

19 November 2018

Joint memorandum by COPE and AfriForum to the US Embassy in Pretoria concerning expropriation without compensation and farm murders and attacks in South Africa

Background of COPE and AfriForum

COPE is a South African opposition party with representation in the South African Parliament. The president of the party, Mr. Mosiuoa Lekota, is a former member of the South African governing party, the ANC. Lekota spent more than 13 years in and out of prisons on Robben Island on the main land and under the previous regime because of his political activities. With the beginning of the new dispensation in 1994, he was elected Premier of the Free State Province in South Africa under the banner of the ANC, subsequently, also serving in South Africa's National Cabinet. Lekota resigned from Cabinet and as ANC member when the ANC began to disregard the national constitution. As this trend persisted he led the move to form the Congress of The People (COPE)

AfriForum is a South African civil rights organization that was founded in 2006. With more than 215 000 active members, AfriForum is currently the largest civil rights organization in Africa. AfriForum focuses on the protection of constitutional rights (as enshrined in the South African Constitution), human and minority rights, as well as other internationally recognized rights. AfriForum condemns any form of racism and is working peacefully within the framework of the law to help create a society where minorities such as Afrikaners, Afrikaans-speaking people and all South Africans may continue to live in freedom, safety and prosperity on a basis of mutual recognition and respect at the southern tip of Africa.

Request to the American Government

This memorandum is addressed jointly by COPE and AfriForum to the American Government, with the request that the USA exert diplomatic pressure on the South African Government to respect the South African Constitution and the protection of property rights contained therein, emanating from the negotiated settlement reached in South Africa in the early 1990s. During the 1990s, the US and other foreign powers played a significant role in encouraging the various parties to reach a settlement, and for this reason we feel free to request the USA 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 expropriate property without compensation would amount to a violation of the negotiated settlement of the 1990s. The ANC government's attempts to amend South Africa's Constitution to make expropriation without compensation possible has now entered a new phase with the fact that the Parliamentary Constitutional Review Committee decided on 18 November to recommend that the Constitution be amended.

COPE and AfriForum are not requesting the USA to exert pressure by means of sanctions or by encouraging disinvestment. 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, including Zimbabwe and Venezuela. With the purpose of protecting ordinary South Africans who would suffer, should the economy be harmed by the disregard of property rights, we however need the assistance of the USA 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 or other programs in order to allow expropriation without compensation. Pressure from the USA is also necessary to ensure that the ANC government does not violate the 1994 settlement by amending the Constitution.

The USA is also requested to exert pressure on the South African Government to declare attacks and murders on farms in the country to be a priority crime. South Africa's citizens of all communities are suffering because of crime, but, seeing that the murder rate on farms are proportionally considerably higher than the average murder rate in the country and that farm attacks and murders in many instances are accompanied by torture, we believe that this category of crime deserves to be prioritized, as is the case with violence against women and children, as well as gang-related violence. Other factors contributing to the urgency for government response to farm attacks and murders to be prioritized, include the fact that farmers and farm workers are job creators and producers of food (influencing food security in Southern Africa), and also the fact that farmers and farm workers live in unique circumstances often in remote areas, where they are far away from police stations and their neighbors. Despite the fact that agriculture has historically played a significant role in the South African economy, the country has now reached the point where imports of food exceed exports. Consequently, there is a growing concern about the future of food security in South Africa.

Denying the problem

The South African Government's denial to the USA and other foreign powers concerning the threat posed by expropriation without compensation and violence on farms is a misrepresentation that must be rectified urgently. For instance, South Africa's President Cyril Ramaphosa told the media at a meeting in New York on 26 September 2018 that there were no land grabs in South Africa and that no farmer in South Africa had been murdered. This is not true.

The facts regarding the threat to property rights by expropriation without compensation and farm murders are stated below.

Expropriation without compensation is a real threat

Notwithstanding the South African Government's attempts to appease the international community by pretending that property rights are not being threatened, the facts prove the opposite. The facts are as follows:

- In December 2017, the ANC officially decided at its congress to accept expropriation without compensation as party policy.
- On 27 February 2018, the South African National Assembly subsequently adopted a motion that the property rights clause in the South African Constitution has to be reviewed in order to allow the state to expropriate private property without compensation.
- On 27 March this year, the South African newspaper *City Press* reported that Maite Nkoana-Mashabane, Minister of Rural Development and Land Reform, said government would not wait until the Constitution has been amended and that her department was preparing a test case to expropriate land without compensation. She also indicated that her department had already identified land they want to expropriate, but that she was not going to disclose the list of farms, because that would warn the owners concerned to prepare for legal action. The minister has never contested the content of this report and it is therefore accepted as a correct version of what she had said.
- On 31 July 2018, President Cyril Ramaphosa made a late-night announcement on television that he and the ANC had decided to proceed with amending the South African Constitution to allow expropriation without compensation. President Ramaphosa's announcement to change the Constitution's provisions regarding property rights 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 Ramaphosa publicly expressing his support for expropriation without compensation. This announcement was made while the South African Parliament's open-ended public participation process had not even been completed yet, thus reducing the participation process to a farce. Foreign pressure is therefore now of paramount importance.

- On 5 August this year another report in *City Press* indicated that the Department of Rural Development and Land Reform, on instruction of the ANC, had identified 139 farms for expropriation without compensation. Zizi Kodwa, member of the ANC's national executive committee (NEC), is cited extensively in this report. The report's content has not been contested by the ANC. On the same day, the South African newspaper *The Sunday Times* reported that according to the party's spokesperson, Ronald Lamola, the ANC had identified 139 farms that would serve as "expropriation targets".
- On 18 November the Parliamentary Constitutional Review Committee officially recommended that the Constitution be amended to make expropriation without compensation expressly possible.

The ANC is attempting to sell its plans to foreign countries by saying these plans would be executed legally and constitutionally and that there would be no land grabs. If the Constitution is amended to allow expropriation without compensation, the ANC could argue that it is being done "constitutionally", but this certainly does not mean that it is 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. It would also contravene international treaties and charters ratified by the South African Government.

Contrary to what the government is professing to other countries, land grabs are indeed 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, 161 in Ekurhuleni and 1 470 in the Tshwane Metro area since January this year. Although these land invasions were not 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 Dr Motodi Maserumule's farm, because the police had refused to act. This was done at great cost.

Both COPE and AfriForum recognize the injustices concerning land ownership in the past, with legislation such as the 1913 Land Act and the 1950 Group Areas Act, and are in favor of efforts to give black South Africans wider access to land. The current restitution and land reform legislation already provides for this. According to former interim President Kgalema Motlanthe's investigation, this process has failed, not because of the Constitution's provisions regarding property rights, but because of large-scale corruption and the Government's lack of executive capacity. The South African Government has already spent more than R50 billion on land reform in South Africa, but has very little to show for it, mostly as a result of corruption. The South African Government is now attempting to cover up its failures in this regard by turning to radical policies such as expropriation without compensation.

The human rights – of not only the present generation of landowners who legally purchased their property, but also of those who do not possess property – will be violated by expropriation without compensation, because the situation in Zimbabwe with its current unemployment rate of 90% shows that a violation of property rights in fact also harms a country's economy to the detriment of all.

Farm attacks and murders are a serious problem

Notwithstanding President Ramaphosa's denial of farm murders in South Africa, the facts show that this is a serious problem.

Those who deny the farm attack and murder crisis, falsely claim that the number of farm murders in South Africa is decreasing. Statistics on farm murders by the TAU SA – including verifiable victim names, farm names and dates when the murders were committed – confirm that farm murders last year were at their highest level in 13 years. A well-grounded analysis of the South African Police Service statistics by Politicsweb further indicates that the police statistics used by AgriSA to create the impression that farm murders are decreasing, have serious shortcomings.

Those who try to ignore farm murders by showing that the number of farm murders is lower than 20 years ago, ignore the fact that the number of commercial farmers has almost halved during the same period. Research by Politicsweb has found that a farmer's chances of being killed is estimated to be 3,2 times higher than the country's already outrageously high average murder rate. This, despite the fact that roughly 80% of all murders included in the South African average murder rate are what is known as social fabric crimes, while social fabric crimes are particularly excluded from the definition of farm murders. The result of this is that the difference between the farm murders and the average murder rate is excessively higher than one tends to conclude at first glance.

Attached to this memorandum is a copy of *Kill the Boer*, a book on farm murders, for your consideration. It was recently written by Ernst Roets, Deputy CEO of AfriForum. The book provides an in-depth analysis of the crisis and contains more than a thousand source references.

Farm attacks and murders should be regarded as a serious violation of human rights, which should be condemned by all mainstream role players and governments worldwide who believe in the protection of human rights. The fact that there are small groups of white nationalists who try to hijack the fight against farm murders, does harm to a justified cause, while those who deny farm murders, try to discredit the effort by falsely trying to connect it to peripheral figures.

Should you require any further information, feel free to contact us.

Kind regards

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