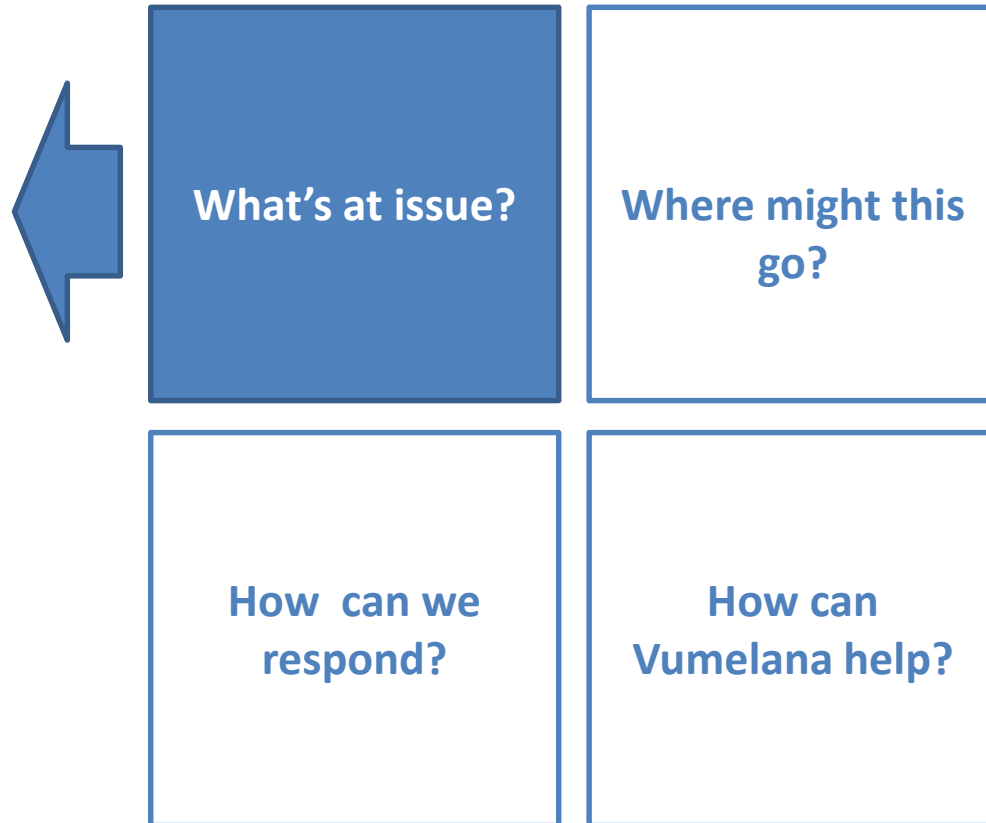


# Land reform in South Africa and expropriation without compensation

Peter Setou  
Chief Executive  
Vumelana

# Land reform in SA and expropriation without compensation



- 1. Land reform is the purposeful change in the pattern of land ownership and use**
  - Practiced through the ages and across the world
  - Directed by the governing authority
  - To change patterns of ownership and use to those that are socially acceptable
  - As an alternative to other forms
    - Spontaneous market transactions
    - Extra legal land invasions
- 2. In South Africa the land reform programme was established in 1994**
  - It was a rights based programme
  - intended to address the legacy of colonial and apartheid land ownership and use
  - targeted to transfer 30% of commercial agricultural land
  - consists of 3 components
    - Restitution
    - Redistribution
    - Tenure reform

# Basic questions unresolved

## What are we trying to do?

- Change the pattern of land ownership?
- Restore rights?
- Improve livelihoods?
- Create a small scale farmer class?
- Deracialise commercial agriculture?

## With what priority?

- Tenure reform for 19m people living in former homelands and on commercial farms (little progress has been made)
- Restitution for those who can prove historical dispossession (where good progress has been made mainly through cash settlements but where the process has now been re-opened)
- Redistribution which has had the major share of funds a greatest land transfer and seems to be the priority

## Why?

- What is the vision for social relationships and economic structure? What mix of:
  - Group based ownership and production?
  - Subdivision into small family farms?
  - Maintenance of the large scale commercial farming structure?

## How?

- Land acquisition
  - State?
  - Market?
- Land development
  - State managed?
  - Market driven?
- Post settlement support
  - Public sector?
  - Private sector?
  - Non-profit sector?

## Where?

- In high potential areas such as might be identified in the National Spatial Development Framework?
- Wherever project opportunities arise?

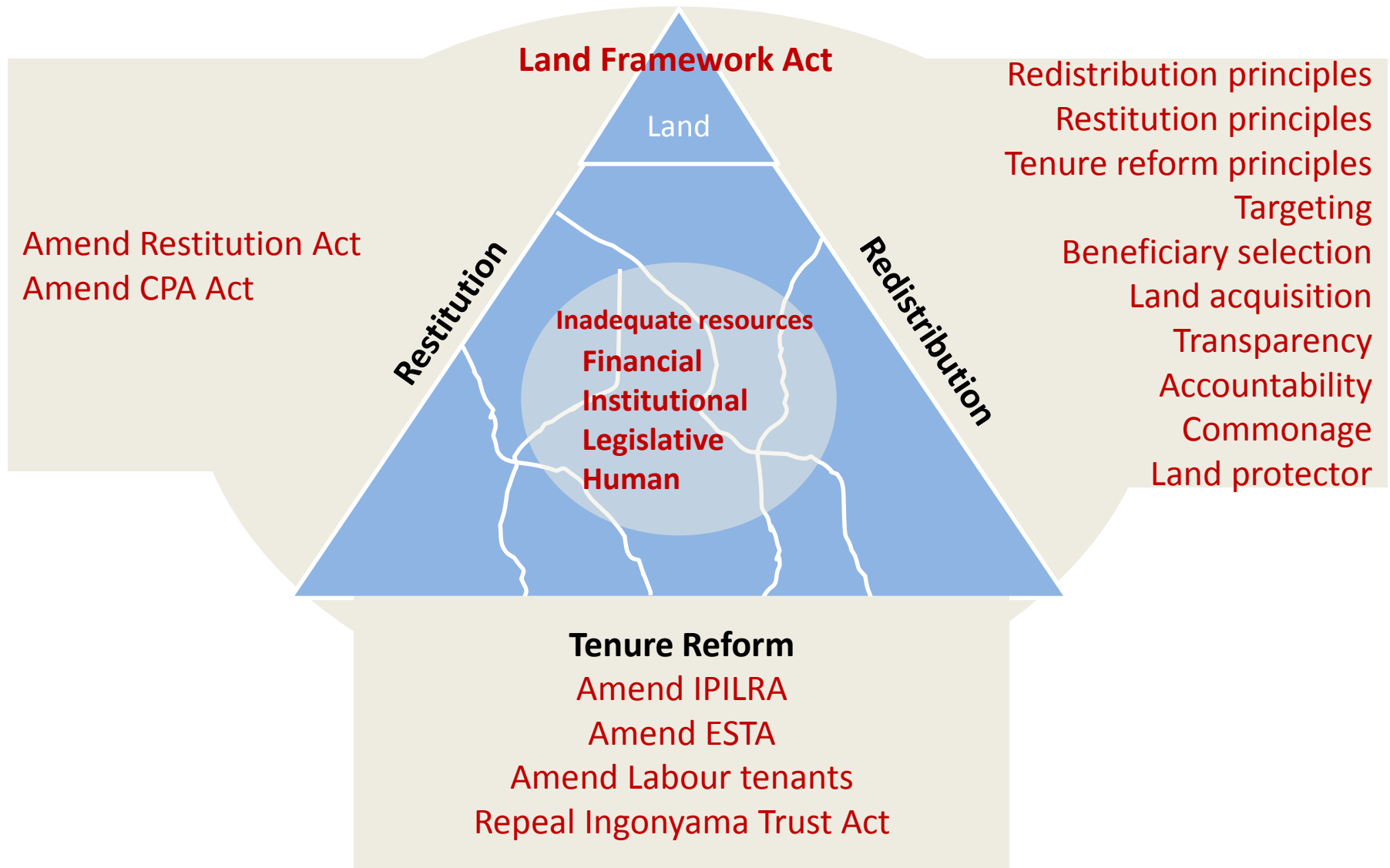
# Expropriation without compensation raises the stakes

- **The first steps have been taken**
  - A motion put by the EFF and amended by the ANC was adopted
  - Parliaments Constitutional Review Committee (14/24 ANC) was mandated to:
- **Review sec 25 of the constitution and other clauses where necessary**
  - Conducted public hearings to get the views of ordinary South Africans, policy makers, civil society organisations and academics, about the necessity of, and mechanisms for expropriating land without compensation
  - Propose the necessary constitutional amendments where applicable with regards to the kind of future land tenure regime needed.
  - A Report back made & adopted by National Assembly in 2018
- **The Adhoc Committee on Amendment of section 25 appointed & started February:**
  - Made recommendation – 6<sup>th</sup> Parliament be tasked with concluding the matter
- **Legislative changes required**
  - A constitution amendment bill
  - Changes to various Acts Restitution, Expropriation etc. & relevant regulations



# Beneath the constitutional debate the land reform system is in distress


**The Motlanthe Panel has recommended far reaching legislative change**



# EWC is possible without undermining the constitution or destroying property rights and the rule of law

**An amendment that makes much of what is already available more explicit and provide for EWC**

- **Defined circumstances** eg
  - Unused land
  - Acquired by illegal means (corruption or fraud)
  - Acquired by state grant
  - Developed with large state subsidy
  - Absentee land lords etc
- **Compensation assessment**
  - Based on “just and equitable” principle (which may be zero)
  - Determined by courts/ judicial supervision
- **Application limited to Land reform**
  - Restitution
  - Security of tenure
  - Redistribution
- **Regulation**
  - By expropriation legislation (setting out procedures, powers of the state, rights of land owners and beneficiaries)
  - Subject to judicial review



Current use  
History of acquisition  
Market value  
Direct state investment  
The purpose of expropriation

# But Constitutional change will not resolve major issues

## ☐ **Restitution processes have to be simplified**

- A quick means of managing financial settlements have to be found
- Communal property Institutions need to be better regulated
- Mechanisms are needed to cut through intra-community disputes
- Restrictions on access to capital have to be removed

## ☐ **Redistribution procedures must be made more transparent**

- District land reform committees will need to be strengthened
- Competitive bidding processes will need to be established

## ☐ **Tenure reform must address the rights of millions of families in communal areas**

- The rights of families & ordinary South Africans must be prioritised

## ☐ **Post settlement support must be expanded**

- When you are dispossessed of land you lose much more than land

## ☐ **Resources must be enhanced**

- Budgets must increase & access to finance be addressed holistically
- Institutional capacity needs to be built nationally, provincially and locally

**The challenge is to find practical solutions while constitutional, policy and legislative changes are introduced**



# Land reform in SA and expropriation without compensation

Constitution  
Rationale  
Goals  
Focus  
Priorities  
Roles  
Resources

**What's at issue?**

Where might this  
go?

How can we  
respond?

How can  
Vumelana help?

# In 2016 a team convened by Vumelana produced 4 scenarios for the future of land reform

## 1 CONNECTION AND CAPTURE

*"story of land as power"*



## OCCUPATION AND CONFISCATION

*"A story about taking back the land;*

## 2 MARKET POWER AND CONCENTRATION

*"A story of land as a productive asset";*

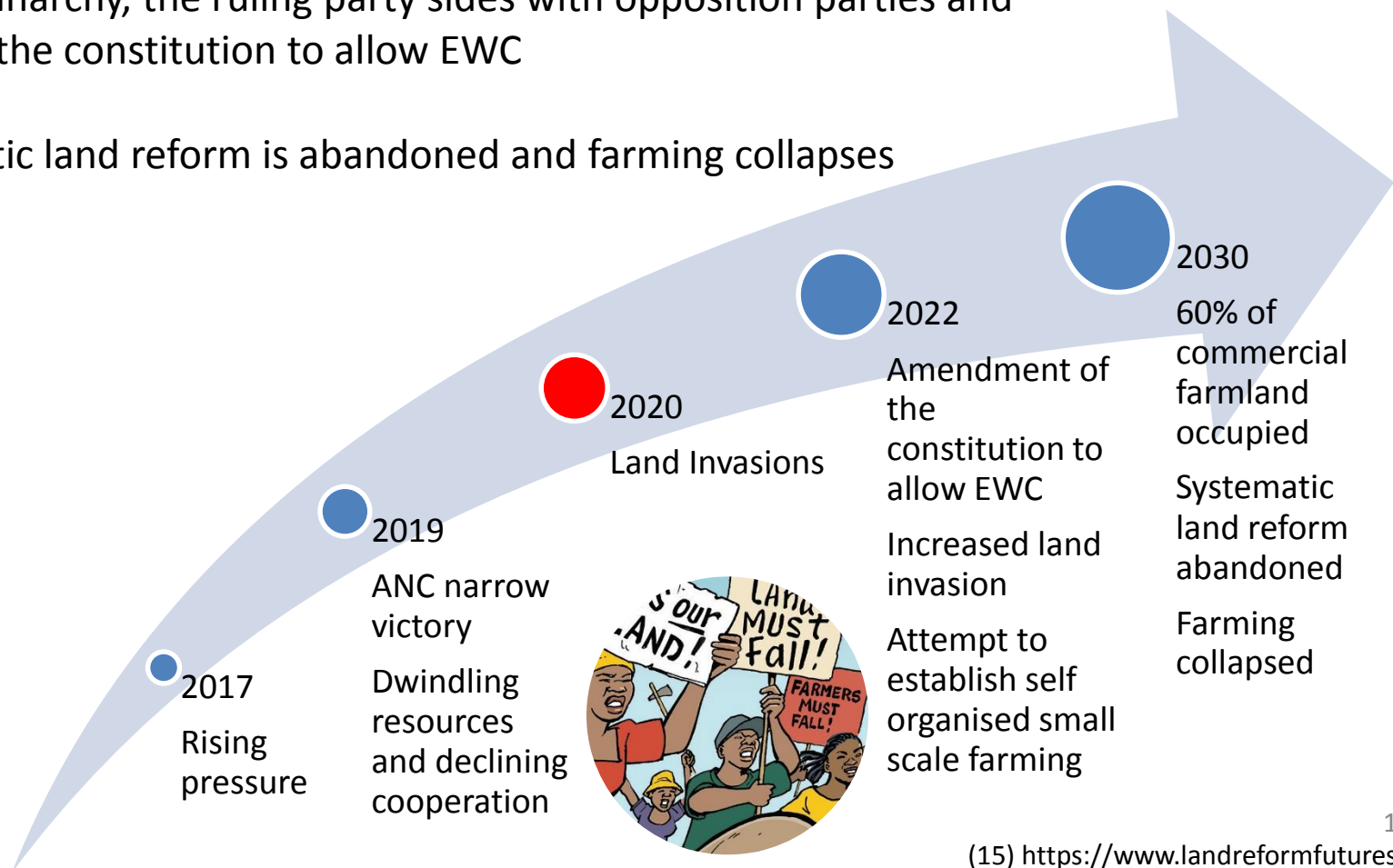


## HARD BARGAINING AND COMPROMISE

*"A story about sharing the land"*

# EWC was foreshadowed in the occupation and confiscation scenario

- In the wake of rising pressure and a narrow election victory in 2019, large scale land invasions occur
- Fearing anarchy, the ruling party sides with opposition parties and amends the constitution to allow EWC
- Systematic land reform is abandoned and farming collapses





# EWC may accelerate the least attractive scenario or trigger a move to the most positive

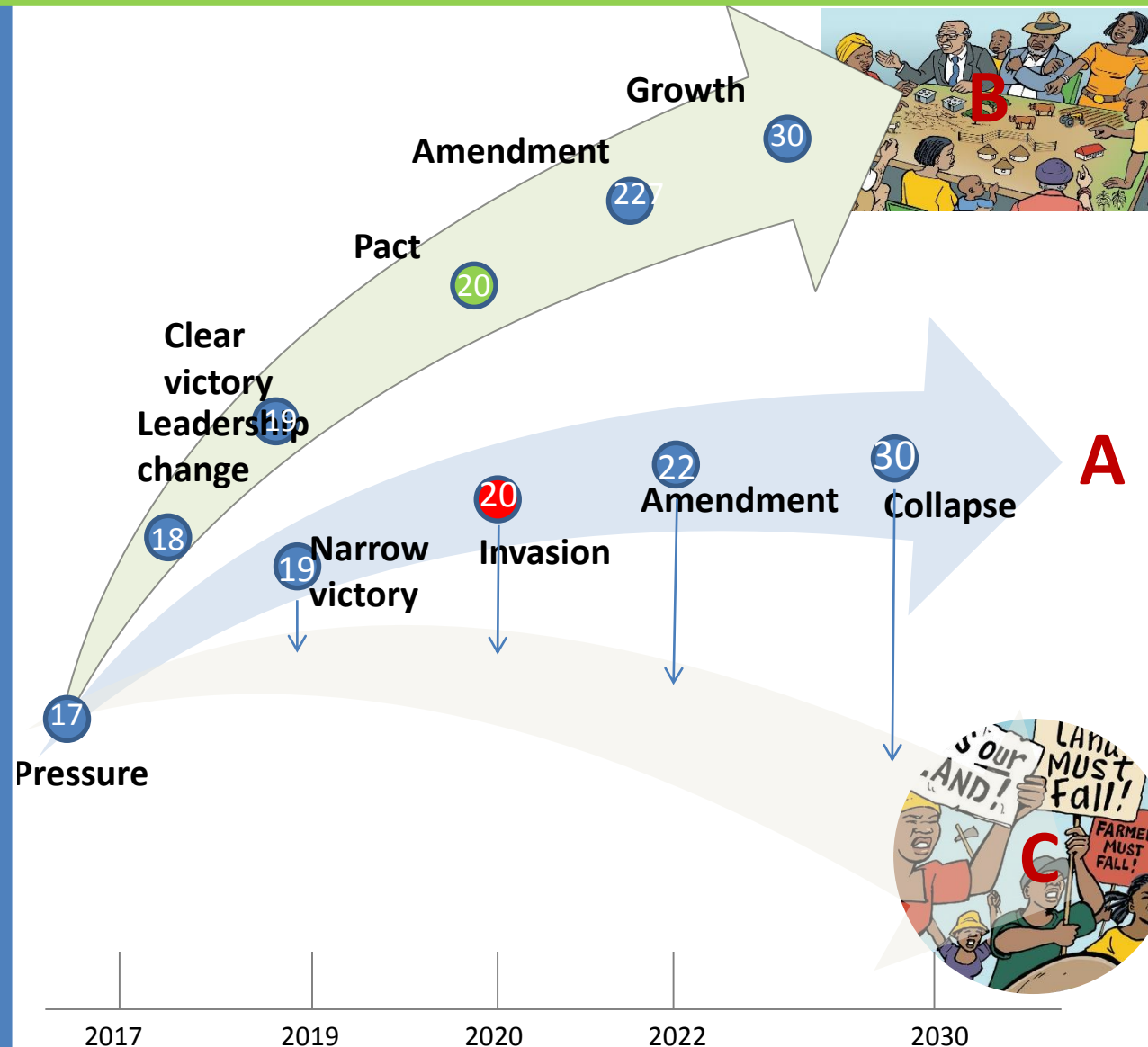
**Scenario A** is the original occupation and confiscation scenario.

**Scenario B** triggers hard bargaining and compromise based on:

- New ANC leadership
- An early offer of EWC
- A pact between business, current land owners, government and community
- A clamp down on invasions
- An amendment of the constitution to allow EWC under limited circumstances.
- The release of private and public land under the land pact
- Properly funded land reform and agri-programmes

**Scenario C** is an accelerated form of scenario A where

- Political talk about EWC unleashes land invasions that can't be controlled.



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# How should South Africans respond?

## 1. Acknowledge

- the impact of historical dispossession
- the need for reform

## 2. Affirm

- The importance of justice and equity
- The importance of property rights

## 3. Promote balanced concern for

- The acquisition of land and
- The manner in which land is used

## 4. Highlight

- Matters requiring urgent attention
- The fact these will not be addressed by changing the Constitution

## 5. Commit to practical action

The legacy of socio-economic injustice which was inherited from the Natives Land Act of 1913 continues to haunt the majority of black South Africans. .... Many South Africans, especially black South Africans, are trapped in a cycle of poverty that emerged as a result of our history of colonialism and apartheid. Modise and Mtshiselwa

Inclusive economic institutions require secure property rights and economic opportunities not just for the elite but for a broad cross-section of society. Acemoglu

# Making rights real

- ☐ Simplify restitution process
- ☐ Make redistribution more transparent
- ☐ Secure the tenure of millions of families in communal areas
- ☐ Expand post settlement support
- ☐ Increase resources

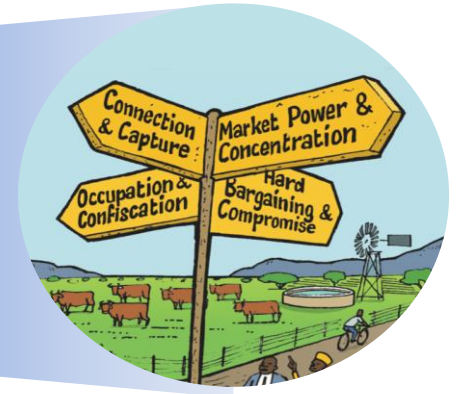




# Land reform in SA and expropriation without compensation

**What's at  
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**Where might  
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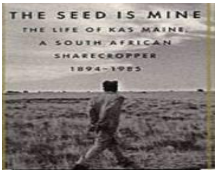


**How can we  
respond?**

**How can  
Vumelana  
help?**



# Vumelana builds partnerships for land reform?



Through the processes of colonialism and apartheid communities lost - not only their land – but access to capital, skills, markets, networks, entrepreneurship...



The restoration of land without access to capital and skills leaves communities with what the Peruvian Economist Hernando de Soto would call “dead capital” (it is separated from the institutional architecture required to put it to productive use)

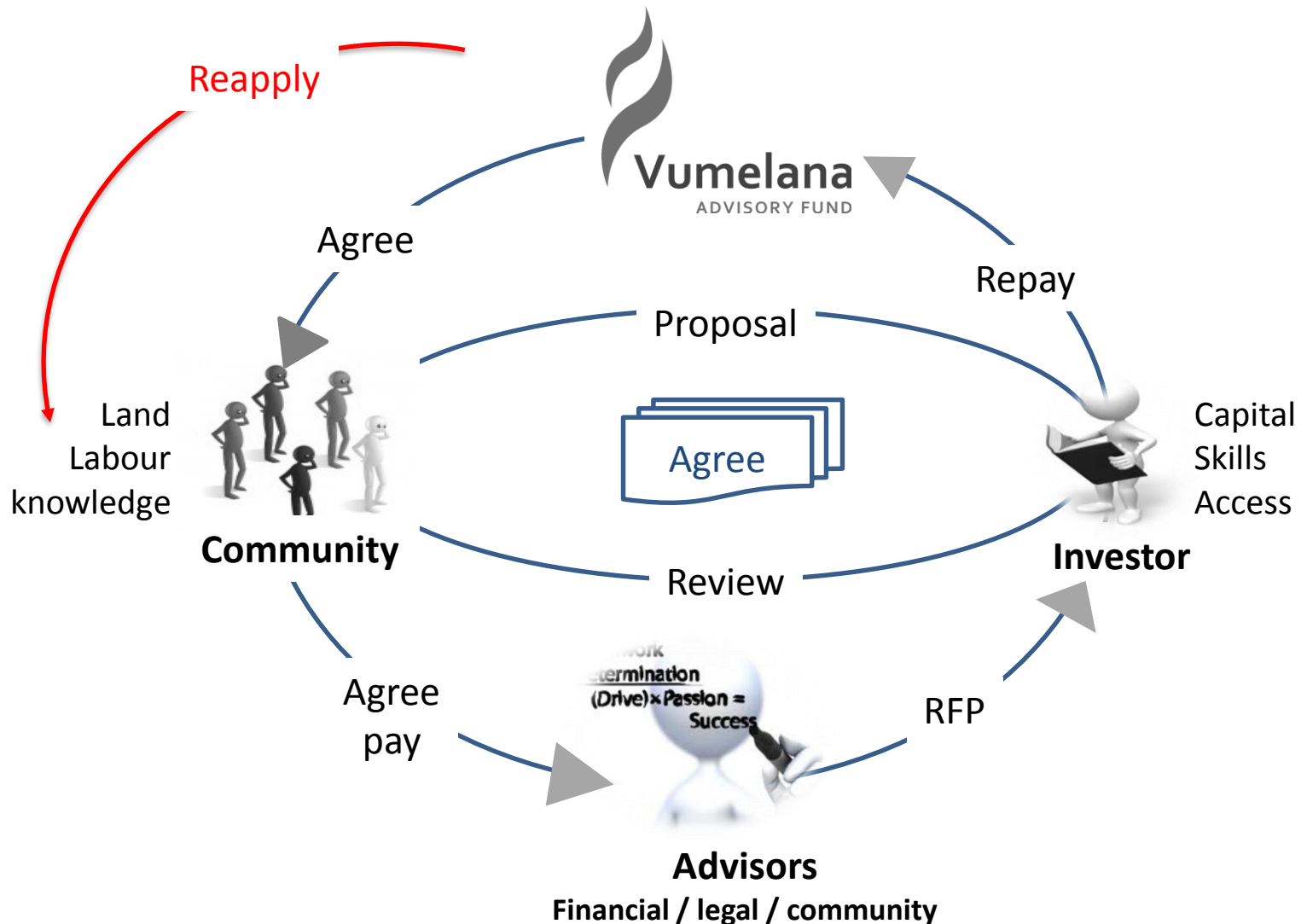


Forging partnerships with 3<sup>rd</sup> parties who have those resources is the most immediate way of addressing that challenge



These partnerships must respond to the asymmetry of power relations and the differing ability of the partners to carry risk and absorb cost

# We lower the risk of partnership by providing skilled transaction advisors



# How can Vumelana help?



Communities

Vumelana provides advisory services and administrative support to communities to structure and maintain partnerships with investors at no risk to the community.



Investors

Vumelana provides advisory services to structure partnerships with land owning communities at no risk to the investor if there is no agreement. Payment for services is required only if an agreement is reached.



Advisors

Vumelana funds the advisory cost of structuring partnerships between land owning communities and investors. All work completed is paid for even if no agreement is reached.



Government

Vumelana mobilises private capital for the implementation of sustainable post settlement partnerships thus reducing the burden on the state to capitalise or recapitalise projects.



Funders

Vumelana offers a vehicle for supporting local economic development while addressing the land reform challenge.

# IMPACT OF OUR CONCLUDED DEALS



## OUR IMPACT

VUMELANA  
HAS  
FACILITATED  
PARTNERSHIPS

19

THAT HAVE THE  
POTENTIAL TO  
MOBILISE  
AN INVESTMENT OF  
R970mil

PUTTING APPROX

70 000ha

OF LAND TO  
PRODUCTIVE USE

WITH THE POTENTIAL  
TO CREATE OR SAVE  
ALMOST

1700 JOBS




BENEFITTING OVER

14 500

BENEFICIARY  
HOUSEHOLDS

Developing sustainable partnerships for land reform

# CURRENT PROJECT PORTFOLIO

		INVESTMENT	JOBS	HOUSEHOLDS
AGRICULTURE		R418m	2,670	5,548
TOURISM		R1,086m	811	713
FORESTRY		R100m	1,393	1,131
		R1,604m	4,874	7,392



# Lessons

## **PARTNERSHIPS**

- **Partnerships provide a bridge to the future for disadvantaged communities**
- **Asymmetry in power must be managed**
- **Independent advice is key**
- **Partnerships must to be based on commercially sustainable activities**
- **Risks need careful allocation**
- **Benefits need to be defined**
- **Agreements need to be legally secure**
- **Oversight needs to be decisive**

## **COMMUNITIES**

- **The nature of “the community” needs to be understood**
- **Conflict needs to be managed**
- **Governance needs to be effective**
- **Facilitation and support may be required through the process**
  - Pre transaction
  - Transaction
  - Post transaction

## **AUTHORITIES**

- **DRDLR with primary land reform responsibility can help or hinder**
  - Clarity of policy
  - Speed of decisions
  - Level of priority
- **Provincial, Local, Parks and other authorities can help or hinder**
  - Level of commitment
  - how land reform is balanced with their primary priorities

## **INVESTORS AND PRIVATE PARTNERS**

- **Investors and other private partners can help or hinder depending on:**
  - The level of social commitment
  - The extent of experience
  - The attractiveness of returns
  - The patience to go with the process

## **ADVISORS**

- **Advisors can help or hinder depending on:**
  - The extent of experience
  - The level of support they get

# THANK YOU

<b>Registration</b>	<b>Vumelana Advisory Fund NPC (RF) Registration Number 2011/001855/08</b>	
<b>Directors</b>	Johan Van Zyl (Chairman)	
	Malcolm Dunn	Futhi Mtoba
	Tim Fearnhead	Bongiwe Njobe
	Trudi Makhaya	Peter Setou (Chief Executive)
	Malusi Mpumlwana	Brian Whittaker
<b>Address</b>	3 <sup>rd</sup> Floor, Building 13, The Woodlands, Woodlands Drive, Woodmead 2191, South Africa	
<b>Post</b>	PO Box 125, Woodlands, 2080, South Africa	
<b>Phone</b>	Tel: +27 11 612 2000 Fax: +27 86 603 7910	
<b>Email</b>	<a href="mailto:info@vumelana.org.za">info@vumelana.org.za</a>	
<b>Web</b>	<a href="http://www.vumelana.org.za">www.vumelana.org.za</a>	