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**SPEECH BY FORMER PRESIDENT FW DE KLERK
TO THE FW DE KLERK FOUNDATION CONFERENCE ON PROPERTY RIGHTS FOR ALL SOUTH
AFRICANS - AND THE ROLE THAT LAND REFORM CAN PLAY IN EXPANDING PROPERTY
RIGHTS**

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**THE CENTRALITY OF PROPERTY RIGHTS FOR THE ECONOMY, FOR AGRICULTURE AND FOR
THE NATIONAL ACCORD**

We have convened this Conference at a critical time in the history of our young democracy.

The ANC and Parliament have adopted resolutions calling for expropriation without compensation (EWC). By so doing they have posed a fundamental threat to investment, economic growth, agriculture, food security and to the national accord on which our new nonracial democracy was founded.

The ANC has, it is true, qualified its support for EWC with the caveat that it should not “undermine future investment in the economy, or damage agricultural production and food security...or cause harm to other sectors of the economy”.

But this is a contradiction in terms.

It has been shown time and again that property rights are essential for sustained economic and social development. The top 20% of countries that best respect property rights have average per capita incomes of more than \$50 000 - compared with less than \$7 500 for the bottom 20%.

There will always be much higher levels of investment in countries with secure property rights than in countries where property can be arbitrarily expropriated or nationalised. This is not just a theoretical question - it is a demonstrable fact:

- A hugely disproportionate share of total agricultural production in the Soviet Union came from tiny plots on which people were allowed to grow their own produce for the market;
- Satellite images of the Korean peninsula at night show the enormous difference in development between the free-market property-owning south and the communist north;
- The dilution of property rights in Zimbabwe and Venezuela - countries that are viewed as role models by the EFF - has led to economic collapse and misery;
- On the other hand, Deng Xiao-Peng’s economic reforms in China - that included recognition of property rights - have resulted in the greatest enrichment of the largest



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number of people in the shortest period in human history. In 1980 GDP per capita in China was less than \$350 - now it exceeds \$15 000.

Expropriation without compensation would inevitably further erode international confidence in South Africa as an investment destination - particularly in the wake of the government's inexplicable decision three years ago to terminate South Africa's bilateral investment treaties with key EU countries.

There is also a disturbing possibility that if the principle of EWC is conceded with respect to agricultural land, it might in future be extended to other property, including residential homes, intellectual property and shares.

Section 25(4)(b) of the Constitution explicitly states that "property is not limited to land". This becomes all the more ominous against the backdrop of the continuing commitment of the ANC's Alliance partners, the SACP and COSATU, to communism - and the ANC's own commitment to "Radical Economic Transformation". Expropriation without compensation might be needed to achieve the "fundamental change in the patterns of ownership, management and control of the economy..." that is the core goal of Radical Economic Transformation.

Expropriation without compensation would also have a devastating impact on agriculture and food security.

South Africa is not a rich agricultural country. Only 12% of its territory is suitable for arable farming. Grazing can be pursued in another 69% of the country. Agriculture contributes only 2.5% of GDP - which is less than half the contribution of the automobile industry. According to the World Wide Fund for Nature (WWF) just 3% of South Africa's farmers produce 95% of the country's food.

Uncertainty regarding land reform is already having a very negative impact on agriculture. Farmers require certainty of property ownership to raise loans to plant their crops. Banks, already owed R170 billion by farmers, will be reluctant to extend further credit if there is no certainty regarding the collateral value of land. Because of the high level of indebtedness, banks might be the main victims of EWC - with very negative implications for the entire financial system.

The average age of farmers is now over 60. Since 1994 the number of commercial farms has fallen by more than half to fewer than 35 000. 20 000 farms are now for sale, double the number in 2015. Many farmers are leaving - or want to leave - the land because of the uncertainty caused by land reform and because of the terrible toll of farm murders. Some of our best young farmers have gone to farm in other African countries - or overseas - where their skills are appreciated. The real challenge will be to retain farmers - of any race - with the proven ability to produce food.



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Finally, expropriation without compensation would be a serious blow to the 1994 constitutional accord. The property clause was one of the most tightly negotiated compromises in the final constitution. Non-ANC parties conceded the principle of expropriation in the national interest - which included land reform. In return, the ANC accepted that just and equitable compensation would have to be paid for expropriated property.

The ANC is now trying to justify EWC on the highly questionable premise that people may be dispossessed of their property because they belong to the same race as others who may or may not have 'stolen' land hundreds of years ago. This would be based on the proposition - unacceptable to any notion of the Rule of Law - that people can be punished for the actions of others. It would give legal recognition to the universally discredited concept of racial guilt - and would make a mockery of the foundational value of non-racialism.

If EWC is adopted, even in diluted form, it would mean that citizens could be deprived of legally held property without compensation - in effect - solely because they belong to the wrong race.

It would raise fundamental questions regarding the future of property rights:

- Is *all* agricultural land owned by white South Africans - which President Ramaphosa claims they acquired as a result of the "original sin" of colonialism and apartheid - subject to land reform?
- Is it the government's intention to apply the principle of demographic representivity to agricultural land?
- If a white South African buys agricultural land tomorrow would it be subject to expropriation - with or without compensation - the day after?
- Will expropriation without compensation be extended to other forms of property as part of the ANC's programme of radical economic transformation?

If the ANC wants commercial farmers to continue to play their indispensable role in producing South Africa's food, it will have to provide them with honest answers to these questions and with cast-iron guarantees regarding their future property rights.

Let me be quite clear: any attempt to dilute property rights of citizens on the basis of their race would also erode their interlinked rights to human dignity, equality, non-racialism and protection under the Rule of Law. It would reduce them to the status of second class citizens in the land of their birth.

None of this detracts from the pressing need for an equitable and effective process of land reform - which is both a constitutional imperative and a political and social necessity.

However, the first step must be clear acknowledgement that, in terms of law and equity, all farmers who hold proper title deeds are the legal owners of their land. After that, discussions can be held on the best and fairest ways to proceed with land reform.



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Expropriation - even with compensation - constitute a serious limitation of rights. In terms of section 36 of the Constitution consideration would have to be given to the negative impact on “the human dignity, equality and freedom” of those involved. Expropriation could be pursued only on the basis of a non-racial law of general application and then only after less restrictive measures to achieve land reform had been exhausted.

The contention in the National Assembly’s resolution that EWC is necessary because “the current policy instruments including the willing seller policy may be hindering effective land reform” is simply not true. The High Level Panel chaired by former President Kgalema Motlanthe found that land reform had failed - not because of any shortcoming in section 25 - but because of incapacity and corruption in the government departments responsible for land reform. And the willing buyer, willing seller is not part of the Constitution. It merely became a process issue in the Land Claims Court.

There are other approaches to land reform that could achieve success. 20 000 farms are on the market and millions of hectares of government-owned land are available for redistribution, including 4000 farms already acquired by the state for land redistribution purposes. Organised agriculture has repeatedly made practical proposals for the development of a prosperous black agricultural sector - and land reform schemes in the Western Cape have met with considerable success.

The core problem is that there is no clarity about what land reform is supposed to achieve - or about the national interest that is supposed to promote.

Land reform could enhance the property rights and freedom of millions of South Africans - or it could deprive them of their property and reduce them to the status of dependent tenants.

In our constitutional democracy the national interest must be defined by the foundational values in section 1 of the Constitution - and not by the political ideology of the ruling alliance. This means that land reform must comply with the Rule of Law and the foundational principles of human dignity, equality, human rights and freedoms and non-racialism.

All human experience teaches us that if we wish to achieve the constitutional vision of improving “the quality of life of all citizens” and of freeing “the potential of each person” land reform must result in the transfer of real property rights to beneficiaries. However, virtually all of the government’s present schemes result in land remaining in the hands of government or traditional leaders - with beneficiaries being permitted only insecure tenancy rights. This is the principal reason for the failure of 90% of the government’s land reform schemes.

It is also essential to understand where the demand for land reform is greatest. According to recent opinion surveys only 1% of black South Africans are interested in agricultural land



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reform. There is, however, enormous demand for urban land for housing. This should be the priority for any land reform initiative - and it should end in beneficiaries possessing title deeds.

One of our most positive economic and social realities is that 7.5 million black South African households already own their own homes. However, the vast majority do not have proper titles deeds. This means they cannot leverage their properties to raise loans to develop businesses or to pursue other economic interests. It has been calculated that the value of these properties may exceed R1.5 trillion. To put things in perspective, this is *five times the value of all the agricultural land in South Africa*.

There are already more than 1.15 million black households that own the land on which they produce food. Another 560 000 households farm land in the traditional homelands. According to Agri SA's recent land audit, black South Africans already own more than 45% of all the high potential agricultural land in the country - much of it in the traditional homelands. A central priority of land reform should be to transfer legal ownership of this land to the people who actually farm it. This could greatly increase the productivity of some of the best agricultural land in South Africa.

Land reform that transfers - or recognises - real property rights in the hands of beneficiaries and owners could dramatically, quickly, and effectively enrich and empower over 65% of South Africa's black households. Such an approach would require:

- legislation to fast-track the registration of title deeds;
- a massive programme to inform property owners of the economic potential of their properties;
- cooperation with the banking sector in unlocking the enormous wealth currently tied up in black property;
- close cooperation with organised agriculture to ensure that emerging farmers are prosperous and successful; and
- acceptance that land reform can greatly enhance national unity and prosperity if we all work together.

However, none of this will work if land reform is viewed as a winner-take-all, black-versus-white fight on the battlefield of the National Democratic Revolution. Rather than being seen in terms of negative racial stereotypes, commercial farmers should be viewed as indispensable partners in our common efforts to feed our people and to build an empowered, prosperous and equitable agricultural sector.

If handled correctly, land reform could be the most positive development since 1994. However, if handled badly on the basis of expropriation without compensation, it would be a catastrophe for all South Africans.