



FW de Klerk
FOUNDATION

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

On 4 July 2018 FW de Klerk spoke at a conference that his Foundation had convened in Johannesburg to discuss property rights for all South Africans and the role that land reform can play in expanding property rights.

De Klerk said that the ANC's decision to proceed with expropriation without compensation (EWC) posed a fundamental threat to investment, economic growth, agriculture, food security and to the national accord on which our new nonracial democracy was founded.

It had been shown time and again that property rights were essential for economic growth 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%".

It was a demonstrable fact that there would always be much higher levels of investment and economic growth in countries with secure property rights than in countries where property could be arbitrarily expropriated or nationalised.

There was also a disturbing possibility that if the principle of EWC was conceded with respect to agricultural land, it might in future be extended to other property. Section 25 of the Constitution stated that property was not limited to land. The ANC's Alliance partners, the SACP and COSATU, were still committed to communism - and EWC might be needed to achieve the "fundamental change in the ... patterns of ownership, management and control of the economy..." that was the core goal of the ANC's Radical Economic Transformation programme.

According to De Klerk, expropriation without compensation would also have a devastating impact on agriculture and food security. Many farmers were leaving the land because of the uncertainty caused by land reform and farm murders. "The real challenge will be to retain farmers - of any race - with the proven ability to produce food."

Finally, De Klerk warned that EWC would also 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."

EWC would mean that citizens could be deprived of legally held property without compensation - in effect - solely because they belong to the wrong race.

According to De Klerk, the ANC was trying to justify EWC on the highly questionable premise that people could be dispossessed of their property because they belonged to the same race as others who may or may not have 'stolen' land hundreds of years ago. "This would be



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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”.

De Klerk said that EWC would raise fundamental questions regarding the future of property rights:

- Was *all* agricultural land owned by white South Africans subject to land reform?
- Was it the government’s intention to apply 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?
- Would EWC be extended to other forms of property as part of the ANC’s programme of radical economic transformation?

De Klerk insisted that none of this detracted from the pressing need for land reform - which was both a constitutional imperative and a political and social necessity.

De Klerk questioned the ANC’s contention that “the current policy instruments including the willing seller policy may be hindering effective land reform”. The High Level Panel chaired by former President Kgalema Motlanthe had found that land reform had failed - not because of section 25 - but because of incapacity and corruption in the government departments involved.

De Klerk warned that expropriation - even with compensation - constituted 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.

He said that there were other approaches to land reform that could achieve success. “20 000 farms are on the market and millions of hectares of government-owned land is available for redistribution. 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.”

According to De Klerk, “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.” The core problem was that there was no clarity about what land reform was supposed to achieve - or of the national interest that it was supposed to promote.



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In De Klerk's view the national interest had to be defined by the foundational values in the Constitution - and not by the ANC's Freedom Charter. This meant that land reform had to comply with human dignity, equality, non-racialism and the Rule of Law.

Also, if land reform was supposed to promote the constitutional vision of improving 'the quality of life of all citizens' it would have transfer real property rights to beneficiaries.

It was also essential to understand where the demand for land reform was greatest. Only 1% of black South Africans were interested in agricultural land while there was enormous demand for urban land for housing. 7.5 million black South African households already owned their own homes. However, the vast majority did not have proper titles deeds. The value of these properties may exceed R1.5 trillion, which was *five times the value of all the agricultural land*.

According to Agri SA's recent land audit, black South Africans already owned more than 45% of all the high potential agricultural land in the country - much of it in the traditional homelands. "A central priority ... should be to transfer legal ownership of this land to the people who actually farm it."

De Klerk said that land reform that transferred - or recognised - 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.

However, De Klerk warned that none of this would work if land reform was viewed as a winner-take-all, black-versus-white, 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."

De Klerk concluded that if handled correctly land reform could be the most positive development since 1994. "However, if handled badly on the basis of EWC, it would be a catastrophe for all South Africans."