

Land Reform Status Update

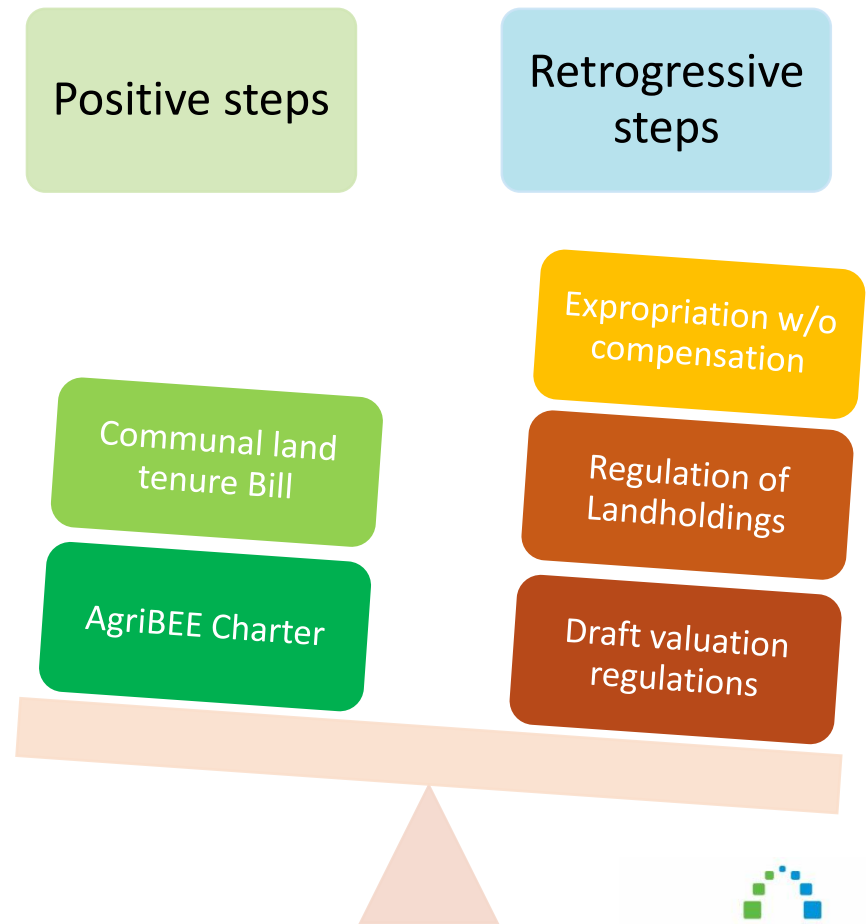
Agbiz Congress 2018

Theo Boshoff
















Current policy environment

Many land reform policy proposals but no clear direction

- Inherent tension between policies based on expanding property rights (AgriBEE Charter, blended finance models & Communal Land Tenure Bill); and
- Those based on increased, centralised regulation (EWC & Regulation of Agricultural Landholdings Bill);
- Everything places on hold pending outcome of EWC debate – EWC can over-shadow everything else that is currently happening.



Status update on legislation...

	Published	Comments	Nedlac	Parliament	EWC proposal	Assented
Expropriation Bill					Bill pending	X
Regulation of Agricultural landholdings Bill			X	X	Bill withdrawn from Nedlac pending outcome of EWC	X
Communal Land Tenure Bill			X	X	Bill Pending	X
Restitution of Land Rights Amendment Bill			N/A	X	Bill Pending	X
AgriBEE Charter			N/A	N/A	Not effected	
Property Valuation Regulations			N/A	N/A	Final Regulations pending	X

*Expropriation Without
Compensation process...*

ANC resolution

- ANC resolution:
 - Amend the constitution to allow for expropriation without compensation; but
 - Proviso: must increase agricultural production, food security and not harm other sectors of the economy;
 - Must take place within the law, 'smash and grabs' will not be allowed.

Parliamentary process

- National assembly voted in favour of reviewing section 25 on the 27th of February;
- Constitutional Review Committee;

Mandate:

- Is section 25 a barrier to achieve land reform?
- If so, what amendments are needed?
- *NB! – Nett effect – debate has moved away from a 'closed-door' debate within a political party towards an open debate on a public platform*
- Strategic move to provide certainty?
- Inclusive process – more likely to accept outcome?

Parliamentary process

- Written submissions are due by the 15th of June;
- Provincial consultations = 27th of June until the 4th of August;
- Agbiz compiling a comprehensive input, bolstered by quantitative modelling in collaboration with BFAP;
- Agbiz is already involved in a number of discussions on various platforms to influence the outcome of the debate.

Agbiz participation to date;

- Strategic Dialog Group (ANC)
 - Called on Agbiz to facilitate sessions with all the relevant role-players in the agricultural and banking sectors;
 - Task team identified 4 key proposals to get implement an accelerated but sustainable land reform programme – comprehensive document prepared;
 - Process overtaken by CRC but dialog with SDG ongoing.
- GIBS Land Dialog;
 - Led by Profs Quinton Johnson (NMU) & Nick Binedell (GIBS);
 - Regarded by Co-chair of the CRC, Mr Vincent Smith & Prof Mathole Motshekga as the first engagement in the process;
 - Dr Purchase presented – inputs very well received;
 - Further engagement within a focus group of key participants.

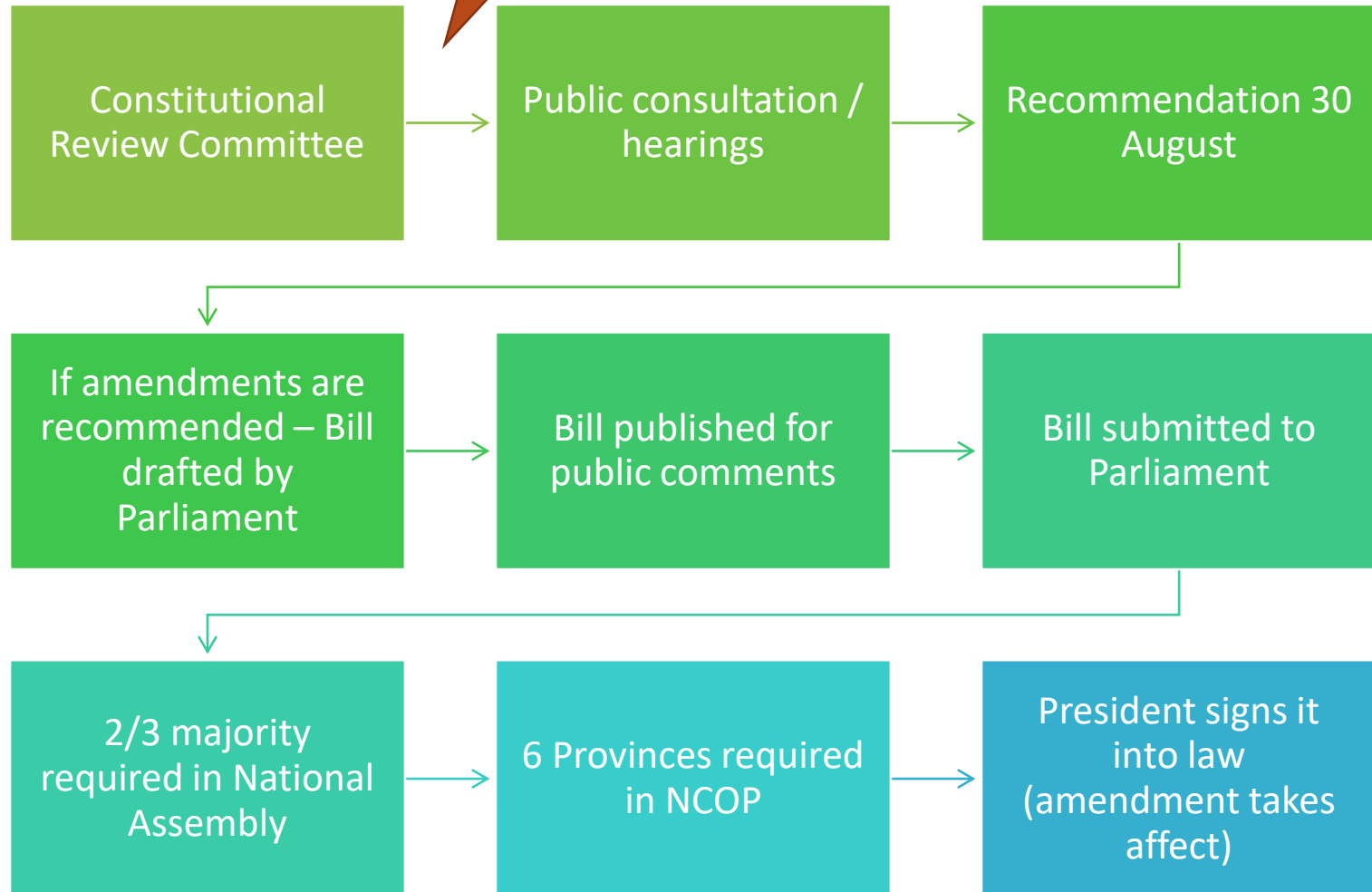
Agbiz participation to date;

- South African Reserve Bank (SARB);
- BER;
- BUSA membership;
- Various meetings of farmer's organisations;
- Werksmans;
- South African Property Owner's Association Congress; and
- Various media.



Process

Where
we are
now



So where are we headed?

What we think may happen...

Emerging position – ANC land indaba 19 & 20 May:

- No amendment to section 25 but amend the Expropriation Bill to allow EWC for the following purposes;
 - *Unused land, especially unused land held by public entities;*
 - *Abandoned buildings;*
 - *Land held for speculation; and*
 - *Land actively farmed by labour tenants where the landlord is absent.*
- ‘just & equitable’ formulation must first be tested & Expropriation Bill amended to influence outcome;
- Will use EWC of underutilised land as one of the instruments to affect land reform, but not only one;
- Possible link between EWC and land over the proposed ‘ceilings’?
- Land reform to move to the Presidency

What does this mean?

‘testing’ the current provisions:

- Positive step to test the bounds of the current formulation; but
- Parties affected by the 4 ‘categories’ could be in for a difficult time in the coming months;
- ‘testing’ = prolonged and expensive litigation.

Amending Constitution v Amending Expropriation Bill

- Nett effect for identified properties may be the same;
- Only difference lies in the recourse one has to challenge the Bill;

*Will an amended Expropriation Bill pass
Constitutional muster?*

EWC Constitutional?

- More complex than it sounds...
- Just because a provision differs from the Constitution, it does not mean that it is unconstitutional;
- S36 - Any right can be limited if reasonable and justifiable to do so;
- Proportionality test;
“25 [8] No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform...”
- Nhlabathi v Fick (2003) LCC;
- EWC allowed, but very unique circumstances;
- Worker’s rights to dignity v no real effect on owner;

Too early to early to tell whether these amendments will pass constitutional muster

What we don't know...

- What is regarded as 'unused'
 - Land bought for expansions but not developed yet?
 - Grazing or planted land being 'rested'?
 - Recreational farms?
 - *Bona fide* game farming or eco-tourism?
 - Non-food crops (wool, forestry, mohair etc.) v food security NB!
- Influence of bonded/unbonded property?
- Long-term economic effect of EWC on sector and economy at large – developing models & projections with BFAP through a scenario planning approach;

Agbiz inputs...

Land Reform imperative

Lack of Extension of Property Rights our biggest failure:

- Communal areas
- Redistribution of commercial farmland
- State land, including townships
- Irrespective of how land is acquired or transferred, legislative gaps must be addressed in all circumstances

Issue at hand is a Property Rights issue

- Property rights go hand in hand with economic growth (2017 International Property Rights Index (IPRI));
- Property rights implicit in individual liberty and economic freedom.

Alternative proposals

Different mechanisms needed to address urban, rural-social and rural commercial land reform

- The social housing need is very pressing;
- Well located land is expensive; but
- EWC not needed to make it affordable – use proactive spatial planning.

Rural land

- Split budget between pro-poor policies in rural areas and transforming the commercial sector;
 - Revamp SLAG for farm workers, prioritise labour tenants etc.
 - Incentivise PPPs to transform the commercial sector.

What is needed, is a budgetary realignment

Redistribute unused state land

- Probably easiest route to effect redistribution for the rural-social need (where the beneficiaries need housing, but are not aspirant commercial farmers);
- Much unutilised state land – minimal cost

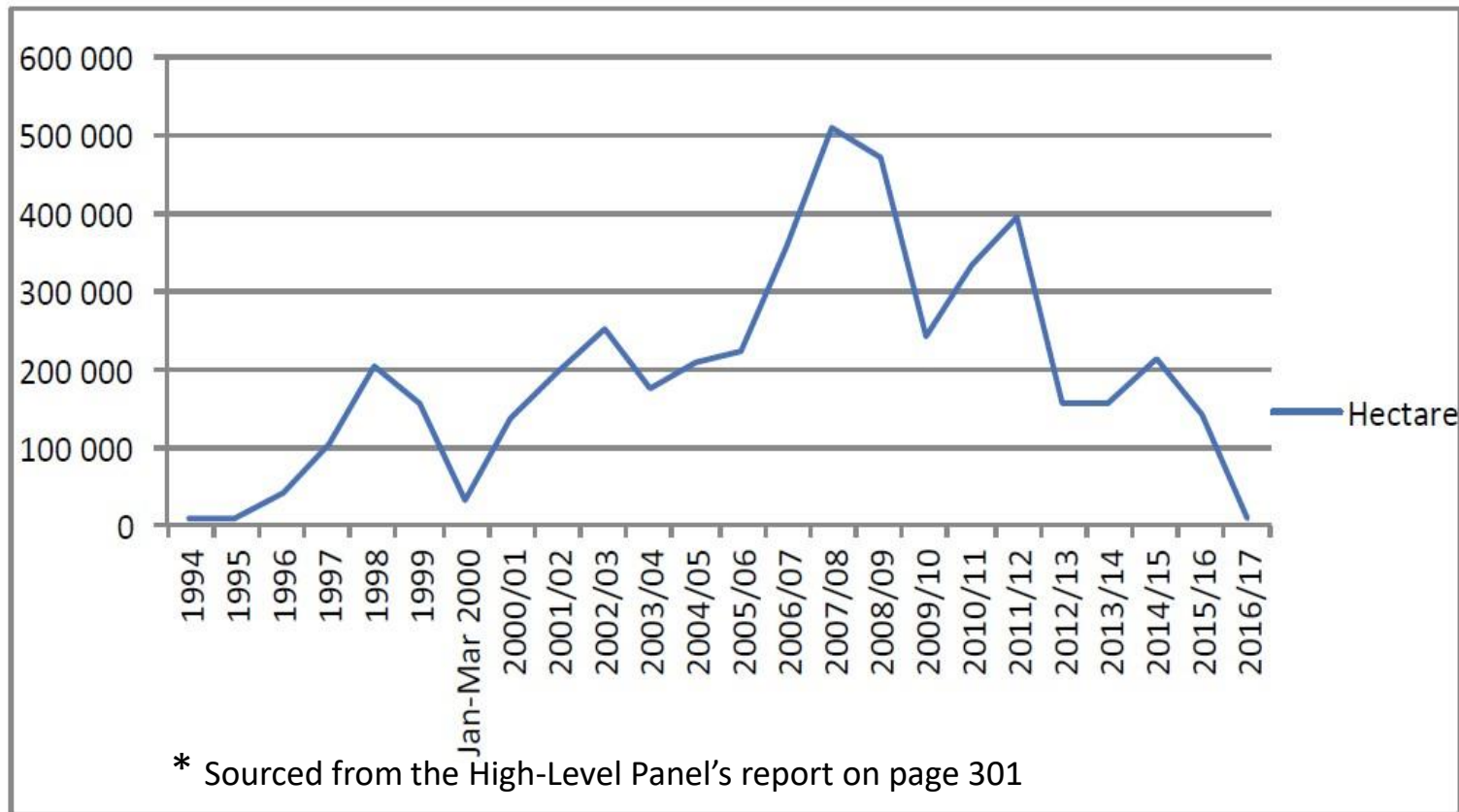
Agbiz realizes that a viable alternative to RALHP&B needs to be found and wishes to propose an additional land redistribution model/programme for smallholder farmer development around the immediate vicinity of rural towns of South Africa, specifically on municipal and state land around these towns, but also on strategically acquired adjacent land to develop a so-called smallholder agricultural zone around such towns. These concentrated smallholder zones tie up with the Agri-parks concept, as well as with the ability of government and private sector to provide cost-effective and viable support services. Unless there is substantial and

- Khaya Lam project by FMF
- Operation Phakisa recommendation as well.

Commercial farmland redistribution

- Pro-active Land Acquisition Strategy (PLAS)

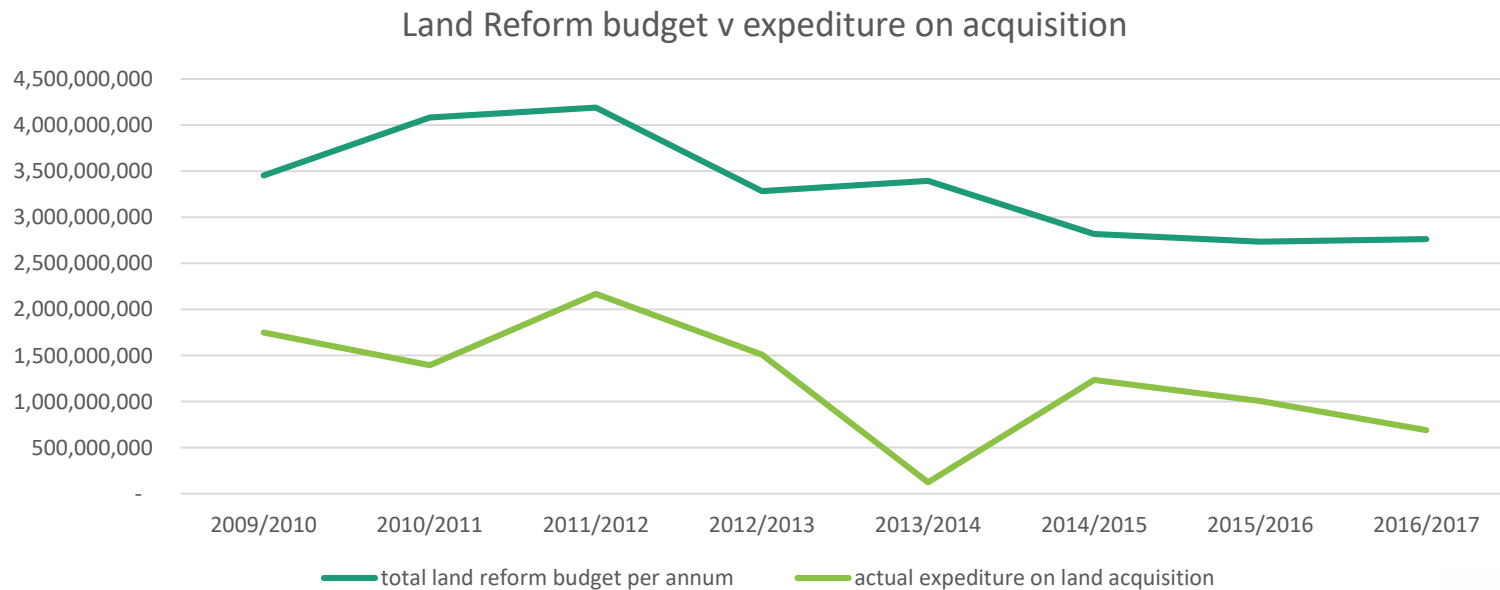
Figure 3.1: Amount of land transferred through land redistribution, in hectares per year



Is Land Reform Affordable?

Budgetary realignment urgently needed:

- Need to spend full budget on land acquisition; and
- Reserve part of budget for blended finance models



BASA/Agbiz Proposal: Commercial Financing for NDP Model on Land Reform

27 February 2015

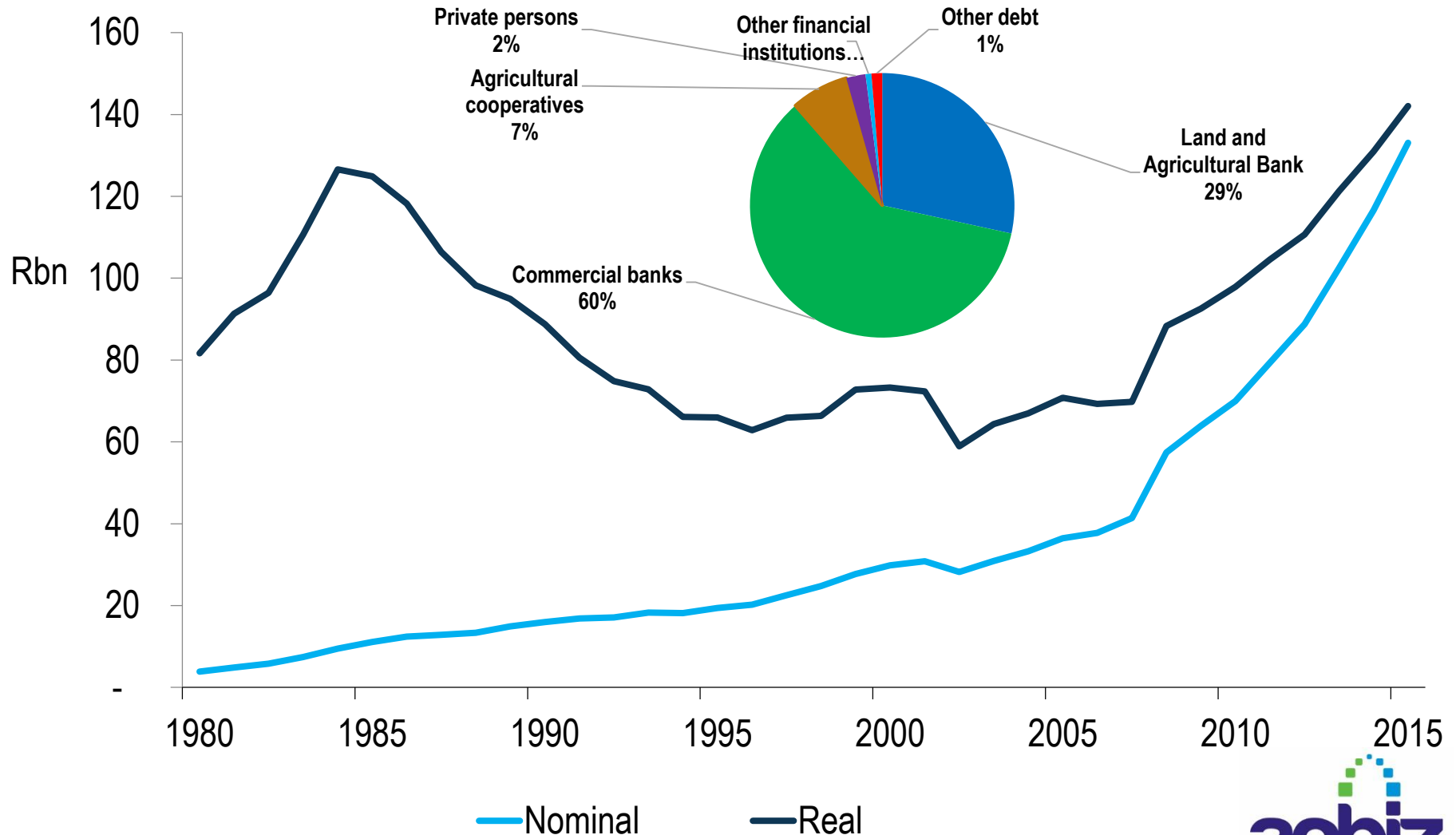
- BASA/Agbiz Commercial Financing for Land Reform;
- Use public sector money to leverage private capital through interest subsidies etc.
- **NDP goal – accelerate land reform without distorting land markets or business confidence!**

SONA 2018:

“We make a special call to financial institutions to be our partners in mobilising resources to accelerate the land redistribution programme as increased investment will be needed in this sector.”

Risk to collateral, “expropriation without compensation”

- Total agriculture farm debt

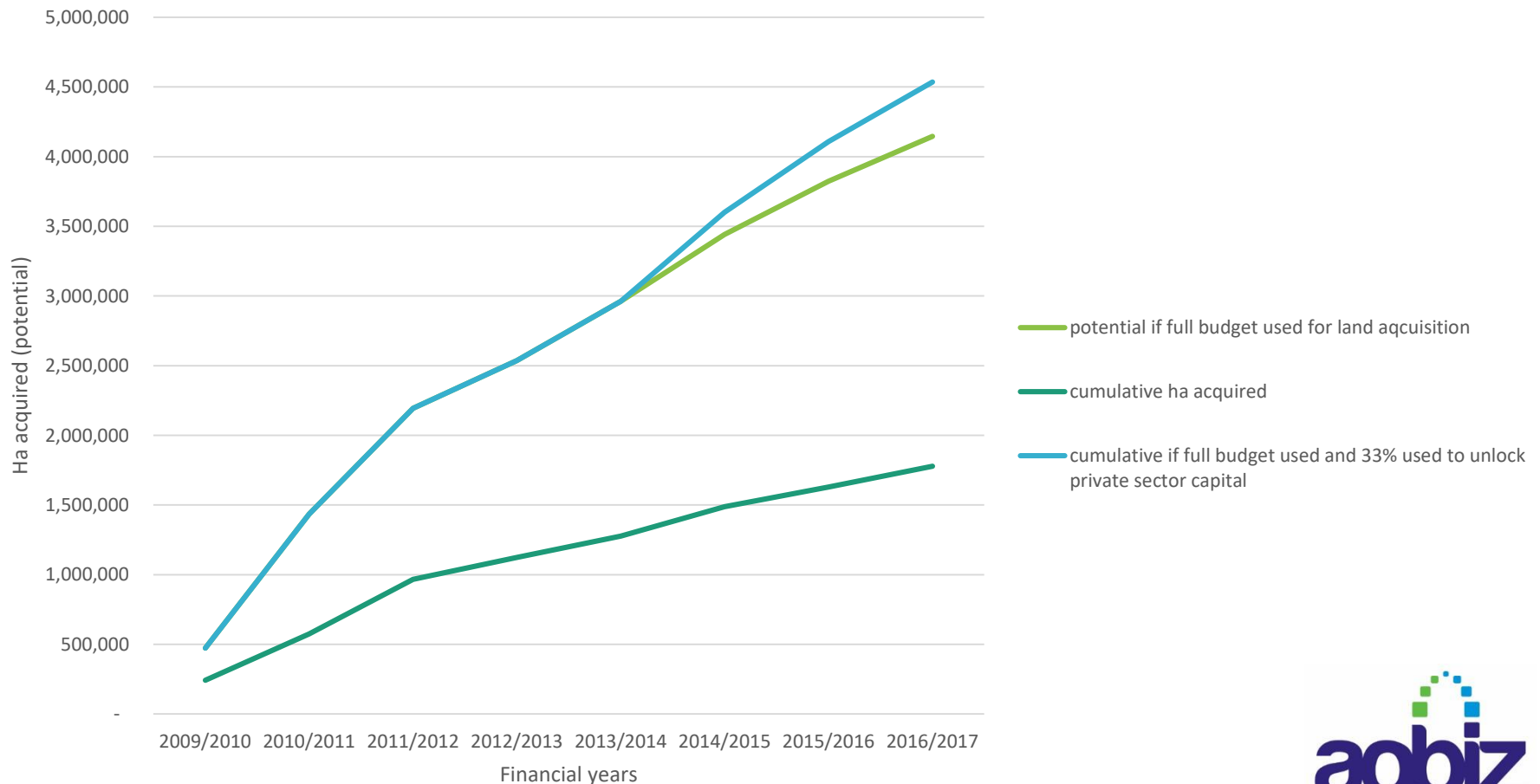


Source: DAFF, Agbiz Research

Is Land Reform Affordable?

4,5 million hectares could have been acquired since 2009 v the 1,75 that was

Cumulative Ha acquired 2009 - 2017 v potential with budgetary realignment



Evidence-based decision making

Short-term

- Get the experts from state & private sector together to thrash out the land audit and arrive at agreed upon figures.

Medium-term

- Move Deed's Office to a digital platform;
- Overlay Deed's information with water rights, restitution & labour tenant claims, mining rights etc.

= publicly accessible, integrated e-cadastre for informed decision making

Deficiencies in the legislative framework

Build on High-Level Panel recommendation for new land reform legislation

- Principles:
 - Once-empowered always-empowered, 3 arms work towards a common goal, freedom association & choice of governing entity.
- Legislate redistribution criteria:
 - Legislate beneficiary selection, land identification, etc.
- Institutional arrangements:
 - Merge DAFF & DRDLR, Restitution Commission separate entity, empower DLRCs & Land Reform 'Ombudsman'.
- Communal land NB! – democratic checks & balances infused with custom.

Incorporate land beneficiaries into formal economy

- Partnership models;
- Blended development finance;
- Rural development agency;
- PPPs for multi-plural extension, training and support;
- Encourage commodity-specific initiatives;
- Facilitate market access;
- Climate change adaptation; and
- Reduce regulatory burden for small businesses.

Restoration of dignity

- Agbiz input primarily viewed from a commercial perspective – creation of successful and viable new entrants;
- This is only one part of the story;
- The restoration of dignity is key to the debate –
 - but how does one do this practically?
- Agbiz's view – conditional ownership the best method to restore dignity;
- Property rights not just about money or assets;
- Also about self-determination, economic freedom and pride.

“Uncertainty creates opportunity”

- There may be no amendment to the Constitution, but
- Very clear that change must come soon – pressure not merely political, legitimate expectations have gone unfulfilled for a very long time;
- Land reform policy space pried wide open;
- Opportunity to drive own transformation agenda?
- Partnerships, BBBEE deals etc. has 2 distinct advantages;
 1. Set the terms for the deals; and
 2. Chose own partner.

*“If you’re not at the table, then
you’re on the menu”**

**BUSA President Jabu Mabuza*

Thank you!

www.agbiz.co.za

www.thegreenkeeper.co.za

theo@agbiz.co.za

