



09 June 2017

‘Back to basics’ approach needed for transformation in the agro-food sector, not a flood of new legislation

The past couple of months have seen the floodgates truly open with new Bills and regulations aimed at land reform:

- The Regulation of Landholdings Bill, aimed at prohibiting foreign ownership of land and setting ceilings to ‘free up land’ for redistribution was published for public comments;
- The Restitution of Land Rights Amendment Bill was tabled as a private member’s Bill to reopen the claims lodgement process until 2021 after the previous Act was set aside by the Constitutional Court in 2017;
- Draft regulations were published to prescribe a formula by which property identified for reform purposes would be valued at a ‘just and equitable’ rate;
- The Extension of Security of Tenure Amendment Bill was passed by the National Assembly to further regulate tenure rights in rural area;
- We are awaiting the publication of the amended AgriBEE codes; and
- One can expect draft legislation on regarding communal land rights and communal property associations to make headlines in the coming months not to mention the proposals made at Operation Phakisa last year.

There is no shortage of plans and the regulator does not shy away from translating those into legislation, however one cannot help but wonder how this all fits into the bigger picture?

Imagine the following situation: A foreigner comes to South Africa and you are given the task of explaining transformation in the agro-food system to him. One can start off with the problem statement which is clear: we have a history of racial segregation that created unequal access to land and opportunities in the agro-food system which has to be remedied. The aim is therefore clear and simply, we need to implement transformation to achieve an equitable and sustainable society.

Next one could explain that we have three broad programmes related to land; one aimed at returning land to communities who were dispossessed, one aimed at formalising informal tenure rights and one aimed at increasing ordinary citizen’s access to land in an equitable way. In addition, we have programmes aimed at transforming the economy. This is still quite easy to follow.

One would then have to explain that we are trying to increase equitable access to land by citizens through a process whereby the state buys up land from previously advantaged citizens to redistribute it to previously disadvantaged citizens. However, the state often does not transfer ownership but remains the owner whilst leasing it to previously disadvantaged citizens. In the cases where we do transfer ownership, we want to put in limitations so that they cannot own more than a certain amount of land. Furthermore where we transfer land to previously disadvantaged citizens, other citizens can claim the same land if they or their ancestors previously owned the land and were dispossessed. Finally, when a group of people

all have an interest in the same land, we require them to form communal property associations and own the land jointly. We also have programmes to encourage transformation in the economy through providing points to companies who voluntarily undertake transformation initiatives which includes transferring ownership of land or shares. If you do so you can gain new market possibilities for your company, but it is not the same as land reform...This is where it gets a bit more complicated.

Next one has to explain that the state can either purchase land or expropriate it. If it is expropriated, then 'just and equitable' compensation must be paid. Even when the state wants to buy the land, it must be valued according to 'just and equitable' as if the state wants to expropriate it, even though it is not expropriating the land but buying it. If the owner does not agree with the valuation price, then he can refuse, in which case the owner can be expropriated however the valuation price might still not be the same as 'just and equitable compensation', in which case a court will have to determine the compensation, not the valuation.

Finally, one may have to explain that to restore land lost through dispossessions, claimants had to lodge a claim by a certain date. This date was then postponed and extended, closed once more, and now seeks to be reopened again. And that there is such a big backlog that the claims lodged before it was postponed must be finalised before the claims lodged after it was reopened, but before it was closed again, can be looked at...By this time you would have likely lost your audience completely.

Your audience may be forgiven if they don't understand how you got from the simple goal of wanting to affect transformation, to such a confusing regulatory system. The latest raft of legislation largely adds to the confusion since proposals such as the Regulation of Agricultural Landholdings Bill and the Draft Property Valuation Regulations can manifestly affect land markets and agricultural economies without providing clear indications on how they will contribute to transformation. If we are to make serious inroads into transforming the agro-food value chain then the focus should be brought back to the key objective. A 'back to basics' approach should be followed whereby each and every new regulatory instrument should be looked at critically with the aim of simplifying the whole process so that it can be implemented swiftly and effectively. In this regard, it is worth looking at each Bill, policy and regulation individually and collectively to see whether or not it clearly contributes the broader transformation goal or if it merely complicates the process further. Ultimately the goal is a simple one, so simplified solutions are required to achieve it.

Theo Boshoff (theo@agbiz.co.za)

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