

Draft Beneficiary Selection and Land Allocation policy has potential, but may need some more work

Both the Presidential Advisory Panel on Land Reform and Agriculture as well as Parliament's High-Level Panel (Motlanthe Report) identified the opaque process used to select beneficiaries and allocate land as critical impediments to successful land redistribution. Since the Constitution was enacted in 1996, Parliament passed legislation that clearly outlines exactly who is entitled to claim land under the restitution and labour tenant programmes but no equivalent was ever developed to outline who should qualify for land redistribution. The Constitution simply provides that the state must foster conditions that enable citizens to access land on an equitable basis and left it up to the legislature and the executive to decide who should benefit and under what circumstances. As multiple studies have shown, this gap in the land reform policy space has sadly led to perceptions of elite capture and frustration for beneficiaries whose redress was not always matched to their needs or aspirations. It is precisely for this reason that both reports recommended the development of clear policy or legislation outlining the criteria, requirements and procedure to guide beneficiary selection and allocation for land redistribution.

In response to these recommendations, the Department published the draft Beneficiary Selection and Land Allocation policy for public comment in January 2020. This represented the first recommendation of the Presidential Advisory Panel which has made its way into formal government policy and as such Agbiz has compiled and submitted comprehensive inputs. From the outset, the Department must be commended for taking the Panel's recommendation on board. It is our hope, however, that the criteria and procedures will eventually be captured in draft legislation so that aspirant beneficiaries have legal recourse in the event that the policy is not consistently implemented. We also made a number of general submissions intended to improve the content of the policy.

The draft policy attempts to cover a wide variety of beneficiaries and potential land needs. A great deal of emphasis is placed on rural beneficiaries who intend establishing farming operations. From an agricultural perspective this is welcomed, however the requirements for beneficiaries who seek access to land for residential (urban or rural), communal, spiritual or industrial purposes are not developed in nearly the same level of detail. As the old adage goes; if you try to be everything to everyone, you end up being nothing to no one... One cannot help but wonder whether the focus of the policy should not be limited to agricultural beneficiaries as the policy only deals with the requirements for housing etc. on a very superficial level, which merely serves to dilute the policy. A completely separate policy should be developed to address urban land reform that can delve into the intricacies of that need.

As far as agricultural beneficiaries are concerned, there appears to be a genuine attempt to align the categories with the former DAFF's Comprehensive Producer Development Support Policy (CPDSP). If this signals a greater level of integration and cooperation between farmer support and land reform then it is certainly a welcome development. Be that as it may, the policy focus seems limited to the allocation of state-owned land and pays no attention to the CPDSP's recommendations that emerging commercial farmers should benefit from state-assisted land reform in the form of blended finance.

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Despite making a clear distinction between subsistence and commercially-orientated producers, the policy is unclear as far as where the priority should be. When it comes to the distinction between pro-poor and emerging commercial programmes, the Advisory Panel recommended that clear targets be set and the budget be apportioned accordingly. The CPDSP makes provision for a 35/50/15 split between spending on subsistence, smallholder and medium scale producers. It would assist to manage beneficiaries' expectations if the draft Beneficiary selection policy were to include a similar arrangement. Notwithstanding these recommendations, the categorization of agricultural beneficiaries is certainly a step in the right direction. Unfortunately, the same cannot be said about the proposed institutional arrangements.

The draft policy proposes that beneficiary selection and land allocation be conducted via a complex chain of institutions comprising District Land Reform Committees on the local level, Provincial Land Allocation Control Committees at the National Land Allocation Control Committee at the top. This arrangement may not be familiar to everyone but that does not mean they are new. In fact, it is exactly the same institutional arrangement which the Motlanthe report labelled as being 'opaque'. The concept underpinning the District Land Reform Committees originates in Chapter 6 of the National Development Plan and were widely supported by private sector institutions when the Plan was adopted in 2012. What was not anticipated, however, was provincial and national structures were to be created that could override their recommendations. This was not something initially envisioned by the NDP and caused a great deal of confusion as the powers, role and responsibilities of the DLRCs vis-à-vis the national and provincial structures were never clarified. The policy does make reference to the development of a terms of reference, but experience has shown that more is required and the roles and functions of these institutions should be spelled out in legislation.

On the whole, the policy is certainly a step in the right direction. With minor adjustments to the categorization of beneficiaries and clarity regarding the legal arrangements for landholding, the policy can provide a concrete platform for land redistribution. However, one cannot use the same institutions and expect a different result. With this in mind, policy may well require substantial work before it can truly live up to the recommendations made by the Motlanthe report and Presidential Advisory Panel.