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An Analysis of Post-apartheid Nonviolent Political Procedures and Land Reforms in South Africa

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Abstract

South Africa's history of systematic land dispossession has led to fundamental disparities in land ownership, with over 80% of the population holding only 20% of land while the white minority controls more than 72%. Despite its globally celebrated progressive Constitution, South Africa remains one of the most inegalitarian states post-apartheid. This paper employs a qualitative literature review methodology to explore transformative constitutionalism as a strategic approach to fostering inclusivity and equality. Findings suggest that while the constitutional framework is idealistic, it lacks effective implementation mechanisms to close the ownership gap; however, expropriation without compensation can be realised if the framework is executed efficiently. Recommendations include enhancing political accountability and community engagement in land reform processes, along with purposively interpreting Section 25 of the Constitution in matters of land expropriation without compensation.

Keywords: *Past land injustices, Transformative constitution, Forceful removal, Inclusivity, South Africa*

Introduction

The growing crisis over the obvious failure of post-apartheid land reform was one of several hot subjects at the 54th elective conference of the African National Congress (ANC) held on 17 December 2017 at the National Recreation Centre (NASREC) in Johannesburg, South Africa. To explore the possibility of amending the "Constitution of the Republic of South Africa 1996" to allow for drastic land reform, the National Assembly organise an *ad hoc* Constitutional Review Committee (CRC) to modify the Constitution to legalise land expropriation without compensation.

The devasting reality of growing and persistent racist socioeconomic inequality and exclusion from access to property by the black majority has led to such activities, whatever their motivations may be at the time and whatever form they may take in the future. South Africa's "land question" has become the most divisive subject in national politics because it is rooted in the country's colonial and apartheid regimes, during which black people were forcibly relocated to non-arable desert land. Despite the government's best efforts to fix land distribution and align disputed property regimes in the public interest since 1994, a sizable portion of land is still owned by the white minority (Smith and Cubbage, 2024). What is worrisome is that the post-apartheid land reform strategical interventions continue to perpetuate government control by favouring the elites while the majority rural black population are deprived; hence, they have to depend on the state and traditional authorities for the use of the land (Keep and Hall, 2020).

Land ownership and access have remained largely unchanged since colonial times despite land reform, and this has become a poignant emblem of the broader shortcomings of South Africa's transition from apartheid (Sparks, 2019). The objectives of land reform went beyond simply returning land to claimants; it sought to address historical injustices and the pain of land dispossession by correcting racially biased landownership patterns and deracialising the privilege of property rights (Du Plessis, 2017).

The "property clause" section 25 of the Constitution has been at the centre of recent political controversy because of its reputation as a barrier to change (Dugard, 2019). In their testimony to the public hearings on the Expropriation Bill of 2015, Black First Land First (BLF) argued, among other things, that Section 25 legalises land to plunder and legitimises colonialism. The National Assembly formally requested that

the Constitutional Review Committee (CRC) consider revising Section 25 to allow for more radical land reform.

It is unarguable that the white minority's existing property rights were prioritised by the National Party, different liberal groups, and significant commercial businesses during what is called CODESA negotiations prior to 1994. During the negotiation from apartheid to black majority rule, land restitution and redistribution were agreed to as a political compromise, thereby seeking to balance the rights and interests of the previously deprived and denied black majority and their white counterparts (Adam and Moodley, 2023).

Therefore, existing property owners are afforded some measure of security under clause 25, which forbids the arbitrary taking of property. Nevertheless, it mandates the promotion of fair access to land and provides a framework for pursuing land restitution, which may involve the legalisation of expropriation (albeit with compensation) where it is in the "public interest." The definition of public interest includes the nation's commitment to land reform as well as measures to ensure access to all of South Africa's natural resources. Section 25 represents an increasingly awkward combination of imperatives, including redistribution and restorative restitution, traditional land usage, and private property ownership, and the result has been a schizophrenic public debate. There are calls to change or even repeal Section 25, but at the same time, there are calls from black and white property owners as well as traditional authorities for more protection of their property rights than they currently have. This paper examines how contemporary legal frameworks and judicial interpretations can either hinder or support the government's transformative land reform agenda aimed at achieving equitable land ownership in South Africa. Despite potential obstacles, we argue that the current Constitution allows for land expropriation without compensation. Furthermore, we advocate for the courts to adopt a purposive approach when interpreting Section 25, which addresses property rights, to better facilitate progressive land ownership paradigms across the country.

Consideration of Transformative Constitutionalism through the Lenses of Land Reform

Transformative constitutionalism aims to achieve substantial social change through legal means rather than through draconian and coercive measures. This approach emphasises nonviolent political processes to

foster inclusive and equitable reforms, promoting justice and accountability in addressing systemic inequalities (Klare, 1998). This intervention ensures substantive equality where inclusivity is paramount. The term substantive equality in South Africa arose from constitutional negotiations in the early 1990s. Constitutionally speaking, substantive equality exceeds an "inclusive trajectory ('inclusive equality') that `'would accord with a liberal notion of inclusion into the *status quo*" (Albertyn, 2007). Nancy Fraser refers to inclusive equality as an "affirmative" approach to change, the goal of which is to remedy "results of social arrangements that are unequal without changing the system that produces them." However, according to Klare's post-liberal interpretation, genuine equality necessitates a commitment to rearranging the power dynamics that sustain the current order. Fraser argues that true equality in the socioeconomic arena would need substantial redistribution (especially in fundamentally unequal nations like South Africa). Noting "that a constitutional commitment to transformation expressed in terms of substantive equality is both an aspirational goal and an assumption that this is (at least partially) feasible through law, it is crucial to remember that substantive transformation is not a guarantee." Even now, 30 years after South Africa transition to democratic governance, the question of whose model of equality we are pursuing as our transformative vehicle and aim remains unanswered at the political level. This lack of political orientation is obvious in constitutional adjudication, which has yet to create a complete philosophy of socioeconomic reform (Wilson and Dugard, 2011).

Until recently, the political trajectory may have been more closely associated with inclusive equality than substantive equality, thanks to measures like black economic empowerment. (often signifying an effort to destigmatise the current unequal social and economic system) (Fredman, 2016). However, in 2017, legislators from a weakened ANC administration started calling for a complete economic overhaul. The topic of land, and by extension the property clause, has been the focus of these questions as of late. Section 25 criticism exposes various strands that outline key societal divisions, which is reflective of the greater uncertainty about the type of transition to pursue.

One critique contends that Section 25 imposes a Western conception of property rights and must be "decolonised" (Madlingozi, 2018). Section 25 does accept private property ownership (albeit it does not provide a positive right to this), but it does not explicitly incorporate various land rights, such as African customary land rights. However,

there is a political and constitutional conundrum that arises from the inclusion of customary land rights. Those living in places governed by customary land rights are often treated more like "subjects" than "citizens," as opposed to those living in areas governed by non-customary land rights, where they have more social and political autonomy and accountability.

In addition, "the Restitution of Land Rights Amendment Act's 2014" attempt to re-open the land restitution process was stopped in its tracks by the *Land Access Movement* case, where affected communities successfully argued that the reopening of the restitution process would never result in the settlement of their unresolved claims. Although "the High-Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change (HLPR)" has shown that traditional communities are unhappy with the way traditional authorities are handling land rights governance, it is still not clear what kind of land rights regime ought to be pursued in customary areas (whether communal land use, communal property ownership, private land ownership, etc.) or how democratic citizenship can be ensured over such land rights under traditional authority administration. There has been a general lack of discussion on the authority of traditional authorities over customary land rights in recent calls for land expropriation without compensation, despite the fact that such calls often highlight the link between land restoration and the acknowledgement of African culture.

The HLPR has recommended that the KwaZulu Ingonyama Trust Act be amended or repealed, and the ANC voiced support for this action at its elective conference in December 2017, which faded away after receiving strong pushback from King Goodwill Zwelithini, who threatened legal action against the government if the Ingonyama Trust Act was changed. Another (not unrelated) gripe is that private land ownership, as it currently exists, should be abolished. The official policy position of the EFF is illustrative of this trend; it states that all land should be transferred to the ownership and custodianship of the state, and that once the state has control and custodianship of all land, those currently using or intending to use the land will apply for land-use licences, which should be granted only when there is a purpose for the land being applied for. This would undoubtedly be one way to transform South African land rights.

The Constitution and Expropriation of Land Without Compensation (EWC)

The preamble to the Constitution features an envisaged society within which people would live in a land of their own, united in diversity. The Preamble guarantees that the land belongs to all the people of the Republic. The democratic society envisaged in the Constitution also features in sections 1, 7 and 39. Section 1 ensures that South African society is founded on human dignity and the realisation of human rights and freedom. The society that Section 7(1) seeks to achieve is the same one contemplated in Section 36(1) which states that the rights in the Bill of Rights may be limited only in terms of law in an open and democratic society based on human dignity, equality and freedom. Section 39(1) states that: When interpreting the Bill of Rights, a court, tribunal, or forum must promote the values that underlie an open and democratic society based on human dignity, equality, and freedom. This provides irrefutable evidence of how the Preamble to the Constitution ensures that society will be based on human dignity, equality, and freedom. As a result, it is vehemently argued that land is equivalent to dignity and equality. To construct a society based on the values of human dignity, equality, and freedom, the expropriation of land without compensation is constitutionally justifiable. According to Ngcukaitobi (2021), expropriation contextually refers to a state acquiring land from a private party (individuals and legal entities) for constitutionally limited objectives. Under Section 25 of the Constitution, expropriation is allowed, provided it serves a public purpose or interest. This serves to stress that Expropriation Without Compensation (EWC), often known as "land grab," is not an injustice committed against the white minority but rather a justice served up to the black majority. The fact that it is stated out in the Constitution, which is considered to be the most significant piece of legislation in the country, is proof that it is not against the Constitution, as long as it complies with the limitation clause (Strauss, 2015).

An Analysis of Property Rights as reflected in the Constitution

In and of itself, Section 25 does not assure continued ownership or confer a property right. No one may be denied the possession of property except in accordance with a general law and no law may permit arbitrary deprivation of property are the key phrases in Section 25(1),

which creates the negative right not to be arbitrarily deprived of property. Those who own land are safeguarded from having it taken away from them without due process, regardless of their socioeconomic status in the past. The courts have given two major interpretations of this clause, although at first glance it seems to be a conservative right (preserving property ownership). Deprivation is associated with expropriation, with expropriation being the most severe kind of deprivation, and courts have given a broad definition of deprivation and a narrow definition of expropriation, with deprivation being the most extensive kind of deprivation.

Given the need to compensate property owners in the event of expropriation, this is a progressive tack to take because a narrower definition of expropriation (and a broader definition of deprivation) means less tax money will be spent on compensation. Similarly, the courts have made it clear that the post-apartheid state's programmes to radically alter the regulatory environment do not constitute an expropriation, freeing the state of the duty to pay the many property owners whose assets were taken.

In AgriSA, The Constitutional Court of South Africa upheld the transformative goal of the Minerals and Petroleum Resources Development Act 28 of 2002 (MPRDA), which is to ensure that all South Africans have equal access to the country's mineral and petroleum resources and to greatly increase the number of opportunities available to previously disadvantaged people, including women, to work in the mining industry. AgriSA upheld the MPRDA's conversion plan, which nullified the rights of anyone holding old-order mineral rights who had not followed the MPRDA's instructions for converting to new-order mineral rights. The court ruled that while the programme did involve deprivation, it did not amount to expropriation and was therefore not compensable. As a result, the Court backed the MPRDA's progressive aims and the effort to shift mineral rights from old-order (historically disproportionately privileged) to new-order (historically disadvantaged) holders.

Second, the courts have made it plain that property owners may have to bear some degree of impairment of their property rights in order to strike a balance between property rights and other fundamental rights, such as the housing rights of unlawful occupiers laid out in Section 26 of the Constitution, and that having to accommodate unlawful occupation for months at a time will not in itself constitute arbitrary deprivation. *Blue Moonlight* involved an application by a private property developer. In

order to evict 86 desperately poor illegal occupants from an inner-city building, the Court ruled that the owner of the property was not obligated to provide housing to the occupants in perpetuity; however, it was reasonable to anticipate that it would exercise some patience while the municipality lined up another place to live.

Just as there is a hierarchical battle between traditional authority and customary communities, so too is there a clash between private ownership and criminal occupation rights. Section 25 offers a framework in which the executive, legislature, and judiciary have maximum freedom to pursue a substantive equality approach without stating how this clash of rights should be managed. In the absence of coordinated executive action, the study of Section 25 investigates the extent to which the judiciary has resolved such disagreements in a game-changing fashion.

The right of the state to take private property without compensation

The principle of eminent domain is increasingly essential in contemporary society. It refers to the state's legal right to take private property without compensation (Meiring, 2017), a foundational concept in many legal systems that enables governments to implement public-benefit projects such as roads and dams. Subsection 25(2) of the Constitution stipulates that property can only be expropriated in accordance with broadly applicable laws. Furthermore, Section 25(4) broadens the definition of property to include more than just land, explicitly authorising the state to expropriate in the public interest for purposes such as land reform and land restitution and ensuring equitable access to natural resources.

However, Section 25's expropriation structure has been described as incompatible with transformation because of the purported necessity of a 'willing buyer, willing seller' market-value-based compensation plan. The government's current strategy has been pursued for largely unjustifiable reasons, but the Constitution does not require this. Section 12(a)(i) of the Expropriation Act states that compensation for expropriation shall reflect the amount which the property would have realised if sold on the date of notice in the open market. This provision is likely to be blamed for the persistence of a 'willing buyer, willing seller', market value-driven compensation method during the post-apartheid era. This provision required a "willing buyer, willing seller"

attitude in the market under the apartheid administration. If the Expropriation Act is to be legitimate, it must, of course, adhere to the Constitution. That's why it's imperative to prioritise the compensation guaranteed by Section 25(3) of the Constitution.

According to Section 25(3), the amount of compensation, as well as the timing and method of payment, must be "just and equitable," establishing an appropriate equilibrium between the interest of the public and the interests of those impacted by the taking, proactively taking into consideration every relevant factor, including the present occupancy of the property, the background of the purchase and subsequent use of the property, and the current fair market value of the property and Section 25(3)(a)-(e) makes it clear that market value is only one of several (non-exhaustive) factors to be considered for determining the appropriate amount of compensation to pay in cases of expropriation. If relevant factors are properly considered, the ultimate amount may be significantly lower than the market value, even if the market value is used as a base.

When deciding what is fair and reasonable in terms of compensation, the market value is only one criterion the court must take into account. This court's precedent has not established market value as the paramount element, as the landowners' lawyers argued. Because it is the most concrete of the variables stated in Section 25(3), market value is often utilised as a starting point for examination, as shown by the correct interpretation of this court's jurisprudence. This is not meant to make market value the primary consideration in settling property disputes; rather, settling disputes over fair compensation should always be the primary focus.

The consideration of market value is among the mandatory but non-exhaustive set of factors listed in Section 25(3). If land or minerals are not being used productively and are required for redistributive objectives, then their expropriation may be justified. Such goals could include helping underserved groups into the housing or mining industries or bolstering new agricultural communities (Pope, 2022). Properties purchased as a result of forcible removals, made available to white farmers at reduced prices, and/or accompanied by governmental subsidies are implicitly authorised for a decrease in compensation based on the history of the purchase.

When the extent of direct state investment and subsidy is taken into account, it becomes clear that current owners who have received substantial state subsidies over the years should not be entitled to market

value compensation amounting to a double subsidy for historically privileged individuals in the event of expropriation. Finally, expropriations that are intended to address urgent societal needs are justifiable, and the amount of compensation can be decreased because the expropriation is primarily for that purpose. Section 25(2)(b) implies that any such expropriation is entitled to compensation; hence, it is true that compensation must be granted in such cases. However, taking into account the foregoing, the compensation may be negligible or non-existent.

In addition, all parties involved have agreed upon or a court has determined the amount, timeline, and method of payment, which is a requirement for any compensation. The Court in *Haffejee* has proven beyond a reasonable doubt that determining the amount, timing, and mode of compensation before the expropriation is preferable but not obligatory. An owner cannot exploit a disagreement over compensation to delay an expropriation. Expropriation payments based on market value or a willing buyer/willing seller arrangement are not mandated by Section 25, as has been explained above. The LCC in *Khumalo* and *Msiza*, and again in *Du Toit*, emphasised that the constitutional structure of "just and equitable compensation" should govern expropriations rather than "the Expropriations Act."

It could be argued that the courts could have done more to create a fundamentally novel approach to implementing the compensation matrix in subsection 25(3). However, the court's ability to decide this problem in the context of land reform has been limited by the puzzling compliance of the post-apartheid administration to a market-value, willing buyer, willing seller paradigm. The paradox of Section 25's paradigm in the Expropriation Act prevents any real change with respect to the calculation of compensation for present 'historically privileged' proprietors. The CRC would do well to start its search for legislation to change with the Expropriation Act. The Expropriation Bill was withdrawn on August 28, 2018, which may be an indication that this process has already begun.

Fostering "Conditions to Gain Access to Land and Advance Tenure Security"

The state is granted considerable discretionary authority to implement projects to improve land access and tenure security under Sections 25(5) and 25(6). One strategy to increase people's access to land is to make it

easier for them to buy or rent land. Section 25(5) gives the state explicit permission and demands that it pursue land redistribution in regard to property tenure (which may involve outright confiscation). But as the HLPR notes, the Constitution's clause 25(5) has not yet been defined by the courts; hence, there is no case law on what constitutes sufficient steps to "enable citizens to gain equitable access to land. The Land Tenure Act (LTA) and the Provision of Land and Assistance Act 1993 (LAA), however, are necessary for this obligation to be legally binding. Concerning the acquisition of land or a right in land by the applicant, Section 23 of the LTA provides just and equitable compensation as prescribed by the Constitution for the acquisition of land or a right in land by the applicant. This language is taken directly from section 25(3) of the Constitution. On the other hand, Section 25 of the LTA establishes a foundationally new legal basis for redistributing land. Many problems have arisen in the administration of this part of the LTA, and consequently, very few Section 16 claims have been settled. *Msiza* is an exception to this rule (although a long-awaited one).

After the government failed to settle roughly 10,914 labour tenant claims, the Association for Rural Advancement and various labour tenants filed a lengthy lawsuit through the Legal Resources Centre to have a Special Master of Labour Tenants appointed to ensure that the Minister of Rural Development and Land Reform propels several court orders for redistribution of land through the LTA. On December 8, 2016, the LCC issued a ruling finding that the Minister and Director General of the Department of Rural Development and Land Reform had violated the Constitution by failing to enforce labour tenants' land ownership claims since the early 2000s. The LCC has primary jurisdiction over the LTA. It collaborated with the Department of Rural Development and Land Reform to issue an order appointing a Special Master of Labour Tenants, who was given the responsibility of devising a plan to resolve all claims made by labour tenants to give them full legal title to the land they worked on. To put this land redistribution programme into action, the current version of the Land Reform: Provision of Land and Assistance Act, Act No. 126 of 1993 (PLAA) is essential.

The PLAA provides a legally binding and extremely innovative framework for the redistribution of land to those who do not have land or limited access to land, to those who wish to upgrade their land tenure, and to those who have been dispossessed of their right in the land but do not have a right to restitution under the Restitution of Land Rights

Act. Like the LTA, the PLAA is underutilised. The HLPR offers a bleak picture of the government's efforts to enforce the Constitution, especially Section 25(5). Section 25(6) creates the necessity for the state to recognise and preserve land occupation and use rights even when they clash with land ownership rights, which is important because many black people live (and often work) on property owned by someone else.

Parliament has passed several pieces of legislation to meet Section 25(6) requirements. The Interim Protection of Informal Land Rights Act 31 of 1996(IPILRA), which controls the tenure security of persons who occupy and utilise land under customary land law, the Extension of Security of Tenure Act [No. 62 of 1997(ESTA), which protects labour tenants from eviction, and the LTA, which in addition to enabling land acquisition, protects labour renters from exploitation and eviction.

Political efforts to elevate traditional authority have damaged the land rights of customary communities, which have been maintained by the courts in the absence of a full legal framework. The importance of the court's PIE and ESTA rulings cannot be overstated. The courts have concluded that ESTA guarantees the right of a wife to remain on the land despite the valid dismissal and eviction of her spouse, affirming further protections against unjust evictions. The Supreme Court recently ruled in the *Daniels* case that ESTA tenants have the legal right to make the necessary renovations to their housing when landlords fail to comply with ESTA requirements.

There have been massive transformative interventions regarding the Prevention of Illegal Eviction Act 19 1998 (PIE) in that the state and the private owners of property illegally occupied have the responsibility and obligation not to render occupiers homeless. The state must not only provide alternative accommodation but also meaningfully engage occupiers regarding evictions. Also, the state has the same obligation to provide emergency shelter to evictees who would otherwise be rendered homeless regardless of whether the eviction is initiated by the state or a private landowner (Dugard, 2012). The state must also ensure there is no implementation of draconian rules such as gender segregation and lockout during the day. This would unjustifiably limit occupiers' rights and therefore be unconstitutional. Essentially, where eviction of illegal occupants is not feasible, the state might be compelled to purchase (or expropriate) the property from the property owner to fulfil its constitutional obligations (Boggenpoel and Mahomedy, 2024). Similarly, the act of using disaster management legislation as a way to evict occupiers without complying with PIE is contrary to the law and hence

illegal and invalid (Nkwinika, 2021). As part of the compromise, before illegal occupiers are removed from occupied land, a private landowner should be tolerant by allowing unlawful occupation for the time being while alternative accommodation is being sought as an emergency shelter (Boggenpoel and Mahomedy, 2024).

Interestingly, if an alternative accommodation had been provided but the illegal occupation continued, applying to balance acts of the rights of the illegal occupiers and the private owner of the land, the courts in South Africa would grant eviction orders after the state has provided alternative emergency shelter, even if this is manifestly unsuitable.

The Issue of Restitution

The land restitution process is described in Section 25 and is possibly the most complex and emotionally fraught aspect of land reform. When considering the number of times land has been restored to claimants and the quality of the restitution provided, this method ranks towards the bottom. The LCC has not yet processed the claims submitted by the 31 December 1998 deadline, which the HLPR stresses as the primary cause of the restitution mandate's obvious failings and government implementation processes, rather than with the text of Section 25(7) *per* se.

Due to these challenges, most successful claimants have settled for monetary compensation rather than seeking restitution *per se*, reducing the likelihood that the restitution process will aid in further land redistribution. In terms of the legal frameworks regulating restitution, the Restitution of Land Rights Act 22 of 1994 (RLRA) specifies the scope and specifics of Section 25(7). The RLRA, in essence, is a carbon copy of Section 25(7), except for a December 31, 1998, deadline for land claims.

Overall, the trajectory of judicial interpretation of the RLRA has been progressive, and important principles have been read progressively, notwithstanding some conservative rulings, especially from the LCC in the early years. As an early example, considering the case of *Kranspoort*, the LCC did not agree about the narrow reading of the prerequisite (in both section 25(7) and the RLRA) regarding a community of people deprived of property after 1913, which would have necessitated an elevated level of collaboration and integration between often detached residents of the erstwhile community, and argued that it would be a

serious violation if the RLRA is to be comprehended so that the terrible repercussions of a removal become the primary explanation why a community restitution claim aimed at remedying. The Supreme Court ruled in *Popela* that the expression "as a result of past racially discriminatory laws or practices" means "as a result of" and not "necessarily" or "solely" as a result thereof. This sheds a lot of light on the situation. This reading made it possible for more claims to meet the criterion, even if the dispossession or removal was not the direct result of past racial discriminatory legislation or practices. To complicate matters further, there is a widespread belief that restitution is impossible, especially in densely populated regions and after substantial changes have been made to the property. In such cases, claimants have often been awarded monetary compensation rather than restitution from the LCC and courts. The question is whether the compensation would qualify as "equitable redress" under Section 25(7) and the RLRA.

Florence is a recent Constitutional Court case that exemplifies the difficulty of awarding compensation in such circumstances. After determining that a parcel of property in Cape Town could not be returned since it had been developed into a parking lot and shopping complex for more than 25 years after its expropriation, the Court struggled with determining an appropriate amount of compensation for the plaintiffs.

The courts have adopted radically new ways of thinking about the legal systems controlling restitution. Particularly noteworthy is the Court's upholding of the unfair and asymmetrical difference between the actual current market value regime (pursued at least until 2018) for compensating the present owners and the constrained calculation for compensating historically deprived individuals in cases where restoration is deemed impossible. However, if the courts interpret the law differently, either because of new legislation or a future judgement by the Constitutional Court, this policy may need to be amended.

On any other Measures

This paper argues that the government can legally pursue a land reform agenda with far greater revolutionary potential than it has thus far. Is it conceivable for the government to avoid the compensation clause altogether? This topic was left unanswered in the preceding discussion of Sections 25(2), (3), and (4). It might be argued that the matrix in Section 25(3), which defines just and equitable compensation, provides a

suitable and substantively transformational way to strike a balance between the many rights and concerns and achieve what, in some cases, might be zero compensation.

Section 25(8) of the Constitution reads as follows: 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 justified. This supports the idea that actions taken or laws passed allowing the state to expropriate property for land restitution without compensation would be constitutional if they were deemed reasonable and justifiable in an open and democratic society based on human dignity, equality, and freedom. Thus, Section 25(8) indicates that, despite the constraints discussed herein that relate to constitutional and legislative frameworks or the judicial interpretation thereof, any government could pursue radical land reform and still be within the legal parameters of Section 25(8) (Madlingozi, 2017).

Findings of the study

Section 25(8) allows the state to justify its violation of Section 25(2)(b), even if it fails to provide compensation when a nominal amount is deemed appropriate and equitable. This is because of the explicit stipulation in Section 25(8) that any deviation from the provisions of Section 25(2)(b) must adhere to the principles outlined in Section 36(1) of the Bill of Rights. Section 36(1) stipulates that the state may limit an individual's rights within the Bill of Rights, including Section 25, provided that the limitation is reasonable and justifiable in an open and democratic society founded on human dignity, equality, and freedom. This assessment must consider all pertinent factors, including the nature of the right, the significance of the limitation's purpose, the nature and extent of the limitation, the correlation between the limitation and its purpose, and the availability of less restrictive measures to achieve the intended purpose. The state can expropriate land without compensation if it can substantiate its actions as outlined in Section 36(1). Upon examining the structure of Section 25, it is safe to say that the state may expropriate private property only if it compensates the owner. The compensation amount can range from zero to market value, contingent upon what is deemed just and equitable in the specific circumstances. In certain instances, a nominal compensation may be

considered just and equitable. Furthermore, even when nominal compensation is mandated, the state may choose not to disburse any payment, thereby limiting the owner's rights; however, such limitation could still be lawful if it is reasonable and justifiable under the circumstances.

Conclusion

No amendment to Section 25 is mandatory to achieve progressive realisation of land reform. Well-considered legislation can be effective, provided it adheres to constitutional standards and must be logical. The rationality of legislation can be evaluated by a rational review inquiry, consisting of a two-part examination. Initially, one inquiry about the lawful objective of the legislation is followed by an examination of whether the legislation can realistically accomplish its declared aim. If it can fulfil its objective, the legislation is rational. Rationality is addressed solely because it is evident that the government can enact a policy of expropriation without compensation through legislation; however, such legislation must be meticulously crafted to avoid unconstitutional violations of Section 25 and to withstand a rationality review test. We assert that all of this can be accomplished through meticulously crafted legislation.

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