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**SPEECH BY FW DE KLERK TO THE CONFERENCE ON THE FUTURE OF PROPERTY RIGHTS
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THE EVOLUTION OF PROPERTY RIGHTS SINCE 1994

It is with regret that I must inform you that Minister Gugile Nkwinti will not be able to join us today. He told us that he would very much have liked to have been able to address us but, despite his best efforts, was unable to change pre-existing commitments. However, he has assured us that he would like to establish a renewed dialogue in relation to land reform and has asked us to coordinate an alternative date as soon as possible.

We welcome this because we believe that it is essential that there should be an open exchange of views on the crucial questions of land reform and property rights. It is essential that there should be no misunderstanding on property rights because of their central importance for future investment and economic growth on the one hand, and intergroup relations on the other.

The problem is that we are receiving contradictory messages from Government.

Two years ago - at this same venue - I made a speech in which I warned that South Africa was at a crossroads. I said that we could

“... either take the road to economic growth and social justice that is indicated by the National Planning Commission - or we can take the “second phase” road toward the goals of the National Democratic Revolution.”

I said that the National Development Plan presented a vision of a future South Africa that we could all share. It included:

- Constitutional democracy;
- Unity in diversity;
- High quality education;
- Health and social services providing security to all those in need;
- Sustainable and equitable economic growth;
- Fair employment for all;
- An environment in which business can invest, profit and contribute to national goals;
- An effective state and public service;
- Mutual respect and human solidarity; and
- A South Africa that contributes to Africa and to the world.

I agreed specifically with the NPC’s analysis that the two main priorities were education and unemployment.

I said that the other road that we could take led in the direction of the ‘second phase’ of the ANC’s National Democratic Revolution. I pointed out that the SACP was one of the main



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driving forces behind this radical new direction - but that it did not view the NDR as the final destination of the revolutionary process. On the contrary, it viewed it as the beginning of a new phase when the SACP - as the self-proclaimed vanguard of the working class - would take over leadership of the revolution which would culminate in the establishment of a communist state.

I regret to inform you that this question has not yet been resolved.

On the one hand, the ANC decided at its Mangaung Conference at the end of 2012 to adopt the NDP as its economic programme.

On the other hand, in statement after statement, ANC leaders have expressed their intention of proceeding with the radical implementation of the second phase of the National Democratic Revolution. Coupled with this there has been mounting pressure on the carefully balanced agreements on the future of property rights that were negotiated and included in section 25 of the 1996 Constitution.

The success of South Africa's historic constitutional negotiations depended on a continuous search for balance between the often diametrically opposed demands of the main parties. In particular, the parties had to try to find a balance:

- Between those who had much to lose and those who had much to gain;
- Between the need for national unity and the need to preserve our rich and varied cultural and linguistic heritage;
- Between the concerns of minorities, and the demands of the majority; and
- Between the need for stability and the need for change.

All reasonable participants accepted that the new Constitution would need to have a strong transformational character. Any attempt to cast in stone the then prevailing social, economic and political relations would be neither acceptable nor tenable.

The new Constitution had to offer hope of a better and more just dispensation for the disadvantaged majority - but it had to do so in an equitable and sustainable manner that would not unfairly threaten the core interests of minorities.

The search for an equitable balance was also at the heart of the negotiations on the key question of property rights. Once again, all reasonable parties accepted that it would be untenable and unacceptable to freeze land ownership patterns on the demographically skewed basis of the past.

Land reform was essential - but it would have to take place in an equitable manner - preferably on the basis of willing seller, willing buyer. The main parties accordingly agreed to the inclusion of a property clause in the new Bill of Rights (section 25) that would achieve a balance between these interests.



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Whereas the property clause in the interim Constitution made provision for expropriation only for a 'public purpose' (such as the building of a road or a dam), section 25 of the 1996 Constitution also allowed expropriation in the 'public interest'. The public interest was specifically defined to include "the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources."

However, section 25 also sought to protect the reasonable interests of property holders by prohibiting arbitrary deprivation of property and by providing that expropriation would be "subject to compensation, the amount of which and the time and manner of which have either been agreed to by those affected or decided or approved by a court."

It was furthermore stipulated that "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 the relevant circumstances" - including market value.

For obvious reasons, the ANC did not vociferously articulate its long-term ideological goals during the constitutional negotiations. However, it has subsequently become evident from its *Strategy & Tactics* documents that the organisation had little intention of maintaining this reasonable balance on property rights.

The ANC's real intentions with property rights became clearer at its National General Council meeting in June 2005 when the organisation decided to review the question of property relations before the Polokwane National Conference in 2007. It complained that property rights were proving to be an obstacle to wealth redistribution and asked, in particular, whether the property clause "*adopted by us and endorsed in the 1996 national constitution is still relevant now.*"

The ANC subsequently decided that, rather than amending section 25, it would be sufficient to draft new legislation that would bring existing expropriation legislation into line with section 25 - particularly by making provision for expropriation in the public interest. In December 2007 the ANC's National Conference at Polokwane called on the state to "expropriate property in the public interest" and to award compensation "in accordance with the Constitution, with special emphasis on equity, redress and social justice".

The resolution called for the abandonment of "market-driven land reform"; immediate review of "the principle of willing-seller, willing-buyer" and the alignment of all legislation relating to expropriation with the Constitution.

In the same year the government introduced an *Expropriation Bill* that sought to broaden the definition of property that would be subject to expropriation in the public interest and to circumvent the role of the courts in determining fair compensation. After a national and international outcry the Bill was quietly withdrawn the following year.



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Since then it has become clear that the Government has adopted the broad approach to property rights that was set out in its *Green Paper on Land Reform* in 2011.

The *Green Paper* asserted that “all anti-colonial struggles” were “at the core, about two things: repossession of land lost through force or deceit; and, restoring the centrality of indigenous culture.” The authors were actually saying that 17 years after 1994 the “anti-colonialist struggle” was not over and that only the indigenous culture should be central.

The *Green Paper’s* solution to the land problem was ‘Agrarian Transformation’ - which was defined as ‘a rapid and fundamental change in the relations (systems and patterns of ownership and control) of land, livestock, cropping and community.’ In terms of its proposals there would be four categories of land tenure:

- State and public land that would be subject to leasehold;
- Privately owned land - that would be freehold but with ‘limited extent’;
- Foreign owned land that would be freehold with ‘precarious tenure’ and subject to conditions; and
- Communal land with communal tenure and institutionalised use rights.

The proposed land tenure system would be supported by a number of new agencies, including a Land Management Commission; a Land Valuer-General and a Land Rights Management Board, with local management committees. The new system would go hand in hand with the implementation of the *Land Tenure Security Bill*, 2010 - which created extensive new rights for farm workers and their dependents and onerous new obligations for land owners.

These proposals have since become the basis for the government’s new approach to property rights and have given rise to the property legislation that we will be considering today.

In the meantime there have been further indications that the government has decided to move down the NDR road - while continuing to give lip service to the NDP. It’s a bit like the dilemma described in the old Afrikaans folksong “*My voete loop na Wellington maar ek ga’ Worcester toe.*”

At the beginning of the parliamentary session this year President Zuma stated that the ANC would “intensify the implementation of affirmative action policies in order to deepen reconciliation and social cohesion in our country.” He said that “after the elections, the country will enter a new radical phase in which we shall implement socio-economic transformation policies and programmes that will meaningfully address poverty, unemployment and inequality.” He repeated the “second phase” theme that “we have achieved political freedom, now we must achieve economic freedom, and ensure that the ownership, management and control of the economy is deracialised further”.



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We can also not ignore the increased influence of the South African Communist Party in achieving effective control of most of the levers of economic policy.

Some years ago the SACP adopted a “medium term vision” “to secure working class hegemony in the State in its diversity and in all other sites of power”. In time this would pave the way to establishment of a ‘socialist state’ in accordance with the “The South African Road to Socialism”.

Nor does the SACP make any secret of the real nature of its relationship with the ANC. The Political Report of the SACP’s 11th Congress Central Committee quotes with approval the 1928 resolution of the Communist International that the Communist Party in South Africa should aim “to transform the African National Congress into a fighting nationalist revolutionary organisation against the white bourgeoisie and the British imperialists, based upon the trade unions, peasant organisations, etc., developing systematically the leadership of the workers and the Communist Party in this organisation.” The SACP, in July 2007, then drew specific attention to the last point: “we repeat: ‘developing systematically the leadership of the workers and the Communist Party in this organisation.’”

Regrettably, this has happened. The SACP has long been handed some 30% of the ANC’s parliamentary seats - without having to win a single vote. Members of its Central Committee now hold the following key posts - particularly with regard to the determination of economic policy:

- Gwede Mantashe: Secretary-General of the ANC (and recently described by Ferial Haffajee as “the most powerful man in South Africa”)
- Jeff Radebe: Minister in the Presidency responsible for the NDP
- Rob Davies: Minister of Trade and Industry
- Senzeni Zokwana: Minister of Agriculture
- Minister Thembelani Nxesi: Minister of Public Works
- Minister Blade Nzimande: Minister of Higher Education and Training
- Minister Ibrahim Patel - although not a member of the Central Committee - strongly associated with COSATU.

None of this is in line with the agreements that we reached between 1990 and 1996. As I said at our annual conference earlier this year: When we agreed to the 1996 Constitution we signed on for the values, rights and institutions that it articulated. “We did not sign on for the National Democratic Revolution. We were never consulted about the ANC’s approach to transformation and we do not accept it.”

I welcome Minister Nkwinti’s willingness to enter into dialogue on land reform. The time has come for serious talks between the Government and all those who are targeted by its version of transformation - including, our minorities, our farmers, the media, civil society organisations; and small and large businesses. We need to talk to government

- About its approach to transformation;
- About the importance of upholding the values in the Constitution;



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- About the likely consequences for the economy, for inter-community relations and for the future of our national accord arising from the Government's present transformation approach; and
- About how we can all work together to achieve real transformation as envisioned in the founding values of our Constitution.

It is against this background that we will today be considering the future of property rights in South Africa. Dr Anthea Jeffery will analyse the current legislation that may have an impact on property rights; Adv Martin Brassey will discuss property rights and the Constitution; Dr Theo de Jager of AgriSA will inform us about recent developments in the search for a workable process of land reform; and Dawie Roodt will spell out the economic and investment implications of any decision to dilute property rights.

We hope that you will find the discussions informative - and regret that the Government will have nobody present to express its perspectives on the future of property rights.