

# Land Reform Status Update

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# Introduction



The Ad Hoc Committee tasked with drafting an amendment to section 25 of the Constitution published the Eighteenth Constitutional Amendment Bill for public comments late in 2019 and Agbiz submitted inputs in February 2020. The bill seeks to retain just and equitable compensation but expropriation includes a proviso stating that a court may determine that it is just and equitable for nil compensation to be paid for land and improvements expropriated in the interests of land reform. The bill is followed by a memorandum that mandates national legislation to determine the specific circumstances in which nil compensation may be just and equitable. Agbiz submitted comments that clearly convey our opposition to an amendment and provide thoroughly researched inputs on the wording while reserving our right to oppose an amendment in principle

Provincial consultations were interrupted by the Covid-19 lockdown but were concluded early in 2021. It is still unclear whether oral submissions will be received as the committee has considered all written inputs but is unlikely to make substantial amendments. The only substantive comment taken on board by the committee relates to whether nil compensation should include improvements made to land expropriated for land reform. The committee will seek clarification from the National Assembly in this regard.

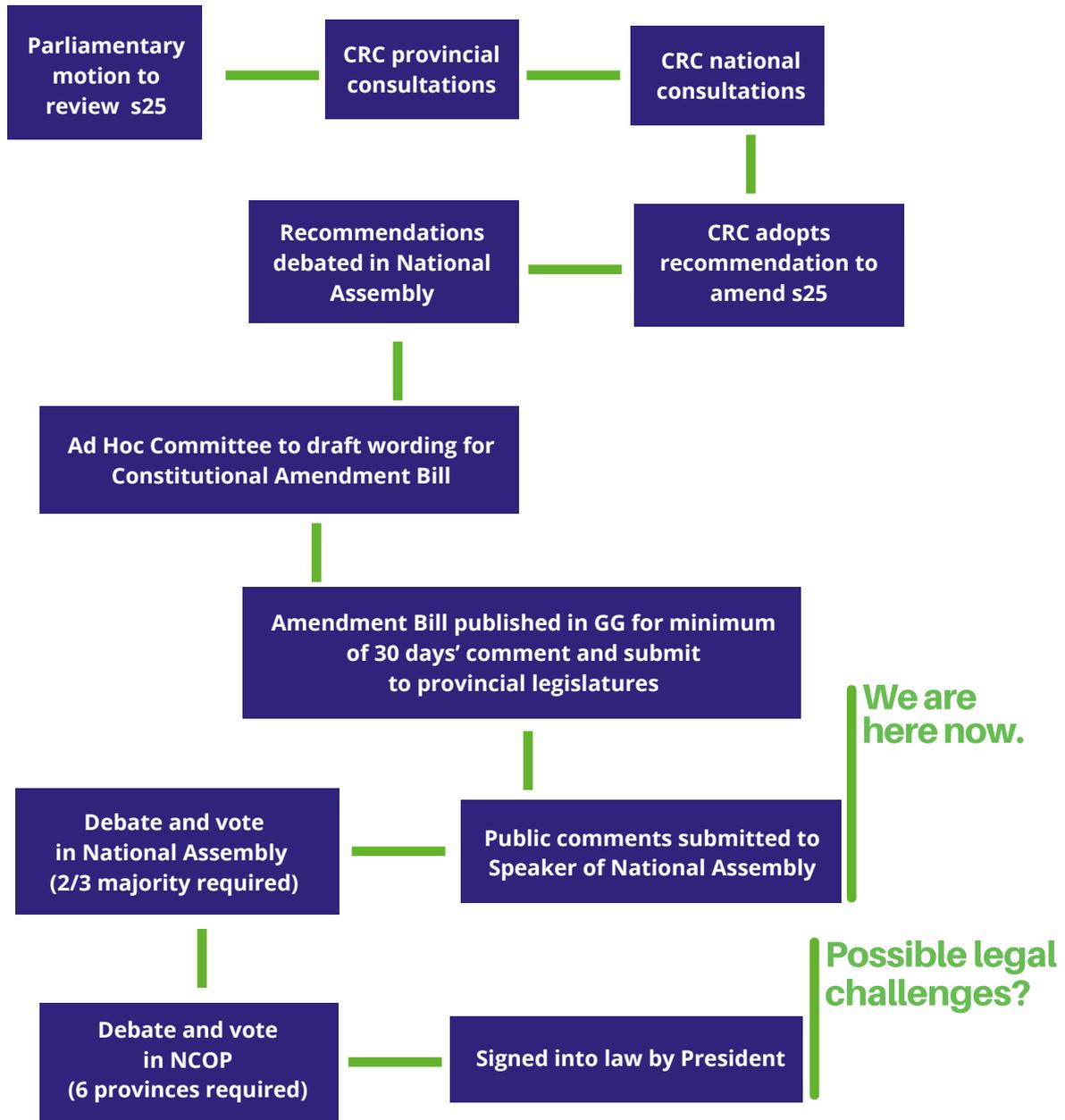
The revised Expropriation Bill is now of critical importance as it provides more detail surrounding the conditions that a court must consider when deciding whether nil compensation would be just and equitable on a case-by-case basis. Agbiz submitted comprehensive inputs on the bill during the Nedlac process, which was finalised in March 2020. The bill has now been tabled in Parliament and Agbiz has submitted comprehensive written inputs.

Expropriation is, however, merely one element of the broader land reform debate. Several outstanding issues predate the expropriation debate and are vital to the success or failure of land reform in South Africa. Policy decisions on a number of these issues were largely held in abeyance while an inter-ministerial committee (IMC) considered the recommendations of the Presidential Advisory Panel on Land Reform and Agriculture. Two policy recommendations relating to land donations, beneficiary selection and land allocation have been published, and Agbiz is again at the forefront of providing inputs.

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

# Process flow

for the review of section 25 of the Constitution



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

Revised Expropriation Bill published in GG for comments

Public hearing and debate in Portfolio Committee

Simple majority (50 + 1) required in National Assembly

Simple majority (5 provinces) required in NCOP

Signed into law by President

# Also under scrutiny

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**There are several outstanding issues which Agbiz is focusing on to improve the outlook on land reform.**

## **The Expropriation Bill**

The Expropriation Bill provides for a uniform procedure to be followed whenever expropriation takes place under an empowering legislative provision and sets out the methodology to be used in calculating compensation. The bill dates back to 2013, but an amended version is now before Parliament. The salient difference is the insertion of a provision that allows a court to determine that it may be just and equitable to award nil compensation considering all relevant circumstances, including where land

- has been abandoned;
- is being held for speculative purposes;
- is owned by SOEs;
- has successfully been claimed by labour tenants;
- has been acquired using subsidies that exceed the market value; and
- constitutes a public health or safety hazard.

Discretion is retained, and the bill is not prescriptive in the sense that it stipulates that the compensation paid must be nil. The decision still hinges on what is just and equitable in the circumstances.

## **Land Donations, Beneficiary Selection and Land Allocation policy**

Although based loosely on a recommendation from the presidential panel, the draft Land Donations Policy published in February 2020 does not contain any incentives for landowners to donate unused land for the purposes of land reform but only deals with how such land is to be allocated. In Agbiz's submission, we make a substantiated proposal that the essence of the panel's recommendation should be taken on board in that landowners should be incentivised through access to blended finance, B-BBEE recognition and an exemption from donations tax.

Following a similar recommendation by the presidential panel, the draft policy on Beneficiary Selection and Land Allocation was adopted by Cabinet on 4 December 2020. The policy is a positive step in principle as it seeks to provide clarity on the selection of beneficiaries and allocation of land for redistribution but Agbiz questioned the institutional structures responsible for implementation. It was also advised that the institutional arrangements be reconsidered to give effect to the inclusive selection process recommended by chapter 6 of the National Development Plan (NDP).

Unfortunately, both policies were adopted without going through the Nedlac engagement process but a commitment is being sought that there will be engagement on any legislation that arises from the policies at Nedlac.

## Restitution of Land Rights

After the 2014 Amendment Bill was declared unconstitutional on procedural grounds, the bill was referred back 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 have called for the bill to be reconsidered as key recommendations by the High-Level Panel and the presidential panel will need to be incorporated before any amendment can be considered.

In a separate process, the commission has embarked on a comprehensive approach to develop new settlement models for land restitution. Consultants have been appointed to create alternative settlement models that will promote continuity in agricultural production when land is restituted. Agbiz was also consulted and provided inputs into the process.

## National Policy on Comprehensive Producer Support (NPCPS)

The NPCPS was conceptualised in an attempt to revamp the state's approach to farmer support. The policy provides for coordination between state extension services and private sector non-financial support, limited grants for smallholder farmers and blended finance for emerging farmers. The blended finance aspect is being developed in parallel while a similar, detailed process will be followed to develop an e-voucher system for state-subsidised inputs. The policy has served before Nedlac and its sub-components are being developed in parallel processes.

## Land Reform (Labour Tenants) Act 3 of 1996

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



“The blended finance  
aspect is being developed.”

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# Agbiz/ BASA land reform proposal

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## Background

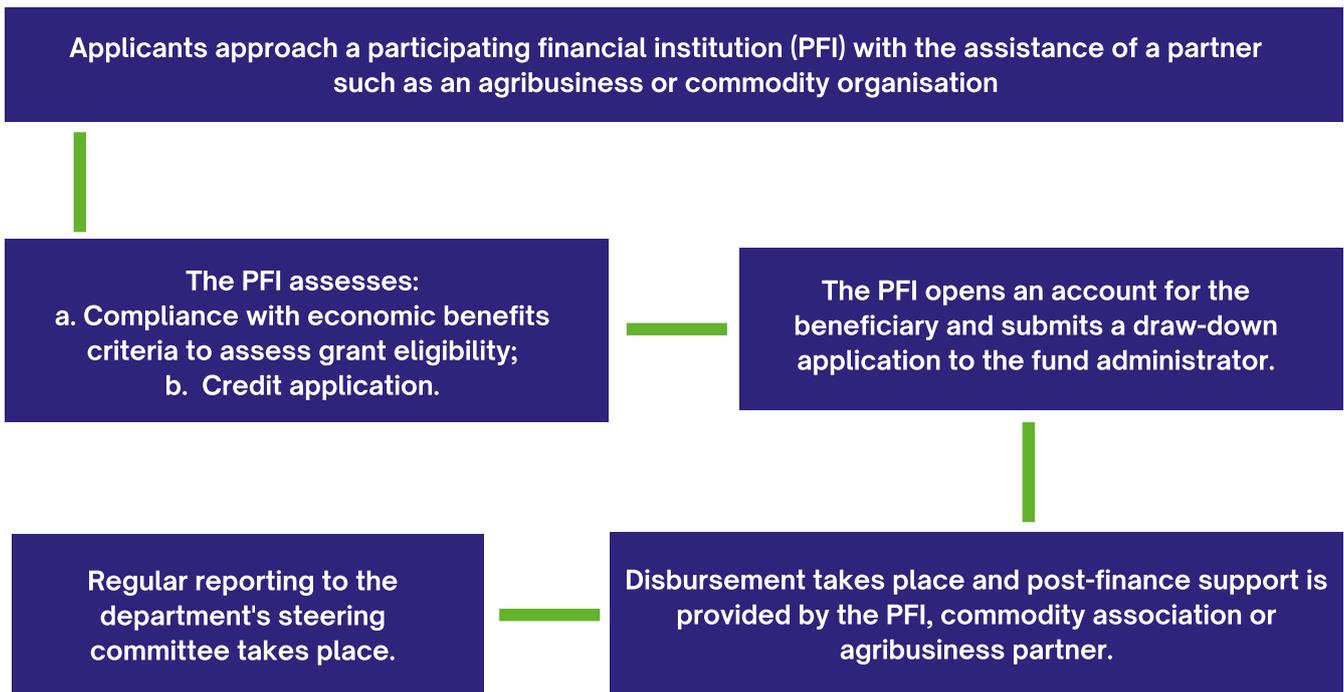
The focus placed on partnerships in the National Development Plan (NDP) in 2012 has prompted Agbiz and the Banking Association South Africa (BASA) to formulate a blended finance proposal for land redistribution.

## The BASA/Agbiz Task Team proposal

This proposal comprises a mechanism and process for the commercial financing of land redistribution. It is based on the principle of blended finance, whereby the state would be able to commit resources to unlock commercial funding for land redistribution. The principle would retain competition among lenders for the commercial portion and enable the state to achieve greater developmental results by doubling up on its developmental spend.

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 can offer commercial acumen and skills to enable the financing process. They would be responsible for initiating commercially viable land acquisition transactions, with possible concomitant operational funding solutions, and should receive recognition in the form of B-BBEE points as well as access to incentives such as access to grants, tax incentives or preferential finance.

## Process flow: commercial financing of land reform



## Status update

Agbiz, BASA and Agri SA pursued this goal through Nedlac and agreed to collapse the Agbiz/BASA model into government's proposals from the NPCPS to form a single blended finance scheme. After years of negotiation, an agreement has been reached to implement an open and competitive scheme whereby any agricultural financier can choose to participate while the Land Bank will be the fund administrator. Qualifying criteria have been drafted to clarify who will be eligible and caps have been put in place on grant funding per beneficiary, which will be matched by loan finance from the PFI. Provision has been made for blended finance to fund land acquisitions and to assist new-age farmers with production finance. Contracts are currently being negotiated between the department and PFIs, and Agbiz has compiled a database of commodity organisations and agribusinesses that wish to partner with PFIs to assist with screening beneficiaries and post-finance support.

## Agricultural Development Agency

To fill the vacuum which currently exists in the support provided for land reform beneficiaries and developing farmers, the Agricultural Development Agency (AGDA) has been established. Initially it will be led by the former director general of the Department of Rural Development and Land Reform, Leona Archery. AGDA is intended to provide comprehensive support to deserving agricultural development projects, including the beneficiaries of land reform. Several initial projects have been identified for support. Agbiz has encouraged members who are in a position to do so, to engage with the agency.



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