

# FISH HOEK VALLEY RATEPAYERS & RESIDENTS ASSOCIATION

*(Incorporating Fish Hoek, Clovelly and Sun Valley)*

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**TO: CONSTITUTIONAL REVIEW COMMITTEE  
MS PAT JAYIYA, COMMITTEE SECTION,  
[pjayiya@parliament.gov.za](mailto:pjayiya@parliament.gov.za)**

**SUBJECT: COMMENTS ON INVITATION FOR PUBLIC SUBMISSIONS ON THE  
REVIEW OF SECTION 25 OF THE CONSTITUTION**

**CLOSING: 31 MAY 2018**

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## **DISCUSSION**

We appreciate that as part of exercising the constitutional obligation to facilitate public participation, the Committee invites written submissions from all stakeholders on the necessity of, and mechanisms for expropriating land without compensation.

We have reviewed our Constitution<sup>1</sup> of 1996's Sections 25 and 36 with the view of making it possible for the state to expropriate land in the public interest without compensation and for the necessary constitutional amendments where applicable with regards to the kind of future land tenure regime needed.

We do not feel that our Constitution needs amending. Expropriation of land is well covered with and without compensation already. As household property owners, we were initially concerned with the "without compensation" portion as property rights are recognised in the United Nations' Universal Declaration of Human Rights and the World Justice Project on rule of law<sup>2</sup>. Expropriation did not work in Zimbabwe. Also, investors will not invest in South Africa if surety of tenure cannot be guaranteed. The lack of foreign investment will negatively affect our balance of payments and our economy probably causing us to go to the IMF for a loan with all of their conditions. However, the IMF will only give a loan to South Africa on condition that respect for property rights is restored. Furthermore, our banks are owed trillions by farmers and they will go bankrupt without payments due to the lack of incentive to repay. Food security will then come under immense pressure.

The Constitution already requires that any compensation for expropriation must be just and equitable. Abandoned buildings, fallow land, over-grazed farms, spent salt-mines, etc. may be expropriated without compensation, if it is just and equitable to do so. A court decides, in the event of a dispute, whether justice and equity have been served.

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<sup>1</sup> <http://www.justice.gov.za/legislation/constitution/SACConstitution-web-eng.pdf>

<sup>2</sup> <https://accountabilitynow.org.za/on-the-nationalisation-of-land/>

Herman Mashaba, the Mayor of Johannesburg, says that he intends expropriating abandoned and dangerous city buildings in downtown Johannesburg without offering compensation to the absentee owners. He cites Section 25 and says that he has been entitled to do so since the Constitution came into force in February 1997. If he is successful, we will ask the City of Cape Town to expropriate a derelict property in our valley under similar circumstances in the public interest.

As no amendments to the Constitution have been framed yet, we reserve our right to debate through the public participation process when appropriate.

We do not wish to make an oral presentation to the Committee.

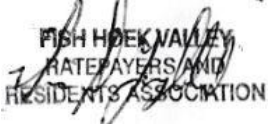
## RECOMMENDATION

It is recommended, for the reasons set out in this report to

### **Not amend our Constitution.**

We are opposed to any changes to section 25 of the RSA Constitution to allow "Expropriation without Compensation" (EWC). Our opposition is based on the findings of the Motlanthe Report on land redistribution, restitution and security of tenure commissioned by the National Assembly Speaker's Forum. In summary:

1. The greatest hindrance to land restitution and redistribution is not compensation but corruption by officials and lack of "capacity";
2. The state has a minuscule budget (0,4% of GDP) and very little political will to implement land redistribution and restitution;
3. The recipients of restituted land become "tenants of the state" - they receive no title deeds and are thus unable to use the land as collateral to finance development;
4. The state has failed to use its existing constitutional powers of expropriation and distribution of land effectively (eg Sepeka Tea Estates);
5. The state has failed to "protect the interests of the vulnerable" as required by Section 25 (6). Rather practices and policies relating to land are used to benefit political allies and special elites.

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<b>DATE</b>	10 May 2018