

Land expropriation demands signal a cry for change

'The demand by black freedom movements for the return of the land meant the return of the country to its people – it was directed not only at ownership of farms but at minority control of the economy and society. This is why expropriation without compensation has become a rallying cry for many who have no interest in farming but who feel that a quarter century of democracy has not ended white privilege. It symbolises a much broader demand for change.' In an analysis on [The Conversation](#) site, the University of Johannesburg's Professor Steven Friedman adds this is why no-one has paid much attention to arguments about the technical merits of land expropriation and why there is such support for a constitutional change – despite the fact that there is no need for it because expropriation without compensation is possible now. 'This has been ignored because the dispute is about dignity and equality, not constitutional clauses,' he says. He argues that **section 25 will probably be changed to allow for expropriation without compensation**. 'But the clause will specify very clearly that this can only happen in very particular circumstances, which it will carefully define.' As a result, property rights will be protected because owners will know that they are entitled to compensation unless they act in a way which forfeits their right. 'Land owners who hold the state to ransom will risk losing compensation; property rights will be protected, making investment safe.' However, Friedman adds the dispute's importance depends not on whether it produces a compromise on land – but on whether it begins negotiations on opening the economy to the excluded. 'This alone will reduce the anger which makes crisis the only mode of change and ensure a less dramatic but more lasting way of addressing economic challenges,' he says.

'Parliament's vote to consider expropriation without compensation is perhaps the institution's worst deed since voting to implement apartheid decades ago.' In a different take on the debate, the Free Market Foundation's Martin van Staden argues **if the Constitution is so amended, the Constitutional Court will be called upon to 'correct the irresponsibility and recklessness of parliamentarians'**. In an analysis on the [Huffpost SA](#) site, he gives two reasons why a proposed repeal of the compensation clause in section 25 – or a repeal of section 25 entirely – would be unconstitutional:

* Section 1(c) of the Constitution provides that SA is founded on the supremacy of the Constitution and the rule of law. Section 74 provides that this section can only be amended with a 75% majority in Parliament. 'Property rights are an inseparable part of the rule of law,' he says, and would thus be law in SA even if section 25 did not exist. 'But if section 25 is to be amended, it will in effect amount to an amendment of section 1(c) of the Constitution as well, because property rights are an essential characteristic of the rule of law. This will require that elusive 75% majority.' Furthermore, if section 25 is amended to remove the compensation clause, the Constitution will no longer be giving full effect to section 1(c), meaning it must become directly enforceable.

* Property rights are part of the basic structure of the Constitution. Section 74 enables Parliament to amend the Constitution, not repeal or replace it. The Constitution, he says, 'does not provide for its own demise'. Any change disguised as an 'amendment' that effectively amounts to repealing the Constitution and replacing it with something else would thus violate the basic structure doctrine. Parliament is not empowered to make a change of this nature. 'Property rights also constitute a part of the founding value of the rule of law and permeates much of the Bill of Rights, including the rights to human dignity and housing.'