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EMPOWERING THE STATE, *Impoverishing the People*

**PROPOSED EXPROPRIATION WITHOUT
COMPENSATION IN SOUTH AFRICA**



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The cover photograph shows an abandoned farm in the Free State

The IRR (Institute of Race Relations) is a non-profit organisation which was formed in 1929 to oppose racial discrimination in South Africa. It is now a think tank committed to promoting political and economic freedom for all South Africans. The IRR has deep historical ties to the United States of America (USA). Its CEO, Frans Cronje, chairs the Board of the Friends of the South African Institute of Race Relations, which is incorporated in the USA as a section 501 (c) (3) entity.

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FOREWORD

The undermining of property rights in South Africa has serious implications both for American investors in South Africa and for the strategic interests of the United States (US). This briefing document is thus aimed at helping Americans understand the likely ramifications if expropriation without compensation (EWC) is introduced, as the ruling African National Congress (ANC) is now determined to achieve.

In February 2018 the South Africa's Parliament 'instructed' a parliamentary sub-committee, the Constitutional Review Committee, to 'review' the property clause in the Constitution (Section 25) to 'make it possible for the state to expropriate land in the public interest without compensation'. The committee has invited written and oral submissions from the public and is expected to report back to Parliament in September this year.

As part of a sustained propaganda campaign in support of this proposal, the ANC now constantly claims that EWC is vital to speed up land reform and counter poverty. Yet some 90% of the land transferred to date has fallen out of production, resulting in few gains for its intended beneficiaries. In addition, EWC will do nothing to address the inefficiencies, corruption, and other factors responsible for land reform failures. If anything, EWC will exacerbate these problems.

Moreover, the land expropriated without compensation will not be transferred to new black owners. Instead, it will be held by the state as a patronage tool and used by it to deepen dependency on the ruling party. This is the fraud at the heart of the EWC idea. By contrast, there are for more constructive ways in which effective land reform could be achieved – as set out at the end of this document.

The ANC is also sedulously fostering the perception that uncompensated expropriations will be limited to land. However, Section 25 clearly defines 'property' as 'not being limited to land' – and there is no indication that the ruling party plans to change this definition.

If the Constitution (or other statutes) are amended to allow EWC, the damage to South Africa's economy will be profound. The ramifications will extend far beyond the agricultural sector to many other spheres. This is partly because the ANC may yet take 'custodianship' of all land. In addition, the ruling party has already proposed a number of 'regulatory' expropriations – and these are likely to be implemented once an EWC amendment is in place to exclude any right to compensation.

Regulatory expropriations arise where the state itself does not take ownership of property, but its regulations deprive existing owners of many of the powers and benefits of ownership. Proposed regulatory expropriations already in the pipeline – many of which would have major ramifications for American investors – include:

- 51% indigenisation (local ownership) requirements for all foreign companies in the private security industry, including those (such as Fedex) which simply transport security equipment;
- price and export controls on all mineral products 'designated' by the mining minister, which will affect companies directly involved in the sector as those with upstream and downstream linkages to mining;
- a 20% free carry for the state in all future off-shore oil drilling projects (under provisions which have already been adopted by Parliament and now cannot easily be changed);
- price controls on all companies providing health services and medical devices or technologies under the National Health Insurance (NHI) proposal; and
- compulsory licences for patented pharmaceuticals under a new intellectual property rights regime recently approved by the Cabinet. This will affect all pharmaceutical companies involved in innovative research and could set a precedent for similar derogations from TRIPS patent protections in other emergent markets.

An EWC amendment could also pave the way for increased black economic empowerment (BEE) ownership requirements. Eskom, for example, already requires 51% BEE ownership from its coal sup-

pliers, and similar rules could be introduced more widely once an EWC amendment has removed the risk of compensation having to be paid. This could affect many American companies operating in South Africa, including those in sectors (the motor industry and the retail sector) where BEE requirements have previously had little impact.

American companies are already worried about the ANC government's cancellation of its bilateral investment treaties (BITs) with the United Kingdom and 12 European countries. Though the US has never had such a treaty with South Africa, American companies previously drew comfort from the protections against expropriation which these BITs contained. But these BITs have now been terminated, while the ANC's ideological hostility to the West and US 'imperialism' has deepened.

The EWC proposal is thus not an isolated aberration. Rather, it is part of an incremental assault on property rights and the free market in South Africa, which the ANC has gradually been intensifying over many years. The EWC proposal will, however, go much further than earlier interventions and be far more sweeping in its consequences.

American companies operating in South Africa have much to lose if the EWC proposal is translated into law. The risk of uncompensated losses could in time encourage many of them to disinvest from the country, especially as South Africa makes up so small a part of the global economy. But an American withdrawal could further isolate the US from the African continent, paving the way for China, in particular, to strengthen and consolidate its influence there. This shift might be a key part of what the EWC proposal is intended over time to achieve.

The West's presence and influence on Africa would then diminish. Yet South Africa and other countries on the continent are important to US strategic interests. Some have vital mineral resources not easily found elsewhere; some about important sea routes and waterways; some seem increasingly beholden to China; and some already harbour several militant Islamic groups deeply hostile to the West.

South Africa, despite all the injustices and economic distortions of apartheid, has long had a vibrant market economy and a strong orientation towards the West. The sophistication and quality of its infrastructure, financial systems, and institutions are exceptional, while the size of its economy gives it significant influence in Africa. It is important to the US that South Africa remain a democratic and free-market nation. The more it moves towards communism (as many in the ANC would like to see it do), the more it will turn its back on the US and shift closer towards China and Russia. This could also have major impact on other African governments.

The EWC proposal is not just a problem for South Africa. It is part of a wider global process inimical to Western interests, which both American investors – and the US itself – have good reason to resist.

The EWC proposal will also betray the constitutional settlement that Nelson Mandela did so much to achieve. It is also likely to have devastating economic and political consequences for all South Africans. For this reason, too, it is vital that all those wanting South Africa to rise above its divided past and achieve prosperity for all its people should stand together to help defeat the damaging EWC amendment that will otherwise soon be made.

EMPOWERING THE STATE, IMPOVERISHING THE PEOPLE: Proposed expropriation without compensation in South Africa

1 A possible constitutional amendment

The property clause (Section 25) in South Africa's Constitution prohibits any 'arbitrary deprivation' of property. It also says that any expropriation must be accompanied by 'just and equitable compensation', which must be based on market value along with factors such as 'the current use' of the property and 'the history of its acquisition'. Expropriation is allowed not only 'for public purposes' (the standard rationale in most countries), but also 'in the public interest'. This is defined as including 'the nation's interest in land reform' and 'equitable access to natural resources'.

Section 25 has other important features. It requires the state to take 'reasonable' measures to increase 'access to land', and entitles those who were 'dispossessed of property' under relevant racial laws (those adopted in 1913 or thereafter) to restitution or other 'equitable redress'. It also states that 'property is not limited to land'.

Since 1994, the ANC government has been pursuing a land reform programme with three key prongs: the restitution of land to the dispossessed, the redistribution of 30% of commercial farming land to black South Africans, and the granting of secure title to land to those lacking this. However, progress has been slow, while production has collapsed on at least 70% of restored land and sometimes on as much as 90% of land reform projects.

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Since 2005, the ANC and many land activists have repeatedly blamed the failures of land reform on the inflated prices the state has ostensibly been forced to pay in buying up land for restitution or redistribution. Since 2013, the Economic Freedom Fighters, (EFF) a political party which broke away from the ANC under its commander-in-chief, Julius Malema, has also been pushing for nationalisation of land, mines, banks, and major corporations (dubbed 'monopoly industry'). In February 2017 the EFF tabled a parliamentary motion calling for the Constitution to be amended to allow expropriation without compensation (EWC), but the ANC rejected this, saying this was not the ruling party's policy. However, in December 2017, at its national conference held at Nasrec in Johannesburg, the ANC changed its stance.

The Nasrec conference resolved that EWC should be one of the mechanisms available to the government to speed up land reform, provided this was done in a way that did not harm the economy, agricultural production, or food security. This decision – made by the organisation's highest decision-making body – is binding on all ANC members and structures.

Soon afterwards, the EFF demanded that the ANC, in line with its Nasrec resolution, should vote with it on a motion to amend the Constitution to allow EWC. In February 2018, this motion (somewhat modified by the ANC) was adopted by the National Assembly by 241 votes to 83. It ‘instructs’ a parliamentary committee, the Constitutional Review Committee, to ‘review Section 25 of the Constitution and other clauses where necessary to make it possible for the state to expropriate land in the public interest without compensation’. The committee is inviting public submissions on the issue and will make its recommendations in September 2018.

2 The historical land injustice

The ANC’s call for EWC is ostensibly aimed at speeding up land reform and correcting what South Africa’s new president, Cyril Ramaphosa, has repeatedly called the ‘original sin’ of land dispossession. However, the way in which land was acquired in the colonial era, from 1652 (when Jan van Riebeeck arrived at the Cape to establish a trading station for the Dutch East India Company) to 1910 (when South Africa became independent from Britain), is far more complex than the simple narrative now being advanced.

In this period, there were forcible land acquisitions not only by whites from blacks, but also by the Xhosa (King Hintsa) from the Khoi and the San; by the Hurutshe from the Tswana; by the Zulu (King Shaka) from the Hlubi, the Ngwane and the Swazi; by the Ndebele (King Mzilikazi) from the Tswana; by the Kgatla from the Po; by the Tswana in the Kalahari area from the Khoi, the San, the Kgalagadi, and the Yei; and by many other black groups against their weaker neighbours. In addition, after the discovery of gold on the Witwatersrand in 1886, the independent Voortrekker republics in the Orange Free State and Transvaal were defeated by Britain in the second Anglo-Boer War (1899-1902). They were then incorporated, together with Britain’s existing colonies in the Cape and Natal, into the Union of South Africa.

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The historical record is thus complex and often inadequately documented. The land acquired from the 17th to the 19th centuries – not only by force, but often also by treaty – also had far less value than the mining, commercial, industrial, residential, and farming land which has since been developed. The drafters of the Constitution thus agreed that the right to restitution should apply solely to dispossessions carried out in 1913 and thereafter.

The period after 1913 was marked by one of apartheid’s greatest injustices – the forced removal of some 2.1m black, so-called ‘coloured’, and Indian people from their rural land or urban homes during the 1960s and 1970s. Under the Natives Land Act of 1913 (the 1913 Land Act), moreover, the black population, then numbering 4 million, was barred, except with state consent, from purchasing rural land outside the ‘reserves’ set aside for them. These reserves made up some 7% of the country’s total land area, whereas the land then owned or occupied by blacks constituted 12.5% of the total. Under the Native Land and Trust Act of 1936 (the 1936 Land Act), the reserves were gradually increased to 13% of the total land area and incorporated into ten black ‘homelands’. By then, however, the black population had increased to 20 million – and overcrowding in the homelands was acute. However, blacks could not easily move to urban areas, as they were barred from owning homes or other land in supposedly ‘white’ towns and cities and needed permits or ‘passes’ to live and work there.

These land injustices are quite bad enough in their own right, without being exaggerated in any way.

Yet the ANC is now distorting the historical record, so as to whip up popular anger and buttress its call for EWC. Whites are repeatedly being accused of having ‘stolen’ the land during the colonial period, when in fact many black groups were then equally intent on acquiring land by conquest and treaty. These were also the established and generally accepted means of land acquisition at the time.

The Land Acts of 1913 and 1936 were repealed by the NP government in 1991. The following year, in a further mark of how white attitudes had changed, some 67% of whites voted for the continuation of a reform process sure to result in their loss of power. When the Constitution was being negotiated thereafter, the need for land reform was broadly endorsed, as reflected in the wording of Section 25. However, land reform to date has been tardy, inept, and generally ineffective in helping its supposed beneficiaries. The ANC government is to blame for these failures, but generally declines to acknowledge this. It also overlooks the fact that EWC will not overcome these challenges and will often make them worse.

3 Failures of land reform

The reasons for the failures of land reform since 1994 are many and complex, but five common factors can be discerned. The salience of these issues has been reinforced by a government-appointed ‘High Level Panel’, which reported in November 2017 on the impact of various post-1994 laws, including land reform ones.

Land reform to date has been tardy, inept, and generally ineffective in helping its supposed beneficiaries. The ANC government is to blame for these failures, but generally declines to acknowledge this.

3.1 Miniscule land reform budgets

The budget for land reform has long been set at only some 1% of total budgeted expenditure. In the current financial year, for instance, R3.4bn has been allocated to land restitution, but this is only 10% of the R30bn budget set aside for both agriculture and land reform. It is also far less than the R12bn allocated to the salaries of officials in these departments. The amount set aside for land restitution is also only 0.2% of total budgeted expenditure of R1.67 trillion in the 2018/19 financial year.

3.2 Collective or state ownership of transferred land

The government does not allow individual ownership of land acquired for restitution or redistribution. Restitution land is generally owned by communal property associations (CPAs), which are commonly riven by dissent and may be driven by self-interest on the part of their trustees. Redistribution land is generally kept in state ownership and can only be leased, not bought, by emergent black farmers. These farmers generally lack title to the land they work, which means that they cannot use this land as collateral and battle to raise working capital.

3.3 Inadequate support for emergent farmers

The government seems to assume that access to land is sufficient in itself for success in farming. However, land is only the first in a long list of requirements. No less important are experience and entrepreneurship, along with working capital, know-how, machinery, labour, fuel, electricity, seed, chemicals, feed for live-stock, security, and water.

Many of the people to whom land has been transferred have little knowledge of agriculture, and have simply been dumped on farms with little effective support from the state. According to Salam Abram, an ANC MP who is himself a farmer and who served on the parliamentary committee for agriculture for twelve years, land reform has been a ‘dismal failure’ because no proper ‘after-settlement’ support has been pro-

vided to beneficiaries. Says Mr Abram: 'The best mentors in South Africa are commercial farmers, but their support, which they have freely offered, has never really been accepted by the government.'

3.4 Gross bureaucratic inefficiency

The restitution process has been dogged by so much inefficiency that officials do not know how many claims they have received, how many they have gazetted, how many have been wrongly gazetted (and should thus be delisted), and how many have yet to be resolved.

In addition, says the Legal Resources Centre (LRC), a civil society organisation, the Commission has made 'colossal errors' in the claims verification process, which need urgently to be fixed. The processing of claims has also been dogged by long delays and gross inefficiency. Writes journalist Stephan Hofstatter: 'A community leader who had to wait eight years for a reply to a [letter] sums it up for me.' These long delays have greatly harmed the rural economy, as farmers cannot easily borrow working capital for land which is under claim. They also have little incentive to invest in it. Hence, many farms under claim are no longer worked, and large areas of productive farmland have effectively been frozen.

Says Dr Theo de Jager, a former deputy president of Agri SA (the voice of commercial agriculture in the country): 'The way the restitution process has been handled has probably done more damage to commercial agriculture in South Africa than the Anglo-Boer War. It has created massive uncertainty, with thousands of farms (often whole districts or industries) caught up in the grip of unfinished claims. No one – neither the current owner nor the claimants – knows who will own the farm in a year from now. So for years no further investment or development takes place.'

The land reform process has also been abused to benefit ANC insiders who use their political connections to get the state to buy them farms and then (as in the case of the formerly thriving Bekendvlei Farm in Limpopo) sell off cattle and other assets and allow crop land to fall fallow.

3.5 Fraud, corruption, and elite capture

Some officials have also acted fraudulently, inflating the prices which farmers are in fact prepared to accept for their land and then, when the state pays out the larger sums, pocketing the difference. (In one instance, the difference amounted to R12m, for the farmer's asking price was R8m while the inflated claim put forward by officials was R20m.)

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The High Level Panel has also flagged corruption and elite capture as significant factors in the failures of land reform. In its 2017 report, the Panel found that the focus of land reform had initially been on 'pro-poor redistribution', but that policy had 'drifted' away from this and now showed 'signs of elite capture'.

3.6 Confirmation from the High Level Panel

Following extensive investigation, the government's High Level Panel has recently confirmed the salience of these five factors in the failures of land reform. Having identified the 'key constraints' on land reform as 'a lack of capacity, inadequate resources, and failures of accountability' in its November 2017 report, the Panel went on:

The Panel is reporting at a time when some are proposing that the Constitution be amended to allow for expropriation without compensation to address the slow and ineffective pace of land reform. This at a time when the budget for land reform is at an all-time low at less than

0.4% of the national budget, with less than 0.1% set aside for land redistribution. Moreover, those who do receive redistributed land are made tenants of the state, rather than owners of the land. Experts advise that the need to pay compensation is not the most serious constraint on land reform in South Africa to date – other constraints, including increasing evidence of corruption by officials, the diversion of the land reform budget to elites, lack of political will, and lack of training and capacity, have proved far more serious stumbling blocks to land reform.

4 Propaganda in support of the EWC proposal

Since 1994 white farmers have repeatedly been stereotyped as incorrigible racists who commonly abuse, assault, and even kill their hapless farm workers. Evidence of good relationships between farmers and their employees has been ignored or downplayed, while incidents of violence on farms have been given major and often distorted coverage. This stigmatisation has paved the way for the propaganda campaign now being mounted in support of the EWC proposal. This involves the constant repetition of various key themes, so as to conceal the truth and skew public perceptions. Racially-charged rhetoric about whites having ‘stolen’ the land is also being used to buttress the EWC demand. The most common themes include:

In the IRR’s 2016 field survey, only 1% of black respondents (down from 2% the previous year) said that ‘more land reform’ was the ‘best way to improve lives’. In the IRR’s 2017 field survey, only 1% of black respondents identified ‘speeding up land reform’ as a top priority for the government.

4.1 There is huge popular demand for farming land

The government has long claimed that a public ‘clamour’ for access to land is forcing it to step up the pace and extent of land reform. More recently, Mr Ramaphosa has repeatedly stated that the ANC must move ahead with EWC because of a ‘pressing’ and ‘urgent’ hunger for farming land among South Africans.

However, comprehensive opinion polls commissioned by the IRR from 2015 to 2017 have repeatedly shown that the great majority of black South Africans have little interest in land reform. This is not surprising, as the country is urbanising rapidly and most people want jobs and houses in the towns and cities.

In the IRR’s 2016 field survey, only 1% of black respondents (down from 2% the previous year) said that ‘more land reform’ was the ‘best way to improve lives’. By contrast, 73% of black people saw ‘more jobs and better education’ as the ‘best way’ for them to get ahead. In similar vein, in the IRR’s 2017 field survey, only 1% of black respondents identified ‘speeding up land reform’ as a top priority for the government.

Even among people who were dispossessed of land under apartheid laws, there has been little interest in land as opposed to cash compensation. By 2013, thus, only 8% of some 76 000 successful land claimants had chosen to have their land restored to them, while the remaining 92% wanted cash compensation instead. Land reform minister Gugile Nkwinti said the government had expected people to ‘jump’ at the chance to obtain land, but they had opted for the money instead because they were urbanised ‘wage earners now’.

4.2 Blacks own a mere 2% of all land and 4% of agricultural land

The government has long promised a comprehensive audit of land ownership by race. An audit of this kind was thus finalised in November 2017 and released in February 2018. Its main focus was on allocating a racial identity to privately owned land, but it found that 61% of the country’s total land area was owned by companies, trusts, churches, and other organisations, the racial identity of which could not easily be established. The audit therefore left this land out of its analysis.

Turning to the land owned by individuals, rather than by juristic entities, the report stated that blacks owned a mere 1.2% of rural land and only 7% of formally registered erven (plots) in towns and cities. As regards some 94 million hectares of agricultural land, the audit stated that 37 million hectares were privately owned by individuals, of which whites owned 26.7 million hectares (72%), coloured people owned 5.4 million hectares (15%), Indians owned 2 million hectares (5%), and blacks owned 1.3 million hectares (4%).

The report's conclusion – that blacks own less than 2% of all land and only 4% of agricultural land – leaves out the 61% of land which is privately owned by companies and other juristic entities. It also excludes:

- all land in state ownership,
- all land held in traditional customary ownership,
- the formal houses that are owned by 8 million blacks, but often without their having title deeds, and
- most restitution and redistribution land (the 8.2 million hectares the state claims to have bought, but which cannot be privately owned by blacks because of the government's insistence on collective or state ownership, as earlier outlined).

A far more accurate audit of land ownership has been conducted by Agri SA. This audit report (published in November 2017) put the total amount of land, both urban and agricultural, owned in 2016 by the government and 'previously disadvantaged individuals' or 'PDIs' (defined as people of black, coloured, and Indian descent) at 43 million hectares or 35% of the country's land area. It put the total quantity of farming land owned by the state and 'PDIs' as 25 million hectares or 26.7% of the total. Taking land potential into account, it put the proportion of agricultural land owned by the government and PDIs at 46.5%. (This is largely because the land long held by black people in customary tenure is clustered in the fertile, well-watered eastern areas of South Africa.)

Agri SA's audit report put the total amount of land owned in 2016 by the government and 'previously disadvantaged individuals' at 43 million hectares or 35% of the country's land area.

The report added that PDIs had privately purchased some 4.4 million hectares of rural land since 1994. This was far more than the 2.2 million hectares of rural land which the Deeds Registry showed the government as having purchased in the same period. Said Agri SA: 'This is a key indicator that private sector agrarian transformation takes place much faster than government programmes.'

4.3 EWC will return the land to 'the people'

The ANC has repeatedly claimed that EWC will 'return' the land to 'the people'. However, this is fundamentally misleading. Land expropriated without compensation will be owned by the state, not by individual black South Africans. Nor will it transferred to them thereafter, for the ANC's policy is to keep land in state ownership. Land acquired via EWC will be held by the state as a patronage tool and used by it to deepen dependency on the ruling party. This is the fraud at the heart of the EWC idea.

4.4 Skewed land ownership is the primary cause of poverty and inequality

The ANC often also claims that skewed land ownership is the predominant cause of poverty and inequality. This diagnosis makes little sense. The agricultural sector contributes a mere 2.3% to GDP and provides only some 4% of all employment. Hence, it cannot possibly provide all the jobs and incomes required to

lift some 30 million people out of poverty. In addition, the key causes of poverty and inequality lie rather in anaemic growth, bad schooling, high unemployment, state inefficiency, pervasive corruption, and a mistaken reliance on BEE, which benefits a small elite while bypassing the poor.

4.5 EWC will be carefully carried out, so as to promote investment, maintain food security, and avoid land grabs

Mr Ramaphosa has repeatedly stated that EWC will simply be one of the ‘options’ available to the government to speed up land reform. This suggests that its use will be occasional and selective. He has also stressed that EWC will be carefully implemented so as to avoid any adverse impacts on investment, growth, agricultural production, and food security (see *Section 5*, below).

Mr Ramaphosa has further promised that there will be no ‘smash-and-grab’ once EWC is authorised. On the ground, however, the smash-and-grab has already begun. Urban land occupations have intensified since Parliament endorsed the EWC motion. Some of these occupations have turned violent, marked by arson attacks and the looting of foreign-owned township shops (spazas). In Hermanus (Western Cape), demonstrators demanding land also burnt down the municipal library and a satellite police station.

Farm invasions have been less common, but have sometimes also occurred. In KwaZulu-Natal, for instance, a crowd 100-strong, armed with pangas and machetes, recently invaded a farm in the Dannhauser area (half way between Johannesburg and Durban). Police from the nearest station declined to come to the farmer’s help, saying they had no vehicles available. Police from further afield did arrive, but not before the crowd had made off with 100 goats and sheep, tools, and equipment.

The key causes of poverty and inequality lie rather in anaemic growth, bad schooling, high unemployment, state inefficiency, pervasive corruption, and a mistaken reliance on BEE, which benefits a small elite while bypassing the poor.

These invasions point to a key risk, says Prince Mashela, a political analyst. If the Constitution is changed and the ANC then drags its heels on EWC – saying that it must go slowly to safeguard investment or to maintain food security – the EFF will condemn its tardiness and encourage people to intensify land occupations.

4.6 Racial rhetoric about the ‘stolen’ land

President Jacob Zuma kicked off this racial rhetoric more than two years ago, in January 2016, when he stated that the government should no longer pay for the ‘stolen’ land. This had been ‘taken, not bought’ and was now ‘the key source of poverty, inequality and unemployment’, he said.

In November that year, Mr Malema stepped up the accusations, saying: ‘We, the rightful owners, our peace was disturbed by the white man’s arrival here. They committed a black genocide. They killed our people during land dispossession... They found peaceful Africans here. They killed them! They slaughtered them like animals! We are not calling for the slaughtering of white people, at least for now... But 1994 means NOTHING without the land! Victory will be only be victory if the land is restored in the hands of the rightful owners. And the rightful owners are unashamedly black people. This is our continent, it belongs to us.’

Since November 2017, racial rhetoric by key figures in the ANC and EFF has increased. Examples include:

- ‘Our land was stolen from our forebears, leading to the destruction of the asset base of the African people and resulting in the impoverishment of the black nation’ (Cyril Ramaphosa, then national and ANC deputy president, in November 2017);

- ‘White people are the ones who have looted and even stolen the land from black people’, and yet they complain about the ANC’s plans for ‘radical economic transformation’ (Dr Nkosazana Dlamini-Zuma, then the favoured candidate for the ANC and national presidency, shortly before the Nasrec conference in December 2017);
- ‘Almost 400 years ago, a criminal by the name of Jan van Riebeeck landed in our native land and declared an already occupied land by the native population a no-man’s land. Van Riebeeck... would later lead a full-blown colonial genocide, anti-black land dispossession criminal project, arguing that simply because our people could not produce title deeds, this land, that they had been living in for more than a thousand years, was not their own. Essentially, he was disregarding their humanity, treating them as part of the animal world’ (Mr Malema, introducing the EWC motion in Parliament in February 2018);
- ‘We need legislation as forceful as war...to ensure that the goal of reclaiming stolen land is attained’ (Ronald Lamola, former deputy president of the ANC Youth League and now a member of the ANC’s inner core, its national working committee, also in February 2018);
- ‘Let us not forget that the land was taken from the masses of our people through the brutal wars of dispossession during the colonial and apartheid eras. These historical injustices resulted in the skewed land ownership patterns along racial lines. This harmed the dignity of the victims of land dispossession’ (Maite Nkoane-Mashabane, minister of rural development and land reform, speaking at a national land summit in March 2018);
- ‘If driven by revenge, we would send dogs, trucks, Nyalas,...and security forces armed with fatal ammunition to forcefully remove white people from the land, as colonialism and apartheid did to black people’ (EFF MP Mbuyiseni Ndlozi during a parliamentary debate on Human Rights Day in March 2018).

In constantly stressing the ‘original sin’ of land dispossession, the ANC and EFF are carefully building up perceptions that EWC will be confined to land, especially farming land. However, the property clause in the Constitution expressly states that ‘property is not confined to land’.

Several journalists have added to the racial rhetoric, with one of the most damning narratives coming from the deputy editor of the *Financial Mail*, Sikonathi Mantshantsha, who wrote: ‘[Over] more than 300 years,...black people had lost everything to white, European conquerors who had invaded and violently taken over the country. The conquerors’ descendants, in various guises, went on not only to inherit their ill-gotten gains, but also to visit upon the vanquished one of the worst forms of dehumanisation and humiliation ever seen. Colonialism and apartheid, built on black dispossession through armed robberies, were to formalise this white privilege.’

These statements grossly distort the historical record and the extent to which blacks also acquired land by conquest and treaty in the colonial period. They are also premised on a doctrine of collective guilt, which has no place in a democracy founded on respect for individual human rights.

5 The likely impact of EWC, if confined to land

In constantly stressing the ‘original sin’ of land dispossession, the ANC and EFF are carefully building up perceptions that EWC will be confined to land, especially farming land. However, as earlier noted, the property clause in the Constitution expressly states that ‘property is not confined to land’. Unless this definition is changed for EWC purposes, property of virtually every kind could become open to expropriation without compensation.

Cas Coovadia, managing director of the Banking Association of South Africa (Basa), has been forthright about the risks of uncompensated farm expropriations. Commercial banks have extended some R125bn

in working capital to commercial farmers, while EWC (even if implemented on a limited scale) would erode property rights significantly. Says Mr Coovadia: 'Once that happens, land can no longer serve as collateral in support of loans to farmers and agro-processors.' The increased risk, warns Mr Coovadia, might 'compel banks to exit the agricultural sector altogether'. Yet, without these loans, farmers would be unable to purchase seed, fertiliser, feed, or implements.

'The resultant decline in food production would not only make food more expensive, but South Africa would need to import food to feed its population, driving up food costs even further,' notes Mr Coovadia. With hunger increasing, the thousands of violent demonstrations already evident each year could easily escalate. Diminished food production would also reduce South Africa's agricultural exports to the European Union and other countries, which totalled more than \$10bn (R125bn at current exchange rates) in 2017.

Depending on the scale of its implementation, adds Mr Coovadia, EWC could also pose 'systemic risks' to the financial sector. The overall exposure of banks to the agricultural sector is significant (R180bn, including the state-owned Land Bank), so 'question marks over how the debt will be handled' could erode confidence in the banking system. The consequences would be even more severe if EWC was not confined to farming land but extended to urban land and other forms of property.

'The resultant decline in food production would not only make food more expensive, but South Africa would need to import food to feed its population, driving up food costs even further.' With hunger increasing, the thousands of violent demonstrations already evident each year could easily escalate.

In addition, South Africa's economy is already performing far below its potential, while two ratings agencies, Fitch Ratings and S&P Global Ratings, have already downgraded its sovereign debt to sub-investment or junk status. If Moody's Investors Service were to follow suit, South Africa would be excluded from the Citi World Government Bond Index, triggering a major outflow from the bond market and further hobbling the economy. Though the optimism triggered by the new Ramaphosa administration persuaded Moody's not to downgrade South Africa in March 2018, Moody's has warned that downgrades may yet follow if the country fails to stimulate the economy through structural reforms and increased investment. At this critical juncture, EWC thus poses a particularly serious risk to an already fragile economy.

The ANC is trying to create the impression that the economic fall-out will be limited because EWC will be used only relatively rarely. However, an EWC amendment to the Constitution could in fact encourage the government to take land as 'custodian' and to embark on a host of 'regulatory' expropriations in sectors going well beyond the agricultural one.

6 The 'custodianship' issue

South Africa's valuable mineral resources – two-thirds of which used to be privately owned – have already been vested in the 'custodianship' of the state under the Mineral and Petroleum Resources Development Act (MPRDA) of 2002. In similar vein, the National Water Act of 1998 makes the government the 'public trustee' of the nation's water resources. In both instances, former private ownership has been extinguished.

The government has also sought to extend the custodianship concept to land. In 2014 it released the Preservation and Development of Agricultural Land Framework Bill (the Agri Land Bill), under which all agricultural land was to be vested in the 'custodianship' of the state. On this basis, the private ownership of farms would be extinguished, as had already happened with mineral resources and water. Farmers would be accorded 'a right to farm', but would have to do so the terms set by the government. Farmers, like miners, would soon find themselves labouring under increasingly intrusive and costly BEE requirements, which in time might make farming as 'uninvestable' as mining has become.

The custodianship proposal was dropped from a 2016 version of the Agri Land Bill. But the EFF has continued to push for the government to take custodianship of all rural and urban land. Says Mr Malema: 'Every title deed will be meaningless and the state will be the custodian of the land.' All individuals and companies will then have to apply to the state for 25-year 'land-use licences', which the government will be able to withdraw and re-allocate to serve the public interest.

According to EFF secretary general Goodrich Gardee, once all land has been vested in the custodianship of the state, 'preference can then be given to black people who have been excluded from having rights over land for generations'. This will also save the state from having to deal with tens of thousands of land claims, which will be slow and costly to resolve under the current 'excessively litigation-based land reform programme'.

If the Constitution is amended to allow EWC, the state will be able to take custodianship of the 8 million houses owned by blacks, the 1 million homes owned by whites, the millions of customary plots held by some 17 million blacks living in the former homelands, and all privately-owned mining, industrial, and commercial land. In none of these instances will it be obliged to pay compensation.

The ANC finds it politically expedient to distance itself from this custodianship demand and let the EFF make the running on it. However, both the ANC and the EFF share the same ideological convictions and ultimate goals (see *Section 10*, below). In addition, the ANC has already endorsed the custodianship idea via the Agri Land Bill of 2014, while its November 2017 land audit effectively does so too by proposing that all land be vested in the state 'as the common property of the people of South Africa'.

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7 Regulatory (or indirect) expropriations

A regulatory expropriation arises where the state itself does not acquire ownership, but its regulations nevertheless deprive the owner of many of the usual benefits and powers of ownership. The ANC is planning to implement a number of regulatory expropriations, as is already evident from various bills and policy proposals. An EWC amendment to the Constitution – particularly one which preserves the current definition of property as 'not being limited to land' – would allow all these regulatory takings to proceed without any risk of compensation having to be paid.

Regulatory expropriations already in the policy pipeline include 51% indigenisation requirements for foreign security companies; 51% BEE ownership requirements for many mining and other companies; price and export controls on all 'designated minerals'; comprehensive price controls over all health care goods and services under the National Health Insurance (NHI) proposal; compulsory licences for patented medicines; 'prescribed' investments for pensions and other funds; and forced divestments to small BEE firms by large companies found to have 'an adverse effect on competition' in concentrated sectors of the economy.

To help pave the way for these regulatory expropriations, the government has already cancelled its bilateral investment treaties (BITs) with the United Kingdom and 12 European countries. It has also persuaded the Southern African Development Community to remove equivalent protections against regulatory expropriation from the SADC Protocol on Finance and Investment.

8 EWC within the Constitution

In response to mounting criticisms of an EWC constitutional amendment, some senior figures in the ANC and the SACP have argued that the Constitution does not need to be changed. In their view, the 'just and

equitable' compensation which Section 25 requires can often be set at zero, which means that EWC can be achieved without changing the Constitution.

Jeremy Cronin, deputy minister of public works and a former first deputy general secretary of the SACP, is a strong proponent of this perspective. According to Mr Cronin, rather than amending the Constitution, the Expropriation Bill of 2015, which is currently before Parliament, should be changed to specify the circumstances in which the state may withhold compensation. This could be done for 'unused' or 'unproductive' land, for 'under-utilised' public land, and for property held 'purely for speculative purposes', he suggests.

The ANC's national executive committee (NEC) – which is the organisation's highest decision-making body between its national conferences – decided in late May 2018 to press ahead with a test case on EWC under the current property clause. This will be done to 'test the argument that the Constitution [already] permits expropriation of land without compensation'. If it becomes apparent that Section 25 'impedes implementation' of EWC, then 'the Constitution will be amended'.

It seems unlikely, however, that the ANC will wait for a test case to wend its way through the courts. The same NEC decision also 'adopted' the 'recommendations' of an ANC land summit, which had said that the ruling party must 'proceed to affirm the amendment of Section 25(2)(b) [of the Constitution] to immediately effect the principle of expropriation without compensation'. Section 25(2)(b) is the sub-clause that requires the payment of compensation on expropriation. The implications are two-fold. First, the ANC is still intent on a constitutional amendment, despite its disclaimers to the contrary. Second, it has no intention of changing Section 25(4), which is the sub-clause defining property as 'not being limited to land'.

According to Jeremy Cronin, rather than amending the Constitution, the Expropriation Bill of 2015 should be changed to specify the circumstances in which the state may 'withhold compensation'.

According to the NEC statement, the ANC will now 'immediately pass' the Expropriation Bill, as earlier described. It will also swiftly enact a 'Land Redistribution Bill' (still to be drafted), which will allow land transfers to proceed without proof of prior dispossession. Moreover, the 30% target for redistribution is to be reassessed, says land reform minister Ms Nkoana-Mashabane, as this was simply 'a floor target' and not the final goal.

9 The mandate given to the Constitutional Review Committee

On 27th February 2018 the National Assembly adopted a motion (originally put forward by the EFF and then modified by the ANC) which 'instructs' the Constitutional Review Committee to 'review Section 25 of the Constitution and other clauses where necessary to make it possible for the state to expropriate land in the public interest without compensation'.

In this process, the committee must 'conduct public hearings' so as to 'get the views of ordinary South Africans' and others 'about the necessity of...expropriating land without compensation'. The committee must also 'propose [any] necessary constitutional amendments' regarding 'the kind of future land tenure regime needed'. The EFF had wanted to include a clause on 'the necessity of the state being a custodian of all South African land', and this instruction might open the door to wording along these lines.

As earlier noted, the motion was adopted by 241 votes to 83. Only the Democratic Alliance (DA), the Congress of the People (Cope), the African Christian Democratic Party, and the Freedom Front Plus opposed it. The Constitutional Review Committee is thus likely to be dominated by parties which have already endorsed the motion.

If the committee recommends an EWC amendment to the Constitution in September 2018, the necessary legislation will then have to be drafted. Since Section 25 forms part of the Bill of Rights, the amendment bill will have to be passed with the support of at least two thirds of the members of the National Assembly. It will also have to be endorsed by six of the nine provinces represented in the upper house, the National Council of Provinces (NCOP). Between them, however, the ANC and the EFF have the numbers in Parliament to ensure the adoption of such a bill.

(It is also possible, however, that an EWC amendment would need a 75% majority in the National Assembly. The argument here is that respect for property rights is integral to the rule of law – and that ‘the supremacy of the rule of law’ is identified as one of the founding values of the Constitution. These founding values can be changed only with the support of at least three quarters of MPs in the National Assembly. If this special majority does indeed apply, the ANC and EFF, even with the support of some of the smaller parties, will not be able to muster it.)

10 The real reasons for the EWC proposal

The supposed need to speed up land reform is not the real reason for the proposed EWC amendment to the Constitution. Nor does the ANC have any interest in generating a new class of land-owning black commercial farmers, who would have the political and economic independence to challenge its damaging and outdated ideology. Rather, the ANC is using the historical land injustice as the thin edge of the wedge to push ahead with long-standing plans to weaken property rights in a host of spheres.

From as far back as 1969, the ANC’s main objective has been to gain state power (as it did in 1994) and then use this to implement a ‘national democratic revolution’ (NDR). Though it first endorsed the NDR some 50 years ago, the ANC regularly re-commits itself to this revolution. Since 1994, it has done so at each of its five-yearly national conferences, including the Nasrec conference held in December 2017.

From as far back as 1969, the ANC’s main objective has been to gain state power (as it did in 1994) and then use this to implement a ‘national democratic revolution’ (NDR). Though it first endorsed the NDR some 50 years ago, the ANC regularly re-commits itself to this revolution.

The NDR is a Soviet-inspired strategy, which the ANC’s allies in the SACP and the Congress of Trade Unions (Cosatu) openly identify as offering the ‘most direct’ route to a socialist and then communist future. The ANC itself is more circumspect about publicly embracing this goal, as this would erode its popular appeal. However, the ANC has also been dominated by the SACP since the 1940s, and remains so to this day. Both organisations play down the extent of the SACP’s control, as open acknowledgement of this would also jeopardise support for the ANC ‘horse’ the SACP has successfully ridden into power without ever having to stand for election in its own name.

The ANC also remains deeply committed to the Freedom Charter of 1955, which it continues to describe as its ‘lodestar’. The charter (which was drawn up with significant input from the SACP) declares that ‘all the land shall be re-divided among those who work it’. It also states that ‘the mineral wealth beneath the soil, the banks, and monopoly industry shall be transferred to the ownership of the people as a whole’. According to the SACP, the implementation of the charter is essential as this will provide ‘an indispensable basis for the advance of our country along non-capitalist lines to a communist and socialist future’.

The ANC’s national conferences invariably adopt a ‘*Strategy & Tactics*’ document setting out the key goals of the NDR and the mechanisms to be used in attaining them over the next five years. One of the goals set out in these *Strategy & Tactics* documents is the ‘elimination’ of existing ‘property relations’. According to the ANC, ‘property relations are at the core of all social systems’. (The free market system

depends on private property rights, whereas a socialist one requires comprehensive state ownership and control of all the means of production, at least until such time as the communist nirvana is attained and the state withers away.) Property relations are thus vital, which means that any attempt at major redistribution is sure to spark a strong counter-reaction. These ‘tensions’, says the ANC, ‘require dexterity in tact and firmness in principle’ so that the proposed redistribution is not halted and the NDR is not derailed.

In recent years, the ANC’s incremental assault on property rights has been cloaked in the language of ‘radical economic transformation’ or RET. This concept is essentially the most recent iteration of the NDR. The ANC defines RET as ‘a fundamental change in the structure, systems, institutions, and patterns of ownership, management and control of the economy in favour of all South Africans’. Most people assume that what the ruling party has in mind is an acceleration of BEE, so that the current, supposedly ‘white’, ownership and management of businesses is increasingly transferred to black entrepreneurs and industrialists. However, the real goal now – as it has been for at least five decades – is to transfer the ownership of all important assets from the private sector to the state.

The EWC proposal is integral to these NDR goals. EWC is not about providing redress to black South Africans for past land injustices. Its real aim is to give the ANC the power to embark on a host of custodial and regulatory takings, as earlier outlined. This will incrementally extend the state’s power over the economy and lay the foundation for the ultimate transition to socialism and then communism.

The EWC proposal is already proving highly successful in distracting attention from ANC corruption and inefficiency in the run-up to the 2019 general election. In addition, it offers a useful way of bringing the EFF ‘home’ and so avoiding any further splitting of the ANC vote.

The call for EWC is thus simply the latest development in an incremental NDR strategy which the ANC and the SACP have been steadily pursuing ever since they gained power in 1994. It is being strongly pushed at this juncture because the revolutionary alliance believes that the global and domestic ‘balance of forces’ favours its success. In the global arena, China and Russia are becoming stronger and Western democracies are weaker. In South Africa itself, public disaffection is growing because rising expectations of a better life can no longer be fulfilled with the growth rate so low, the unemployment rate so high, and corruption and inefficiency so widespread. In addition, enough time has passed since the political transition and Nelson Mandela’s death in 2013 for the NDR assertion that Mr Mandela ‘sold out’ the black majority to gain ground among jobless and disaffected youth.

The EWC proposal also offers some immediate political gains. It is already proving highly successful in distracting attention from ANC corruption and inefficiency in the run-up to the 2019 general election. In addition, it offers a useful way of bringing the EFF ‘home’ and so avoiding any further splitting of the ANC vote.

Also politically useful is the fact that land expropriated without compensation will not in fact be handed to landless blacks. Instead, it will be held by the state and used by the ANC as a patronage tool. This will give ANC cadres increased opportunities for personal enrichment and strengthen their loyalty to the ruling party. State control will also cement the population’s dependency on the ruling party and help it maintain its grip on power.

11 Is Cyril Ramaphosa trying to neutralise the EWC proposal?

The ANC makes no secret of its commitment to the NDR, yet many journalists and other commentators discount the importance of its expressed intentions. Given the ‘Ramaphoria’ that has arisen since the Nas-rec conference, many also assume that Mr Ramaphosa is a pragmatic businessman who is ‘playing a long game’ in order to isolate the radical faction within the ANC and neutralise the EWC proposal.

According to this perspective, Mr Ramaphosa was pushed into endorsing EWC because his margin of victory at Nasrec was so narrow (179 votes) and the need to unite a deeply divided ANC was so strong. Many commentators thus assert that ‘scaremongering’ around EWC is unwarranted, as Mr Ramaphosa will successfully limit its scope and potential damage. In particular, he will ensure that EWC is used only for ‘unused’ and ‘unproductive’ farmland, which can be taken without depriving people of their livelihoods and without restricting food production or undermining investment.

However, even if these qualifications are initially written into the relevant rules, this will not compensate for the damage to business and investor confidence that is sure to arise from authorising the government to embark on EWC. In practical terms, disputes as to whether particular farms are at least partially ‘unused’ or ‘under-utilised’ are also sure to abound. So too are disputes as to how much land individual farmers in fact need to maintain their livelihoods and how much is excess to their requirements (anything above the ANC’s proposed land ceilings, for example?). Inevitably, the qualifications will prove unworkable in practice and will be removed or eroded in due course. Moreover, once the principle of EWC has been conceded and written into the Constitution (or the Expropriation Bill), the terms on which expropriation can be carried out can be changed over time.

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In addition, if Mr Ramaphosa is indeed playing ‘a long game’ aimed at neutralising the EWC proposal, he is going about it in a strange way. He has repeatedly endorsed the EWC idea, whereas he could rather be stressing (so as to strengthen the moderates and isolate the radicals):

- that expropriation is not needed when millions of hectares of state-owned land are available for redistribution and 20 000 farms are up for sale;
- that EWC will not address the reasons for land reform failures, as identified by the High Level Panel, and that these problems must be overcome before any attempt is made to speed up land reform;
- that organised agriculture has repeatedly made practical proposals to help develop a prosperous black agricultural sector, and that these offers should be pursued before EWC is tried;
- that the state’s 2017 land audit is incorrect and that 47% of all high potential farm land is already in black hands; and
- that putting millions of new farmers onto tiny farms that they do not own goes against what most black people want and is no solution to poverty or inequality.

However, Mr Ramaphosa is saying none of these things. Like other senior figures within the ANC, he seems to accept that ‘the principle’ of EWC has already been decided, and that it is only ‘the modalities’ of its implementation that remain to be considered.

12 A better way forward

The Constitution should not be amended to allow EWC. As Dave Steward of the F W de Klerk Foundation writes: ‘If EWC were to be adopted, even in diluted form, it would be a body blow to the already battered national accord on which the new South Africa was founded. 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 equitable

compensation would be paid for expropriated property. The property clause was at the heart of the constitutional agreement – because, as the ANC correctly observes, “property relations are at the core of all social systems”.’

An EWC amendment would not only unravel one of the most important elements in the Constitution but also set a precedent for further damaging changes. The doctrine of judicial review, for example, is already being eroded – especially on issues vital to the NDR – through the ANC’s significant control over judicial appointments. But the doctrine might then be jettisoned altogether, so that the legislation adopted by Parliament can no longer be ‘undermined’ by unelected judges. This would take South Africa back to the doctrine of parliamentary sovereignty and fundamentally weaken all constitutional safeguards against the abuse of power.

The notion that EWC is possible within the parameters of the present property clause is only marginally less dangerous. This too would deal a ‘body blow’ to the negotiated settlement reached in the 1990s. This too would be an invitation to the government to embark on the extensive custodial takings and wide-ranging regulatory expropriations it already has in mind. This too would fatally erode investor confidence and the prospects of boosting growth and reducing unemployment. Before Ms Nkoana-Mashabane’s proposed test case comes before the Constitutional Court, thus, every effort must be made to show just how damaging it would be for the property rights vital to prosperity to be white-anted in this way.

The notion that EWC is possible within the parameters of the present property clause would deal a ‘body blow’ to the negotiated settlement. It would also invite the government to embark on the extensive custodial takings and regulatory expropriations it already has in mind.

IF EWC is not the answer, what, then, should be done to make a success of land reform, the ostensible rationale for the EWC idea? Here, the focus must shift from land to farming. The critical issue is not the number of hectares transferred – especially when most of that land is then likely to fall out of production – but rather how best to increase the number of successful black commercial farmers. Emergent farmers wanting to expand into large-scale production must thus be helped to do so. However, no one should be encouraged to believe that farming is an easy option, when agriculture is in fact an exceptionally high-risk sector – and especially so in a water-stressed country such as South Africa.

People with the necessary entrepreneurial drive are likely to be found among the black South Africans who have already bought 4.4 million hectares of rural land on the open market since 1994. Others could be identified through the African Farmers’ Association of South Africa (Afasa), and via the commodity organisations, such as Grain SA, which are already doing much to develop new farmers. Effective steps should then be taken to help fulfil their needs – but quick fixes are unlikely to succeed and should rather be avoided.

Emergent farmers in need of land should buy it at market prices from among the 20 000 farms that are already on the market (along with the additional farms likely to be put up for sale by ageing farmers in the future). Preferential interest rates could be made available by the Land Bank to facilitate these purchases. However, the state should not provide ‘free’ land to farmers when it does not do the same for entrepreneurs in retail or manufacturing. Rather, the government should sell them some of the land it already owns. If necessary, it could start by leasing some of its land to emergent farmers, who must, however, be granted firm options to buy as soon as they can afford to put down deposits.

The role of the state should largely be confined to the critically important task of providing better rural infrastructure in the form of roads, railways, and dams. Electricity, abattoirs, produce markets, milling and storage facilities could be provided either by the state or by the private sector.

The government should also help by financing effective extension services. It should stop trying to provide these services itself, as it clearly lacks the capacity to do so. Instead, essential training and mentorship should come from existing commercial farmers, with their unparalleled know-how and experience. These farmers, who last year alone put R332m into development initiatives through their commodity organisations, should be applauded for their efforts. Their existing mentorship programmes, should, however, be expanded with the help of state-funded vouchers. Emergent farmers could then use these vouchers to purchase the particular extension services they need from the providers of their choice.

What of working capital? Emergent farmers will often need to borrow from commercial banks and will battle to do so unless the government guarantees their loans. This will have to be done if small black farmers are to grow into big ones. Guaranteeing loans for a carefully selected pool of such farmers would, however, be a much better investment than spending R2bn on grandiose projects, such as agri-parks (as the government is currently intent on doing). It would also be a far better use of tax revenues than repeatedly providing billions in bail-outs to South African Airways and other poorly managed parastatals. Privatising some of these companies would also be a good way of raising funds to help emergent farmers expand.

South Africa's current crop of 35 000 or so commercial farmers should be encouraged to stay on the land and keep producing, so as to feed the nation, contribute to export earnings, and provide the necessary mentoring to new entrants. The population is expanding (from 40 million in 1994 to a projected 67 million in 2030) and will soon be more than 70% urbanised. Its need for secure and affordable food supplies thus cannot be met in any other way.

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In addition, much of the country's well-watered and high-potential farming land is still held in customary communal tenure in former homeland areas. As a result, large swathes of this land are not being used for agriculture at all. This land cannot be brought into full production without much better infrastructure and sound extension services. Secure title must also be transferred at reasonable prices to present occupants, who are currently tenants of the state as represented by traditional leaders. Those who rely on social grants rather than on farming could be bought out by people wanting to become commercial farmers. Consolidation into much larger units will also be needed to achieve economies of scale.

What of the people now living on customary plots who sell their land to new commercial farmers? There will be increased job opportunities for them in the revitalised rural economy, but many will want to move to urban areas. Such urbanisation is already well in train and echoes developments all around the world, where people move off the land and into jobs in the towns and cities. South Africa's problem is that the necessary urban jobs are not being generated on anything like the scale required.

EWC is, of course, no solution to this challenge. Rather, people in the cities need secure title to their homes and other properties, so they can secure mortgage finance or use their assets as collateral for loans in setting up small businesses. However, these small businesses will battle to succeed in the current context of poor skills, anaemic growth, and rising unemployment. These fundamental challenges must be overcome if the country and its people are to prosper.

A Practical Path for Effective Land Reform

Successful land and agrarian reform is possible. A future in which sizable numbers of black commercial farmers are assisted into business, securely holding their land, is by no means beyond South Africa's reach – provided the necessary conditions are put in place.

Government policy is to place the state rather than the aspirant farmer at the centre of its land reform efforts. This has been codified in the State Land Lease and Disposal Policy, which specifies that land acquired for purposes of redistribution (including making land available for aspirant farmers) will remain under state ownership. Only the largest producers may qualify to purchase their holdings, and then only after 50 years. The policy of the government is now moving towards one of expropriation from existing farmers and presumably leasing it to emerging producers. The reason for this approach, the government says, is that 'the willing buyer, willing seller model has failed' as there is not enough money to make it work.

But this argument is incorrect.

We at the IRR estimate that good quality grazing land is in the market for R10 000 per hectare. To purchase a 1 000 hectare farm for a young upcoming farmer would cost R10 000 000. We further estimate that to stock that farm with 200 pregnant cows would cost another R4 000 000. A further R2 500 000 could then be spent providing the emerging farmer with a new Land Cruiser bakkie, a tractor, trailer, and implements. He could then be given R3 500 000 in cash as working capital.

South African Airways received a bailout of R10 billion from the government last year and has recently requested another R5 billion. Had R15bn been spent on land reform, this sum could have established 750 successful new black commercial farmers over the past two years alone.

The whole investment would come to R20 000 000 and would create a debt-free commercial farmer generating a positive cash flow of around R1 000 000 a year and with more than sufficient collateral to buy more land and expand his farming enterprise.

These sums are actually quite modest when measured against other commitments the government has chosen to make. South African Airways (SAA), for example, has received extensive coverage in recent years for its poor performance and governance challenges. It received a bailout of R10 billion from the government last year and has recently requested another R5 billion. Based on our sums, had R15bn been spent on land reform, this sum could have established 750 successful new black commercial farmers over the past two years alone. Considering that there are only 30 000 commercial farmers in the country, this is a not inconsiderable number. A ten percent cut in the public service wage bill would finance the establishment of an estimated 3000 new black commercial farmers every year.

In reality, though, the government is starving emerging black farmers of support. Terence Corrigan, the IRR's project manager in charge of our work on land and property rights has commented: "This year the budget of the Department of Rural Development and Land Reform is some R10.4 billion. This amounts to less than one percent of government's total budgeted spending. The budget for land reform – the acquisition of land for redistribution – comes in at R2.7 billion. Restitution – settling land claims – is budgeted at R3.7 billion. (In each case,

this includes administration costs, and not just the amounts dedicated to actual land transfers.) VIP protection and associated services, by contrast, are expected to cost a total of R2.6 billion. In other words, protecting the country's political elite is seen as pretty much on a par with providing land to emerging farmers, and not much less important than addressing cases of land dispossession. If that doesn't tell us everything we need to know about priorities, it certainly tells us a great deal."

The SAA bailouts and VIP protection money reveal the extent to which the government is prioritising the establishment of black farmers. 'Willing buyer, willing seller' cannot be said to have failed when there is no buyer.

Each of the new farmers established under our model would be very well positioned to grow their businesses through their own collateral and cash flow – particularly if the Land Bank were to grant them generous loan conditions, something it does not at present do. These emerging black farmers would arguably be in a much stronger financial position than most white farmers. Their rise, eminence, success, and expansion would be the most powerful answer South Africa could offer to the historical denial of property rights to black people.

Our model represents a rethink of the direction of policy. It is simple, straight forward, cost effective and could be put into action within weeks. But it would only work if property rights are respected and the agricultural sector is run on market principles.

The IRR's *National Growth Strategy* outlines the key economic reforms that need to be introduced. First, property rights must be strengthened by jettisoning the EWC idea and reversing all the current laws and proposed policies that undermine and threaten them. Without this essential step, direct investment at the scale required will continue to pass the country by.

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Second, a business-friendly environment must be put in place. Many parastatals on the brink of bankruptcy should be sold off on terms that guard against corruption and the emergence of new private monopolies. Effective public/private partnerships should then be used to expand essential infrastructure and maintain what already exists. Red tape must be slashed, especially for small businesses. The inefficient public service must be trimmed and professionalised, and the tax load lightened for both companies and individuals. The fraud and wasteful spending which currently taints up to 40% of state procurement must be stamped out.

Third, labour laws must be substantially reformed. The government itself acknowledges that entry-level wages are already generally so high they that they lock the unskilled and inexperienced out of jobs. Rules which push up labour costs – including the extension of bargaining council agreements to non-parties and the proposed national minimum wage – must be scrapped. Instead, private employers must be allowed to take a leaf out of the government's book and pay the unskilled, as the state does, a stipend of some R90 a day. This is far below the entry-level wages generally required, but the government provides work opportunities at these low wages because it hopes they will pave the way to better jobs. Often, however, they do not. By contrast, if people were allowed to work for the same low wages in the private sector, they would generally receive better training, notch up more relevant experience, and have greater prospects of moving into higher paying jobs over time.

Increased flexibility in the hiring and firing process is also essential, as business needs to be able to adjust to peaks and valleys in demand. Employers will thus hire freely only if they can dismiss freely. The presumption that dismissals are unfair unless the employer can prove otherwise should be removed. Instead, employers should be free to dismiss employees under the notice periods agreed in their employment contracts.

Fourth, South Africa's ineffective and damaging 'transformation' policies require fundamental reform. BEE is by far the most ambitious and far-reaching affirmative action programme in the world. Partly for this reason, misperceptions have grown up around its effects. Some people criticise it for harming the economic prospects of whites, but there is little evidence of this. At the same time, most people assume that BEE is effective in helping the poor and enjoys broad support. These assumptions are equally flawed. BEE helps only some 15% of black people – and its benefits go primarily to a small and often politically connected elite. This is also not surprising, for the great mass of the unskilled and unemployed have little prospect of ever benefiting from BEE ownership deals, management posts, or preferential tenders.

Behind the scenes, most business people are well aware of these limitations, and criticise BEE for its ineffectiveness and high costs. Many also support the IRR's alternative policy of 'EED' or 'Economic Empowerment for the Disadvantaged'.

What EED proposes is a paradigm shift to a system which no longer bypasses the poor but rather takes effective steps to empower the disadvantaged. It also uses carrots rather than sticks to encourage and reward the key contributions made by business to investment, employment, and development.

EED selects its beneficiaries on a socio-economic basis, as does the social grants system. It also puts its emphasis on the inputs needed to empower the poor. It thus rewards business for expanding opportunities by making direct investments, creating jobs, contributing to tax revenues, adding to export earnings, topping up venture capital funds, appointing staff on a 'wide' definition of merit (which takes account of disadvantage), and entering into effective public-private partnerships to improve education, housing, and health care.

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South Africa's economic problems are becoming increasingly serious, but they are not yet intractable. The country still has enormous strengths. With these essential structural changes in place, it could soon start living up to its great potential. The IRR's proposed reforms would have a measurable impact on investment, growth, employment, and income levels within 12 months. They would also provide the foundation for sustainable growth rates of 6% to 7% of GDP within a decade. This would be far more effective than EWC – or any of the government's other intrusive and damaging interventions – in overcoming unemployment, poverty, and inequality. These reforms would also allow the country to unshackle itself from current ideological and other constraints and emerge as a prosperous middle-income economy by the 2030s.