



LAND REFORM

Status update
December 2018



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Introduction

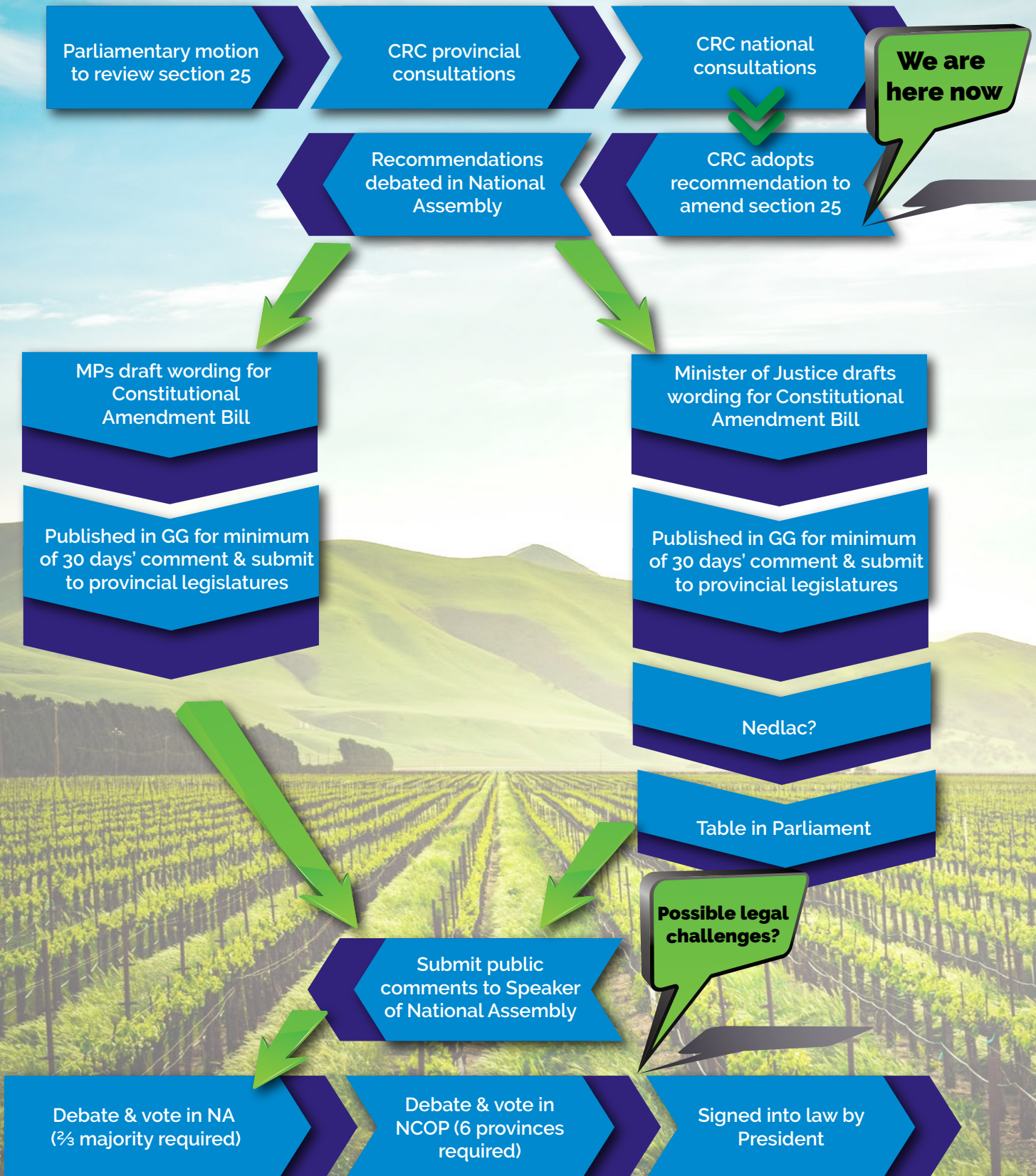
On 15 November 2018 the Constitutional Review Committee made the recommendation that section 25 of the Constitution should be amended to 'clarify' that section 25 of the Constitution does make provision for expropriation without compensation. At this time the conditions under which this may happen are still unknown as Parliament is yet to draft and consult on the exact wording of the proposed amendment.

Of critical importance now is the Constitutional Amendment Bill or parliamentary motion that will need to be drafted and the detail that it contains on the conditions under which land expropriation without compensation will be given effect. Agbiz will engage on this Bill, as well as make oral submissions to Parliament.

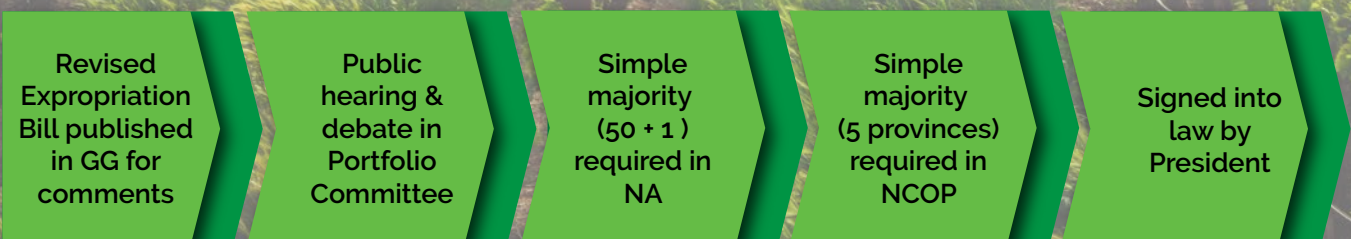
Expropriation is however merely one element of the broader land reform debate. There are several outstanding issues which predate the expropriation debate and which are not finalised as of yet. These elements will be outlined in this document as they are vital to the success or failure of land reform in South Africa, and Agbiz is represented on a number of platforms where the outcomes of these processes will be decided.

This document is intended to place the latest developments on expropriation into context and to provide an overview of the broader direction in which land reform is moving.

Process flow for review of section 25



Parallel process could be followed to amend Expropriation Bill, where the detail will be prescribed



Communal Land Tenure Bill

Tenure reform for the communal areas of South Africa is long overdue. The draft Bill which was published for public comment in 2017 made provision for title deeds to be given to communities, and each community to decide on the nature of individual landholdings within the collective. Aside from comments regarding the scope of the minister's discretion, the draft Bill's content was largely positive. In the meantime, the recommendations made by the High-Level Panel on governance reform in communal areas need to be incorporated into the Bill, and as such it has been held in abeyance since for the past year.

There are several outstanding issues which predate the expropriation debate. Agbiz is focusing on several other developments and initiatives to improve the outlook on land reform.

Land Reform (Labour Tenants) Act 3 of 1996

After a damning judgement was handed down against the Department of Rural Development and Land Reform (DRDLR) in 2016, a special master is being appointed to oversee the implementation of the Labour Tenants Act.

Extension of Security of Tenure Amendment Bill (ESTA)

The ESTA Amendment Bill passed through Nedlac as far back as 2013 but has since not been passed by Parliament. Aside from a questionable provision which seeks to limit access to courts, the Bill makes positive strides in alternative dispute resolution measures to settle tenure disputes on commercial farms.

Comprehensive land reform framework legislation

The High-Level Panel also identified the need for an overarching framework legislation to guide the principles for the implementation of all land reform, especially land redistribution. Such legislation should regulate key aspects of redistribution such as land identification and beneficiary selection. No Bill has been published as of yet but Agbiz undertook to cooperate with the DRDLR in their legal review as a Jobs Summit outcome.

Restitution of Land Amendment Bill

After the 2014 Bill was declared unconstitutional on procedural grounds, the Bill has been returned to Parliament for further consultation.

As it currently reads, the Bill seeks to open the claims lodgement process for an additional three years, however Agbiz and other stakeholders called for the Bill to be reconsidered as key recommendations from the High-Level Panel and Presidential Panel will need to be incorporated before any amendment should be considered.

Blended finance

The Jobs Summit outcomes for the agribusiness sector emphasised the need for blended finance models to fast-track land reform and farmer development. Arrangements are being put in place between Department of Agriculture, Forestry and Fisheries (DAFF), DRDLR, Land Bank and the Jobs Fund to create a blended finance model for farmer support. A similar arrangement is being sought for land redistribution through the BASA/Agbiz finance model.

Also under focus

Status update on Agbiz/BASA land reform proposal:

Commercial financing for NDP model on land reform

Background

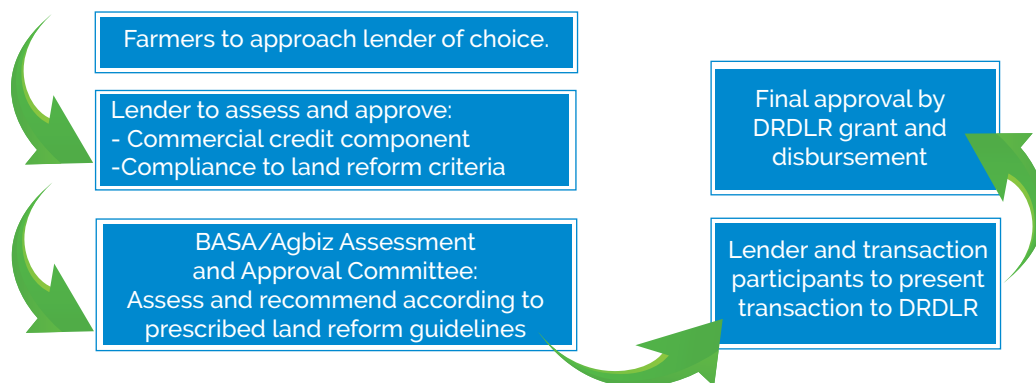
- ▶ Following the release of the National Development Plan (NDP) in 2012, the South African agricultural sector, in its widest context of Government, organised agriculture, commercial lenders and agribusinesses, realised the need for all parties to play an active and collaborative role in addressing land reform.
- ▶ To this extent Government requested that commercial lenders most active in land financing propose a mechanism for the commercial financing of land reform.
- ▶ The Banking Association South Africa (BASA) and the Agricultural Business Chamber (Agbiz) subsequently formed an Agbiz/BASA Task Team in order to respond to this request.
- ▶ Several workshops were held to arrive at the proposals contained in this document.
- ▶ The Agbiz/BASA Task Team and its respective members support the concept of orderly and market-based land reform in order to address the historic inequalities created by South Africa's past.

The BASA/Agbiz Task Team proposal

1. This proposal suggests a mechanism and process for the commercial financing of the land reform model as detailed in Chapter 6 of the NDP.
2. Tangible land reform results are the measure of success of the financing process.
3. In this proposal, the Task Team representing the South African commercial banking and agricultural business sectors, offers a commercial funding solution for an element of land reform.
4. Land reform as per the NDP is a national imperative for ensuring the country's stability, food security, rural development and security of tenure. The NDP model on land reform is essentially a proposed framework for land reform and not a "one-size-fits-all" model or plan. It does however provide a number of principles for orderly land reform implementation. It is supported by both Agbiz/BASA as it is underpinned by market principles which support the retention of commercial agriculture. At the same time it does not undermine agriculture property values on which lenders place reliance for loans which they afford to commercial farmers.
5. The active participation of commercial farmers in the financing of land reform and establishment of a viable black commercial farming sector is a critical success factor. Commercial farmers offer commercial acumen and skills to enable the financing process. They will be responsible for originating commercially viable land acquisition transactions, with possible concomitant operational funding solutions.

6. Commercial farmers (those who derive their primary income from farming ventures on a sustainable and profitable basis) need to be incentivised to participate in these joint ventures with measures, benefitting from incentives such as access to grants, tax incentives, B-BBEE ratings and recognition. These incentives should be guaranteed by Government and communicated to all parties involved.
7. The proposal is premised on the retention of competition between lenders.
8. Farmers must have the right to choose or select partner beneficiaries – process must be demand driven, i.e. selection must be apolitical and voluntary.
9. Normal commercial lending criteria principles will apply. Freedom of choice of financier is endorsed.
10. This proposal is informed by the following principles:
 - ▶ Transfer of title into any legally accepted entity, for example a trust or company, in which the black-owned stake is deemed to be acceptable to Government.
 - ▶ State-owned land, communal land and other land transactions not meeting normal commercial agricultural lending criteria are excluded. Separate funding models for such transactions will require development by Government.
 - ▶ A land audit is an imperative and all available knowledge on whom owns what, needs to be consolidated and maintained in one database by the Deeds Office. This includes state and parastatal entities, as well as municipalities.
 - ▶ Speed of decision-making relating to the grant approval process is critical and should happen within 45 days to allow funds to flow within 14 days thereafter.
 - ▶ The BASA/Agbiz Assessment Committee will in principle vet the proposed land reform transactional framework for recommendation to DRDLR. BASA/Agbiz representation to be specified by BASA and Agbiz. Assessment guidelines will be aligned with DRDLR conditions/criteria and this framework.
 - ▶ Incentivisation is required to ensure participation by commercial farmers.
 - ▶ Normal recovery processes under the Insolvency Act will apply.
11. The Task Team proposes the following process model:

Process flow: Commercial financing of land reform



Status update

In February 2015, the model was presented to Minister Gugile Nkwinti and adopted by the DRDLR, but never implemented. President Ramaphosa, in the 2018 State of the Nation address (SONA), indicated the importance of implementing exactly such a model. During his opening address of the Jobs Summit in early October 2018, the president explicitly referred to the importance of implementing the Agbiz/BASA Land Reform Model. In the run up to the Jobs Summit, DAFF and DRDLR did consult with Agbiz and BASA on the implementation of the model and it was agreed that the model would be one of the initiatives that would qualify for blended finance from the facility at Land Bank. This facility at Land Bank, into which DAFF and the DRDLR have already injected R800 million for the current financial year (R2.5bn over three years), is now functional and should be tested with applications. Agbiz is not aware of any successful applications to date however.

Presidential advisory panel on land reform

- ▶ In September 2018, President Ramaphosa appointed a 10-member advisory panel on land reform, which included Agbiz head of Agribusiness Wandile Sihlobo. Since its establishment, there have been roughly four meetings.
- ▶ The presidential advisory panel on land reform has a broad mandate that covers most aspects of land reform. The panel's mandate is to provide a unified policy perspective on land reform in respect of restitution, redistribution and tenure reform. Its work is partly informed by the resolution of Parliament to consider expropriation of land without compensation. Focus is on the circumstances in which the policy will be applied, the procedures to be followed and the institutions to implement and enforce. The panel will advise Government on how to use its constitutional mandate for land reform and its powers to expropriate in the interests of land reform.
- ▶ While the terms of reference from the presidency did touch on EWC – the key focus is 'applying EWC' on the areas that the ANC has identified in their 54th Conference report, which is:
 - » *"15. Expropriation of land without compensation should be among the key mechanisms available to the Government to give effect to land reform and redistribution.*
 - » *16. In determining the mechanisms of implementation, we must ensure that we do not undermine future investment in the economy, or damage agricultural production and food security. Furthermore, our interventions must not cause harm to other sectors of the economy.*
 - » *17. The ANC's approach to land reform must be based on three elements: increased security of tenure, land restitution and land redistribution ... These interventions should focus on Government-owned land and should also be guided by the ANC's Ready to Govern policy document which prioritised the re-distribution of vacant, unused and under-utilised state land, as well as land held for speculation and hopelessly indebted land"* - ANC 54th Conference Resolution Report
- ▶ The panel has subdivided its work into five work streams:
 - » **Expropriation without compensation.** Consideration must be given to costs, policy, conditions, and processes including valuation, rights of those affected and institutional reforms. (NB Role of Land Claims Court).
 - » **Models of agrarian reform and post-settlement support.** Consider legislation, policy Government programmes and private sector contribution (including food security).
 - » **Where should the land come from?** Consider state and private land, including solutions and finance models for bonded land.
 - » **Ownership tenure and property rights models.** Consider legislative framework, rural and urban land, freehold and communal, women, youth and people with disabilities.
 - » **Social aspects and infrastructure enablers.** Consider household/community issues, impact on poverty and unemployment (women, youth), migration patterns. Include water rights/access, energy and road infrastructure.
- ▶ The work streams have presented the initial draft papers on these work streams for discussion and debates. All presentations were constructive.
- ▶ On November 21, there was another meeting to refine the papers in preparation for an upcoming colloquium "by invitation" in the first week of December, where papers will be presented, to get feedback and views from business, communities and other stakeholders.
- ▶ The outcome/feedback of the colloquium will be integrated into the papers in writing up the final plan which will be presented to the president of the country, and the IMC in March 2019.

Overall, the panel is getting along nicely and there are robust discussions about policy and development. The end goal is the plan that will lead to a sustainable and growing South African agriculture and (other industries), and most importantly, improve people's living standards.

Compiled by:

Dr John Purchase, Theo Boshoff and Wandile Sihlobo

The Grain Building, 477 Witherite Street, The Willows, Pretoria, 0184, South Africa

Tel: +27 12 807 6686 | **Email:** admin@agbiz.co.za | **Website:** www.agbiz.co.za

Design & layout: Fire Cherry Creative Branding - www.firecherry.co.za