

## Presidential advisory panel's report on land reform: why context is important

On Sunday, the Presidency released the final report of the Advisory Panel on Land Reform and Agriculture. The release of this report was highly anticipated and therefore attracted a flurry of media coverage. At this juncture it is worth taking stock of the process and considering the effect which the recommendations may have on land reform policy.

### **The report contains ideas and recommendations, not policy**

President Ramaphosa convened the panel of experts to advise him on land reform and agricultural policy, but like any advice, the president can take it under consideration and decide what to use. It was clearly never the intention to outsource the formal policy-making function of the government. As such, the report contains ideas and recommendations from experts that may well influence eventual policy decisions, but it does not automatically become government policy.

The fact of the matter is that government gets bombarded by policy recommendations on a daily basis through a variety of platforms. As far as land reform is concerned, we have been through a plethora of forums where stakeholders could voice their comments and recommendations including the NAREG process emanating from the Green Paper on Land Reform, Operation Phakisa, the High-Level Panel on the Acceleration of Fundamental Change and a host of stakeholder forums and ad hoc consultations. In all of these processes, various stakeholders held differing views.

The role of government is to hear all of the stakeholders' views, comments and recommendations in order to arrive at a balanced policy position. The advisory panel should not be viewed any different. Perhaps the only difference is that the members were invited based on their individual knowledge and expertise opposed to the stakeholder groupings they represent. In any event, due to the diversity of expertise brought together by the president, it is unsurprising that the panellists have divergent views on how land reform should be affected. It is now up to government to distil these views and take forward whatever it deems appropriate in the formulation of its own policies.

### **The public may or may not be able to submit comments, but it shouldn't affect the outcome**

Public participation is a critical component of participatory democracy. The state is duty bound by the Constitution to allow the public its fair chance to make inputs into new policy and legislation. The caveat, of course, is that the panel's report is not policy nor legislation. As such, there is technically no obligation on the state to request public inputs. Should the Presidency decide to invite public comments, Agbiz will naturally make full use of the opportunity and formulate detailed inputs

29 July 2019

**Theo Boshoff**  
Head: Legal Intelligence  
+27 12 807 6686  
theo@agbiz.co.za

[www.agbiz.co.za](http://www.agbiz.co.za)

#### **Disclaimer:**

*Everything has been done to ensure the accuracy of this information, however, Agbiz takes no responsibility for any loss or damage incurred due to the usage of this information.*

based on thorough research, best practice models and the mandated positions it holds on various aspects. Should no opportunity be given to submit comments on the report itself, then the normal process will still unfold, if and when, any of the recommendations are translated into official, draft policy of government.

Should any recommendations be accepted by government, the public consultation cannot be bypassed before it is adopted. However, at this stage of the process it may be premature to insist on public consultation as any opportunity would constitute an 'extra' bite at the apple.

**Some recommendations can be implemented immediately, others cannot**

Some of the recommendations made in the panel merely require political will to achieve, whilst others require substantive amendments to the legal framework. The following recommendations do not require legal amendments:

- creating innovative financing mechanisms;
- creating a 'land register' to house donations;
- identifying and releasing state land;
- conducting a land audit;
- subdividing land already acquired by the state;
- providing tenure grants for certain occupiers;
- rooting out corruption;
- reallocating water rights in conjunction with land allocation;
- finalising outstanding restitution and labour tenant claims; and
- splitting the budget between reforming the commercial farming sector vis-à-vis land reform for social considerations.

In theory, these proposals, if accepted by government, can be immediately implemented. It will however require substantial political will as the existing business processes of the department will need to be adjusted.

Other recommendations require amendments to the legal framework, including:

- institutional arrangements such as the creation of a land reform ombudsman;
- creating legally enforceable rights for the holders of off-register tenure rights;
- amendments to the municipal property rates regime;
- altering the legal framework regulating land rights on farms (ESTA);
- clarifying the role of traditional councils and communities in natural resource governance in communal areas;
- expanding the capacity and mandate of the Land Claims Court; and
- a compensation policy for expropriation.

The latter issues require legal amendments which cannot be undertaken without substantive public consultation, usually characterised by the following processes:

- gazetting for public comments;
- the Nedlac process; and
- public hearings in the Portfolio Committee and Select Committee of the NCOP where applicable.

Agbiz is well positioned to participate on each platform.

### **Only Parliament can make a decision on the Expropriation Bill or a constitutional amendment**

A great deal of emphasis has been placed on the panel's recommendations regarding compensation for expropriation. Ironically, this is one area where the process has somewhat overtaken the panel's recommendations already.

Parliament resolved to re-establish the ad hoc committee dealing with a possible constitutional amendment before the panel's report was released. Likewise, the Department of Public Works received public comments on the redrafted Expropriation Bill in February and is likely to table the Bill in Parliament soon. As such, both processes are now in the hands of Parliament through the Ad Hoc and Portfolio Committee on Public Works respectively.

Further debates will have to take place at the public consultations facilitated by Parliament. With this in mind, the parliamentarians will have to weigh up the panel's recommendations along with any other party who makes use of the public consultation processes to follow.

### **Agbiz will monitor the process closely, seek mandates and make inputs wherever possible**

Agbiz monitors the *Government Gazette* on a weekly basis for draft policy or legislation, is represented in all four chambers of Nedlac and is well positioned to make inputs into the parliamentary process. If and when the opportunity arises for inputs to be made, Agbiz will be at the forefront of engagements. In the meantime, we will study the report closely and obtain mandates in preparation for any opportunity which may arise to influence this important area of policy. As thought leaders, we are well positioned to make a meaningful contribution and as such it is necessary to explore the merits of each and every proposal in sufficient detail.