

**Press
Release
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South African Institute of Race Relations
The power of ideas

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**Valuer-General's proposals pose real hazards for millions of South Africans –
IRR**

A proposed amendment to Section 25 of the Constitution (the 'Property Clause') would give the government wide latitude to seize private property at a fraction of its value.

Residential properties are especially vulnerable; given that people's houses may readily be targeted for land reform, and that their homes are usually households' primary asset, this is a matter of grave importance.

The proposal was made by the Valuer-General to the ad hoc Parliamentary Committee tasked with drafting a change to the Constitution to facilitate Expropriation without Compensation. The Office of the Valuer-General is the state agency required to value all property targeted for land reform by the government.

As Section 25 currently stands, one of the factors to be taken into consideration in deciding on 'just and equitable' compensation for expropriated property is the 'current use of the property'. The Valuer-General proposes to redefine this as 'current use value'.

These concepts are not synonymous. 'Current use' is not defined in Section 25. In principle, however, it revolves around the extent to which farms, holiday homes, mining land, or other assets are being fully used, for instance.

'Current use value' was introduced by regulations gazetted under the Property Valuation Act in November 2018. These regulations effectively define 'current use value' as the difference between cash inflows and outflows on a single day: the date on which the valuation is carried out.

Property targeted for land reform must be valued according to the 'fixed formula' set out in the regulations. As Acting Valuer-General Pelekelo Mwiya explained to the ad hoc committee, this is as follows: 'value = current use value + market value, divided by two'. Historical acquisition benefits and state subsidies must thereafter be subtracted from the initial total reached.

In other words, except where the 'current use value' is extraordinarily high – bringing a net income of close to the market value of the property on a single day – valuation for land reform purposes will not produce anything close to market value. Typically, the formula will value properties at half their selling price.

As noted earlier, residential properties – having no 'current use value' – are particularly vulnerable under this formula.

Moreover, after additional factors (such as 'acquisition benefits') are considered, the compensation offered could fall further. This means 'one could get to zero compensation', as the Valuer-General told the ad hoc committee.

At present, the definition put forward in the regulations is inconsistent with the Constitution. The Valuer-General's proposed amendment would remove the possibility of a legal challenge to his 'fixed formula'. It would essentially retrofit the constitution to skew the taking of property for land reform purposes decisively in favour of the state to the detriment of private owners.

The IRR warns that South Africans should not ignore the dangers in what is being proposed. This measure is by no means an arcane technical one, but poses real hazards to the assets and livelihoods of millions of South Africans.

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