

Retention of ownership as a basis for economic growth: Address to the TLU

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South Africa is living through a momentous time – this at least is clear. It is at times like these that extraordinary risks arise. But also extraordinary opportunities.

I doubt it is necessary to restate to this audience what the nature of the risk is. Since the end of 2017, the ruling African National Congress has been pushing for a policy of Expropriation without Compensation. It would be no exaggeration to say that it is one of the most important public debates since the constitution was adopted in 1996. It is a dire threat to agriculture and to the economy as a whole. But it goes beyond the economic. It has painted a target on the property clause of the constitution, one of the most vigorously negotiated in the document. The EWC drive threatens the integrity of constitutional governance, and through that, civil rights and the rule of law. It is a challenge that must be faced and defeated, not merely negotiated and managed.

There is no more important single issue confronting either the farming community or the country as a whole.

But I hope that in the course of what I have to say, I can point to some shoots and seedlings of optimism. Yes we are at a crisis. There is no question of this. But at times of crisis, things can change rapidly. Rahm Emmanuel, former mayor of Chicago and close associate of former US president Barack Obama remarked: 'You never let a serious crisis go to waste. And what I mean by that it's an opportunity to do things you think you could not do before.'

To understand the risks and the possibilities, we must first understand what is underway. In this respect, my task is made easier by the fact that there are few organisations in the country that have understood what has been going on in the country quite as well as the TAU.

The move of property rights is not a desperate reaction to the failures of land reform. It is not a kneejerk populist measure, even if populism plays some role. Rather this has been years in the making and is bears the imprint of a decades-long ideological project and a history that is not always properly understood.

A departure point from which to understand what is at play is the year 1912 and the establishment of what would become the African National Congress. At that point an essentially moderate organisation pushing just demands for civil and political rights. During the Second World War it was even prepared to suspend its demands, while supporting the then government's war aims. But as white South Africa opted for apartheid, so the ANC turned to the Soviet bloc for support. More enduring than diplomatic backing, funds or military assistance, this left a strong intellectual legacy.

Nothing is so important here as appreciating the doctrine of National Democratic Revolution (NDR) adopted first by the South African Communist Party, and later by the ANC adopted the doctrine at its conference at Morogoro in Tanzania in 1969.

The doctrine of NDR was based on Lenin's theory of imperialism, which held that the wealth of the colonial powers arose solely from their oppression and exploitation of the colonised. From this foundation, Lenin argued that the purpose of anti-colonial revolutions must always be to dispossess the coloniser – and then embrace communism – failing which the colonised could never be free. The SACP made this theory applicable to South Africa by developing the notion of 'colonialism of a special type' – to mean that both the coloniser and the colonised lived together inside the same country, into which the coloniser had become permanently integrated. But despite that integration, white/capitalist prosperity remained solely the result of the oppression and exploitation of the black majority, and indeed prolonged that poverty – and that the coloniser, despite his integration, would have to be dispossessed if the colonised were ever to be free. The ANC has regularly recommitted to the NDR, and it remains the framework that organises its thinking.

However, the ANC's re-establishment as a legally operating party in 1990 and the country's governing party in 1994 forced it to face the realities of the modern world. The spectacular collapse of the Soviet bloc had shaken the faith of many socialist believers, including some within the ANC. It is to the credit of Nelson Mandela and Thabo Mbeki that they were prepared to drive a pragmatic alternative to the path that many in their party demanded. This manifested in the Growth Employment and Redistribution, or GEAR, policy that sought to drive socio-economic upliftment through investment-driven growth. Matched with the good fortune of interest rates that were cut in half, cheap surplus electricity, relatively low household debt levels, and the commodity boom, South Africa under Thabo Mbeki initially made some progress. The number of people with jobs doubled. Ten formal houses were built for every new shack being erected. The number of university students doubled. Economic growth rose to 5% by 2007 as government debt levels halved and a budget surplus was recorded.

But even as he was driving a socio-economic recovery he was planting the seeds of its collapse. His cruel health policies saw hundreds of thousands of unnecessary deaths and life expectancy fall by 10 years. It was on his watch that the arms deal corruption set the precedent for the looting of the Gupta family, VBS bank, BOSASA and the many other horrors that lie waiting to be uncovered. It was during Mr Mbeki's presidency, analysts forget, that South Africa first ran out of electricity – an issue for which he uncharacteristically apologised. His term was instrumental in seeing merit surrender to race in the civil service which in turn set up the collapse of so many government functions. And it was his own unconscionable diplomacy towards Zimbabwe that enabled the collapse both of the rule of law and the economy in that country.

As Mr Mandela's influence faded, Mr Mbeki would make two fatal blunders that later intersected to prematurely end his own political career. The first was to send the charismatic Jacob Zuma to wrest the rural Zulu nationalist vote from Inkatha, without appreciating that if Mr Zuma succeeded, he would come to inherit the mantle of Zulu nationalism and wield it as a weapon in the ANC – exactly as came

to pass. The second was on HIV and AIDS. Here, Mr Mbeki's missteps allowed the long-isolated Left within the ANC to regroup, fundraise, and develop platforms of influence around the AIDS pandemic that they later used to stunning effect to attack Mr Mbeki's economic policy and to turn public and popular opinion against him.

Those two mistakes led to Mr Mbeki's defeat at Polokwane in 2007.

The Left was happy to exploit Mr Zuma's populism to eject Mr Mbeki, while Mr Zuma was happy to ride the wave of ideologically inspired anti-Mbeki media sentiment crafted by the Left. After Polokwane, the Zuma camp would go on to loot the state, while the Left clawed back, to use the revolutionary term, 'the levers of policy influence' denied to them since Davos in 1991. And with those levers in hand they turned the policy clock back to the socialist dogma of 1969, cancelling more than ten bilateral investment treaties, introducing restrictive immigration rules, introducing the National Health Insurance proposal, hiking minimum wage levels, publishing the revised draft mining charter, and turning the screws of ever more onerous racial edicts.

That these shifts further coincided with the global financial crisis in 2008 created the perfect governance, policy, and economic storm best highlighted in South Africa's rate of economic growth peeling away from the global average in a pattern last seen in the late 1970s in unison with declining levels of job creation and declining popular confidence in the future – all of which we identified and began to track in great detail.

Those consequences generated the once (for ANC leaders – and many analysts) unthinkable proposition of the ANC surrendering its national majority. That fear triggered an internal power struggle between the 'Leftists' and the 'Looters', the victors at Polokwane, as both sides sought to escape responsibility for the ANC's reversals – a struggle in which the Left ultimately prevailed by using the thesis of 'state capture' to discredit Mr Zuma sufficiently to bring Cyril Ramaphosa to power as ANC leader. However, this was by the narrowest of margins – 179 votes out of over 4 700 delegates. And while state capture had undoubtedly done much damage, it was only a part of the problem – and in our judgement not the leading part.

Today the ideologues whose policies were central to the disaster of the past decade are still in the ruling party and the government is pressing ahead with many of the same policies – a primary target of which remains the erosion of property rights.

The current move on property rights can be traced to around 2007. Between then and now, we at the IRR have identified some 30 instances of actual or attempted legislation, policy or regulation that has sought to restrict property rights.

These started in many respects with vociferous attacks on the willing-buyer/willing-seller policy at the ANC conference in Polokwane that informed the content of the draft Expropriation Bill of 2008, which in turn informed the dropping of the Proactive Land Acquisition Strategy in 2010, the drafting of the agriculture Green Paper of 2011 which forewarned of every risk from land ceilings to EWC – all of which would be drafted into policy and legislation within the next six years – the 20% proposal in the National Development Plan of 2012, the 50/50 proposal that came hot on its heels, the Land Restitution Amendment Act of 2014 that sought to provoke hundreds of thousands of new land claims without the budget to finance them, the subsequent Property Valuation Act via which the state sought to escape that budgetary bind, the Agri Land Bill that sought to make the state custodian of all agricultural land as the Green Paper had warned – thereby escaping any budgetary bind at all – the Regulation of Land Holdings Bill that would cap farm sizes and force farmers to surrender the surplus, and now the parallel processes of the pending Expropriation Bill and proposed constitutional amendment. Yet even this chronology contains just around 10 of the 30-plus markers in the pattern; each of which built one upon the other in a systematic and ordered manner.

In parallel with the policy process ran a related and still continuing campaign of political stigmatisation directed at commercial farmers. This has deep roots in the thinking of the ANC and had been a constant background narrative. That they stole the land, were responsible for ‘original sin’, beat their staff, refused to pay fair wages, deepened rural poverty, refused to be part of building a better society, inflamed racial tensions, sabotaged land reform efforts, and thereby threatened, through these and other sins, the future stability of the entire country. It was a series of mantras repeated day in day out on scores of media and political platforms.

The purpose of propaganda is stigmatisation and the purpose of stigmatisation is to make the targeted group ‘the other’ so that the society loses its ability to empathise with it, meaning that, should the state choose to launch an assault on that group, there is very little likelihood that anyone or any other groups would come to its defence. Such assaults can then be used to set policy precedents that can be expanded to groups beyond those initially targeted.

The inflammation of anger against commercial farmers creates a context in which laws can be passed to seize their property, after which this can be expanded to other sectors. And you get away with it because all the rest of society falls victim to the “first they came for the farmers but I was not a farmer.....” delusion.

These have come to a head since the end of 2017 with two specific processes.

Firstly, there has been the drive to amend Section 25 of the Constitution to accommodate EWC. Some commentators seem to think it matters little if the Constitution is changed to allow EWC because the present formula for ‘just and equitable’ compensation could already result in zero compensation in certain circumstances. This is a dangerous fallacy.

The present constitutional formula would yield a zero result only in exceptional instances – and generally solely where the market value of the property is zero or very close to this. Think, for example, of mineral-depleted and badly contaminated mining land that is honeycombed with tunnels (creating a major risk of subsidence), and which cannot be used for housing or any other purpose without costly prior rehabilitation.

The current formula, which is contained in Section 25(3), says that compensation on expropriation must be ‘just and equitable’, and that it must ‘reflect an equitable balance between the public interest and the interests of those affected’.

This wording is very important – particularly in its reference to ‘an equitable balance’ – because it underscores the fact that individual owners cannot be made to foot the bill for land reform. This is a national responsibility which must be met by the government out of tax revenues.

The present formula goes on to state that the necessary ‘equitable balance’ must be found by looking at all the relevant circumstances. It lists five which must be taken into account, but it also makes it clear that other relevant factors – for example, the need to compensate people for direct losses resulting from expropriation – must be taken into consideration, too. (Such losses would include moving costs and any loss of income from a farm or other property.)

The five listed factors are market value, along with the ‘current use’ of the property, the history of its acquisition, the extent of direct state subsidy in its acquisition or capital improvement, and the purpose of the expropriation. These last four factors are often difficult to quantify, but cannot trump the overarching need for that ‘equitable balance’.

The Constitution also says that ‘the amount of the compensation’ and the time and manner of its payment must either have been agreed by the parties or ‘decided or approved by a court’. This is another vital safeguard, for it gives the ultimate decision-making power on compensation to the courts, rather than the ANC’s deployed cadres.

Amending the Constitution to allow for EWC will remove these key safeguards. If the compensation due is zero, then Section 25(3) – which deals with the amount of compensation to be paid – will have no relevance. The current need for ‘an equitable balance’ will no longer apply. Nor will the courts have any role in deciding on compensation. Hence, all the safeguards now contained in Section 25 will fall away.

A constitutional amendment will allow the passage of ever more damaging statutes, each of which could be adopted by a simple majority in the National Assembly. Once the EWC principle has been conceded, there will be nothing to prevent the adoption of the current Expropriation Bill or the steady

ratcheting up of a succession of expropriation laws providing for zero compensation in ever-widening instances.

In addition, the wording of the constitutional amendment could be broad enough to allow a 'big-bang' approach right from the start. Take, for example, the recent report of the presidential advisory panel on land reform and agriculture. The panel recommended that Section 25 should indeed be amended and suggested the wording. It proposes that Section 25(2) should have an extra sub-section (Section 25(2)(c)) added to it, which would say:

'Parliament must enact legislation determining instances that warrant expropriation without compensation for purposes of land reform'.

Once the Constitution has been amended in this way, Parliament (by a 51% majority) could pass legislation vesting the custodianship of all land in the state for the benefit of the people, and adding that, if any court were to find that this amounts to an expropriation, then this is 'an instance that warrants expropriation without compensation'.

Those who now argue that an EWC amendment will make no difference will find they have opened the way to precisely what the Economic Freedom Fighters (EFF) and many in the ANC so clearly want. In this situation, all land will vest in the State as custodian, existing title deeds will 'mean nothing', people will no longer be able to use their homes to build up household wealth, and all individuals, companies, and farmers will need land-use contracts with the State – which will be open to termination when deployed cadres so decide.

The second of these is the passage of the Expropriation Bill. My colleague, Dr Anthea Jeffery, has explained the bill as follows:

"The Bill is intended to complement a constitutional amendment by setting out some of the circumstances in which 'nil' compensation may be paid.

According to the Bill, 'it may be just and equitable for nil compensation to be paid' for expropriated land which:

- is used by a labour tenant (one who works for the owner for part of every year in return for the land he uses);
- has been 'abandoned' by its owner;
- is held 'for purely speculative purposes';
- is worth less than the state subsidies from which it has benefited; or
- is owned by a state-owned entity which consents to the expropriation.

This list, with its five examples, is intended to reassure South Africans that EWC will be sparingly used and justifiably applied. However, the circumstances in which EWC may be deployed are expressly 'not limited' to those set out in the Bill. They may thus extend far beyond this short list.

Of critical importance is that the ANC's reassurances that the 'nil' compensation provisions in the proposed Expropriation Bill of 2019 will be used sparingly overlooks the definition of 'expropriation' in the Bill, which has been carefully crafted to allow nil compensation for a host of 'indirect' expropriations as well.

To understand this, some definitions are required. A 'direct' expropriation arises where the State takes ownership of property. An 'indirect' expropriation could be either a 'custodial' taking or what is called a 'regulatory' expropriation.

A 'custodial' taking arises where the State takes custodianship of property, as it has already done for all mineral and water resources.

A 'regulatory' expropriation arises when the State, for instance, imposes price controls on a product, thereby preventing its owner from selling at market value. In this situation, the State does not acquire ownership of the product, but its regulations result in a loss to the owner.

Under customary international law, as well as most bilateral investment treaties (BITs), expropriation is defined in a broad way to include both 'direct' and 'indirect' expropriations. In South Africa, Section 25 of the Constitution (the property clause) does not define 'expropriation'. However, the word – especially as contained in this guarantee of property rights – would generally be understood as having its usual wide meaning.

However, the Constitutional Court's majority judgment in the Agri SA case in 2013 has already begun the process of narrowing this meaning. Here, Chief Justice Mogoeng Mogoeng effectively ruled that expropriation requires the acquisition of ownership by the State. This meant that the State's 'assumption of custodianship' over a mining right (the issue before him) did not qualify as an expropriation or merit the payment of any compensation.

On this reasoning, further custodial takings by the State would not qualify as expropriations or merit compensation and the Expropriation Bill includes a definition of 'expropriation' which is clearly based on Mogoeng's ruling.

On top of this, we have recently seen the report of the Presidential Panel on Land Reform. Regrettably, much of what it proposes pushes this forward too.

The panel comes out in favour of amending Section 25 of the Constitution, to 'move away' from the mandatory compensation for which it now provides. It also endorses EWC in supposedly limited circumstances. It lists ten instances in which zero compensation would be appropriate: for example, for land which is 'abandoned' or held 'purely for speculative purposes'. But it also makes it clear that the circumstances meriting 'nil' compensation are 'not limited to' the ones it lists.

The panel also recommends a new 'compensation policy', under which compensation will range from 'zero' to 'minimal' to 'substantial' to 'market-related', depending on the circumstances. This suggests that market value will become an exception to be allowed sparingly, if at all – for even 'market-related' compensation need not be the same as market value.

In what might be the most concerning element of the report, the panel proposes that all municipalities, 'with the input of local residents', must identify well-located and appropriately serviced land that is suitable for redistribution. 'Individual owners of properties that meet the criteria of land required for redistribution...may [then] offer their land as donations, or enter into negotiations with the State, failing which the State may proceed to expropriate'.

This is fundamentally coercive. It also guarantees that expropriation will become the favoured means of land acquisition, despite the panel's statement that it should be only one of several mechanisms. In practice, this approach will also make it very difficult for banks to accept land as collateral for loans – as virtually any land in any part of the country could be identified for redistribution in this way and then expropriated at well below market value.

Moreover, municipal government is a deeply problematic area of our governance architecture. Many are dysfunctional and highly corrupt – and this is something that government itself says. The Office of the Auditor General reported earlier this year that its staff often feel intimidated and threatened when working at this level. The potential for abuse if local government is placed in a position to expropriate beggars belief.

Dr Jeffery concludes as follows:

Overall, the panel's report reflects an infinite belief in the benevolent power of the State to direct and control the use of land. To maintain such a belief in South Africa is astonishing, for, here, pervasive state incompetence, callousness, venality, and corruption are glaringly apparent. Expand the powers

of the State in the ways the panel proposes – and these core characteristics of ANC rule will quickly spread into the space provided.

But why property were rights so much in the ANC's sights?

Private property rights are of course at the heart of a market economy. The ability to own something securely, to have that ownership respected by others and protected by the state is a prime enabler and incentive behind investment, which is – in turn – is necessary for growth. It creates the environment to plan over the long term, to accept short-term losses for long-term gain. It mitigates risks. Removing security over assets is about as large a disincentive as is possible to have.

As one study put it: 'Institutions that protect property rights are crucial to economic growth and to investment. Some of the regressions above point to effects that rival even those of education. Moreover, the effect of institutions on growth persists even after controlling for investment. This suggests that the security of property rights affects not only the magnitude of investment, but also the efficiency with which inputs are allocated.'

But property rights also distance people from the state. For a political movement like the ANC, one which has a messianic sense of its mission, they are intrinsically problematic. Many in the ANC have never quite reconciled themselves to the idea of property rights, or their necessity. (As one ANC MP memorably said in about 2006, Section 25 was a 'sunset clause', and would ultimately be repealed.) They restrict the state's latitude for action, and in so doing – the argument goes – they stand in the way of justice. The state, as the embodiment of the people of the country would benevolently take control of its assets and ensure that things are distributed to maximum benefit.

Understand that this is ideological. This is the National Democratic Society – the outcome of the National Democratic Revolution. For many within the ANC and SACP, the endgame is a socialist and ultimately communist society. Its interesting to reflect briefly on the choice of words used in some ANC documents. Property Relations. This draws attention not just to the assets but to their owners. This points to the social and not just the economic drivers of these initiatives.

But as the SACP has warned, it would 'do incalculable harm to the quest for socialism' if a precipitous assault were to be made to eliminate private property. Rather, the advance would need to be made incrementally. Be under no illusions, the Expropriation Bill is a part of this drive.

How does this play out?

Our views of the threats to agriculture are conditioned by the experience of Zimbabwe. There is a perception that mob rule and state-sponsored land invasions pose an imminent threat. This is not, in

our view, the case. Our polls reveal that less than 10% of people see land reform as a policy priority for the government. Rich urban people think land reform is more important than poor rural people. It is not now, and has not since the 1990s been a major issue. The question of land reform only threatens South Africa's political stability if politicians use it to drive a racial nationalist agenda. This is in part a means to deflect attention from the government's failures, but also its ideological core.

Our view is that government does in fact want a more ordered process to be followed, which is why it is trying to change the law and the Constitution. Land invasions are a growing problem and rhetoric from government may encourage them, but we caution against seeing this as official policy.

Indeed, there is a realisation on the part of many in the ANC that violence and instability will undermine its own goals. It also has in mind that damaging the value and productivity of the assets it has in mind will be counterproductive. When President Ramaphosa said last year that he wanted farmers to continue investing and farms to continue producing, he was being sincere. At least to some extent.

We suspect that the goal is not to seize the commercial operations, but in the words of our colleague Russel Lamberti, 'to regulate those means' to the advantage of the State and the party. Hence we have long warned that the most acute danger is that the state will seek to take over land in the country as the 'custodian'. It will effectively own it, nominally on behalf of the 'people of South Africa'.

This is along the lines of what it did with mineral rights and water rights. It is a method and principle that can be, and in many respects already is being, expanded to many sectors of the economy. Each time, the play is the same. The State develops regulatory power over an economic sector and uses that power to force businesses in that sector to surrender some of the value they produce.

In the case of agriculture, the play might be something along these lines; put in motion a process that will see the State effectively seize all land as custodian; offer leases to existing property owners; and then start enforcing conditions on the renewal of those leases – such as that you must surrender X% of your enterprise to an empowerment 'partner'. At first, it will seem manageable, even pragmatic – a neat solution to a problem, a means of avoiding the pending chaos and delivering on the policy certainty that investors crave. But be careful. Sometimes the incentive politicians have to create chaos and cause uncertainty is that they can intervene to resolve it. Only when it is too late will you understand that, as the conditions attached to your lease are ratcheted up, so you have been changed from a business owner to a civil servant – and have ultimately lost all that were working for.

The mining industry is the most prominent case study of what will befall you. At first, the industry went along with the surrender of mineral rights, and then with the rent seeking that followed. For a time it seemed to work, but then the edicts were ratcheted higher and higher to the point that scores of miners have exited the country, the industry is on its knees, and prominent mining CEOs have

described the industry as 'uninvestable'. All that is left now, as will be the case for you, is the empty shell.

There is a lesson, here.

When miners lost control of their assets and their industry, it was because they played along with the initial moves by the government to nationalise mineral rights. They thought that if they went along, they might get along. In other sectors, too, organised business has actively cooperated, facilitated, appeased and enforced the rent-seeking agreements that pass as 'empowerment policy' in our country – edicts that saw firms having to surrender equity to political cadres in the hope that if they did so the government would be benign. As an aside, it is mad, and immoral, that this sort of thing, which is pure rent seeking, is still described as 'empowerment policy' when it does nothing to address the actual causes of disadvantage. The millions of desperate and unemployed people subsisting on the fringes of poverty deserve a lot better.

The brilliance of the government's rent-seeking strategy lies in its capacity to convince the intended victims to apply the strategy to themselves. Without the active cooperation of organised business, none of this sort of thing could in practice be implemented.

The outcome of this can only be dire.

Probably the most detailed examination of what EWC would mean was produced by Dr Roelof Botha and Prof Ilse Botha, and submitted to the Constitutional Review Committee last year. Looking at what EWC has meant for a set of comparator countries, it set out two likely scenarios for South Africa covering a period of 10 quarters (for the purposes of the study, it assumes a start in the 2nd quarter of 2018 and runs to the 3rd quarter of 2020). Cumulatively, this demonstrates, in the words of the report: 'Empirical evidence confirms the stifling effect on initiative, entrepreneurship and productivity inherent in the plethora of regulations and restrictions that accompany an institutionalised system where private property ownership is not guaranteed and protected by law.'

By the end of this period, annualised GDP would be between R270.4 billion and R454.8 billion lower than without EWC. Fiscal revenues would fall by between R157.5 billion R261.5 billion. The budget deficit would as a consequence balloon and a downgrade of the country's bonds to junk would be inevitable. South Africa would forgo as many as 2.28 million jobs. Recession, higher interest rates and inflation would be the reality.

All of this would have an extensive knock-on effects on the ability to render services and finance social spending. Societal frustration, discontent and despondency would escalate. This would accelerate the emigration of skilled people, further capital flight and the further undermining of South Africa's competitiveness.

This would push South Africa, and not just agriculture, to the brink.

So what can be done?

The threat posed by the EWC drive demands a consummate response. It is necessary to understand what is afoot. This means that even the most apolitical must acknowledge what these developments mean for him or herself. It is essential to get the analysis right, to be informed above all of the driving force of ideology in these developments. This makes it possible to plan an effective reaction.

Fortunately, the political theory that the ANC and SACP adhere to hold that the agenda can be advanced as long as opposition is minimal. When opposition builds, it may be necessary to pull back and wait for complacency to set in again. Then resume the advance. Call this a war of position – and it goes a long way to explaining the repeated attempts to dilute property rights. But it also illustrates the success that groups like the IRR have had in standing up to it.

That is the key. To be ready and willing to oppose, both as a principled and pragmatic measure, intrusion into people's private property rights. We have warned in the past and do so again now: a successful move against property rights (or against the interests of any citizen or group) is only likely if some of those who stand under threat are willing to help it along.

Business, for example, has failed to stand up to counterproductive empowerment policies – this despite the burdens and inefficiencies that it has imposed. And even though there is now growing disillusionment with these policies. They offer very little to ordinary South Africans. If anything, they pay for it in constrained business growth and consequently fewer job opportunities. On the contrary, business has gone along with it. In rhetoric at least.

In the land context, if organised agriculture, banks, cooperatives, and related industries refuse to indulge the government's expropriation plans, and focus instead on promoting sensible alternatives, then mass expropriation or custodial takings probably cannot happen – other than by sending the security forces to drive people from their homes in the full glare of the global media and investment community.

Facing this threat will require that organisations like the TAU identify the principles that they will defend, and then do so with conviction and stubbornness. IRR chief executive, Frans Cronje, recently said this to another farming audience:

Never fall into the trap of negotiating away core principles by allowing your opponent to set the terms of reference for debate. Noam Chomsky said that the smart way to keep people passive and obedient is to strictly limit the spectrum of available opinion and then to encourage very vigorous debate within the spectrum. Hence, the only debate about empowerment policy in South Africa is how to do race-based BEE better. There is no debate about policies that might be better than race-

based BEE at empowering poor people. In your case, the principles are property rights, title, and a market economy. When the government asks what the maximum size of a farm should be – don't spring the trap. Even if your first number is a million hectares, once you have conceded the principle that the State can decide how big a farm can be, the number will be whittled down steadily until it is one hectare. Instead, you should answer that, while you have no mandate to discuss capping farm sizes, you would like to talk about the myriad of factors holding emerging farmers back, which range from the lack of title and the cost of capital to the dearth of proper extension services – and, more than that, that you would like to have that discussion in the full glare of the media so that they can better appreciate the real problems that face emerging farmers.

From here you need to act to defend your interests. At this point, let me indicate that there is a need to cooperate across lines of ideology and race. Link up with other like-minded groups. You may have sharp difference over all sorts of issues, but where your interests align – as in stopping EWC – work together.

White and black farmers need to find common cause on this. Many black farmers can attest to the difficulties in running a farm in the current climate better than their white counterparts. Think of the man who testified before the Zondo commission about how he was denied state veterinary assistance because he could not demonstrate his loyalty to the party. Blacks know better than whites the risks of allowing the ANC to decide who can own property, and of being denied the opportunity for title altogether.

We at the IRR have just brought out a key alternative report to that of the presidential land panel. We have proposed that the only way to support new commercial farming entrants is via title, cheap financing, and very effective extension services. That is the model upon which the success of the South African commercial farming industry was built, and black people, particularly given our country's history, deserve nothing less than the full benefits of that same model.

Beware of attempts at divide and rule. Decide carefully who your allies are. You are all commercial farmers – first and foremost – and what happens to commercial farmers will in the end determine what happens to all of you.

Reasons for optimism

By now things must be looking rather bleak. But I promised that there was an optimistic message. Societies turn on points of crisis. It is when things seem most overwhelming that real game-changing possibilities present themselves. Indeed, at this time what seemed inconceivable becomes necessary. As the great American civil rights leader, Dr Martin Luther King, once said 'I know, somehow, that only when it is dark enough can you see the stars.'

The consequences of things continuing on their current trajectory dare not be understated. Yet recognising this demands not only that we push back against it, but that we use it to show the strength of the alternative.

The subject that I was asked to speak on was Retention of Ownership as a Basis for economic Growth. Let me after that somewhat and speak not of 'Retention' but of 'Expansion'.

It remains one of the most distressing – I would say scandalous – failings of the current dispensation has been the reluctance to extend property rights to people living in the former homelands. And that government policy has been stripping property ownership away from its land reform programme. This was thrust into the public domain recent with the Rakgase judgement. For anyone not familiar with this, David Rakgase is a 78 year old farmer from Limpopo. He has been farming on state land since the early 1990s, and has apparently made a success of it. Like any other farmer, he wanted to own what he worked, and made an offer to buy the land. Government agreed. So far, so good. This was in 2002.

Things went around and around, until in 2011 government changed its mind. He could have a long-term lease, but not ownership. As it turned out, he was given five years, after which he had to reapply. Okay, now then they dragged things out month by month. Eventually, the offer was a 30 year lease, with a renewal option thereafter for another 20 years. I don't know for sure, but I think that after that, he might have been able to buy. He would also have to live a lifespan that we read about in the Old Testament.

In the meantime, illegal occupiers had moved onto the land and Mr Rakgase was having trouble getting them off. He was, after all, not the owner.

So he went to court. And he won. The government was ordered to make a plan to sell the land to him, as it had originally agreed. The court was also scathing about the government's behaviour.

Think about what this means. At a time when public debate is heated about land reform and the distribution of farm ownership, we have a successful black farmer being unable to gain the title deeds to the land he is working. His experience is not unique. Millions of South Africans lack the sort of formalised ownership and the solid property rights that many of us take for granted. There are probably thousands and thousands of David Rakgases who seek no more than an opportunity to be successful farmer-businesspeople.

Indeed, our polling shows that South Africans across the board are really supportive of property rights. They are a part of our multiple cultures. It is the ideologues who are out of step.

There is a major opportunity here, one that we as the IRR are trying to take up. Millions of South African families and aspirant businesspeople need title to and protection of their assets. They want it. They understand very well the implications of this for their economic prospects. They are valuable allies in this fight.

With determination, not only can you win, but you can turn the terms of this debate around. In so doing, you will not merely protect what exists, but extend the blessings of property ownership, property rights and the market to those who have been excluded in the past and present. In so doing, your own interests will be secured into the future.