



LAND REFORM SEMINAR

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SPEAKERS

> Bulelwa Mabasa | Facilitator

> [Please click here for profile](#)

> Anele Khumalo | Regulation of Agricultural Land Holding Bill B-2017

> [Please click here for profile](#)

> Theo Boshoff | Recent Developments

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> Thami Mdontswa | Expropriation of Agricultural Land Without Compensation

> [Please click here for profile](#)



REGULATION OF AGRICULTURAL LAND HOLDINGS BILL B-2017

ANELE KHUMALO

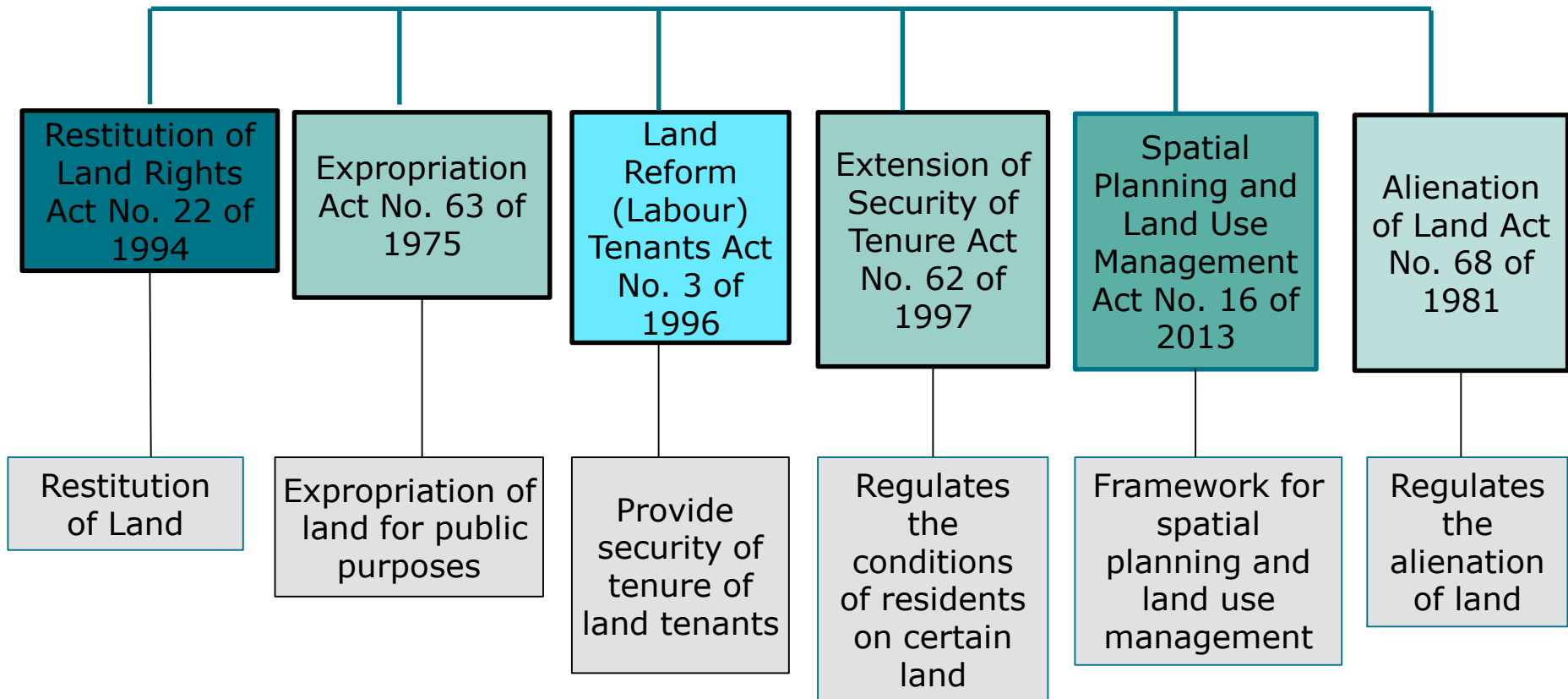
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THE RIGHT TO PROPERTY

SECTION 25 OF THE CONSTITUTION OF SOUTH AFRICA, 1996



LAND HOLDINGS BILL

- Published on 17 March 2017
- Differs from initial draft Bill
- Bill aims to progress land reform within the agricultural sector

IMPORTANT OBJECTIVES

- The establishment of a public register
- Limitations on the acquisition of agricultural land by foreigners
- Introduces long term leasing
- Limitations on the sale and the “right of first refusal”
- Establishes the Land Commission

WHO DOES THE BILL APPLY TO:

- All owners of “agricultural land” which is defined in section 1 as –
 - “all land, excluding land –
 - (a) in a proclaimed township: Provided that all land which, immediately prior to the date of commencement of this Act, was formally zoned for agricultural purposes by any sphere of government of any public entity, is excluded from the provisions of this paragraph;
 - (b) with regard to which an application for declaration as a township had been submitted in accordance with applicable township establishment legislation prior to the date of commencement of this Act: Provided that such application is approved within a period to be determined by the Minister;
 - (c) which, immediately prior to the date of commencement of this Act, was formally zoned for non-agricultural purposes by any sphere of government or any public entity;
 - (d) which has been excluded from the provisions of this Act by the Minister by notice in the Gazette; or
 - (e) which has been determined as non-agricultural land use in accordance with the provisions of the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013)
- In particular foreign persons, both natural and juristic

WHAT DOES THE BILL SEEK TO ACHIEVE?

1. Register of Public and Private Agricultural Land

- Land owners will be required to make disclosures of present ownership and disclosures of acquisition of ownership agricultural land
- State will also be required to make disclosures

2. Prohibition on the Acquisition of Agricultural Land by Foreign Persons

- Foreign persons will not be permitted to acquire ownership of land once the Act comes into force
- Foreign persons may conclude long term leases of agricultural land

WHAT DOES THE BILL SEEK TO ACHIEVE?

3. Regulates the Disposal of Agricultural Land by Foreign Persons

- A foreign person disposing of ownership of an agricultural land holding, **must/shall** offer the Minister, in the prescribed manner, the right of first refusal to acquire ownership of such agricultural land holdings
- The foreign person **must** thereafter “make the land available for acquisition to the citizens”.

WHAT DOES THE BILL SEEK TO ACHIEVE?

4. Land Ceilings

- The Minister must, by notice in the Gazette, and after consultation with the Commission and the Minister responsible for agriculture, determine the categories of ceilings for agricultural land holdings in each district

5. Redistribution Agricultural Land

- Owners of agricultural land must notify the Commission “of the identity of the portion of such agricultural land holdings which constitutes redistribution agricultural land in terms of the provisions of the Act

WHAT NOW?

Bill is still undergoing the Parliamentary process and is yet to be finalised.

Challenges should the
Bill be promulgated in
its current form

Is this the solution to
land distribution?



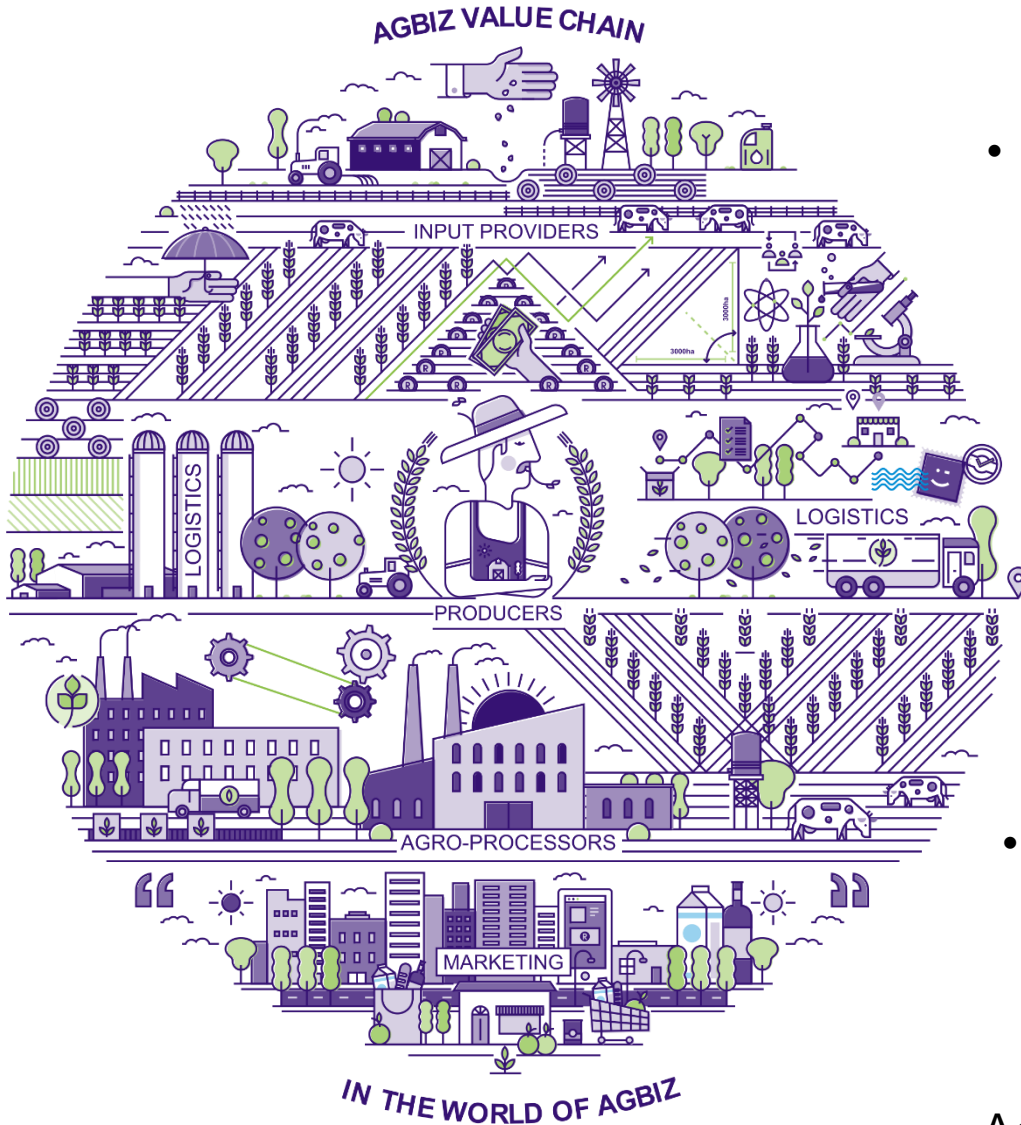
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SA Land Reform: Some recent developments...

3 August

By Theo Boshoff

Werksman's Land Reform
Seminar



- Agbiz represents the agricultural value chain;
 - This includes;
 - Input providers such as seed, fertilizer and machinery manufacturers;
 - Financial institutions and insurance companies;
 - Logistics;
 - Off-takers, Agro-processors; and
 - Market linkages.
 - Agriculture contributes 2-3% of GDP but together with the value chain, it is closer to 14%.
 - Significant employer in rural areas (Primary Agriculture - 6% of total labour market).

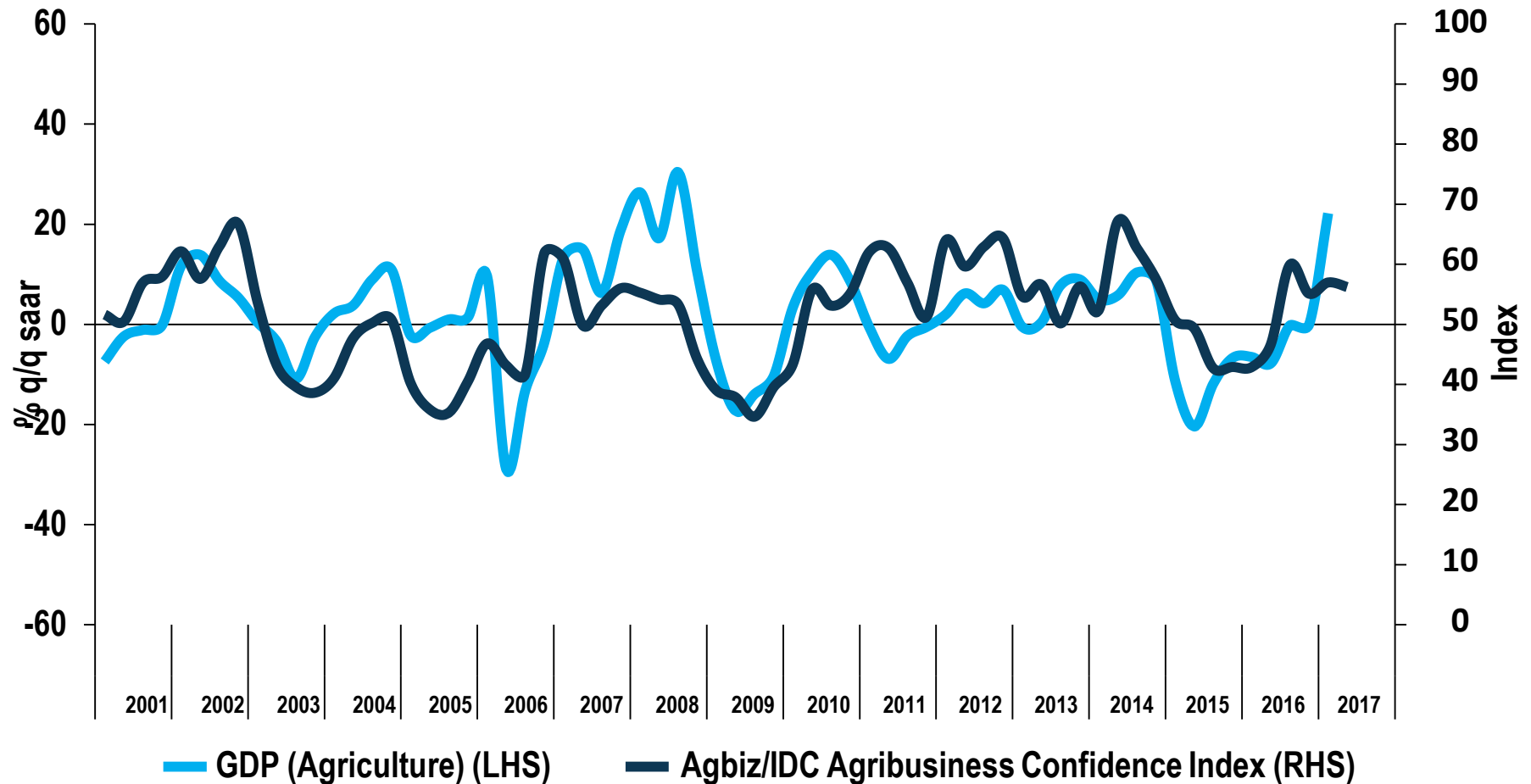
Agbiz and land reform

- Agriculture and Agribusiness are inextricably linked;
- The prosperity of agriculture is vital to agribusiness and successful land reform is an integral part of that.
 - Agribusiness relies on primary production for its business; and
 - Our members are heavily invested in the sector.
- Aside from the moral obligation to advance transformation, land reform poses opportunities to attract new entrants to the sector;
- However, also vital to retain value of land as an asset class;
 - Financial institutions have approximately R160 billion invested in the sector, the majority of which is secured by mortgage bonds.

"enable a more rapid transfer of agricultural land to black beneficiaries without distorting land markets or business confidence in the sector"

-Chapter 6 of the NDP

Agbiz/IDC Agribusiness Confidence Index and Agriculture GDP



Source: Stats SA, Agbiz Research

Profitability is improving but investment is lagging



- Ratio of investment to debt has steadily declined since 2007

- From 2004 to 2013, investment in the sector increased by 5.9% compared to 19.8% and 11.9% for net farm income and total farming debt respectively

Source: Statistics South Africa (2015).

RESTITUTION OF LAND RIGHTS AMENDMENT BILL

- > Broadly supportive of the restitution programme, but must take place quickly and efficiently to prevent prolonged uncertainty;
- > As far as Agbiz's membership is concerned –
 - > Compensation received for land more relevant than the purpose of land reform (restitution v redistribution);
 - > NB that the owners are compensated fairly to maintain integrity of land market, collateral value and property rights.
- > Focus on sound models for settlement to enable beneficiaries to enter a competitive agricultural sector;
- > Ownership of land key to access finance for new entrants with limited assets;
- > Governance structures streamlined and suitable for business.

COMMUNAL LAND TENURE BILL

Content:

- > Provides for title deeds to be transferred to communities;
- > Communities can decide on nature of individual rights within communal land (use rights, lease or title);
- > Communities can opt for CPAs, Trusts or Traditional Authorities as a governance structure.

Analysis:

- > Transfer of title deeds a positive step for agricultural development;
- > However; Minister has sole discretion to decide on existence of rights, extent thereof, and whether or not to transfer title;
 - > Potential constitutional difficulties – existing, informal rights to be effected.
- > Governance will continue to be critical – CPA Amendment Bill should assist but commitment to good governance will be key.

REGULATION OF AGRICULTURAL LAND HOLDINGS BILL

Land Commission

- > Can be enabling as a source of information if commission is credible;
 - > Autonomous, suitably qualified & integrated database.
- > Currently no private sector land reform or private sales counted.

Prohibition of foreign ownership

- > Not based on sound data – hence the need for a land commission;
- > Limitations not unprecedented, but prefer a model similar to Australia where transactions over a threshold require consent
 - dealt with on the merits of each transaction.

REGULATION OF AGRICULTURAL LAND BILL

Land ceilings:

Cost v Benefit?

- > Mortgage bonds will have to be deregistered and reconsidered (still a viable unit?);
- > Huge costs associated with subdivision – why not buy existing land parcel?;
- > Some producers may be denied economies of scale;
- > SA producers use scale to remain competitive in a climate of high input costs (weak Rand) and highly subsidized international competition.
- > Can have a negative impact on investor confidence and bond financing;
- > International examples not necessarily relevant;
- > China, Taiwan, S Korea, India have different resource base; and

REGULATION OF AGRICULTURAL LAND BILL

Land ceilings:

Will it benefit beneficiaries?

- > Beneficiaries will receive 'off cuts';
- > economically viable?
- > Access to resources (water, good soil etc..)
- > Access to roads or municipal services?;
- > Conflicts with NDP, DLRCs and government's own demand-led redistribution policies (strategically located land);
- > Beneficiaries will have to deal with whatever off-cut they get – why not look for land suited to beneficiary's needs and aspirations?

PROPERTY VALUATION REGULATIONS

What its all about:

- > Office of the Valuer General (OVG) mandated to value land identified for land reform at 'just and equitable' rate as in s25 of the Constitution;
- > Regulations codifies 'just and equitable' into set a formula to be applied by valuers:

'value' = (current use value + market value) -
subsidies

PROPERTY VALUATION REGULATIONS

Complex interface between economic principles, technical valuation practice and legal/constitutional principles;

- > Rigid formula not in line with section 25 of the Constitution;
 - > s25 a flexible mechanism that must be applied to the circumstances of each case.
 - > S25 looks at 'fairness', not a simple formula.
 - > Rigid formula can overcompensate some and undercut others
 - > Impossible to apply all factors rigidly as a court would weigh factors in s25 and apply them according to their relevance in the given circumstances;
 - > To treat all land owners the same using a formula could be out of line with the court's approach to interpreting s25 of the constitution.

PROPERTY VALUATION REGULATIONS

Practical effects:

- > 'current use value' is not the same as 'productive value'!
 - > Only looks at net income for year.
- > Will result in an under-valuation as it does not take the potential of the land into consideration but rather the current income generated.
- > Presumably aimed at 'punishing' underutilized or 'lifestyle farms'; but
 - > Will have negative side-effects on long term investments; and
 - > Ecology – disincentive to exploit resources;
- > Can have severe effects on financing of agriculture and long term investments;
 - > 'return on investment' (capitalisation rate) not factored into equation;
 - > Therefore a disincentive to invest in capital improvement of property.
- > Formulation not aligned with any recognised methods for valuing agricultural properties.
- > If the value of land acquired for land reform is pushed down, will lower the value of the land - not fully empowered or compensated.

PROPERTY VALUATION REGULATIONS

NB! – perspective required;

- > valuation never binding;
 - > OVG cannot 'set' the price when the state purchases land for reform – seller only bound to what he agreed on.
 - > Nor can OVG 'set' compensation upon expropriation
- Compensation must be agreed upon or decided by a court. OVG can simply inform the state's offer.

But – if no consensus reached, role of OVG can become redundant.

Ultimately, what matters is that the compensation must be '**just and equitable**', reflecting an **equitable balance between the interests of the state and those affected**, taking into consideration **all the relevant circumstances**.

ALTERNATIVE APPROACHES

Unlock private sector capital

- > Consider public-private partnership financing 'packages' for land reform beneficiaries:
 - > Interest rate subsidies, co-financing, credit guarantees;
 - > Falls within constitutional mandate to '*foster conditions which enable citizens to gain access to land on an equitable basis*';
 - > Enable us to achieve more with less funds.
- > Joint ventures v mentors
 - > partner's own finances also at stake = accountability;
- > Look at a compulsory right of first refusal over agricultural land, subject to strict conditions;
 - > Namibia used same to achieve 22% land reform with far smaller fiscus.

THANK YOU!

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LAND QUESTION PANEL DISCUSSION

Expropriation of Agricultural Land Without Compensation

3 August 2017



rural development
& land reform

Department:
Rural Development and Land Reform
REPUBLIC OF SOUTH AFRICA

A delicate balance

The Land Shall Be Shared Among Those Who Work it.

Freedom Charter, 1955

No political democracy can survive and flourish if the masses of our people remain in poverty, without land, without tangible prospects for a better life.

Reconstruction and Development Programme, 1994

We, the People of South Africa... Believe that South Africa belongs to all who live in it, united in our diversity

Constitution of the Republic of South Africa, 1996

Context

- Non-inclusive economy and high unemployment rate
- Structural challenges within the economy – which perpetuate inequality and joblessness
- Declining share of agriculture to the GDP
- Declining share of agriculture in employment
- Dramatic rural-urban migration without employment
- Growth of urban services and the manufacturing sectors (leaving rural area without industry)
- Poor economic demographic transition
- Racially biased access to land, credit, financial & the rural food industry is not functioning
- 14.3 million have food access challenges

Context

- Land Reform is a Constitutional and moral imperative.
- The ambitious target of redistributing 30% of white-owned agricultural land by 2014 was not met.
- Some of the blame for the slow pace has been on the so-called “willing buyer, willing seller” principle.
- The NDP set a target of redistributing 20% (16.4m ha) of agricultural land by 2030.
- The Property Valuation Act, 2014 established the Office of the Valuer General who must determine just and equitable compensation payable in land reform transactions.
- Land Reform laws are being revamped, and implementation improved.

Who owns South Africa?

Phase 1 of the Land Audit:

- 14% of land is registered State land
- 7 % is recently surveyed state land (but not yet registered) and
- 79 % privately owned

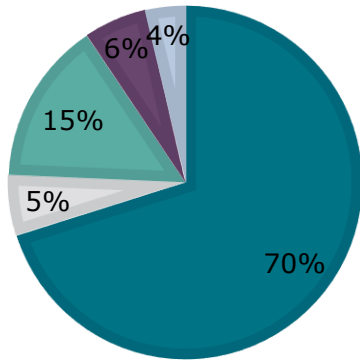
Phase 2 of the Land Audit

- Cabinet is considering the report
- We are expecting strong decisions to address all these institutional challenges
- Regulation of Agricultural Land Holdings Bill will enforce disclosure of ownership of land and landed property.

PRELIMINARY PHASE 2 INFORMATION

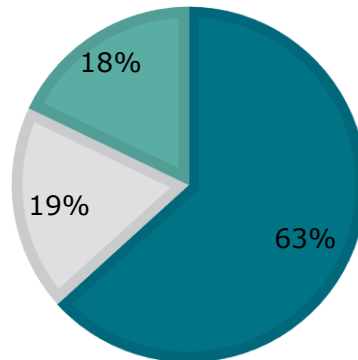
Race

■ White ■ African
■ Coloured ■ Indian_Asian
■ Other



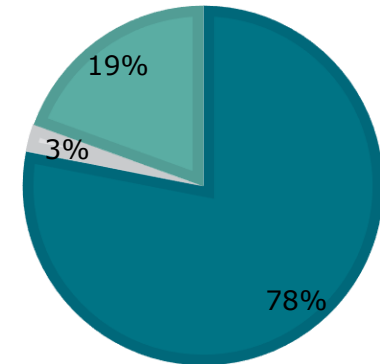
Gender

■ Male ■ Female ■ Unknown



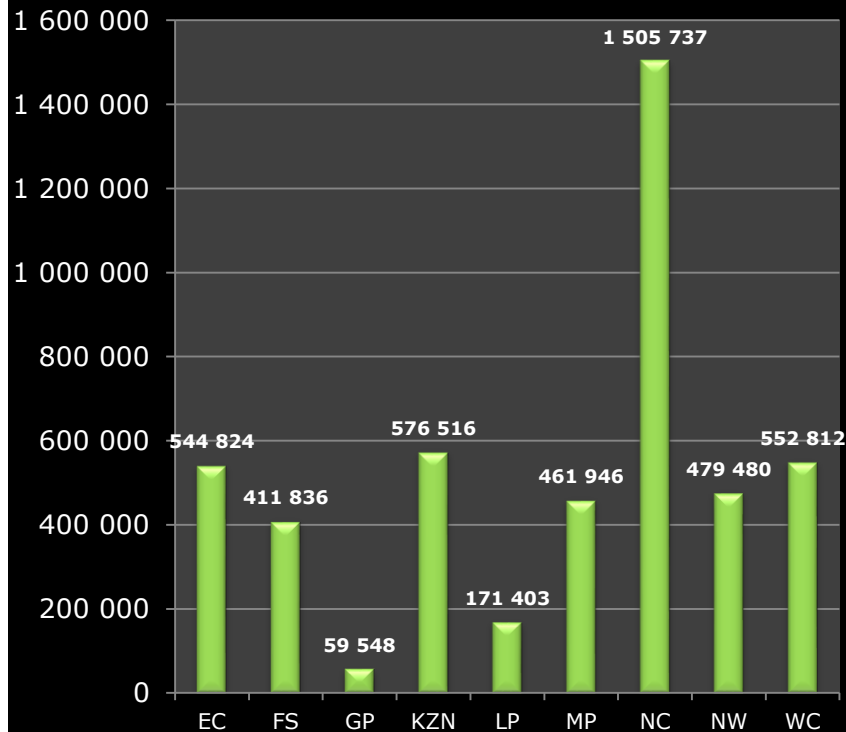
Country of origin

■ South Africans ■ Non South Africans
■ Unknown

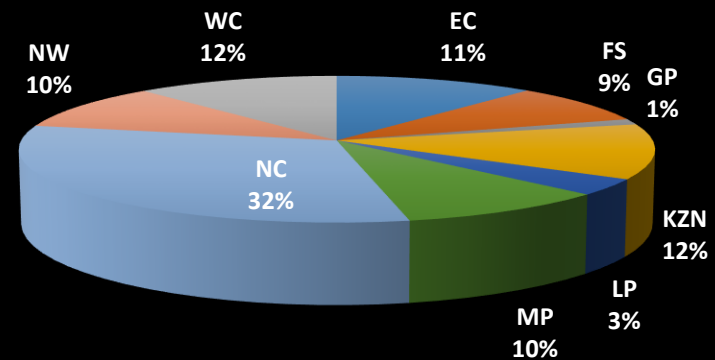


LAND ACQUISITION SUMMARY (HECTARES)

**NUMBER OF HECTARES ACQUIRED AND REDISTRIBUTED
PER PROVINCE 1994 - 2016**

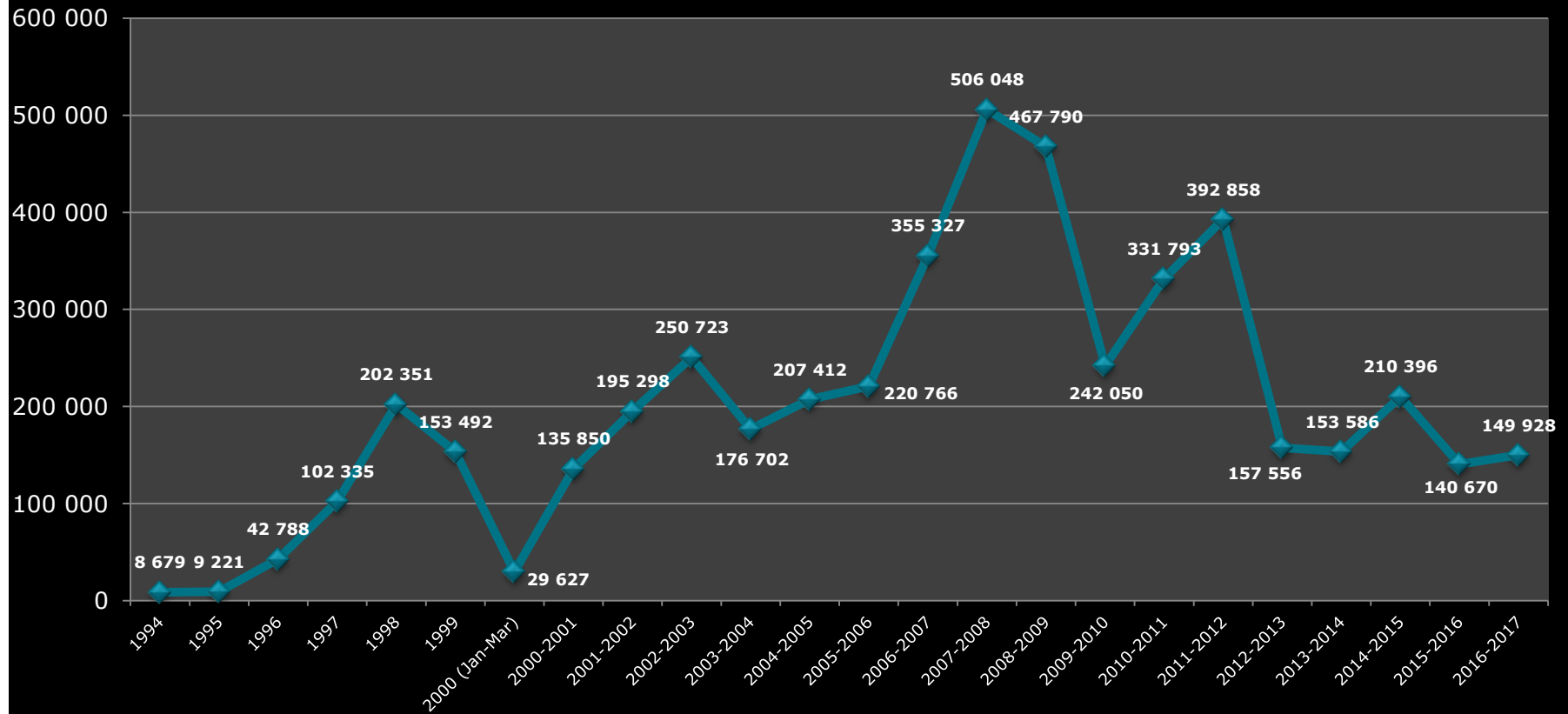


**PERCENTAGE OF HECTARES ACQUIRED AND REDISTRIBUTED PER PROVINCE 1994 -
2016**



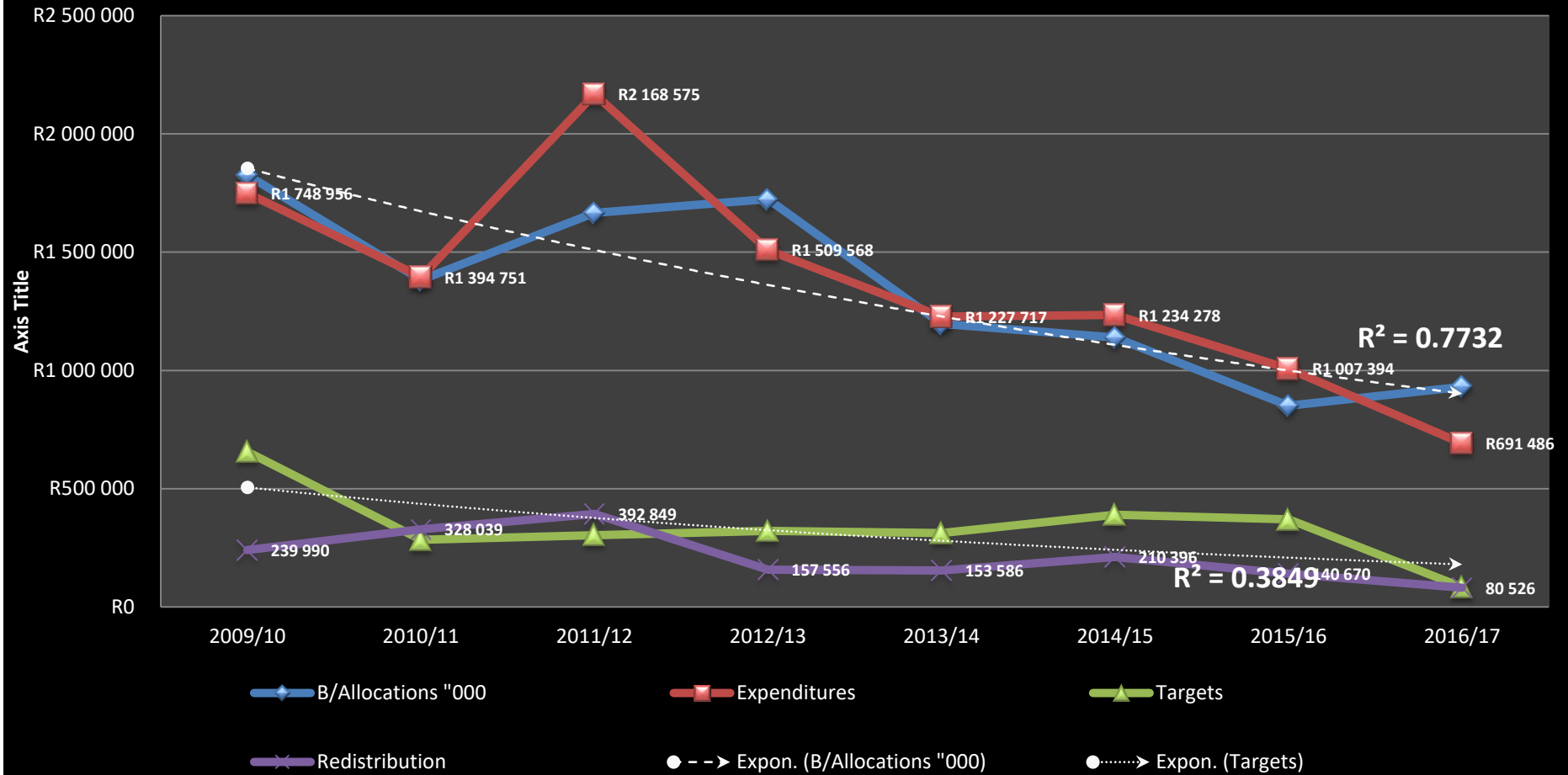
LAND DELIVERY PER YEAR – CUMULATIVE DATA

Trend of Hectares Acquired Per Year/FY

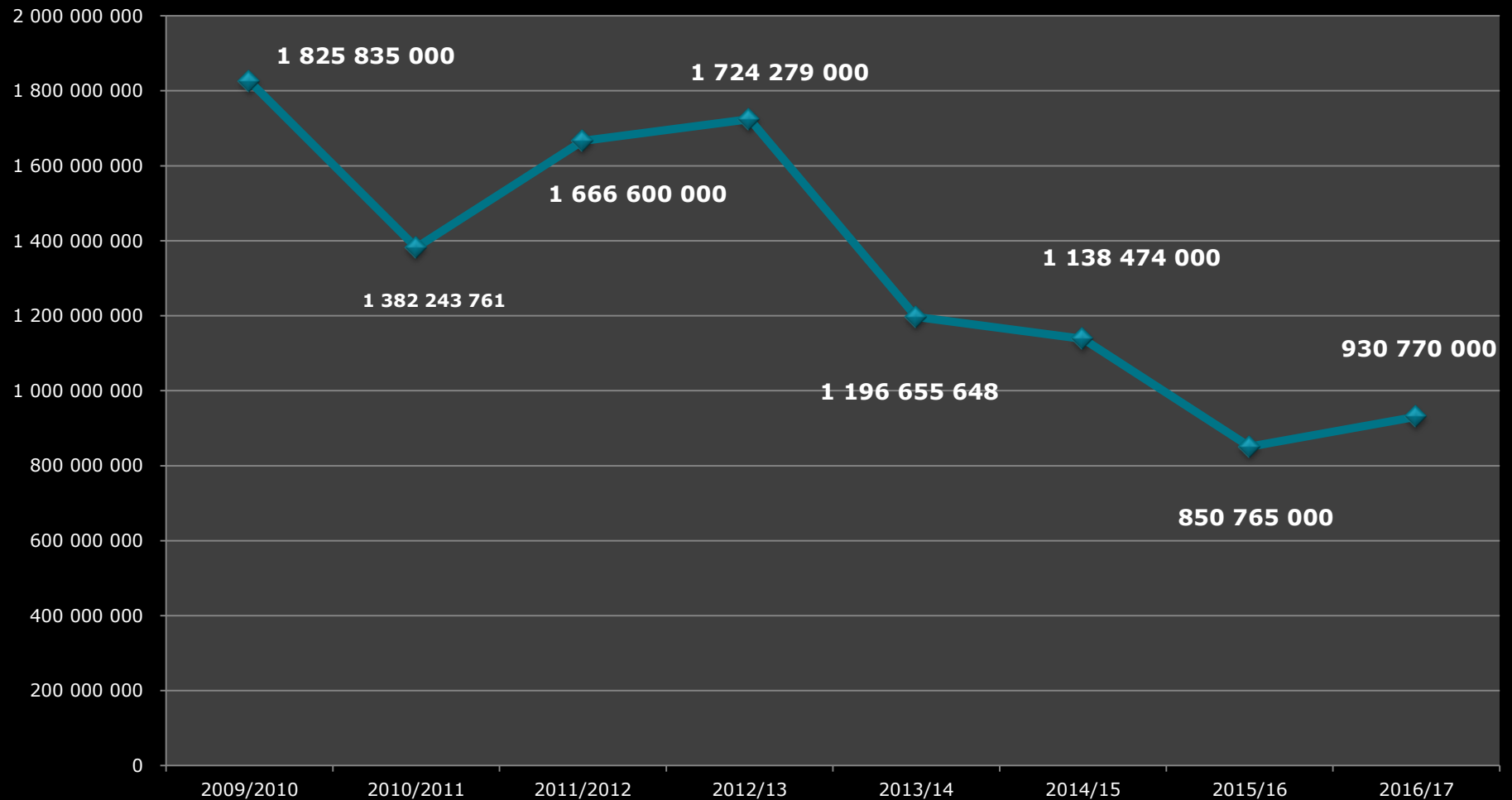


BUDGET ALLOCATION/TARGETS TREND (2009/2010 – 2016/2017)

Trends 2009/10 – 2016/2017

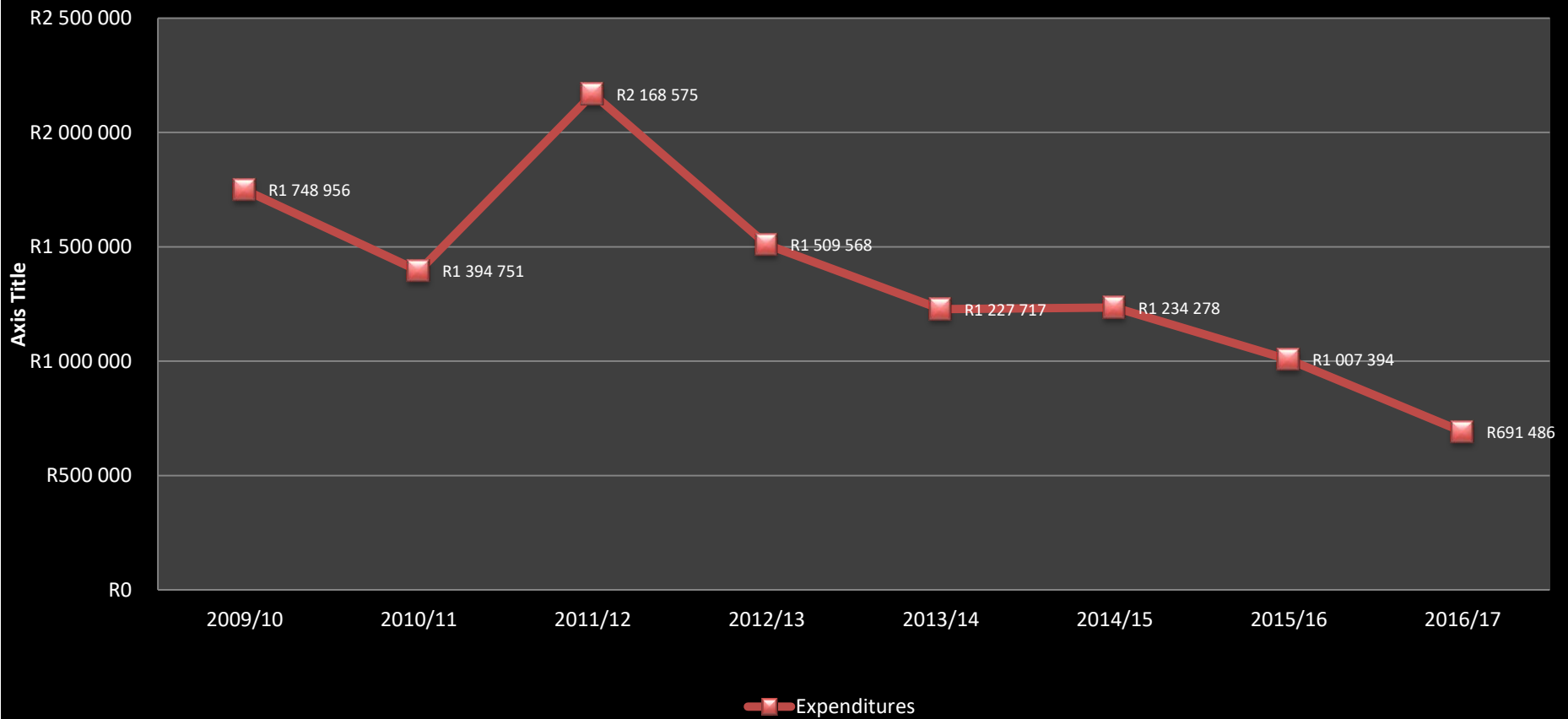


State Funding for Land Acquisition: Budget Allocation 2009 to 2016



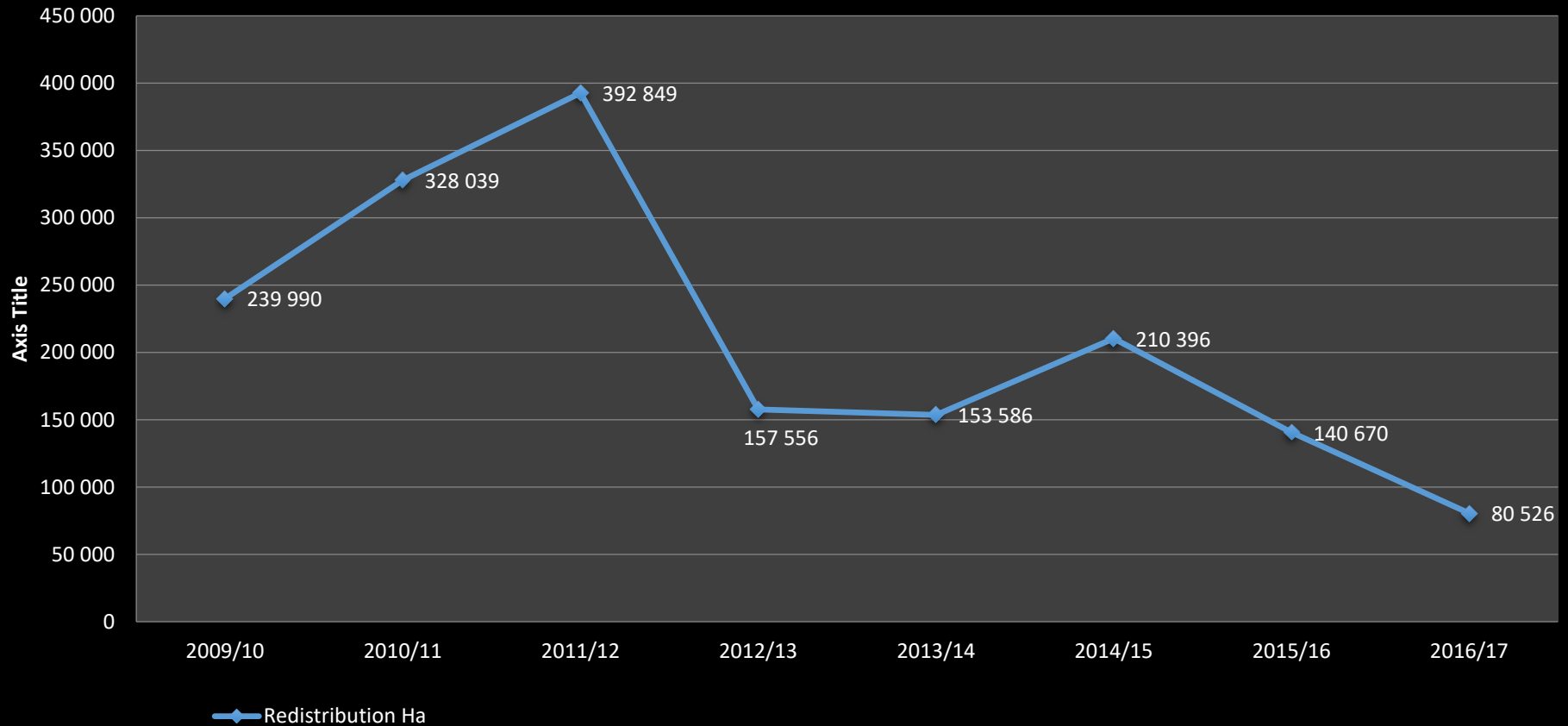
BUDGET EXPENDITURE TRENDS (2009/2010 – 2016/2017)

Trends 2009/10 – 2016/2017



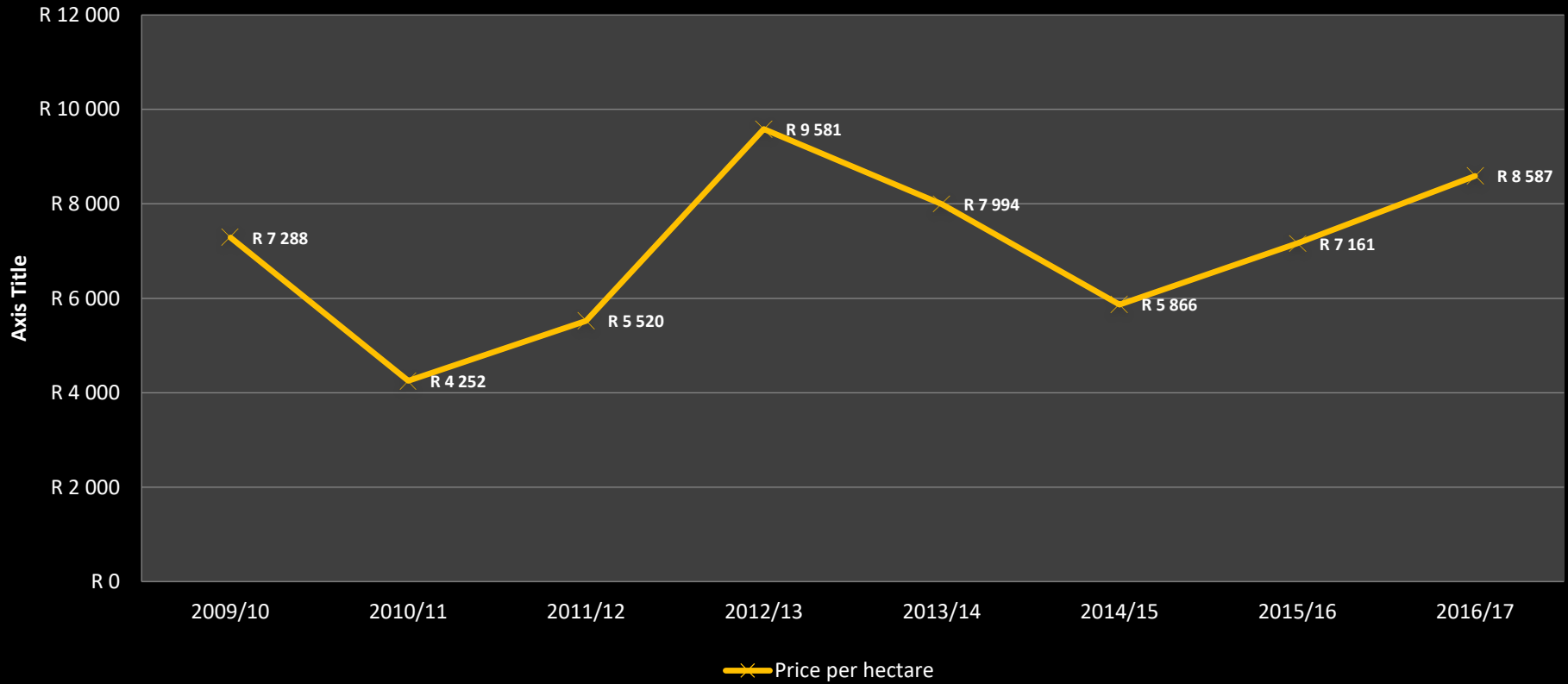
HECTARES ACQUIRED (2009/2010 – 2016/2017)

Price Per Ha 2009/10 – 2016/2017



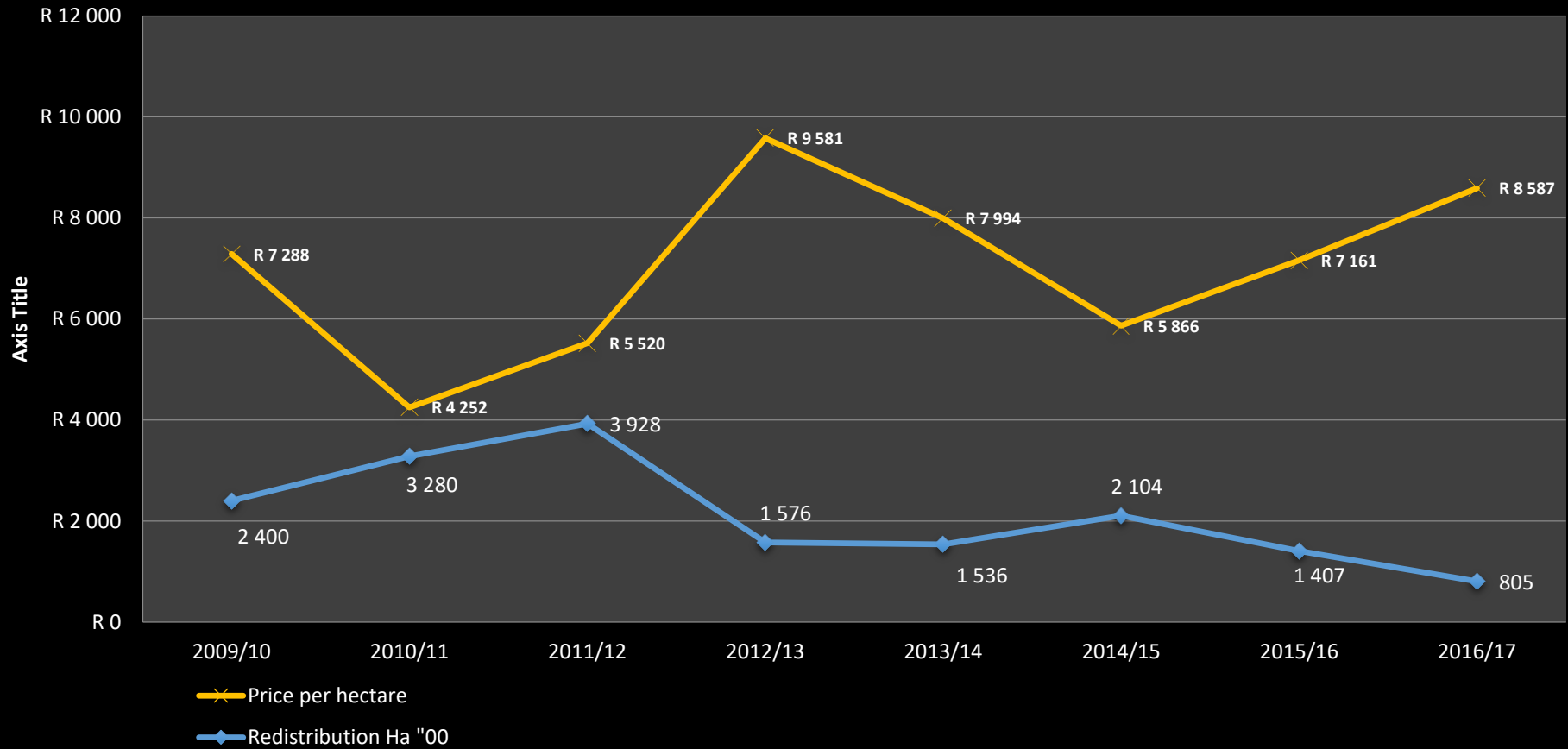
PRICE PER HECTARE TRENDS @ THE AVG OF R 6 966 (2009/2010 – 2016/2017)

Price Per Ha 2009/10 – 2016/2017



PRICE PER HECTARE V HA ACQUIRED TRENDS (2009/2010 – 2016/2017)

Price Per Ha 2009/10 – 2016/2017



Indicative Budget against what is required

R54 Billion - NDP

R4 Billion - MTSF



Change.... Please.



Radical Socio-Economic Transformation

- > Defined as a fundamental change in the structure, systems and patterns of ownership and control of the economy; the elements to be transformed being:
 - > Structure
 - > Systems
 - > Ownership
 - > Control; and
 - > Institutions
- There is also a proposal for the Amendment of the Constitution to remove the right to just and equitable compensation when agricultural land is expropriated for redistribution – the so called Expropriation of land without compensation.

The RSA Constitution

- > The Constitution requires, and facilitates, extensive and progressive programmes of land reform.
- > The process must be law-governed.
- > Expropriation in the public interest or for a public purpose is permitted, subject to payment of just and equitable compensation – which permits amounts well below market value (not tested in ConCourt).
- > It does not impose a willing seller, willing buyer test for compensation for land expropriated for redistribution.
- > It gives the State considerable latitude in how to effect redress.

Rycroft, Hlomendlini & Makgolane articles

- > What will happen to the farm debt of R160bn, excluding grower loans & subsidies?
- > What will be the impact on food production and farming units?
- > What about food sovereignty?
- > What will the impact on capital investment on agriculture?
- > What will be the impact on the rest of the economy?
- > What, if any, will be the damage the agri-sector?
- > Will this not lead to economic collapse?

What alternatives can you and I place on the table for consideration?

Ndzi hela kwala!

THANK YOU

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