



The Banking Association South Africa



Presentation M&G
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BASA POSITION ON EWC



Fully supportive of State's initiatives to rectify past injustices and to correct land ownership patterns (essential for SA Inc's. sustainability) but EWC should benefit the poor, not increase their plight (job losses, food insecurity).

We are not supportive of EWC outside of the confines of Section 25 of our Constitution.

We are of the view that Section 25 of the Constitution does not need to be changed. The provisions of Section 25(8), read with section 36(1) are however applicable if EWC is to meet constitutional muster.

BASA position premised on views of legal experts including amongst others Motlanthe High-level Panel Report, former concourt judges Moseneke/Sachs - Section 25 is transformative in nature, provides caters for EWC under certain circumstances and places an obligation on the State to increase access to the country's resources)

Transparent formula for determining "just and equitable" compensation should be contained within the Expropriation Bill ("just and equitable" compensation could range from R nil to above market value).



BASA POSITION ON EWC (CONT.)



Prosperity and property rights are inextricably linked. In many countries, insecure property rights hinder economic development and limit economic opportunities.

Property rights are the basis of exchange and the extension of ownership to capital goods provides the basis for the development of financial markets, which is essential for economic growth and development.

Related legislation which dilutes property rights, with a resultant negative impact on property values is also not a holistic, sustainable solution for:



Owners



Lenders



Food Security



Property Market

BASA remains committed to playing a leading role in working with key stakeholders, including government in finding all-inclusive solutions to economic challenges so as to create a better life for all South Africans.

Given the magnitude of the challenge, we do not believe that either the State or the private sector can go it alone. A meaningful partnership is required and by necessity this will need to include all key agricultural stakeholders, including amongst others, land owners, agricultural associations, communities, the state and financiers.

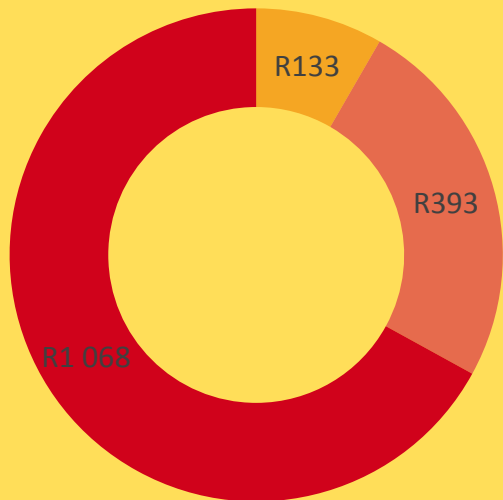


Banks Total Exposure

R 1 594 Billion (June 2018)

Property is about long-term investor confidence.

Sector Exposure*



Essential that land reform needs to occur in a manner that does not undermine property rights and/or property values, failing which it could cause systemic risk for landowners, lenders and the state alike, as:

- Banks place reliance on property as security for loans.

The Bank's Act 1990, & Regulation 225 thereto requires banks to annually value their assets (includes property) at market value

- In turn, Bank's Act aligned to global Regulatory framework (BASEL, G20).

A marked decrease in the value of properties (due to amended legislation/market uncertainty), could destabilise the banking sector and have a negative impact on the credit rating of the sector and the country.

■ Agriculture ■ Commercial & Industrial ■ Residential

* Billions, as of May 2018



WE EMPHASISE

Crisp and Definitive policy/legislative frameworks

The need for the state to create market certainty through crisp and definitive policy/legislative frameworks which are well communicated and that measures are put in place to prevent 'EWC property class 'creep' and/or the rash implementation of EWC.

EWC mandate confined to the Minister of Public Works and/or the President

Retention of a EWC mandate should be confined to the Minister of Public Works and/or the President as in excess of 200 State entities that have the power to expropriate.

“Land Indaba”

We propose that a “land indaba” be held, once the State has a clear perspective of what it needs to do in respect of land reform and how partnerships can be created to achieve success.



PROPOSALS

We propose that some of the criteria/factors to be considered when implementing all land reform legislation include:



Real empowerment

- Agricultural land reform, including SME deals must be structured in a manner where there will be real empowerment, i.e. there must be an exit plan for strategic partners and a clear process whereby capacity is built to allow beneficiaries to be able to manage the business. The principles should preclude the situation whereby land is technically transferred to beneficiaries, but the former owner can continue business as usual by leasing back the land/business without some sort of succession plan.

Freedom of association

- The formation of a Communal Property Association or Traditional Council should never be a precondition to obtaining equitable access to land and opt out options should be available.
- Beneficiaries should retain the choice as to which (if any) strategic partner they wish to work with. Contracts with strategic partners should never be a prerequisite to obtaining land on an equitable basis.



AGRICULTURE SPECIFIC



Land reform should not undermine Black beneficiaries.

Transfer of land (and the productive use thereof) should be the primary purpose of land reform. Beneficiaries should thereafter be supported and empowered to manage it in the way they deem fit and use it for commercial purposes, subsistence purposes or a combination of these two uses (needs to include the need for post settlement support, upskilling and mentorship).

Once land has been transferred, beneficiaries to be assisted to make a success of their chosen enterprise. This should not preclude beneficiaries from making economic decisions about their properties and undue restrictions should not be placed on what they choose to do with the properties. The State should realise that the beneficiaries have been empowered and that it therefore cannot exercise control over all their future decisions.

Conversely, land owners, commercial farmers and agribusinesses should be incentivised to become involved in projects that empower previously disadvantaged individuals i.e. some acknowledgement that they have made their just contribution.

Any empowerment scheme should where possible include business plans, contracts, lease agreements etc. to guide the owner on how to ensure that the property becomes commercially viable.



AGRICULTURE SPECIFIC



There is currently a disjuncture between the farmer support efforts of the Department of Rural Development and Land Reform (DRDLR) and the Department of Agriculture, Forestry and Fisheries (DAFF) which has led to uncoordinated spending. DAFF and the DRDLR should be consolidated into a single, new government department but the Commission for the Restitution of Land Rights should be kept as a statutory commission separate from the consolidated Department.

Similarly, the functions, powers and composition of the District Land Reform Committees should be legislated.

A hybrid model that combines blended finance models (a public/private financing partnership), eg. the AgriBEE Code, using the current Constitutional provisions would be the most desirable route to follow and is recommended.

Holistic “Land Reform” legislation is proposed (one Act), as is the need for the Expropriation Bill to be finalised. This will require existing land reform and related legislation to be reviewed together with current policy frameworks.



AGRICULTURE SPECIFIC



Legislative criteria for beneficiary selection

The current criteria can serve as the basis. However, this must be contained in legislation, not merely policy.



Legislative criteria for selection of land

The criteria should be legislated, and the criteria contained in chapter 6 of the National Development Plan should be prioritised

The Banking Association proposes that a Land Reform Ombuds completely independent from the DRDLR/DAFF be established.

- An independent body is required that is accessible to land reform beneficiaries and interested parties who do not have sufficient means to have their grievances resolved in a court of law.
- Hear complaints and investigate grievances in any given area of the land reform programme, including non-performance by the State.



COMMUNAL LAND TENURE



**17 million (31%)
face tenure
insecurity in
communal
areas**

Recognized in Section 25(6) of Constitution:

“There is a fundamental correlation between vulnerable forms of tenure and the geography of spatial inequality & poverty that remains entrenched in South Africa” (High-Level Panel Report)

- Can't create generational wealth
- Limited access to finance
- Excluded from formal economy

Tenure insecurity also problematic for lenders' – especially infrastructure & term finance as reliance placed on property as security.

Separate private-public sector funding models will need to be developed for communal areas, small holders, restitution beneficiaries, regeneration of rural areas (includes Agri Parks). These could include the further division of on farm/off farm funding models (joint technical committee needs to be created).

Long-term leases instead of outright ownership is an option provided such leases are easily tradable and have automatic roll overs, which will attract a fair value to them. This could also be an alternative form of collateral.



**5/7 million
(9/10%) in
urban areas**

LAND RESTITUTION

Past & current progress is untenable for both claimants (social justice) & land owners (sterilizes property) alike:

35 Years to complete claims received up to end 1998

SOURCE: HIGH-LEVEL PANEL REPORT

709 Years
to complete land
restitution

**R54 billion needed to achieve NDP land reform target (source: DRDLR)
budget limitations an alternative legislative framework is required.**

- Unproductive/unused land, including State owned land should be prioritised for redistribution. AgriSA estimates that government owns +- 4 000 farms. These are mostly under-utilised and represent “low hanging fruit” for land reform purposes.
- There are numerous redistributed farms that are also not optimally utilised and properties where there are absent land owners.
- Within the urban context abandoned properties represent “low hanging fruit” opportunities.

LAND AUDIT

We are supportive of the need for a national land audit to be undertaken



Gender

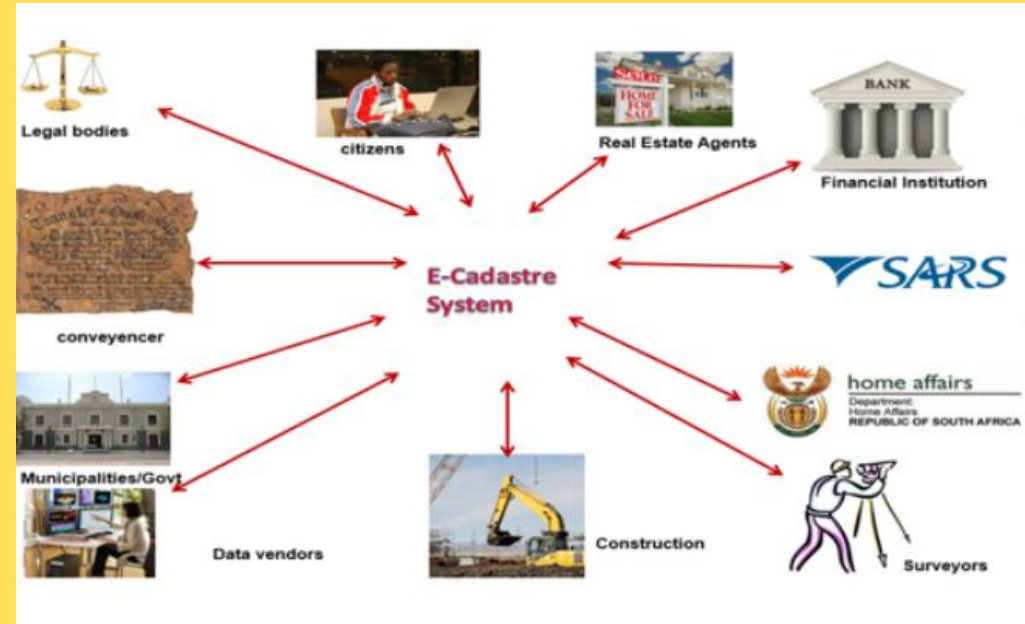


Race



Audit will also assist with the identification of unused and unproductive land

We recommend that the scope of information should be expanded to include all publicly accessible and recorded land-based information such as land use capability classification and potential, water use authorisations and land or labour tenant claims etc.



- This information should be incorporated into a single, digital interface designed to house all land-based information.
- Although different state entities may remain data custodians, a bespoke single, digital point of entry to obtain the information is required within the Deeds Registry.

Key private sector stakeholders , including lenders, prepared to assist the State in this regard.






AGRICULTURE SPECIFIC

The High Level Panel Report, Operation Phakisa and the NDP provide well researched potential solutions for successful land reform and that we believe government should scrutinise these reports.

There are a number of countries who successfully implemented land and agrarian reform which we suggest holds some interesting insights for SA.

Key messages:

- Land reform in Brazil is achieved through both market-led and state-led approaches.
 - Expropriation is limited to land which does not fulfil a social function (unproductive land).
 - Land reform beneficiaries receive title deeds to their land.
 - Government invested in the entire agricultural value chain which resulted in employment opportunities and benefits within secondary agriculture (agri-businesses etc.) as modernisation resulted in primary market job losses.
 - Agrarian reform process follows a holistic approach. It is not only restricted to one department of government but rather there is policy alignment across multiple government departments and institutions.
 - Integration occurs between government and the public. Public partnerships between government and farmers address critical issues such as the development of infrastructure needed for the agricultural sector etc.
 - Compensation is paid at market value upon expropriation.
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RESIDENTIAL/COMMERCIAL AND INDUSTRIAL PROPERTY SPECIFIC

1.2 million Urban households living in informal settlements

Land challenge interwoven (rural/urban):

- Land claims extend into urban areas
- Land invasions –urban/peri-urban areas.

Whilst the focus is on legislative and policy framework reform for rural areas, there is a pressing need for a review of human settlements policy within the urban context as:



Housing backlogs have doubled since 1994



Informal settlements have grown from 300 to approximately 2700 despite noteworthy achievements (urbanization/smaller family units).



RESIDENTIAL/COMMERCIAL AND INDUSTRIAL PROPERTY SPECIFIC (CONT.)

Human Settlements Development Bank

The mooted Human Settlements Development Bank should incentivise 1st time home buyers to enter the market. This framework should consider means tested qualifying criteria, a review of current legislation and financial assistance in respect of differentiation and subsidisation, and incentivising the private sector to increase the production of affordable housing property stock.

Review qualifying criteria and minimum standards

Review the qualifying criteria for subsidy houses, including expediting the delivery of title deeds to owners. Removing restrictive conditions will increase the availability of property stock. Provide serviced sites and promote incremental housing.

Promote rental stock & “inclusionary housing”

Promote rental stock as an alternative form of tenure.

Promote “inclusionary housing” as a compulsory component in new residential developments

Impending Regulation and legislation

Increase security of tenure for families living in informal settlements and review current legislation that impedes accelerating transformation of the residential property market.



CONCLUSION

Meaningful land reform, together with the reversal of skewed land ownership patterns is an imperative for the country. We are however of the opinion that amending the Constitution to give effect to this is unnecessary.

To promote economic development that benefits the poor, formal property rights are required. Such rights can take a number of forms, but security of tenure and the tradability of such property is pivotal.

Within the SA Inc. context, immoveable property alone constitutes R4.5 trillion of household nett assets. The generational wealth creation attributes of property rights is therefore apparent.



CONCLUSION (CONT.)

Land expropriation, with or without compensation, looms large for landowners. EWC, if not done according to the confines of the Constitution and a law of General Application, could create systemic risk for specific classes of property, lenders and the State alike.

We emphasise the need for the State to create market certainty through crisp and definitive policy/legislative frameworks which are well communicated and that measures are put in place to prevent 'EWC property class creep'.

We must ensure that going forward, EWC does not increase the plight of the poor, either because of job losses or more importantly increased levels of food insecurity, caused by the collapse of food production.

The implementation of EWC must also not inhibit the attraction of local and global investment and inclusive growth. If this were to happen, we would all suffer, and mostly the poor, whom we are hoping will benefit from land reform.



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**WE DO NOT INHERIT THE EARTH
FROM OUR ANCESTORS; WE
BORROW IT FROM OUR CHILDREN**

American Indian Proverb



End of Presentation