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Expropriation: rural communities have the most to lose

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The debate about whether government has or should have the power to expropriate property without compensation is raging on.

Lawyers and academics argued the property clause of the constitution calls for "just and equitable" compensation, so if it is just and equitable to pay no compensation, the constitution provides government with that power.

A resolution was adopted by

parliament late last year that the constitution must be amended to make the power to expropriate without compensation explicit.

The department of public works also published a draft Expropriation Bill.

The public has until this week to comment on that draft. However, it has not yet been introduced in parliament and there is likely to be more time for public comment once it is before parliament.

The draft Bill provides for expropriation where it is just and equitable "having regard to all

relevant circumstances".

A list of examples includes land held for speculative purposes, state-owned land, or land abandoned by its owners.

The Bill strives to create "uniformity across the nation". In doing so, it must create a balance between the government's need to expropriate land and the rights of those being expropriated.

The problem is that people don't own land or rights in a uniform way. Private property rights are registered in the deeds office and ownership is easy to prove.

But the land rights of the majority of South Africans living in the rural areas of the former homelands or in townships are not registered in the deeds office.

Not only is it too expensive, but the deeds registry is not designed to cater for customary or indigenous forms of ownership.

Without the title deed, it is far more difficult for land rights holders not only to prove their rights, but to show the value of those rights.

The Bill gives no guidance as to how to deal with communally

held land and the persistent problem of some traditional leaders claiming ownership over all the land under their jurisdiction.

The value of land depends on what the land means to different people. For a member of the Umgungundlovu community in Xolobeni in the Eastern Cape, for example, the value of the land has to do with its value as an expression of the history and identity of a people. Rights in the land depend on membership of a community. Losing the land means losing all of that. – *Ground-up*