

# EXPROPRIATION AND LAND REFORM IN SOUTH AFRICA

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# INTRODUCTIONS

- Municipal Law Department
  - Also deals with public law, administrative law, constitutional law
  - They all converge with expropriation
- Chantelle Gladwin-Wood, Partner since 2012
  - Head of Municipal Law Department (first of its kind in SA)
  - Masters in Advanced Property Law (UNISA)
  - LLD studies in Municipal Law at TUKS
  - Chairperson of Johannesburg Attorneys Association and Gauteng Attorneys Association
- Anja van Wijk, Senior Associate since 2018
  - Specialises in evictions and landlord/tenant law
  - And all aspects of constitutional law relating to property including expropriation

# AGENDA

1. What is land reform?
2. What is expropriation?
3. Why does it exist? What is land hunger? International perspectives
4. S 25 of the Constitution and 'the property clause'
  - Expropriation requirements
  - Public purpose/public interest
  - Subsection 8 and the limitations clause – s 36
5. The Expropriation Bill v dot and v2.0
6. Amending the Constitution?
7. The Beneficiary Selection Policy
8. The balancing act: land reform vs protection of property rights?
9. Into the future

# WHAT IS LAND REFORM?

- Owing to our dark past, there is a desperate need for people who have or who continue to suffer the effects of the discriminatory policies of Apartheid, to receive redress
- One of the most popular methods of redress is land reform (because land is thought of as being the most valuable kind of asset)
- Land reform comes in many forms:
  - Security of tenure (upgrading of rights and giving out title deeds, laws that protect tenure like ESTA etc)
  - Restitution (returning land to people who were forcibly moved off of it) – dealt with by the Land Claims process
  - Redistribution (no defined policy, but thought of as being aimed at taking assets from persons who acquired them unduly and giving them to those who were unduly disadvantaged by the government of the time)
    - EXPROPRIATION IS TO BE USED FOR THE LATTER
- IMPORTANT NOT TO CONFLATE EXPROPRIATION AND LAND REFORM – expropriation is one means of achieving land reform, but there are many others that might be used and more effectively, and less devastatingly
- Just because one opposes expropriation (with or without compensation), this does not mean that one is against land reform and addressing the evils of the past

# WHAT IS EXPROPRIATION?

- An act of 'taking' property of any kind from a private citizen by a government
  - Any kind of property – not only land, cash in bank, shares, jewellery, water rights, servitudes, conceivably any "thing" with value in our law
  - Can only be done by government
  - Can only be done against a private citizen
  - 'taking' is a loose term – sometimes described as 'acquiring' – the exact meaning is not defined anywhere and can be elusive
    - For example in the AgriSA case in the Constitutional Court the court held that the government was not expropriating the mineral rights from the owners of the land in terms of the legislation that caused the unreserved mineral rights to 'revert to' the government at a certain date – but rather that the government was holding them as custodian for all of the people of SA. Because the government was not 'taking' it for its own benefit, it was held not to be expropriation
    - Heavily criticized because of the slippery slope – nationalization of banks?

# EXPROPRIATION VS DEPRIVATION?

- Not every 'taking' is an expropriation
- The Constitutional also talks about 'deprivations'
  - less severe forms of infringements on property rights
  - Can be done by government or private individual/company
  - Must be authorized by law of general application to be lawful
  - Must not be arbitrary to be lawful
- Normally, expropriation is where the whole or the majority of the right is 'taken' so as to remove the control of, or benefit of, the owner of the thing, whereas deprivation is usually an interference with only some of or one of the owner's rights in that thing
- Example: *FNB t/a Wesbank v SARS* (Constitutional Court) – where a provision of the Customs and Excise legislation said that if a debtor hasn't paid their taxes SARS can take their stuff, including any stuff they possess that is owned by third parties. SARS was unhappy because that often meant that cars that FNB was the title holder of were lost to SARS. Argued it was an unconstitutional and arbitrary deprivation of their property rights because they weren't liable for the debt yet suffered for the debts of another person. Court agreed.

# WHY DO WE NEED EXPROPRIATION?

- Governments all over the world have the power to expropriate – necessary and ordinarily seen as fair when compensated
- The government needs to have the power to ‘take’ from a private citizen where necessary for the public good
  - What is best for all must override what is best for one
- Government has power to do this when necessary
  - Emergencies such as natural disasters
  - Infrastructure development such as roads, hospitals, etc
  - Not to be abused for personal gain or croniism or tendpreneurship
    - Abuses would hypothetically fail the ‘public purpose’ requirement

# THE LAND HUNGER

- The government has told the SA public that it needs expropriation in order to speed up land reform, because the people of SA are calling for it
- This is colloquially referred to as 'the land hunger'
- Undoubtedly, people want to accrue wealth and assets
- Undoubtedly, the majority of our population were denied this ability under Apartheid – catch up is needed to result in a more equal society
- But to date we have no proper understanding of the key aspects of this 'hunger' – and as such, we cannot begin to formulate a plan to deal with it
  - Who are deserving of receiving land?
  - What kind of land should be 'redistributed'?
- Expropriation is a drastic measure and we should only use it where we know it will achieve the desired end – at this point we don't know that because we haven't done enough research

# INTERESTING QUESTIONS

- From my article “The Land Hunger: <http://www.schindlers.co.za/news/expropriation-3-the-land-hunger/>
- Does ‘land hunger’ involve only a desire for land itself?
- Can it be thought of more generally as a hunger for security of tenure or for a means to provide for one’s family’s accommodation?
- Can it be thought of more generally as a hunger for wealth?
- Can a hunger for land include the needs of not only the individual and their immediate family, but their extended family, or future generations?
- What type of land hunger qualifies for redress?
  - Saleable or lettable units (not primarily for the beneficiary’s accommodation but rather for economic benefit),
  - large tracts of commercial farm land,
  - smaller tracts of farm land for subsistence purposes,
  - residential homes in urban areas, or
  - homes/plots in rural areas that the family hails from?

# MORE INTERESTING QUESTIONS

- Does everyone of a certain race, heritage or ethnicity qualify or are there other qualifications?
- Do black people from outside of South Africa qualify?
- Do Jewish people who landed in South Africa to escape the holocaust qualify?
- Are black people or previously disadvantaged people with income or assets above a certain threshold excluded?
- Do white or previously advantaged people with less than a certain income/asset threshold qualify?
- What about black people from wealthy families (remembering that in many black families wealth is held by one member for the benefit of all others)?
- What about black persons from wealthy families, such as some of the royal families?
- What about black South Africans born into the 'new South Africa' – is there any cut-off date or will any black person qualify, no matter when they were born? If so, will there ever be a cut-off date?

# EVEN MORE QUESTIONS

- **What kind of land will satisfy the 'land hunger'?**
- Will land anywhere do or will each person's unique needs/wants be taken into account?
- Does it include improvements on the land (such as a dairy on a farm, a warehouse on a piece of industrial land, or a house on a residential erf)?
- Does it include not only improvements, but other implements necessary to turn the land into an economic unit (for farming you might need tractors, labour, seed, implements; whereas for lettable residential units you might need land in residential areas, access to municipal services, etc).
- Does it include only land, or rights in land – such as shareblocks, life rights in retirement villages, rights to communally owned grazing land or for residential purposes on tribal land, leases?
- Does it include the right to land for purposes other than living? Running a business, practicing one's religion, educating children, etc?

# POPULAR MEDIA HAS CLOUDED THE DEBATE

- The media has confused the issue
- Very few facts/statistics to base opinions on
- AgriSA and Government land reports – conflicting and criticized
- Very emotive issue because connected to our dark part and moving towards a more equal society
- Mark Oppenheimer (advocate) writes and speaks about expropriation without compensation based on the available statistics – and is heavily criticised for it
- <https://www.politicsweb.co.za/opinion/six-myths-about-land-reform>

## **Myth Three: People are crying out for land**

“When South Africans are asked about the country’s most serious unresolved problems, almost 40% identify unemployment, 33% raise a lack of service delivery, while less than 1% are concerned about land distribution.

When people win their land claim cases, they are given the choice of receiving land or financial compensation. In **92% of cases**, people choose money over land. This shouldn’t come as much of a surprise, because money translates into freedom. Beneficiaries can use that money to start businesses, pay off debts or invest in the market. The facts show that land is not a burning issue for ordinary citizens. It’s an issue being capitalised on by a few radicals with big loudhailers.”

# INTERNATIONAL PERSPECTIVES

[www.theglobaleconomy.com](http://www.theglobaleconomy.com) – a useful tool for gauging ‘expropriation risk’ in different countries across the globe

- in 2017 we ranked 82 out of 171 (number 171 being the best and number 1 being the worst)
- Our risk factor for expropriation was 4 out of 7
- Australia, UK, USA have a risk factor is 1
- Iraq, Afghanistan, Somalia have a risk factor of 7
- Zimbabwe has a risk factor of 6

- Risk defined as:

“Risk of expropriation and government action = The risk of expropriation and government action covers the risks of expropriation, breach of contract by the government, a possible negative change of attitude towards foreign investors, and also risks related to the functioning of the judiciary system”

EXPROPRIATION HAPPENS EVERYWHERE – BUT WE DON'T HEAR ABOUT IT IN THE NEWS BECAUSE IT HAPPENS IN AN ORDERLY FASHION IN A MANNER THAT DOESN'T THREATEN HUMAN RIGHTS, INVESTOR CONFIDENCE OR FOOD SECURITY

# SECTION 25 OF THE CONSTITUTION

- 'The Property Clause'
  - Was the product of negotiation when the Constitution was written
  - It reflects a delicate balance between the rights of property owners and occupiers
  - It also strikes a balance between the rights of property owners (not to have their property expropriated without compensation) and the right of the state to exercise its authority and take property where necessary in the public interest/purpose

(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.

# SECTION 25 CONTINUED

- (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.
- (4) For the purposes of this section— (a) the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and (b) property is not limited to land.

# SECTION 25 CONTINUED

- (5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.
- (6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.
- (7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.
- (8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1).

# SECTION 36?

- Limitation of rights 36.
- (1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—
  - (a) the nature of the right;
  - (b) the importance of the purpose of the limitation;
  - (c) the nature and extent of the limitation;
  - (d) the relation between the limitation and its purpose; and (e) less restrictive means to achieve the purpose.
- (2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

# SECTION 25 - SUMMARY

- Key points to remember:
  - Expropriation must happen in terms of a law of general application – it cannot be aimed at a particular person or group unless a law of general application (which would have to be passed by Parliament) allows this
  - Expropriation must be compensated
  - Expropriation must be in the public interest or for a public purpose – abuses will not pass the test – and public interest includes the nation's commitment to land reform
  - The state can pass legislation that does not accord with section 25 in terms of subsection 8 provided that it accords with section 36 – the general limitations clause
  - There is no formula for compensation in the Constitution – it only says it must be just and equitable – can be NIL or rather nominal (R1) in just and equitable circumstances
  - You **MUST** take into account the listed factors when looking at whether the compensation payable is just and equitable and
  - There is nothing saying that expropriation is tied to the 'willing buyer willing seller' principle
- **CONCLUSION** – s 25 does not need to be amended to achieve greater land reform, by making greater use of expropriation, even where the compensation payable is nil or nominal
- All that is needed is national legislation providing a framework in terms of which this can happen (provided that this legislation is in line with the s 25 and 36 of the Constitution)

# THE EXPROPRIATION BILL

- The Expropriation Bill was first published for comment 21 Dec 2019 – if passed it will amend the existing Expropriation Act – highly criticized (for timing of comment as well)
- The newly gazetted and revised Expropriation Bill (v2.0) was published for comment on 9 October 2020
- NB features:
  - “Formula” for compensation in Act done away with – overarching consideration is that compensation must be just and equitable (which is in line with present formulation of s 25, making us question whether there will be any amendment or a non-material amendment)
  - ‘willing buyer willing seller’ as a first attempt retained but if this doesn’t pan out state can just expropriate at its own determined value
  - All affected parties are given the opportunity to make representations as to the value of their interests at some or other stage – increased protections for unregistered right holders
  - Aggrieved property owner or right holder can approach court to determine just and equitable compensation
  - Includes a list of circumstances where expropriation without compensation MIGHT be just and equitable (eg abandoned land)

# INSTANCES IN WHICH IT MIGHT BE OK TO COMPENSATE AT NIL

(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;
- (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; and
- (e) when the nature or condition of the property poses a health, safety or physical risk to persons or other property.

(4) When a court or arbitrator determines the amount of compensation in terms of section 23 of the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996), it may be just and equitable for nil compensation to be paid, having regard to all relevant circumstances.

# LAND! SUBJECT TO EWC

- A list is given of instances in which it might (not will) be just and equitable to expropriate **LAND** without compensation – each case to be decided on its own facts
  - Land occupied by labour tenants
  - Land acquired purely for speculation
  - State owned land
  - Abandoned land
  - Land whose market value is less than or equal to the value of state investment in that land
- PROBABLY THE MOST CONTENTIOUS PART (of 2019 Bill) which have been clarified in 2020 Bill v2.0)
  - 'speculation' was overly broad
  - Unregistered rights holders (e.g. judgement creditors) now have some protection/provision is made for possible compensation
- **INTERESTING THAT THIS LIST IS ONLY IN RELATION TO LAND AND NOT ALL PROPERTY, WHEREAS S 25 ALLOWS IT TO BE ALL PROPERTY (but public participation and exceeding the scope of the mandate of the committee tasked with amending S 25 re land?)**

# FACTORS NOT TO BE TAKEN INTO ACCOUNT

- Section 12 includes an interesting list of factors NOT to be taken into account when determining just and equitable compensation (unless there are special circumstances):
  - Fact that property taken against owner's will;
  - Special suitability of property for purpose expropriated (unless that special suitability has market value);
  - Enhancement in value from unlawful actions (buildings not built to zoning or building law requirements???) RISK ;
  - Improvements made after notice of intention to expropriate (unless otherwise agreed);
  - Anything done to increase compensation payable; and
  - Any increase/decrease in value as a result of the expropriation.

# FACTORS NOT TO BE TAKEN INTO ACCOUNT WHEN CALCULATING COMPENSATION

(2) In determining the amount of compensation to be paid in terms of this Act, the expropriating authority must not, unless there are special circumstances in which it would be just and equitable to do so, take account of—

- (a) the fact that the property has been taken without the consent of the expropriated owner or expropriated holder;
- (b) the special suitability or usefulness of the property for the purpose for which it is required by the expropriating authority, if it is unlikely that the property would have been purchased for that purpose in the open market;
- (c) any enhancement in the value of the property, if such enhancement is a consequence of the use of the property in a manner which is unlawful;
- (d) improvements made to the property in question after the date on which the notice of expropriation was served upon the expropriated owner or expropriated holder, as the case may be, except where the improvements were agreed to in advance by the expropriating authority or where they were undertaken in pursuance of obligations entered into before the date of expropriation;
- (e) anything done with the object of obtaining compensation therefor; and
- (f) any enhancement or depreciation, before or after the date of service of the notice of expropriation, in the value of the property in question, which can be directly attributed to the purpose in connection with which the property was expropriated.

# TREATMENT OF RIGHT HOLDERS

- Three categories:
  - Owners – always entitled to compensation (owners include any person registered in any public office, not only Deeds Office, as owner)
  - Registered right holders – do not get compensation because when the property is expropriated the registered rights remain intact and aren't affected, unless the registered right is expropriated too in which case it must be compensated as if it were ownership
    - Exception – mortgage bonds which do not survive expropriation
  - Unregistered right holder
    - If known, they get notice and compensation just like the owner (3 special listed categories, lessees, purchasers and lien holders)
    - If unknown, they can go back and ask for compensation when they find out that their right has been expropriated
    - Get special treatment because they are vulnerable and need extra protection

# MORTGAGE BONDS?

- Mortgage bonds fall away when expropriation happens - bond holder gets no compensation (but has right to *negotiate* with land owner for compensation)
- But the bond holder is given notice of the intention to expropriate and gets the right to make representations regarding the effect of the expropriation and the value of its right
- Theory is that because the underlying loan (that gave rise to the bond) is not expropriated, bank doesn't lose because it can still claim from property owner
- But one must ask how property owner who has just lost property, potentially with no or nominal compensation, will pay if he/she/has no money – can't sell property to pay bond so bank has lost security right (ie to sell property to recover money owed) and that in itself might be protected as property in terms of our Constitution
- Potentially unconstitutional – risk for banks???
- New bill provides slightly more protection by having the Master hold the compensation until dispute between mortgage bond holder and owner is resolved
- Jordaan case: para 61 recognizes that a security interest is protectable

[61] The same applies to the bond-holder, who advances money to the new owner to finance the transfer, but finds that its security, carefully calculated on the value of the property before transfer, becomes useless afterwards. The effect of allowing the charge to take effect post-transfer is thus to substantially interfere with or limit the transferee's ownership as well as the mortgagee's real right of security.

# POSSIBLE ISSUES WITH THE BILL

- Bonds are still not compensated
- The Bill provides that bond holders (banks) lose their bonds over the property when it is expropriated, but the same doesn't apply to financiers who have registered rights over any other type of property other than land – such as notarial bonds registered over movables or a bank's noted interest in a vehicle. This unequal treatment might bring about a challenge.
- The Bill does not require a professional valuation in all instances – **only where land is to be used for land reform is this required but only in terms of the Property Valuation Act.** Also **the Property Valuation Act requires that a valuation report include market value,** but **the Bill does not require that market value be one of the things that is looked at when an investigation is being done into the feasibility of the land for expropriation for the stated purpose** (although it is one of the factors to be taken into account when determining J and E compensation).
- Right to enforce payment virtually non-existent – state entitled to take possession anyway – need something stronger

# AMENDING SECTION 25?

- Ad hoc committee tasked with considering amendments to section 25 are still debating
- Were originally three proposals by different parties
- <https://www.news24.com/SouthAfrica/News/expropriation-without-compensation-this-is-how-the-constitution-could-be-amended-20191107>
- What I said in Nov 2019....."I suspect we will see it a week before Xmas – government has a history of trying to 'sneak these things through' "
- Watch this space over Xmas!

# WHAT ARE OUR VIEWS?

- In short, section 25 does not need to be amended to achieve land reform (and even expropriation without compensation – here is a link to an article that proves this: [https://scholar.sun.ac.za/bitstream/handle/10019.1/106255/slade\\_submission\\_2019.pdf?sequence=1&isAllowed=y](https://scholar.sun.ac.za/bitstream/handle/10019.1/106255/slade_submission_2019.pdf?sequence=1&isAllowed=y)
- We worked with a think tank from the South African Chair of Property Law at Stellenbosch University to debate, if there has to be an amendment for political reasons, what that amendment ought to look like
- Experts from all over RSA who sat together for two days to think, debate and produce a set of comments about the proposed amendments
- This is not publicly available but we will send out a copy with the slides and other relevant materials after this webinar
- Here is a link to an article that I wrote about this, incorporating both my views, and the views of the think tank, after the comments were released: <https://www.schindlers.co.za/2020/expropriation-5-proposed-amendments-to-section-25-of-the-constitution-february-2020/>
- Our most recent articles on the newly revised Bill can be found at:  
<https://www.schindlers.co.za/2020/expropriation-6-expropriation-bill-v2-0-october-2020-2/>  
<https://www.schindlers.co.za/2020/expropriation-7-expropriation-bill-v2-0-and-municipal-charges/>

# THE BALANCING ACT

- Unless sections 25 and 36 of the Constitution are both amended to remove the 'just and equitable requirement', this will always be the overriding consideration when looking at expropriation
- Our courts will decide on a case by case basis
- There are factors that must be taken into account and factors that must not be, and instances in which land might be taken without compensation are listed – but this does not override the 'just and equitable' standard which remains untouched
- Our courts have (apart from the *AgriSA* judgment, which has been highly criticized) always protected property rights fairly
- The strength of our judiciary might just be our saving grace – it is one of the factors in the 'risk analysis' undertaken when comparing expropriation risk worldwide

# BENEFICIARY SELECTION POLICY

- Is a policy, not a law
- Came in out Jan 2020 and was open for comment for 60 days – we haven't seen a final or revised version yet
- Is a guideline for government to chose beneficiaries of land reform – with or without compensation
- Clear focus on giving access to women, military veterans, and people who want to farm for subsistence or commercial reasons
- Only indication that urban land is targeted, is insofar as it relates to giving large tracts of land to poor municipalities in urban areas for development of housing, and fast tracking developments of private developers that will promote access to housing for the lower income segments

# FOCUS OF SELECTION POLICY

## 4.1 POLICY PROPOSALS:

- a) **Ensure equitable access** to land for all the previously disadvantaged citizens;
  - b) **Address diverse or different land needs** (for agricultural production, human settlements, commonage, residential and industrial development purposes);
  - c) **Promote industrialization and change of spatial development** with the focus towards township economy, special economic zones, and industries in rural areas;
  - d) **Promote urban agriculture** through access to agricultural development plots or allotments;
  - e) **Create a credible and transparent system** of land allocation and beneficiary selection;
  - f) **Target the rural poor, landless, poor municipalities and peri-urban residents** to gain access to land;
  - g) **Create a crop of new young black smallholder/commercial farmers** through targeting women and unemployed agricultural graduates, youth in the agricultural sector to access land and associated Agro processing value chain opportunities;
  - h) **Establish an independent selection panel** for land allocation.
- f) **Commercialization of black farmers:** Government shall ensure we rekindle the class of black commercial farmers which were systematically destroyed by the 1913 Natives land Act;
  - g) **Biasness towards Poor Rural residents and Municipalities:** Government shall ensure rural poor, landless, poor municipalities and peri-urban residents gain access to land for production, commonage, human settlement, and industrial development.
  - h) **Women and Youth advancement through access to land:** Government shall ensure in particular that land allocation reach out to women, unemployed agricultural graduates, and youth in the agricultural sector for participation in agricultural production, economic activities and associated Agro processing value chain opportunities.

# WHERE TO FROM HERE?

- Much work to be done – for example, there is developing law on the issue of ‘the family house’ – and our concept of land ownership and rights does not take this into account. This is critical to a proper administration of land rights in RSA
- See work being done on the family home here: <https://www.birmingham.ac.uk/Documents/college-artslaw/dasa/2019/family-house-position-paper.pdf>
- Work to be done on the issue of how RSA might offend international law if it brings in EWC on a blanket basis
- We await the answer on if and how section 25 is to be amended – we may even see constitutional court challenges to this
- We don't think there will be an amendment to the Constitution – the Expropriation Bill caters for everything needed
- Regardless of what we end up with:
  - We will inevitably see court challenges by affected parties – as usual this will go on for many years and we will carve our way into the landscape through ad hoc judgments
  - Pretty much business as usual unless the proposed amendment to s 25 spooks investors (speculation!!), damages food security or the issue of bonds not being compensated in terms of the Bill causes a retraction/withdrawal/shrinking of credit in the economy – in which case we will all suffer for it
  - Only time will tell

# PREDICTING THE FUTURE

- For now, business as usual
- I don't think we will see a drastic amendment to the Constitution (I still think we won't see one, and the Government plans to run the public comment process (where a majority of people will say don't change it) simply to excuse it from acting on its prior promises to amend
- Of course, we might be wrong
- I previously predicted that, based on the draft amendments to the Expropriation Bill we would not see a change to the Constitution, or that it would be a meaningless change (looks like I had too much faith!)
- Indeed, the politicians seem to be tampering with our most important document to make it look like they are doing something – VERY VERY DANGEROUS PRECEDENT SET
- So don't rely on our predictions for the future – politicians are full of surprises
- If you feel vulnerable, seek legal advice – might be a way to make your property less vulnerable to expropriation (I have some ideas)

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- Expropriation #1: Amendments to Section 25? <http://www.schindlers.co.za/news/expropriation-1-amendments-to-section-25/>
- Expropriation #2: Tenants and Occupiers <http://www.schindlers.co.za/news/expropriation-2-tenants-and-occupiers/>
- Expropriation #3: The Land Hunger <http://www.schindlers.co.za/news/expropriation-3-the-land-hunger/>
- Expropriation #4: The Expropriation Bill <http://www.schindlers.co.za/2019/expropriation-4-the-expropriation-bill-of-21-december-2018/>
- Expropriation #5: Proposed Amendments to Section 25 of the Constitution <https://www.schindlers.co.za/2020/expropriation-5-proposed-amendments-to-section-25-of-the-constitution-february-2020/>
- Expropriation #6: Expropriation Bill V2.0 – October 2020 <https://www.schindlers.co.za/2020/expropriation-6-expropriation-bill-v2-0-october-2020-2/>
- Expropriation #7: Expropriation Bill V2.0 and Municipal Charges <https://www.schindlers.co.za/2020/expropriation-7-expropriation-bill-v2-0-and-municipal-charges/>