

Legislation that drives and influences agricultural development

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For today...

- 1. Expropriation Bill;*
- 2. Section 25 Amendment;*
- 3. National Policy on Comprehensive Producer Development Support (NPCPDS);*
- 4. Blended finance;*
- 5. Allocation of state land;*
- 6. Land donations & beneficiary selection policies;*
- 7. Communal land tenure;*
- 8. Agricultural water use;*

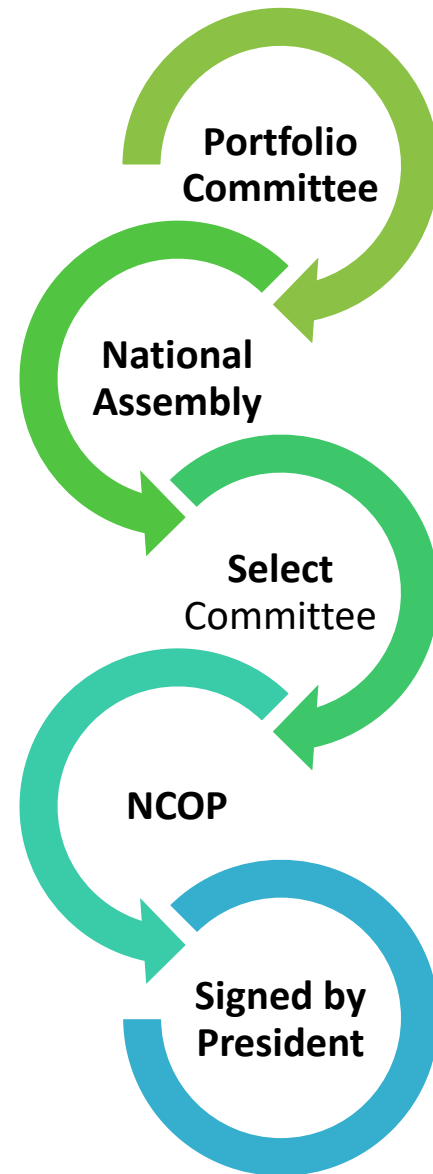
1. Expropriation Bill

Introduction

- Why the hype, why now?
- What is the Bill's purpose, do we need this Bill?
- Can the state now expropriate land?
- Are there any checks and balances?
- Will compensation be paid?
- What impact will this have on land values and investor confidence?
- What risk does it pose for land owners / bond holders?

1. Expropriation Bill

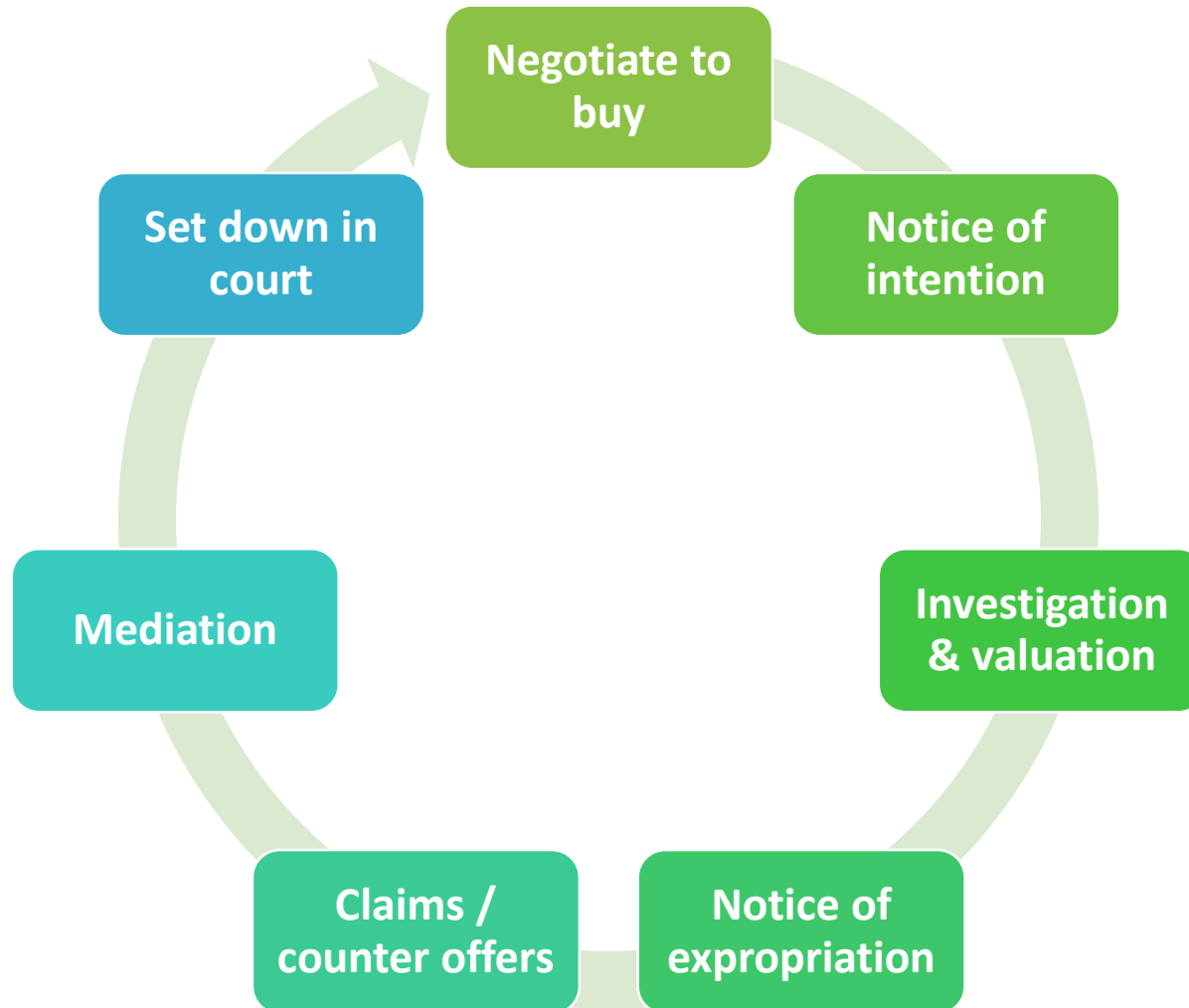
- Land can already be expropriated; but
- New legislation is needed to guide the process & calculation of compensation;
- Process matters = 'checks & balances' NB to keep expropriation a last resort—
 - Expropriation should never be easier than purchasing property.



Compensation

- Compensation must be **just & equitable**, reflecting a **balance** between the individual & the collective's interest taking **all relevant circumstances** into consideration; but
- A **court may** deem it just and equitable for **land** expropriated in the **public interest** to be expropriated at **nil compensation**:
 - Successful labour tenant claims;
 - Speculation (no intention to use or develop);
 - Abandoned (fail to exercise control);
 - SOE's land where not needed for other purposes;
 - Where value of past subsidies in acquisition and capital improvement of property exceed current market value;
 - Where land poses a public health or safety threat.

Process



Possible impacts

- State does not fix compensation = must be agreement or court order;
- ‘nil compensation’ not automatic – simply a consideration that must be weighted against all relevant circumstances;
- Courts unlikely to award ‘nil’ compensation; but
- Offers made for nil compensation and the onus is on owner / bond holder to go to court;
- Listed properties = will likely get compensation but may need to litigate to get just and equitable compensation;
- Mortgage bonds?

Impact of expropriation will depend on how often it is used, which may depend on the success of voluntary land reform initiatives.

2. Constitutional Amendment Bill

Still necessary?

- Purpose: “make explicit what is implicit” - truly necessary?;
- Nil compensation already possible in theory, but only in extreme circumstances – this is unlikely to change;
- Expropriation Bill not reliant on s25 amendment;

Agbiz remains steadfastly opposed to an amendment as it is unnecessary and can harm investor confidence.

Process:

- 18th Constitutional Amendment Bill published on 13th December 2019 – written inputs submitted end of January;
- Provincial & national hearings interrupted by COVID-19 lockdown;
- The Bill lapsed and had to be re-tabled – the consultation process restarted in provinces, national to follow.

3. NPCPDS

- Framework policy;
- Break down the 'silo approach' to producer support seen in the past;
- Dual focus: support subsistence farmers & commercialise emerging farmers through key, market orientated interventions, including:
 - Producer register (prevent double-dipping);
 - E-vouchers for subsistence producers;
 - Blended finance for market-orientated smallholders;
 - PPPs with commodity organisations & agribusinesses for extension services, training & support.

4. Blended finance

- Production finance & land acquisitions to be based on a Government grant coupled to a loan;
- Purpose: commercialise emerging, black producers;
- More funding + reduces dependency on the state for emerging farmers;
- Open, competitive system developed at Nedlac:
 - Open to all interested financial institutions (open & competitive);
 - Single framework policy for commercial banks, land bank, agribusinesses etc.
 - Beneficiary selection, gov grant component, processes and evaluation form Gov's side etc. uniform for all participating financial institutions – can tailor their own financing products.
- R1 billion to be budgeted over next 3 years;

**Above R10m
turnover**

Large
Scale

**Only eligible for blended
finance as part of disaster
relief**

**R1m – R10m
turnover**

Medium
Scale

**Blended finance, means
test to be applied (mostly
for large, community
projects)**

**R50k – R1m
turnover**

Smallholder
Producers

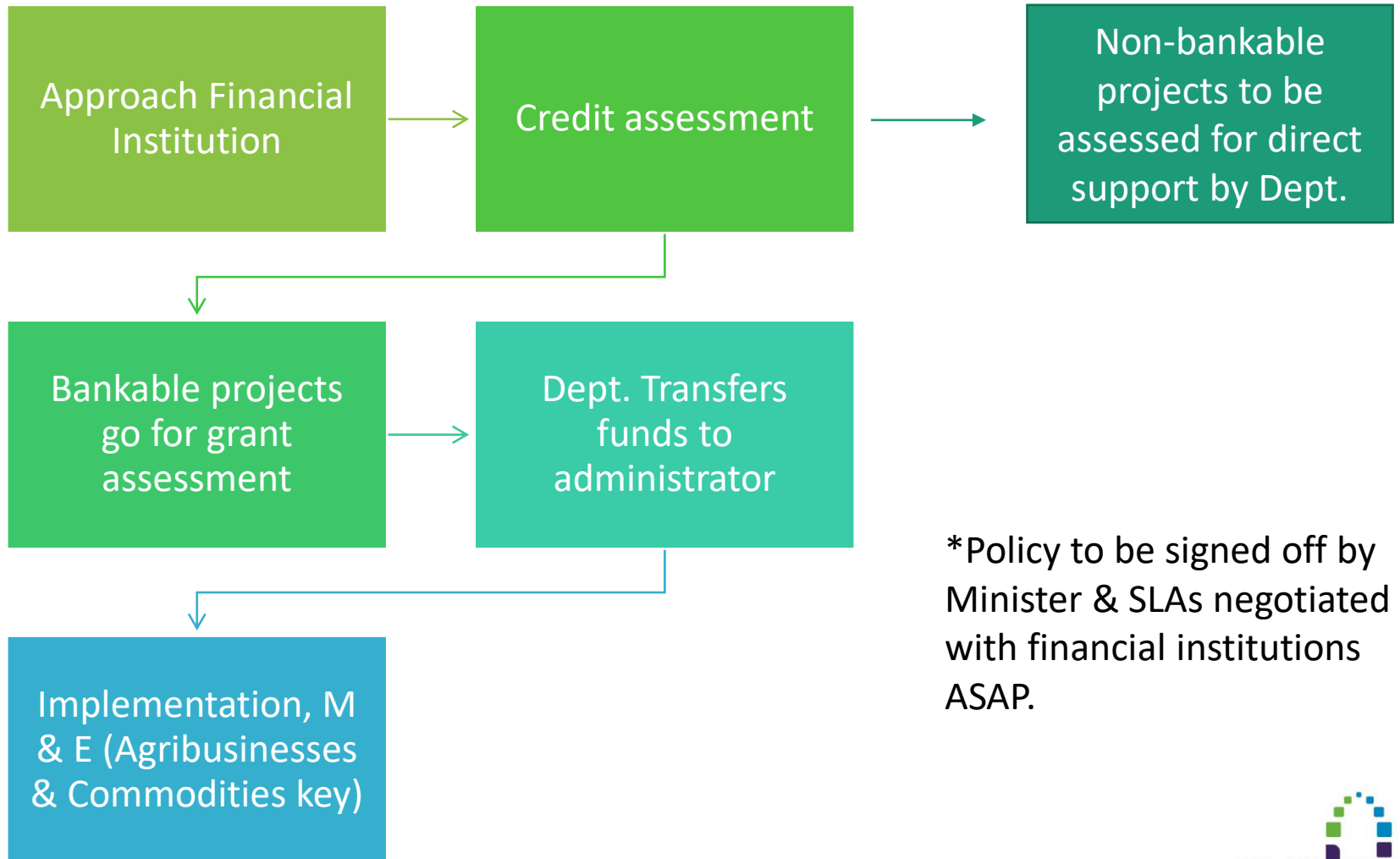
**Blended finance, sliding
scale of Gov grant v loan
finance applied**

R0 – 50k turnover

*Household/
Subsistence
Producers*

100% grant funding

Process flow



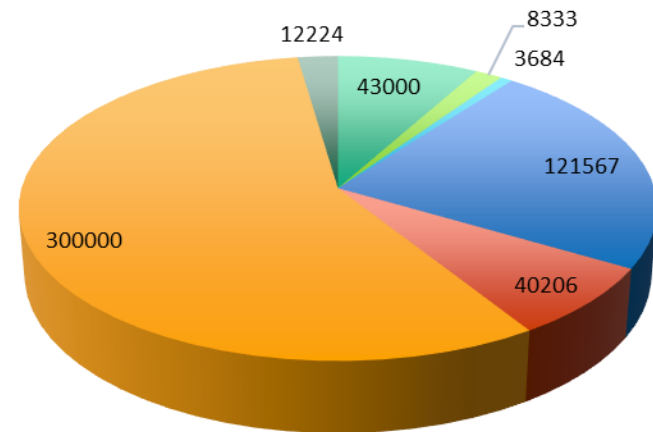
*Policy to be signed off by Minister & SLAs negotiated with financial institutions ASAP.

Contentious issues	Latest
Production finance v land acquisition	Both included, PLAS policy amended to include blended finance for ‘missing middle’ and land reform funds to be allocated
Leasehold v ownership	<ul style="list-style-type: none"> • Production loans – beneficiary of PLAS or living on communal land will receive a registered, long term lease; • Where blended finance is used to acquire land = beneficiary to receive title deed
Land used as security	<ul style="list-style-type: none"> • Long term leases – right to cession registered in the deed’s office – financial institution shall have a ‘stepping-in’ right in case of default; • Can also apply to first loss funds (i.e. Khula fund) that accounts for 50% of property’s value as collateral
Inclusion of joint ventures	<p>Joint ventures eligible, but:</p> <ul style="list-style-type: none"> • Blended finance must be used to finance black beneficiary’s share; • Minimum 51% ownership; • Option to buy out partner.

5. Allocation of state land

- 700 000 hectares of state land to be allocated for land redistribution;
- Coupled with blended finance, it can contribute to inclusive growth in the sector;
- State land leased, not transferred to beneficiaries; and
- Questions asked about land being re-allocated. Should not perpetuate tenure insecurity.

2020/21 Target: Allocation of State Land Ha's



■ Eastern Cape ■ Free State ■ Kwazulu-Natal ■ Limpopo
■ Mpumalanga ■ North West ■ Northern Cape

6. New land reform policies

Beneficiary selection & land allocation

- Comments submitted;
- Good step forward; but
- No clarity as to land holding entity (leasehold v ownership);
- Institutional arrangements.

Land donations

- Comments submitted
- No incentives provided for:
- Increased BBBEE recognition;
- Blended finance access;
- Donations tax exemption;
- Admin processes for transfer.

7. Communal land rights

- The '3rd leg' of land reform still lagging behind;
- Communal tenure still regulated by legislation dating back to 1936 and legally insecure;
- Communal areas still rely on vague and informal systems – recognition & development of African, customary property laws required;
- Blended finance will assist producers who cannot use their land as collateral but there is no substitute for treating the root cause of these farmers' challenges;

This is a crucial piece of the puzzle missing for agricultural development

8 Agricultural water use

Infrastructure

- Presidential Infrastructure Coordinating Committee (PICC) has taken charge of key projects as part of the economic recovery plans;
- In July, the PICC published a list of 50 projects to the value of R340 billion for immediate implementation;
- These are already budgeted for but were bogged down at provincial level – PICC to take over implementation;
- 11 Water projects amongst the list Gazetted.

Policy issues

The Water & Sanitation Master Plan has been finalised but there are some contentious issues that remain unresolved:

- Future of Existing Lawful Use (ELU);
- Prohibition on trading of rights;
- Unlawful water use;
- Transformation & Water Allocation Reform;
- Water Price Strategy v 'Economic Regulator' for water

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF PUBLIC WORKS AND INFRASTRUCTURE

NO. 812

24 JULY 2020

Presidential Infrastructure Coordinating Commission Council**Strategic Integrated Projects**

In terms of Section 8(1)(a) read with Section 7(1) of the Infrastructure Development Act, as amended, 2014 (Act no. 23 of 2014) (the Act), the Presidential Infrastructure Coordinating Commission hereby designates the following Strategic Integrated Projects (SIPs):

1. Strategic Integrated Project No 19: Water and Sanitation

SIP 19: SUB-PROJECTS

- a. Vaal River System including Phase 2 of the Lesotho Highlands Water Project: Gauteng
- b. Phase 2A of the Mokolo Crocodile River (West) Augmentation Project: Limpopo
- c. uMkhomazi Water Project: KwaZulu Natal
- d. Olifants River Water Resource Development Project - Phase 2: Limpopo
- e. Vaal-Gamagara: Northern Cape
- f. Mzimvubu Water Project: Eastern Cape
- g. Rehabilitation of the Vaalharts-Taung Irrigation Scheme: Northern Cape & North West
- h. Groot Letaba River Water Development Project - Nwamitwa Dam: Limpopo
- i. Berg River Voëlvlei Augmentation Scheme: Western Cape
- j. Rustfontein Water Treatment Works: Free State
- k. Orange-Riet Canal Increase of Bulk Raw Water Supply: Free State

Water policy issues

- Master plan finalised, but many of the proposals may not enjoy universal support; i.e.
 - Future of ELU;
 - ‘Use-it or lose-it’ approach to water rights;
 - Trading of water entitlements;
- There is also no ‘road-map’ for transformation in the water space;
- There is currently no ‘social compact’ or strategy for agricultural water use which all stakeholders buy into;
- The current situation is not desirable as stakeholders are meeting each other in court – i.e. trading of water rights

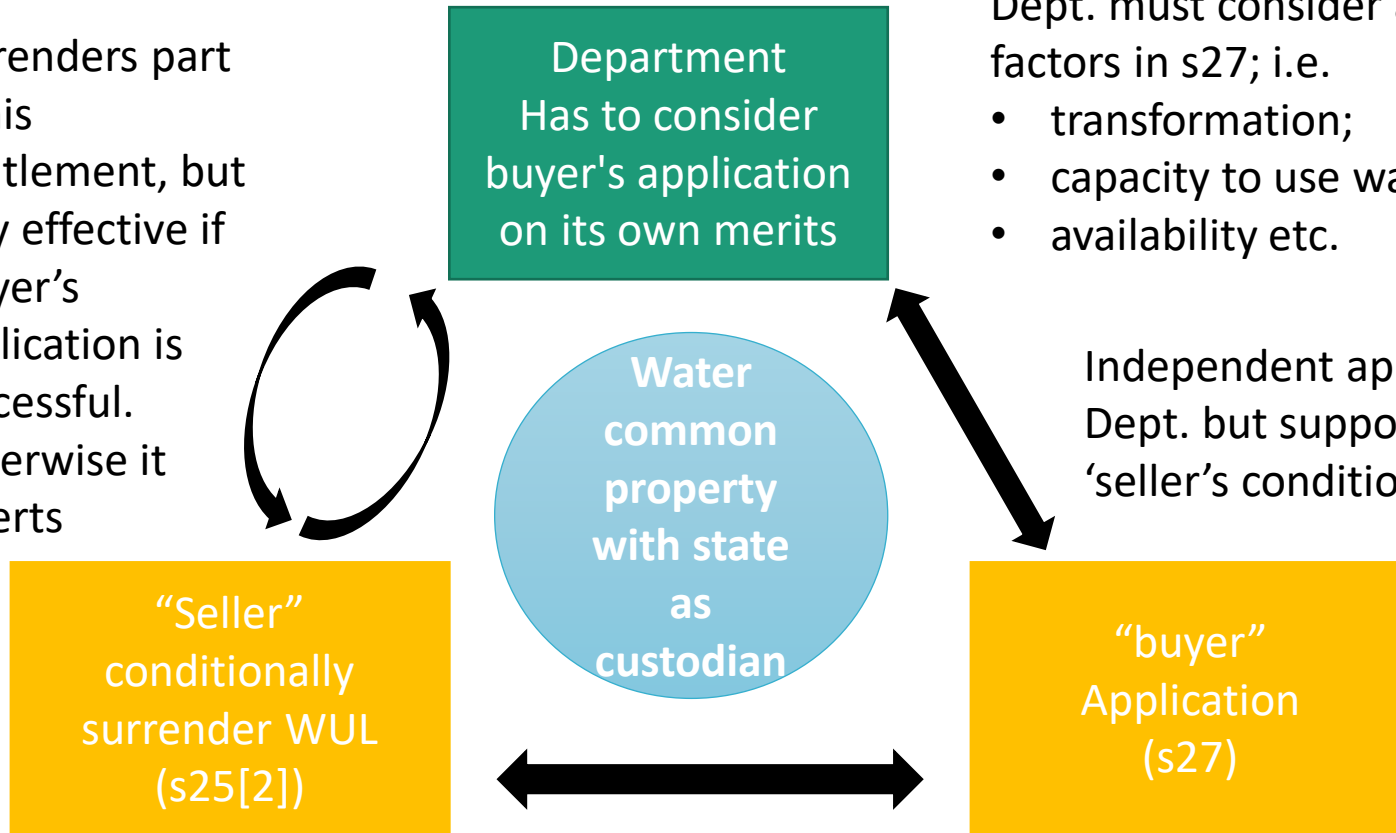
Water

Prohibition of water trading (SAAWUA & Others v Dept.)

- Water User Associations took the Department to court over their refusal to approve a WUL where another person had conditionally surrendered their entitlement (for compensation) in favour of another person's application;
- Department did not approve application;
- On Appeal: section 25(2) of the NWA does not permit one to 'sell' water entitlements;
- This would lead to the privatisation of a national resource & deprive the Minister of her role as the custodian to ensure that water is equitably distributed.

Water

Surrenders part of his entitlement, but only effective if 'buyer's application is successful. Otherwise it reverts



Dept. must consider all factors in s27; i.e.

- transformation;
- capacity to use water;
- availability etc.

Independent application to Dept. but supported by 'seller's conditional surrender

Cannot 'sell' water, but 'buyer' pays 'seller' to surrender part his entitlement

Conclusion & summary

Challenges

- Communal Land Tenure;
- Road map for agricultural water use;
- Land donations policy.

Enablers

- Blended finance;
- NPCPDS;
- Beneficiary Selection Policy;
- Allocation of state land;
- Water infrastructure.

Red Herrings

- Expropriation Bill;
- Section 25 Amendment? – Opposed by Agbiz but responsible reporting key

Thank you