

Equitable Access to Land Bill

Background

The High-Level Panel on Key Legislation recommended as far back as 2017 that a National Land Reform Framework Bill was required to provide coherence between redistribution, restitution and tenure and provide a clear framework for redistribution. The panel went as far as drafting a proposed Bill. The Presidential Advisory Panel on Land Reform and Agriculture supported this recommendation and proposed that the Bill should be gazetted and debated in Parliament urgently.

The draft Bill contained in the High-Level Panel report, which was then called the National Land Reform Framework Bill contained several land redistribution principles. These include things such as:

- Reasonable measures to ensure that land is made available on an equitable basis, which means giving priority to people who are landless and poor.
- A primary focus on the poor and disadvantaged.
- A land redistribution programme that considers the capacity of institutions responsible for implementing the programme and is balanced and flexible.
- A coherent and comprehensive land redistribution programme that is sufficiently resourced and able to secure equitable and secure access to land and related resources including water.
- Planning for land redistribution that must happen at both national level and local level.
- An equitable balance between the expressed demand for land for agricultural and non-agricultural purposes, including settlement, as well as multiple uses of land for both commercial and non-commercial purposes.
- The promotion of gender equality.
- State resources for land redistribution must be allocated and used in a manner designed to ensure that large numbers of poor and vulnerable South Africans benefit, and thus promote equitable access, taking due account of the need for post-settlement support and other relevant factors.
- Redistribution must be designed to overcome the legacy of apartheid and apartheid geography.
- Racial integration in rural areas is to be promoted, as is the provision of opportunities for poor and landless people to gain access to land in areas previously dominated by the wealthy.

- The land redistribution programme must guide the uses of land in rural and peri-urban areas to promote equitable access to land in such areas in a manner that contributes to the overcoming of the legacy of apartheid geography around the urban centre.

The proposed Bill also dealt with target groups, prioritisation and beneficiary selection. It proposes a focus on women and the very poor. It requires that beneficiary selection happen transparently and should consider the demand for land. A land demand register should be developed. The selection of beneficiaries must be informed by the outcomes of substantial public and broad community engagement. The Bill further proposes that the state must develop a land reform implementation framework for every district municipality, which framework must, amongst other things, reflect the needs for land, the socio-economic profile of people expressing a need for land, an assessment of competing needs and demands for land. Land demand shall guide the acquisition of land. Such land can then be purchased or expropriated.

Towards the end of 2024, the Nelson Mandela Foundation launched a court application out of the Western Cape High Court to challenge the State on its failure to comply with Section 25(5) of the Constitution which deals with equitable access to land and provides that: *“The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis”*.

- The Foundation is seeking an order:
 - a) declaring that the State has failed to discharge, diligently and without delay, its obligation under section 25(5) of the Constitution;
 - b) directing the State to:
 - ensure the enactment, within 18 months of national legislation that addresses at least the following issues: the definition of “equitable access” to land; how land is to be identified and acquired; how beneficiaries are to be selected and supported; multiple land uses; and integration with other elements of land reform;
 - report to the Court every three months regarding the steps taken to pass such legislation.

On 19 February 2025, the Minister of Land Reform and Rural Development and senior officials from the Department briefed the portfolio committee on the proposed Equitable Access to Land Bill, the Redistribution Bill by a new name.

What is redistribution, and where does it fit in?

Redistribution is one of the three pillars of land reform in South Africa. Lately, the Department of Agriculture, Rural Development and Land Reform has added a fourth pillar, namely land development. Section 25(5) of the Constitution gives the mandate for redistribution. The section provides that *“The*

state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.”

Although redistribution is only one of the pillars of land reform, which is the broader concept, there are also redistributive elements in the tenure reform programme. The Labour Tenants Act, Upgrading of Land Tenure Rights Act (ULTRA) and the Extension of Security of Tenure Act (ESTA) are aimed at tenure security and provide permanent solutions that are redistributive.

The 1997 White Paper on South African Land Policy provided, with regard to redistribution: *“The purpose of the Land Redistribution Programme is to provide the poor with land for residential and productive purposes in order to improve their livelihoods.”*

Status of the Equitable Land Access Bill

It is clear that the Bill is still being drafted. No draft was presented to the portfolio committee. The timeline for the Bill proposed by the Department of Land Reform and Rural Development is the following: The Bill to be submitted for Cabinet approval in March this year and published for public comment between April and May. The Department expected Cabinet approval in June and final certification by the Office of Chief State Law Adviser in July. The Bill would go to NEDLAC for deliberation in August and be tabled in Parliament in October 2025. This means that there will be ample opportunity to comment on the Bill. It is also positive that there will be a NEDLAC engagement on the Bill. Agbiz will participate in all of these processes in order to address any concerns that the farming sector may have with the Bill.

What will the Bill address?

In the briefing to the portfolio committee the Department indicated that the Bill will deal with the following subject matter:

- Access to land principles
- Access to land by the State
- Access to land plan
- Access to land by citizens
- Identification and selection of beneficiaries
- Applications and record for land allocations
- Access to Land Agency
- Register of agricultural land
- Notification of present land ownership
- Land ownership ceilings
- Land Tribunal
- Regulations

Most of these concepts are not new and were included in the 2013 Green Paper on Land Reform.

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