parties – it would be misguided to argue in 2025 that the Expropriation Act, and the politicians responsible for it, was adopted with the best interests of property owners in mind. The South African political class and government are hostile to the concept of private property ownership *per se*.

CONSTITUTIONAL AMENDMENT

In February 2018, Parliament adopted a resolution that signalled the government's intention to pursue a policy of expropriation of private property without compensation that might require an amendment to section 25 of the Constitution.²²

This was two months after South Africa's ruling party, the ANC, adopted expropriation without compensation as a policy pillar at its December 2017 conference.²³

Nonetheless, it was the militant Marxist-Leninist party, the so-called Economic Freedom Fighters (EFF), that introduced the resolution. The ANC, then desperate to win back some votes from the EFF in the upcoming 2019 general election, supported the motion with minor, moderating amendments. After the 2019 election, the EFF and ANC together had sufficient parliamentary seats to adopt a constitutional amendment.²⁴

According to the ANC and its allies, sections 25(2) and (3) of the Constitution (discussed below), which require that the government must pay an amount of just and equitable compensation to owners when it expropriates their property, are problematic. It is said that the requirement to pay compensation has hindered government from implementing substantive land reform and righting the historical injustices of Apartheid, and hence, the requirement should be abolished or otherwise modified.

As we have already seen, this is not the case: the limited land reform budget is discretionary, not imposed by market logic.

The February 2018 resolution set in motion a process to determine whether an amendment to the Constitution would be necessary to enable government's new policy, and if so, what the content of the amendment should be.²⁵ President Cyril Ramaphosa repeatedly reaffirmed his party's commitment to changing the Constitution.²⁶

On 15 November 2018, the constitutional review committee that was established by the February resolution recommended that Parliament amend section 25 to enable expropriation without compensation. The parliamentary *ad hoc* committee responsible for the amendment published its draft Constitution Eighteenth Amendment Bill on 13 December 2019. The draft was modified at various junctures. Specifically, it allowed “land and any improvements thereon” to be confiscated, i.e., “the amount of compensation may be nil.”

On 7 December 2021, when the vote on the constitutional amendment came before Parliament, the EFF had withdrawn its support, believing that the proposal did not go far enough. Whereas the ANC sought to enable government to acquire property through confiscation, the EFF desired for the amendment to nationalise all land in one fell swoop. This meant that the ANC did not have the requisite two-thirds majority to amend the Constitution, and as a result the attempted amendment failed.²⁷

EXPROPRIATION ACT

An update to South Africa's 1975 Expropriation Act²⁸ had been in the works since at least 2008, when the first new Expropriation Bill was mooted. It was followed by new versions in 2013 and 2015. These versions of the Bill already contained problematic provisions as regards compensation for expropriations, which would put owners at a distressing disadvantage vis-à-vis the state. However, they did not (explicitly or implicitly) provide for or conceive of a situation where the owner might not receive any compensation.²⁹ It was well-understood that such a notion would be obviously unconstitutional.

It was only after the 2018 parliamentary resolution that the idea of expropriation *without compensation* (which was eventually contrived into “nil compensation”) became seriously considered. The failed amendment to section 25 that followed, particularly, would have provided that, “For the furtherance of land reform, national legislation must [...] set out circumstances where the amount of compensation is nil,” to pave the way for a new expropriation law that regulates property confiscation.

20. The Land Court Act (6 of 2023) itself does not assign expropriation jurisdiction to the new court, but does allow future legislation to designate this court as the appropriate forum. Therefore, future land reform laws – a Redistribution Bill, for instance – could and very likely will require that expropriation-for-redistribution cases be heard before the Land Court

21. Boshoff, W. 2025. Redistribution of land: Racial legislation on its way. Freedom Front Plus. vplus.org.za/latest-news/redistribution-of-land-racial-legislation-on-its-way/.

22. Mokoena, S. 2018. National Assembly debates motion on land expropriation. Parliament of the Republic of South Africa. parliament.gov.za/news/national-assembly-debates-motion-land-expropriation.

23. Omarjee, L. 2017. ANC reaches resolution on land reform. *News24*. news24.com/fin24/Economy/anc-reaches-resolution-on-land-reform-20171220.

24. Section 74 of the Constitution provides that amendments to the Bill of Rights may only be made with the support of two-thirds of the members of the National Assembly (the lower house of Parliament) and six out of the nine provincial delegations in the National Council of Provinces (the upper house of Parliament).

25. Crouse, G. 2018. The NA's resolution on EWC: A clause-by-clause analysis. *Politicsweb*. politicsweb.co.za/comment/the-nas-resolution-on-ewc-a-clause-by-clause-analysis/.

26. Ramaphosa, C. 2018. SA's President Cyril Ramaphosa's statement on expropriation of land without compensation, economic stimulus. *CNBC Africa*. cnbcafrica.com/insights/ramaphosa/2018/07/31/land-expropriation/.

27. Coetzee J., and J. Marais. 2021. Expropriation without compensation – it is not the end of the road and is still on the table. *Fasken*. fasken.com/en/knowledge/2021/12/15-expropriation-without-compensation.

28. Expropriation Act (63 of 1975).

29. Jeffery, A. 2015. The Expropriation Bill is back – and it's still unconstitutional. 17 @Liberty. irr.org.za/reports/atLiberty/files/liberty-2013-the-expropriation-bill-is-back-and-its-still-unconstitutional.

The new, 2018 draft of the Expropriation Bill,³⁰ followed by the 2020 draft that eventually became the (current) Expropriation Act of 2024,³¹ therefore contained the first provisions for completely compensationless takings.

Nonetheless, since the tabling of the Bill, the amendment of section 25 failed. Rather than abandoning the nil compensation provision of the Expropriation Bill as a consequence, however, the then Minister of Justice and Constitutional Development, Ronald Lamola, declared that, “We will now use our simple majority [as opposed to a two-thirds majority] to pass laws that allow for expropriation without compensation.”³² With this, he had the Bill then already being processed by Parliament in mind.

The ANC-majority Parliament adopted the Expropriation Bill on 27 March 2024.³³ Two months later, after the 29 May 2024 general election, the ANC lost its parliamentary majority. Ramaphosa purported to assent to the bill on 20 December 2024, though this was only publicly revealed on 23 January 2025.

Section 12(3) of the Expropriation Act provides as follows:

“12. (3) It may be just and equitable for nil compensation to be paid where land is expropriated in the public interest, having regard to all relevant circumstances, including but not limited to –

(a) where the land is not being used and the owner’s main purpose is not to develop the land or use it to generate income, but to benefit from appreciation of its market value; (b) where an organ of state holds land that it is not using for its core functions and is not reasonably likely to require the land for its future activities in that regard, and the organ of state acquired the land for no consideration; (c) notwithstanding registration of ownership in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937), where an owner has abandoned the land by failing to exercise control over it despite being reasonably capable of doing so; (d) where the market value of the land is equivalent to, or less than, the present value of direct state investment or subsidy in the acquisition and beneficial capital improvement of the land.” (my emphasis)

This does not apply to other forms of property, but only to “land” (that is, any fixed property) in the context of the “public interest” (a legal-technical term in South Africa referring, in this context, primarily to land reform aimed at redressing past racial injustices).

While the Act does list some examples (section 12(3)(a)-(d)) of when these “nil compensation” expropriations could conceivably occur, dwelling on this list is counterproductive as that would create the impression that the list is closed. It is an open list, merely of *examples*, meaning that the range of cases in which the state could confiscate property without the payment of compensation is indefinite.

“NIL COMPENSATION”

SECTION 25

Sections 25(2) and (3) of the Constitution provide as follows:

“25. (2) Property may be expropriated only in terms of law of general application –

(a) for a public purpose or in the public interest; and (b) subject to compensation,

the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.

(3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including –

(a) the current use of the property; (b) the history of the acquisition and use of the property; (c) the market value of the property; (d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and (e) the purpose of the expropriation.” (my emphasis)

It must, again, be emphasised that section 25 was not amended as the ANC and its partners had intended. Though the Constitution Eighteenth Amendment Bill was designed to pave the legal way for the Expropriation Bill, it was

not adopted, meaning that the Expropriation Act became law in January 2025 in the absence of the constitutional allowance that was being carved out for it.

The way many in the discourse have sought to sidestep this gaping hole of constitutional justification, was to argue that because in the abstract it could be “just and equitable” for nothing to be paid, “nil” is (already) “implicit” in the constitutional requirement of compensation.³⁴

Indeed, the whole argument for the justifiability of a “nil compensation” expropriation hinges on the “just and equitable” standard, that is, that conceivably justice and equity could demand in particular circumstances that nothing be paid in exchange for the property in question.

This perspective however places the cart before the horse, because the Constitution does not only require justice and equity.

In other words, whereas justice and equity is required, so too is the “payment” of an “amount” of “compensation.”

It is theoretically conceivable, in the abstract, that it might be just and equitable, or even sensible, for someone to not be paid anything when the state desires to seize their property. But this is only in theory and in the abstract, divorced from the Constitution.

30. Available here: Parliamentary Monitoring Group. 2018. Expropriation Draft Bill [X-2018]. pmg.org.za/bill/862/.

31. Available here: Parliamentary Monitoring Group. 2024. Expropriation Bill [B23-2020]. pmg.org.za/bill/973/.

32. Bloomberg. 2021. ANC plans to introduce land expropriation in South Africa without Constitution change: minister. *BusinessTech*. businesstech.co.za/news/property/545192/anc-plans-to-introduce-land-expropriation-in-south-africa-without-constitution-change-minister/.

33. Sabinet. 2025. Making sense of the Expropriation Act – How Sabinet’s services can support you. sabinet.co.za/making-sense-of-the-expropriation-act-how-sabinets-services-can-support-you/.

34. Lubbe, H.J., and W.J. du Plessis. 2021. Compensation for expropriation in South Africa, and international law: The leeway and the limits. 11 *Constitutional Court Review*: 79-112: 98.

The constitutional text, clearly and unequivocally, requires that whenever there is an expropriation, there must be an amount (of money), that compensates (repairs, restores) the owner for the harm and inconvenience of the expropriation, and which amount of compensation must be paid (that is, a transfer of value) to the owner. These are the basic requirements that cannot be escaped by pretending that only the words “just and equitable” appear in section 25.

Indeed, when determining what the amount of compensation will be, the justice-and-equity analysis must occur within the parameters of the constitutional prohibition on concluding at “R0” or anything that in substance approximates “R0.”

To repeat: Not only does the concept of “compensation” (putting “just and equitable” aside for a moment) necessarily exclude “nil,” but so do the concepts of “payment” and “amount.” It is only upon this realisation that we may return to the standard of “just and equitable,” with the understanding that whatever the constitutionally prescribed justice-and-equity analysis concludes, it must be an amount of compensation that can be paid, and can never be or approximate “nil.”

This simple fact – which in any other question of constitutional interpretation would be perfectly uncontentious – is the reason for section 12(3) of the Expropriation Act, even without argument, being *necessarily* unconstitutional.

The Constitution requires the payment of an amount of compensation upon expropriation, and the Act allows expropriation to occur without the payment of an amount of compensation.

This is basic unconstitutionality.

Readers in systems of constitutionalism that have endured for an extended period will intuitively understand this. With their developed systems, it is unthinkable to seriously consider an argument that posits that “yes, the Constitution requires compensation, meaning you cannot expropriate without compensation, *but* in some circumstances the Constitution would allow expropriation to occur at the amount of nil.” This is a fundamental abuse of language that would not be allowed in system of justiciable constitutionalism.

This is not to say that property confiscation *per se* is unheard of.

Governments confiscate property all the time, even in dispensations where civil liberty and private property are highly prized. A criminal might use a pistol to murder their victim. That pistol might be owned by the murderer. The state is in all likelihood going to seize the weapon without paying the murderer its market-based value. This is because the criminal, through their voluntary conduct, and affirmed by a successful conviction in an ordinary court applying accepted standards of evidence, has *forfeited* their ownership of the pistol. No expropriation takes place, in other words, because ownership of the pistol has been forfeited.³⁵

Similarly, persons who have been sequestered would have courts attach their property in lieu of the payment of debts. In these cases, their property is utilised as compensation for their creditors, after a fair judicial process was undergone.

While the sheriff of the court will in many cases be responsible for the confiscation of this property, it still does not amount to expropriation, because – again – ownership of the property has been forfeited through the debtor’s voluntary decision to take on debt and fail to repay it in terms of the voluntary contact between them and their creditors.

On the other hand, the voluntary conduct of property owners has no bearing on expropriation anywhere in the free world. Expropriation is *per se* an institution of coercive imposition, not voluntary forfeiture.

Expropriation (elsewhere known as “takings,” “compulsory purchase,” or “eminent domain”) is when governments decide, by and for themselves, that they require a given piece of property for a public purpose. In other words, far from the owner forfeiting their property, the government has *condemned* the property.³⁶ There is no question of blameworthiness on the part of the owner, and hence there is no criminal prosecution or delictual or tort action that plays out in court to prove wrongful conduct. The owner, simply, has done nothing wrong. Nonetheless, their property is still, for some reason of social improvement, required.

And as a result, in recognition of this unfairness, the state must – as a matter of course – restore the owner as far as it can to the position they would have been in had the expropriation not taken place (*restitutio in integrum*).

If the South African Constitution did not intend *restitutio in integrum* – making whole the expropriated owner – then the word “compensation” would not have been utilised. The Constitu-

tion could have provided that upon expropriation an “amount of money, if any, determined by the expropriating authority could be paid at the discretion of that authority.” Here, there is no question of “compensation.” The constitutional drafters understood, however, that foreign and domestic investors, and ordinary property owners, would regard such a constitutional mechanism as hopelessly unfair and inadequate. And thus, the Constitution clearly provides that the amount to be paid upon expropriation, must be an amount *of compensation*. Compensation *compensates* the owner for the damage of expropriation.

“Zero,” “nil,” or “nothing,” can never compensate anyone for anything. To pretend that “nil” could stand in for compensation through formalistic trickery with language is to sidestep constitutional guarantees.

This means, at base (that is, as a floor), the market value of the property must be paid to the owner. But over and above that, because the owner did not *desire* selling the property, even at market value, prior to the state’s decision to expropriate, it follows that the property held an even higher value to the owner than what it would have fetched on the open market. That is why, in any “just and equitable” analysis worth the terminology of justice and equity, the ultimate amount of compensation must be *above* market value.

It is here – in determining *how far above market value the amount of compensation must be* – that expropriating authorities and courts must balance the interests of the owner and of the public as required by section 25(3) of the Constitution.

35. Expropriation (from Latin *ex* – “away from” – and *propriare* – “one’s own”) means to take someone’s property away from them, under which circumstances they cease to be the owner. This is distinct from that person losing or abandoning or forfeiting their ownership themselves by choice.

36. “Condemn.” Dictionary.com. [dictionary.com/browse/condemn](https://www.dictionary.com/browse/condemn).

SECTION 36

The only way, within the parameters of the South African Constitution, to succeed in government expropriating property without compensation, is under section 36(1) of the Constitution.

This provision sets out how government may limit the rights guaranteed in the Bill of Rights, including the right to compensation as a part of the right to property.

But a section 36(1) justification cannot succeed by mere assertion. The expropriating authority would need to show that it is reasonable and justifiable in an open and democratic society for the state to be capable, in that instance, to take the property without compensation. This is a high bar to clear, and includes considerations like rationality, proportionality, and, crucially, the availability of less restrictive means to achieve government's aim.

Almost as a matter of course there would always be a "less restrictive means" available over expropriation without compensation – which, necessarily, is *expropriation with compensation*, which we have seen is comfortably within the state's financial ability.

Section 36(1) is therefore a very precarious hiding place for those who seek to excuse section 12(3) of the Expropriation Act. Few attempts, however, have been made to locate the nil compensation expropriation phenomenon in section 36(1), with most preferring the even more untenable avenue of formalistically arguing that "nil" is be an "amount" of "compensation" that could be "paid."

PROPERTY RIGHTS IN A DEVELOPING ECONOMY

HUMAN FLOURISHING

South Africa's legal discourse paradigm has long assumed that private property rights are essentially parochial, and stand opposed to what is called the "public interest," which is supposedly represented by the state. And therefore, because it is presumed that the so-called public interest must always enjoy preference over sectarian or individual interests, the state is thought to have much leeway in undermining property rights.³⁷

This approach is fundamentally misguided.

Private property rights and its protection is necessarily in the public interest, and it is precisely because of this fact that this right is entrenched against state predation in many formally supreme constitutions around the world. Where the Constitution therefore provides that the public interest must be balanced against the interests of those affected by state action, it is important that property rights not arbitrarily be placed only on the latter side of the equation.

As Sary Levy-Carciente and others wrote in 2023, summarising the annual *International Property Rights Index (IPRI)* that has run since 2007:

*"Results keep suggesting that countries with high IPRI scores and its components also show high income and high development levels indicating the positive relationship between a robust property rights system and people's quality of life."*³⁸

This analysis is not premised on the superficial notion of an individual owning property is more prosperous (or "powerful") than an individual not owning property, as many opponents of property rights would have us believe. It is, instead, a system and policy analysis: in countries where private property rights are best protected, *everyone*, including those who are not owners, are better off. Where private property is strongly protected, human development outcomes and flourishing *in general* are markedly better than in polities where property rights are weak.³⁹

37. See, for example, Roux, T. 2013. Property. In S. Woolman (ed.), *Constitutional Law of South Africa*, 2nd ed. Juta & Co. 46.1-46.37. 46.2; and Van der Merwe, J. 2016. On the relativity of property rights in the Constitution. 32 *De Rebus*. derebus.org.za/relativityproperty-rights-constitution.

38. Levy-Carciente, S. 2023. *International Property Rights Index 2023*. Property Rights Alliance. 75. atr-ipri.s3.amazonaws.com/ipri23_fullreport.pdf.

39. Madan, A. 2002. The relationship between economic freedom and socio-economic development. 7(1) *University Avenue Undergraduate Journal of Economics*. 13-14. core.ac.uk/download/pdf/59229153.pdf.

CONSTITUTIONALISM AND DEMOCRACY

Secure property rights do not only serve economic growth, development, and prosperity, but are also inextricably linked with constitutional democracy where governments are servants of the people rather than the masters. Levy-Carciente writes that "property rights are a linchpin institution for a free society, based on citizenship that controls its own life and builds its own destiny."⁴⁰

Koos Malan explains that private property gives real substance to formal citizenship. When citizens are not allowed to securely own property that is safe from political deprivation, citizenship itself is robbed of its essence. Without security of ownership, citizens are subject to the mercy and generosity of invariably self-interested political actors, and cannot provide meaningfully for their own sustenance. Where people are dependent on political goodwill in the form of leasehold, permissions to occupy, or superficially have ownership that is subject to extinguishing at any time, there is a chilling effect summed up by the saying: One does not bite the hand that feeds you. In other words, protests, petitions, criticisms, or challenges to political abuse will be indirectly suppressed if government can rip the material foundation upon which citizens stand from under their feet.⁴¹

Constitutionalism is about the circumspection and limitation of state scope and power to the benefit of the public.

Part of this paradigm of limitation is respect for and deference to civil society: the constitutional state does not regard the government as superior to, or sovereign over, civil society, but regards civil society and government as partners in governance. This is, ultimately, democracy.

Two recent examples from South Africa's own experience illustrates how surrendering property to the state chills civic life.

In September 2024, the African Global Dialogue planned to host an international event at the conference venue of Constitution Hill, the seat of the Constitutional Court that is owned by the Gauteng Provincial Government. The ANC (the party), however, committed to instructing its employees in the ANC-controlled provincial government to disallow the use of government ("public") property, given the opposition of the party to the ideas and values of the event organisers. The booking was thus cancelled by the government at the last minute.⁴²

More recently, in April 2025, the Buffalo City municipality cancelled previously approved bookings by a controversial pastor to utilise the municipally-owned Orient Theatre Hall in East London. This came after the pastor was *acquitted* of the criminal charges that made him contentious. Not even a judicial acquittal could save one from an opinionated state apparatus that too easily forgets its status as civil servant.⁴³

The more power government gains over the control of property, the less room there is for political, religious, and general civic organisation outside of what is regarded as politically correct. Property rights enable fruitful and flourishing co-existence *even when* one is the state's bad side.

Compensation upon expropriation is one of the most important property rights. It is a substantive and tangible barrier to state abuse by raising the cost of potentially abusive state conduct. Any expropriation can be dressed up in the rheto-

ric and vibes of "public interest," but with the absolute guarantee of compensation, a catch-all safeguard is ensured, plugging any gaps that might arise.

The Expropriation Act is, therefore, clearly a measure designed to deprive civil society of its secure property rights in favour of a government that seeks more power over private and commercial affairs, in contravention of the ingrained understanding that expropriation and expropriation law involves the necessary safeguard of (market-based) compensation.

40. Levy-Carciente 2023 4.

41. Malan, K. 2018. The implications of expropriation without compensation for constitutionalism. Politicsweb. politicsweb.co.za/documents/ewcvcs-constitutionalism.

42. Palestine Solidarity Alliance. 2024. Campaign to expose African Global Dialogue as a genocide-washing conference successful! palestinesa.co.za/campaign-to-expose-african-global-dialogue-as-a-genocide-washing-conference-successful/. See also Van Staden, M. 2024. Private property is inseparable from other "basic" freedoms. Daily Friend. dailyfriend.co.za/2024/09/26/private-property-is-inseparable-from-other-basic-freedoms/.

43. Maliti, S. 2025. "He's not welcome": Buffalo City bars Timothy Omotoso from preaching at municipal venues. News24. news24.com/politics/hes-not-welcome-buffalo-city-bars-timothy-omotoso-from-preaching-at-municipal-venues-20250427.



BEST PRACTICE ON COMPENSATION

BEST PRACTICE

There has been a constant refrain in the discourse around expropriation without compensation that the Expropriation Act is a normal kind of legislation one encounters in all countries around the world and that concerns about it are misplaced. This has proven to be a convenient narrative that the ANC has recently adopted as a “strawman” argument to defuse criticism.

While it undeniable that every country in the world has a law governing expropriation, countries with successful, prosperous, and constitutional economies, societies, and governments, approach expropriation in a *particular* way.

In jurisdictions like the United States, Singapore, and Switzerland – two of which are post-colonial economies, two of which are bereft of large natural resource complements, and all three of which have distant and recent histories of historical injustice – for example, expropriation is not a matter of retribution or criminal justice; that is, an instrument of punishment. It is meant, instead, to be utilised for social improvement.

In these jurisdictions, expropriated owners are not thought to have done anything “wrong” – otherwise they would have been dealt with according to criminal, delict, or tort law. Instead, their property is,

regrettably, needed by the government to pursue a legitimate government interest. The governments of those countries – and indeed most successful states with expropriation regimes – approach the owners with deference and are required to pay just (usually market-based, or above market-based) compensation. Expropriation is *conceptually* tied to compensation. The result is that a notion like “expropriation without compensation” is a contradiction in terms.⁴⁴

In the United States, though what qualifies as a “public use” (the foundation for expropriation) differs from state to state, market-based compensation is a *sine qua non*.⁴⁵ Indeed, the Fifth Amendment to the US Constitution plainly provides that no private property shall “be taken for public use without just compensation.” Just compensation is intimately tied with the market value of the property,⁴⁶ and considers the uses of the property.⁴⁷ As Richard Epstein writes:

“The just compensation requirement ensures that the individual, who has been forced by law to contribute property to some common improvement, is not wiped out in the process. The just compensation requirement assures that the state’s option to compensation can never be exercised at zero price, but only at fair market value.”

*Done correctly, no one gets hurt, and any social improvement remains.”*⁴⁸

In Singapore, the Land Authority declares upfront that they “work very closely with other public agencies to keep acquisition to a minimum” and that owners will be paid market compensation under their Land Acquisition Act. They further write that they “are committed to walk the journey with the affected land-owners and to support them throughout the acquisition process.”⁴⁹ This deferential attitude, whereby owners are rightly recognised as victims of an unfortunately necessary process, is the correct one.

Experts in Swiss building and planning law explain that under Swiss law, expropriation is only permissible (among others) when the principle of proportionality is observed, the goal of the expropriation cannot be achieved through other means, and the expropriated owner has been fully compensated.⁵⁰

Switzerland even went so far as to openly declare that it would not confiscate Russian assets after that country’s attempt to conquer sovereign Ukraine, without paying fair compensation at market value.⁵¹

These are only three examples. It is, however, clear that virtually all the “open and democratic societies” of the world require the payment of compensation upon expropriation, and involve respect and deference to owners.⁵²

In these jurisdictions, “compensation” means what “compensation” means in ordinary language: the owner should be put in the same financial position as they would have been had the expropriation not occurred. The “compensation” must repair the damage that has been done by the state to the innocent owner.

In countries where expropriation has been reconceptualised from a tool of social improvement into a tool of punishment and retribution – Zimbabwe and Venezuela, for example – are basket cases in large part due to this reconceptualisation.⁵³

Expropriation law is meant to be a legal framework that protects owners from arbitrary government confiscation of their property, and once this deference to and respect for owners is lost, investor confidence disappears, and economies collapse.

44. Van Staden 2021a 12.

45. International Comparative Legal Guides. 2025. Real Estate Laws and Regulations USA 2025. ICLG.com. [iclg.com/practice-areas/real-estate-laws-and-regulations/usa](https://www.iclg.com/practice-areas/real-estate-laws-and-regulations/usa).

46. “Eminent domain.” Cornell Law School Legal Information Institute. [law.cornell.edu/wex/eminent_domain](https://www.law.cornell.edu/wex/eminent_domain).

47. Suitt, C. 2025. How do you determine just compensation in eminent domain cases? Super Lawyers. [superlawyers.com/resources/eminent-domain/how-do-you-determine-just-compensation-in-eminent-domain-cases/](https://www.superlawyers.com/resources/eminent-domain/how-do-you-determine-just-compensation-in-eminent-domain-cases/).

48. Epstein, R.A. 2014. The common law foundations of the takings clause: The disconnect between public and private land. 30 *Touro Law Review*. 265-295. 274.

49. Singapore Land Authority. n.d. Acquisition of land. <https://www.sla.gov.sg/properties/acquisition-of-land>.

50. Swiss Building Law. n.d. Expropriation. [building-law.ch/land-use-planning/expropriation](https://www.baugesetz.ch/land-use-planning/expropriation); International Comparative Legal Guides. 2025. Real Estate Laws and Regulations Switzerland 2025. ICLG.com. [iclg.com/practice-areas/real-estate-laws-and-regulations/switzerland](https://www.iclg.com/practice-areas/real-estate-laws-and-regulations/switzerland).

51. ENR Law. n.d. Swiss Federal Council determines that there is no legal ground for confiscation of frozen Russian assets under Swiss law. [enr-law.com/publications/news/swiss-federal-council-determines-that-there-is-no-legal-ground-for-confiscation-of-frozen-russian-assets-under-swiss-law/](https://www.enr-law.com/publications/news/swiss-federal-council-determines-that-there-is-no-legal-ground-for-confiscation-of-frozen-russian-assets-under-swiss-law/).

52. See Van Staden, M. 2021b. Property rights and the basic structure of the Constitution: The case of the draft Constitution Eighteenth Amendment Bill. 14(2) *Pretoria Student Law Review*. 169-193. 188-189. upjournals.up.ac.za/index.php/pslr/article/view/1819. Section 36(1) of the South African Constitution requires that when assessing whether a limitation of a constitutional right is justifiable, regard must be had to whether that limitation is reasonable and justifiable in the context of an “open and democratic society.” The Constitutional Court in *S v Jordan and Others (Sex Workers Education and Advocacy Task Force and Others as Amici Curiae)* 2002 (6) SA 642 (CC) at paras 90 and 91 held that in this inquiry, other open and democratic societies around the world can be considered.

53. See Van Staden, M. 2021c. The dangers of South Africa’s proposed policy of confiscating property. In J. Gwartney, R. Lawson, J. Hall, and R. Murphy. *Economic Freedom of the World: 2021 Annual Report*. Fraser Institute. 237-250. 242-243. [cato.org/sites/cato.org/files/2021-09/efw-2021-chapter-5.pdf](https://www.cato.org/sites/cato.org/files/2021-09/efw-2021-chapter-5.pdf).

UNITED STATES-SOUTH AFRICA RELATIONS

Given the wide gap that South Africa is creating between itself and the open and democratic societies of the world,⁵⁴ little is left to the imagination for why the country's relationship principally with the United States appears to be in the process of collapsing.

On 2 February 2025, just over a week after Ramaphosa's assent to the Expropriation Act was revealed, Donald Trump announced the cutting of funding to South Africa until an investigation into the new confiscation policy – which he rightly characterised as a "human rights violation" – has been completed.⁵⁵ Only days later, the American President enacted an executive order that halted all foreign aid to South Africa, citing the Expropriation Act specifically, alongside South Africa's support for foreign adversaries of the United States and its allies, like Hamas. The executive order also opens a pathway to refugee status for Afrikaners, the largest component of the country's white minority and primarily associated with the ownership of farmland, given how political rhetoric in South Africa has singled them out for property confiscation.⁵⁶

Late in February, the Solidarity Movement, a South African civic group primarily known for defending the rights of Afrikaners, undertook a trip to the United States to calm tensions. Solidarity sought to protect South Africa from broad sanctions and tariffs, and the country's access to the African Growth and Opportunity Act (AGOA). If there are to be sanctions, they should be directed at the political clique responsible for the misconduct.⁵⁷ Shortly thereafter, in early March, South Africa's Directorate for Priority Crime Investigation announced it was investigating a docket of high treason against the Solidarity Movement.⁵⁸

In mid-March, US Secretary of State Marco Rubio expelled the South African Ambassador to the United States, Ebrahim Rasool, for among other things his partisan remarks against Trump.⁵⁹

In April, two bills were introduced in the US Congress to provide relief for racial minorities in South Africa fleeing persecution and property confiscation, and mandating a review of the relationship between the two countries.⁶⁰



And in June another bill was introduced in Congress to, among other things, suspend direct American assistance to South Africa and impose targeted sanctions on certain political leaders for human rights violations and corruption.⁶¹

These are only some of the most notable items of fallout resulting, in large part though by no means exclusively, from the adoption into law of the Expropriation Act.

South Africa has been treated extremely favourably over recent decades, with the United States allowing the country to continue benefiting from AGOA. In fact, it could be argued that South Africa, as an upper-middle income country was

not intended to be preferenced by this American law, with it instead being aimed at uplifting poorer economies.⁶²

That South African authorities responded to this generosity by placing themselves on the opposite side of every notable geopolitical conflict from the United States – including erring on the side of Russia against Ukraine, on the side of Iran against Israel, and on the side of China against Taiwan – and adopting laws like the Expropriation Act that specifically violate a core tenet of AGOA ("a market-based economy that protects private property rights"⁶³), seems (it is submitted) to be intentional malice.

54. Note that South Africa's property protection score has declined over all categories, long before the Expropriation Act was assented to. See Levy-Carciente 2023 27-30.

55. Fernandes, J. 2025. Donald Trump cuts funding for South Africa, says "massive human rights VIOLATION". *Livemint*. livemint.com/news/us-news/donald-trump-cuts-funding-south-africa-us-news-confiscating-land-human-rights-violations-alleged-white-farmer-deaths-11738543857290.html.

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58. eNCA. 2025. Hawks investigating high treason dockets linked to AfriForum, Solidarity US visit. enca.com/top-stories/hawks-investigating-high-treason-dockets-linked-afriforum-solidarity-us-visit.

59. *The Guardian*. 2025. Marco Rubio says South Africa's ambassador to US is "no longer welcome". theguardian.com/world/2025/mar/15/south-africa-ambassador-us-no-longer-welcome-marco-rubio-ebrahim-rasool.

60. GovTrack.us. 2025. H.R. 2607 – 119th Congress: AFRIKANER Act. govtrack.us/congress/bills/119/hr2607; Congress.gov. 2025. H.R. 2633 – 119th Congress: U.S.-South Africa Bilateral Relations Review Act of 2025. congress.gov/bill/119th-congress/house-bill/2633/text.

61. Cape Town ETC. 2025. US Congress introduces bill for sanctions against SA leaders. capetownetc.com/news/us-congress-introduces-bill-for-sanctions-against-sa-leaders/.

62. See Fabricius, P. 2014. Has AGOA worked too well for SA? *Politicsweb*. politicsweb.co.za/rss-news/has-agoa-worked-too-well-for-sa; Baskaran, G. 2024. Quantifying the impact of a loss of South Africa's AGOA benefits. Brookings Institution. brookings.edu/articles/quantifying-the-impact-of-a-loss-of-south-africas-agoa-benefits/.

63. AGOA.info. n.d. AGOA Country Eligibility. agoa.info/about-agoa/country-eligibility.html.

ALTERNATIVE RECOMMENDATIONS TO THE EXPROPRIATION ACT AND EWC

In light of the above, the following recommendations would not simply normalise South Africa's expropriation dispensation, but also achieve the land reform objectives dictated by the Constitution. Indeed, the Constitution allows government to pursue a comprehensive land reform programme that does not – in fact, may not – harm private property rights.⁶⁴

In so doing, South Africa's relationship with the United States stands only to improve.

EXPROPRIATION CONTROL ACT

- Parliament should adopt an Expropriation Control Act that respects the nature of expropriation law as a regime that limits government's power to confiscate, rather than a regime that enables government to more easily seize property.
- This Act should entrench market value compensation as the absolute floor of expropriation, but further set out that the quantum of compensation could, and in most cases should, be higher than mere market value.
- The Act should also ensure that expropriated owners are legally conceived of as blameless victims of state conduct, rather than the present implicit characterisation of them as (at best) annoying impediments to the state's agenda or (at worst) wrongdoers in need of punishment.

LAND REFORM

- The Institute of Race Relations' Right to Own Bill, which deals with various questions of constitutional property rights, should be adopted to act as the foundational law that guides government's posture toward property.⁶⁵
- Redistribution must be abandoned as a policy measure. It has no constitutional basis and is premised on a bogus, politically contrived "hunger for land." The only exception to this is that land owned by the state that is entirely or mostly unused, or being leased out, should be redistributed in *ownership* (formal title) to deserving civilians without political connections.
- The successful restitution programme started in 1994 must continue, and be capacitated with a larger share of the state budget.
- Owners with insecure tenure, and tenants on state land without title, should have their ownership secured and formalised. This process is already underway in some areas, for example through the facilitation of the Free Market Foundation's Khaya Lam Project,⁶⁶ but not yet at scale.
- Where red tape and regulation stands in the way of more equitable access to land, these should be done away with as required by section 25(5) of the Constitution. This includes provisions regulating the subdivision of land and excessively burdensome building and zoning codes.

64. For more on the Free Market Foundation's recommended alternatives to EWC, see Liberty First (www.libertyfirst.co.za).

65. South African Institute of Race Relations. 2025. Right to Own Bill. irr.org.za/whatsacanbe/files/right-to-own-bill.pdf.

66. See www.khayalam.org.za.



CONCLUSION

South Africa's new Expropriation Act, in many ways, is the straw that broke the camel's back in the country's relationship with the free world, primarily the United States of America. In particular, this Act allows the government to confiscate (take without compensation) private property owned by both locals and foreigners.

The Act is plainly unconstitutional, as the Constitution requires the payment of an amount of just and equitable compensation before an expropriation may take place (that is: confiscation is unlawful). But it cannot be viewed in isolation. The incumbent regime has adopted many other laws and policies over recent decades aimed singularly at undermining security of private property.

The state has created the impression that it cannot reasonably pay market value for expropriated properties and thus must be enabled to pay significantly below market value or even "nil" compensation. The reality is that the state voluntarily underfunds its land reform budget and could have concluded the full land reform project years ago utilising monies it has lost to corruption or spent on lavish vanity portfolios.

The Expropriation Act is, furthermore, not akin to expropriation statutes found throughout the open and democratic societies of the world, where compensation upon expropriation is standard and a high degree of deference is owed to expropriated owners.

There are multiple avenues of responsible constitutional land reform that could be embarked upon to redress the inequities of South Africa's history of land dispossession without endangering justice, investor confidence, or setting loose unlimited state power. Primarily, the hitherto successful (though underfunded) restitution process should be capacitated and preferenced over the political rent-seeking phenomenon of redistribution. The Expropriation Act specifically should be replaced with an Expropriation Control Act that appropriately conceives of expropriation law as a mechanism that protects property rights against arbitrary confiscation.

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