

New policies and laws on redistribution and communal land being drafted.

The Department of Agricultural, Land Reform and Rural Development (DALRRD) is in the process of drafting new policies which will be followed by legislation to regulate communal land tenure as well as redistribution.

A seminar was hosted by DALRRD in Kempton Park on 23 February 2023. Stakeholders and an expert panel were invited to discuss a concept policy on communal land and redistribution. Agbiz's Annelize Crosby participated in the panel discussion. The Department stated that it required assistance and guidance on how to balance divergent positions and recommendations on communal land and redistribution when developing legislation, without deviating from the constitutional values of the supremacy of the Constitution and the rule of law.

Communal land

In respect of communal land, a Communal Land Bill is currently being developed that mainly provides for the following:

- the transfer of communal land held in trust by the State and the Ingonyama Trust to communities and community members occupying such land.
- the registration of communal land.
- the administration of communal land.
- community rules.
- dispute resolution mechanisms; and
- matters incidental to the above and other provisions.

In terms of the concept document, the State has undertaken to divest itself of communal land it holds in trust for communities. In terms of registration of rights, the following options are being considered:

- in respect of outer boundaries, the land must be registered in the name of traditional councils or in the name of the community as a juristic person.
- in respect of subdivided portions for residential or business purposes, the individual stands be registered in ownership/freehold in the names of those already occupying them OR customary land tenure right or some form of land tenure right falling short of freehold.

During the panel discussion concerns were raised about the proposal to register the outer boundaries in the name of a traditional council or community property association.

Agbiz, in its presentation stated that the organization believes that the ultimate aim of the land reform programme is to restore dignity, and a crucial element of dignity is the ability to work, to provide for yourself and provide for your family. As such, the security of tenure to which communal occupiers are entitled must result in the creation of wealth.

Since agriculture is the dominant economic activity in most communal areas, the chosen tenure arrangements must empower occupiers to use their right in land as the basis for prosperous and sustainable agricultural enterprises. Secure tenure rights in communal areas that are conducive to economic development holds is key to the growth of the agro-food sector and continued national food security. Certain communal areas contain some of South Africa's last underutilized high value agricultural land.

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It is therefore imperative that tenure arrangements for communal occupiers are conducive to agricultural investments.

Redistribution

The concept document does not deal with redistribution in much detail. It does provide that a Land Redistribution Bill that is being developed provides for the following:

- land acquisition including through land expropriation.
- land acquisition and redistribution principles.
- land acquisition and development plans.
- the establishment and maintenance of a register of public and private agricultural land;
- the declaration of present ownership of private agricultural land.
- the submission of information on public agricultural land
- beneficiary identification and selection.
- the regulation on ownership of agricultural land by foreign persons.
- the forfeiture of unlawfully acquired agricultural land.

Agbiz, in its presentation, referred to the 2017 draft Redistribution Bill which formed part of the High-Level Panel on Key Legislation's report. This draft Bill provides for area-based planning, beneficiary selection, subdivision, post settlement support and alternative dispute resolution. Agbiz also mentioned the potential role of the blended finance policy and the proposed Agricultural Development and Land Reform Agency in redistribution. The latest land transfer statistics as set out in a recent article by Wandile Sihlobo and Prof Johan Kirsten were shared with DALRRD. Agbiz cautioned against re-opening the debate on land ceilings and restrictions on foreign ownership and has made previously done research done on the potential impacts of land ceilings with the Department.

There will be further consultations once the drafting of the Bills has been finalized.