
Policy Brief on Equitable Land Redistribution

Expert Policy Brief on Developing a Systematic Approach to Equitable Land Redistribution in South Africa

This document is for discussion purposes

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Land Governance in South Africa

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Acknowledgements

This Policy Brief was prepared on behalf of and for the National Multi-Stakeholder Platform (MSP) on Land Governance in South Africa, with the support of the Food and Agriculture Organization of the United Nations (FAO), in order to develop capacity in land governance monitoring, policy dialogues and engagement on responsible tenure governance in the context of agricultural and rural development in line with the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*.

The development of the Policy Brief was managed by the Association for Rural Advancement (AFRA) in its capacity as Co-Chair of the MSP, and the Secretariat for LandNNES, the Land Network National Engagement Strategy of South Africa and the Civil Society arm of the MSP.

The National Multi-Stakeholder Platform (MSP) was established in September 2017, with FAO playing a catalysing role. The MSP is co-chaired by the Department of Agriculture, Land Reform and Rural Development (DALRRD) and Civil Society, currently represented by the Association for Rural Advancement (AFRA).

LandNNES is a broad civil society platform bringing together over 26 civil society formations (who are members) with a common medium-to-long term vision around strengthening people-centred land governance, especially for marginalised and vulnerable groups. LandNNES is supported by the International Land Coalition (ILC), and is concerned with both the policy and implementation dimensions of land governance.

Terms of Reference

This Policy Brief will contribute to meaningful policy dialogues and engagement on responsible tenure governance in the context of agricultural and rural development in line with the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. The policy brief aims to provide strong, contextual mapping, critique and analysis of the complexities around Land Reform and Redistribution in South Africa and propose recommendations for the multi-stakeholder interlocution between Government, United Nations Agencies and Civil Society.

The Policy Brief includes:

- A brief analysis of the current situation of Land Reform and equitable Land Redistribution in South Africa.
- A brief overview of the envisaged situation/desired changes using the VGGT Technical Guide No. 5 on 'Responsible governance of tenure and the law' (FAO 2016) and VGGT Chapter 3 and 4 (FAO 2012, pp. 11-17 and 19-28).
- A set of incremental, concrete and actionable recommendations of how to get to the desired situation. The recommendations will constitute the essential inputs for discussions in the future multi stakeholder meetings and will be the base to develop an action plan/road map on the issue.

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1. Introduction

After 25 years of democracy, South Africa remains a highly unequal country with high levels of poverty and unemployment. Land reform policies have largely failed to reconfigure the inherited, highly dualistic and spatially divided agrarian structure¹. As a result, skewed land ownership patterns are a key feature of inequality in post-apartheid South Africa. At present, there are approximately 35 000 large-scale, mostly white-owned commercial farms. These commercial farms occupy the majority of the country's commercial agricultural land and produce the bulk of the country's marketed output. Available evidence also indicates that there are about 4 million small-scale producers, located in about 2 million households, and confined to the former homelands. Approximately 200 000 of these small-scale farmers produce for the market while the majority are engaged in farming for subsistence purposes². Success in land reform is predicated on the extent to which existing policies are able to reconfigure the dualistic and unequal agrarian structure to make it more inclusive and wide-ranging.

2. New policy directions in post-apartheid land reform?

The current political discourse on South Africa's land reform represents an opportune moment for exploring new policy directions in the land reform sector. However, much of the debate has centred on the slow pace of land reform and its failure to meet the set numerical targets³. Significant political developments have been largely driven by growing public pressure on the state to accelerate the pace of land reform. Some of the key political and policy processes include:

- The appointment of the Expert Advisory Panel on Land Reform and Agriculture on the 18th of September 2018. This provided an opportunity to analyse the state of affairs in the land reform sector and to explore new policy directions. On the 4th of May 2019, the Expert Advisory Panel presented its final report, which makes important recommendations on the role of land reform in the social transformation of South Africa⁴.
- The policy proposals in the Expert Report on Land Reform and Agriculture confirm some of the earlier recommendations by the High level Panel of Parliament Report on the Assessment of Key Legislation and Acceleration of Fundamental Change⁵ (2017). The High Level Panel (HLP) Report (2017) highlighted the failure of the state to develop appropriate laws to ensure social transformation through land reform as directed by the Constitution, in the Bill of Rights.
- On the 27th of February 2018, the National Assembly passed a Parliamentary motion to amend the Constitution so as to allow for expropriation without compensation (EWC). Subsequently, public hearings were conducted, culminating in the decision to amend the property clause in

¹ Cousins, B. (2013). Land Reform and Agriculture Uncoupled: The Political Economy of Rural Reform in Post-apartheid South Africa in Paul Hebinck and Ben Cousins (eds), *In the Shadow of Policy: Everyday Practices in South African Land and Agrarian Reform*. Wits University Press.

² Aliber, M. and Cousins, B. (2013). Livelihoods after Land Reform in South Africa. *Journal of Agrarian Change*, Vol. 13 No. 1, 140-165.

³ The 30% target for land transfer which has since been abandoned, was initially set for the first five years of land reform, and extended for another 15 years, up to 2014. The idea was to transfer 30% of "white-owned agricultural land, excluding the former Bantustans, other state land, and urban and other non-agricultural land to Black South Africans" (Hall and Cliffe, 2009:2).

⁴ Expert Advisory Panel on Land Reform and Agriculture. 2019. Final report of the Presidential Advisory Panel on Land Reform and Agriculture. Pretoria, Republic of South Africa.

⁵ HLP (2017). High Level Panel (HLP) of Parliament Report on Assessment of Key Legislation and the Acceleration of Fundamental Change. Cape Town: Republic of South Africa.

the Bill of Rights. Currently, a Constitutional Review Committee is finalising the amendment of Section 25 of the Constitution to clarify conditions under which the state may exercise EWC.

- An Expropriation Bill which is meant to be aligned to the Constitution is in the pipeline. South Africa has previously relied on the Expropriation Act of 1975, an apartheid-era law, which only considers expropriation for ‘public purposes’ and not for ‘public interest’⁶ which encompasses land reform. Instead of just and equitable compensation as required by S25 (3) of the Constitution, the Expropriation Act of 1973 requires compensation at market price.
- The Expert Advisory Panel on Land Reform and Agriculture has made some key recommendations in relation to EWC as one of the strategies for land acquisition. This includes circumstances where EWC may be immediately applied with nil compensation⁷.
- The binary division between agriculture and land reform has undermined success in land redistribution. The sixth administration initiated a restructuring exercise and the Department of Rural Development and Land Reform has now become the Department of Agriculture, Land reform and Rural Development. This new Ministry combines the land reform and agriculture components under one portfolio.
- An Inter-Ministerial Committee (IMC) was set up to consider the implications of the recommendations of the Presidential Advisory Panel on Land Reform and Agriculture.

These wider policy processes happen amidst growing evidence that land reform has shifted from its pro-poor precepts initially espoused in the White Paper on Land Reform⁸ (1997). The White Paper (1997) explicitly identifies the ‘rural poor’ as the target beneficiaries to be prioritised in land reform and sought to operationalise the transformation objectives contained in the Bill of Rights. However, there has been a shift in the ‘class agenda’ of land reform as the poor are increasingly underrepresented⁹. Ironically, key questions on ‘what land reform is for’, ‘who should benefit from land reform’ have been peripheral to the ongoing political discourse on land reform. These questions relate to the ‘wider purposes and significance’ of land reform in South Africa¹⁰. Thus, such questions go beyond merely making land available but foreground the issue of equitable access to land.

3. Towards a systematic approach to equitable access to land

It is against this background, that the National Multi-Stakeholder Platform seeks to systematically identify the mechanisms and processes that will ensure that land reform policies effectively operationalise the Constitutional imperative to ‘broaden access to land on an equitable basis’¹¹. In addition, a LandNRES discussion note, entitled ‘Developing a People-centred Land Governance Policy Framework: Towards a Pro-poor Programme Built on Equitable Access to Land’ argues for a pro-poor

⁶ In earlier case law, there is a distinction between a broad and narrow understanding of the term ‘public purpose’. In its broad sense, expropriation for a ‘public purpose’ includes all things that affect or benefit the public at large. Conversely, in its narrow sense, ‘public purpose’ merely refers to purposes that relate to the state and government purposes. In the Constitutional era, ‘public interest’ is a broader category than ‘public purpose’. Thus, ‘public purpose’ refers to government purpose while ‘public interest’ refers to the interest that benefits the public. For a more detailed analysis, see B. V Slade. 2014. Public Purpose or Public Interest and Third Party Transfers. Potchefstroom Electronic Law Journal, Vol. 17, No. 1, pp. 167-206.

⁷ These conditions include but are not limited to (a) abandoned land; (b) hopelessly indebted land; (c) land held purely for speculative purposes; (d) unutilised land held by state entities; (e) land obtained through criminal activity; (f) land already occupied and used by labour tenants and former labour tenants; (g) informal settlement areas; (h) inner city buildings with absentee landlords; (i) land donations (as a form of EWC); (j) farm equity schemes (see Expert Report on Land Reform and Agriculture, 2019:80).

⁸ Department of Land Affairs (DLA). 1997. White Paper on South African Land Policy. DLA, Pretoria.

⁹ Hall, R. 2010. The Politics of Land Reform in Post-Apartheid South Africa, 1990 to 2004: A Shifting Terrain of Power, Actors and Discourses. DPhil Thesis. Oxford University.

¹⁰ Cousins, B. 2013. Land Redistribution, Populism and Elite Capture: New Land Reform Policy Proposals under the Microscope. The Journal of the Helen Suzman Foundation, Issue 70.

¹¹ Constitution of the Republic of South Africa, Act 108 of 1996.

land reform programme to advance equitable access to land and natural resources. The LandNNEs discussion note (2019) outlines a set of key questions are central to refocusing land redistribution in South Africa:

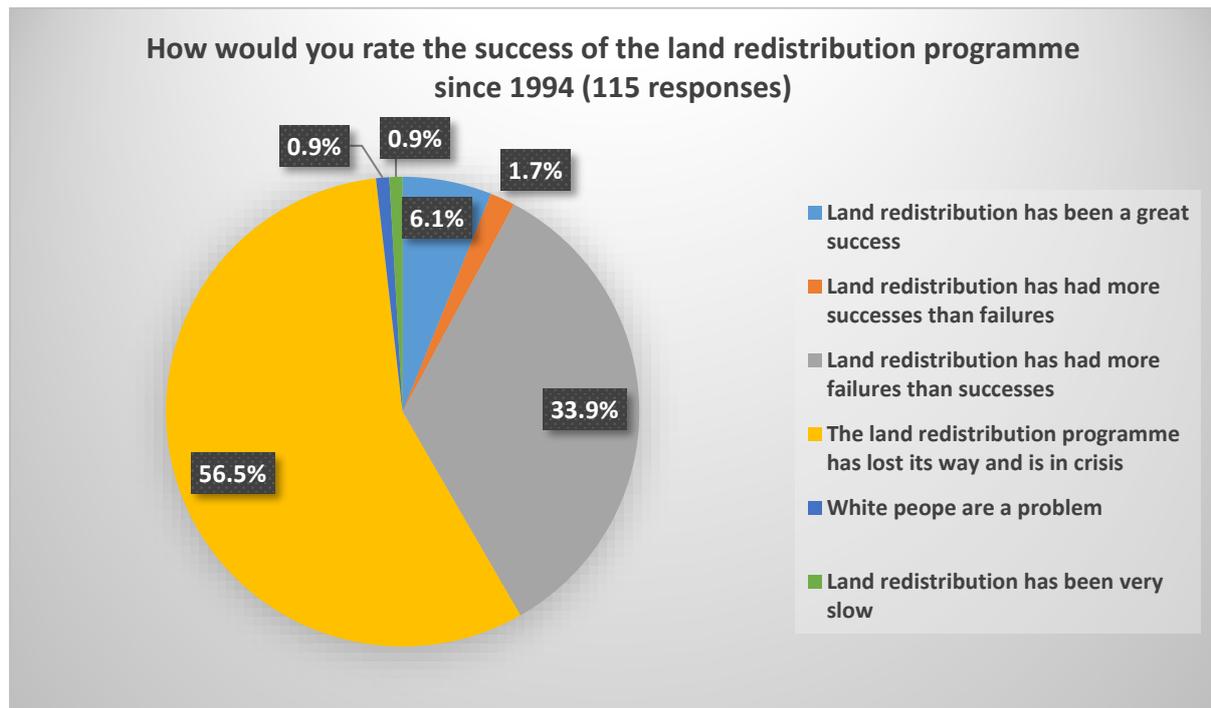
- What must be redistributed (Land, water, fisheries access, minerals)?
- Who should benefit from land and resource redistribution (Rural, urban, means-tested or racially based)?
- What should land redistribution achieve (Agreed purposes, rural and urban land uses and associated indicators of success)?
- Where should land redistribution be prioritised (what land should be targeted and where)?
- How should land and resource redistribution targets and priorities be planned, agreed and implemented (Who should be involved/represented in open democratic processes to shape these decisions)?
- How is land for land reform to be acquired (what approach should be taken to acquire land for redistribution and what factors should influence the calculation of compensation)?
- What are the tenure rights and responsibilities of which people accessing land and natural resources through land reform should acquire (What are the ways in which individuals, households and communities should be able to hold and manage their land)?

These set of questions need to be foregrounded in any meaningful discussion on how to effect a pro-poor land redistribution programme. Although South Africa's land reform programme is embedded in the Constitution, existing legislation and policies have not sufficiently addressed key questions on equitable access to land in order to ensure effective social transformation.

4. Operationalising equitable access to land in South Africa

Post-apartheid land reform has fallen short of expectations in terms of the constitutional imperative to broaden access to land on an equitable basis. Both the High Level Panel (HLP) Report and the Presidential Advisory Panel Report on Land Reform and Agriculture (2019) argue there is no appropriate legislation and policies to ensure equitable access to land in South Africa.

Figure 1: LandNNEs community survey (n =115)



Land reform has been implemented through the Provision of Certain Land for Settlement Act 126 of 1993 also widely known as Act 126. This law was initially formulated by the National Party government during its pre-emptive land reform in the twilight years of apartheid. The Provision of Certain Land for Settlement Act 126 of 1993 has been amended and renamed twice to make it relevant for post-apartheid land reform. Initially, it was renamed as the Provision of Land and Assistance Act, by an amendment, Act 26 of 1998 and subsequently, as the Land Reform: Provision of Land and Assistance Act, by an amendment, Act 58 of 2008¹².

A number of key shortcomings have been identified in terms of the extent to which Act 126 gives effect to the constitutional imperative to broaden access to land on an equitable basis. Amongst the key shortcomings of Act 126 are that:

- It does not define 'equitable access' in a meaningful manner;
- It provides no guidance as how beneficiaries are to be selected;
- It has no provisions on how post-settlement support is to be provided;
- It does not have guidelines on how the land tenure security of beneficiaries is to be secured;
- It says nothing about the role of local authorities in land reform planning and implementation¹³.

Accordingly, both the HLP Report (2017) and the Expert Advisory Panel Report (2019) emphasise the need for an overarching land reform legislation which will guide and direct the land redistribution

¹² Kepe, T and Hall, R. 2016. Land Redistribution in South Africa. Commissioned report for High Level Panel on the assessment of key legislation and the acceleration of fundamental change, an initiative of the Parliament of South Africa, 28 September 2018.

programme as a whole and its various sub-programmes. A number of issues to be clarified in the new legislation would include some key questions on:

- Who should get land?
- How should the land be used or what type or scale of farming? Should land be redistributed to enable settlement and multiple livelihoods, including in urban areas? Or should it be exclusively for farming? How will land reform help address spatial inequality?
- How should land be identified and acquired? Should redistribution be restricted to those properties that are offered for sale – i.e. not targeting? Or should there be area based priorities?
- How is land valued? What should the state, or beneficiaries, pay for land? Should this be a 'market' price, a negotiated price, a price determined on the basis of section 25(3) of the Constitution? If the latter, how should 'just and equitable' compensation be defined?
- What rights should beneficiaries have? Should they be owners of the land? Or long-term lessees? What is the rationale for leasing, and should those who do not pay lose their land? Does the state have the capacity to enforce leases and extract rent – now and in the future when more properties are acquired? Should land be held by traditional councils on behalf of communities, by beneficiaries through communal property institutions, or by community members themselves¹⁴?

5. A National Land Reform Framework Bill for South Africa?

Land reform experts developed an illustrative National Land Reform Framework Bill as part of commissioned inputs for the High Level Panel Report (2017). The illustrative National Land Reform Framework Bill of 2017 attempts to, among other things, operationalise equitable access to land and address some of the key questions outlined above. The draft Bill illustrates the kind of principles and guidelines that may foster equitable access to land and forms an appropriate basis for a more comprehensive and fully-fledged overarching law to guide South Africa's land reform. In relation to the land redistribution component of land reform, Chapter 2 (4) (1) to (10) of the illustrative National Land Reform Framework Bill of 2017 sets out the relevant principles required to foster equitable access to land. In terms of these principles:

1. The Minister shall take reasonable measures to ensure that land is made available on an equitable basis, which means giving priority to people who are landless and poor.
2. A reasonable land reform programme is one that includes a primary focus on the poor and disadvantaged, considers land problems in their social, economic and historical context, considers the capacity of institutions responsible for implementing the programme, and is balanced and flexible.
3. The state must develop a coherent and comprehensive land redistribution programme which is sufficiently resourced and able to secure equitable and secure access to land and related resources, including water.
4. Planning for land redistribution must proceed at both national and at local level, so that appropriate land and water reform programmes are developed to guide the acquisition and redistribution of land. Coordination of the national and local plans remains the responsibility of the Minister.

¹⁴ HLP Report, pp. 220-221.

5. In implementing a programme of land redistribution, the Minister shall ensure an equitable balance between the expressed demand for land for agricultural and non-agricultural purposes, including settlement, as well as multiple uses of land for both commercial and non-commercial purposes.
6. The Minister shall ensure that gender equality in access to land is promoted and that women's interests in gaining secure access to land are promoted.
7. State resources for land redistribution must be allocated and used in a manner designed to ensure that large numbers of poor and vulnerable South Africans benefit, and thus promote equitable access, taking due account of the need for post-settlement support and other relevant factors.
8. The land redistribution programme must be designed in a manner that it assists to overcome the legacy of apartheid and apartheid geography, which separated zones of white and black ownership and occupation of land.
9. Racial integration in rural areas is to be promoted, as is the provision of opportunities for poor and landless people to gain access to land in areas previously dominated by the wealthy.
10. The land redistribution programme must guide the uses of land in rural areas but also peripheral urban areas, so as to promote equitable access to land in such areas in a manner that contributes to the overcoming of the legacy of apartheid geography around urban centres¹⁵.

Besides the basic principles on 'equitable access to land', the illustrative National Land Reform Framework Bill of 2017 provides specific guidelines to how to ensure democratic, participatory and transparent processes in relation to land identification and acquisition, beneficiary targeting and selection and area-based planning to match land needs to available land¹⁶.

6. Land reform policy in post-apartheid South Africa

Post-apartheid land reform has gradually shifted from its pro-poor focus, as shown by the various policy shifts during the different political administrations. Initially there was the Settlement and Land Acquisition Grant (SLAG) which promoted multiple livelihoods and survival amongst land reform beneficiaries. The SLAG programme required beneficiaries to be means-tested in order to ascertain their eligibility for the grant. Households earning less than R1 500 per month qualified for a R15 000 grant (later increased to R16 000) which was equivalent to the housing subsidy grant. Subsequently, in 2000, the government introduced the Land Redistribution for Agricultural Development (LRAD) grant which replaced the welfarist SLAG. Commercial success became the overriding goal of land redistribution. Thus, under LRAD beneficiaries accessed grants on a sliding scale (ranging from R20 000 to R100 000) depending on the amount of their own contribution which could be in cash or kind. In the LRAD programme, eligibility no longer depended on a means test. As a result, both the poor and the relatively well-off individuals competed for grants.

The current Proactive Land Acquisition Programme (PLAS) represents the highest point of the quest for commercial success. At the centre of the PLAS programme is the leasehold system. This is implemented on the basis of the State Land Lease and Disposal Policy (SLLDP) developed in 2013 and

¹⁵ The National Land Reform Framework Bill of 2017.

¹⁶ Hall, R. 2009. Land Reform for What? Land Use, Production and Livelihoods in Ruth Hall and Lionel Cliffe (eds.), *Another Countryside: Policy Options for Land and Agrarian Reform in South Africa*. PLAAS, University of the Western Cape, Bellville.

revised in 2019. At present, the 2013 SLLDP identifies four categories of farmers: large-scale commercial farmers, medium-scale farmers, small-scale farmers and land-poor or landless households as the target groups that qualify to lease state land. However, the emphasis on commercial success alongside elite capture and land corruption has resulted in the exclusion of small-scale farmers, and the land-poor or landless households.

Table 1: Shifts in land reform policy over time¹⁷

Flagship programme	Acquisition	Tenure	Class agenda	Land-use
SLAG (1995-2000)	Market-based purchase	Transfer of title	Means-tested (pro-poor)	Multiple livelihoods
LRAD (2000-2010)	Market-based purchase	Transfer of title	Not means-tested (Unclear)	Agriculture only
PLAS (2006-now)	Market-based purchase	No transfer of title- (leasehold system)	Not means-tested (unclear)	Agriculture only

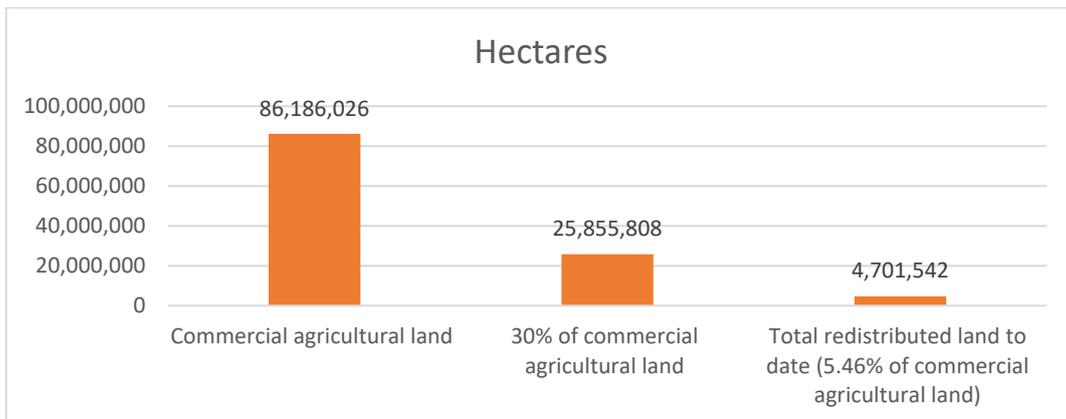
(Source: Kepe and Hall 2016).

7. The performance of land redistribution in South Africa

It is widely acknowledged that the pace of land redistribution in South Africa has been very slow. The total size of South Africa's commercial agricultural land is 86 186 026 hectares and 30% of the total commercial agricultural land in South Africa is equivalent to 25 855 808 hectares. However, only 4 701 542 hectares (or 5.46%) of South Africa's commercial agricultural land has been redistributed (see Figure 2). The amount of commercial agricultural land redistributed (5.46%) includes programmes which transferred ownership of land to beneficiaries (SALG and LRAD), land transferred to state institutions (through commonage and PLAS), and the transfer of shareholding in business (Equity schemes under the SLAG, LRAD and 50/50 policy). Accordingly, not all of the land categorised as redistributed is actually in the hands of the beneficiaries. This is evident in equity schemes whereby farmworkers, for instance, are merely shareholders and not necessarily land owners.

¹⁷ Kepe, T and Hall, R. 2016. Land Redistribution in South Africa. Commissioned report for High Level Panel on the assessment of key legislation and the acceleration of fundamental change, an initiative of the Parliament of South Africa, 28 September 2018.

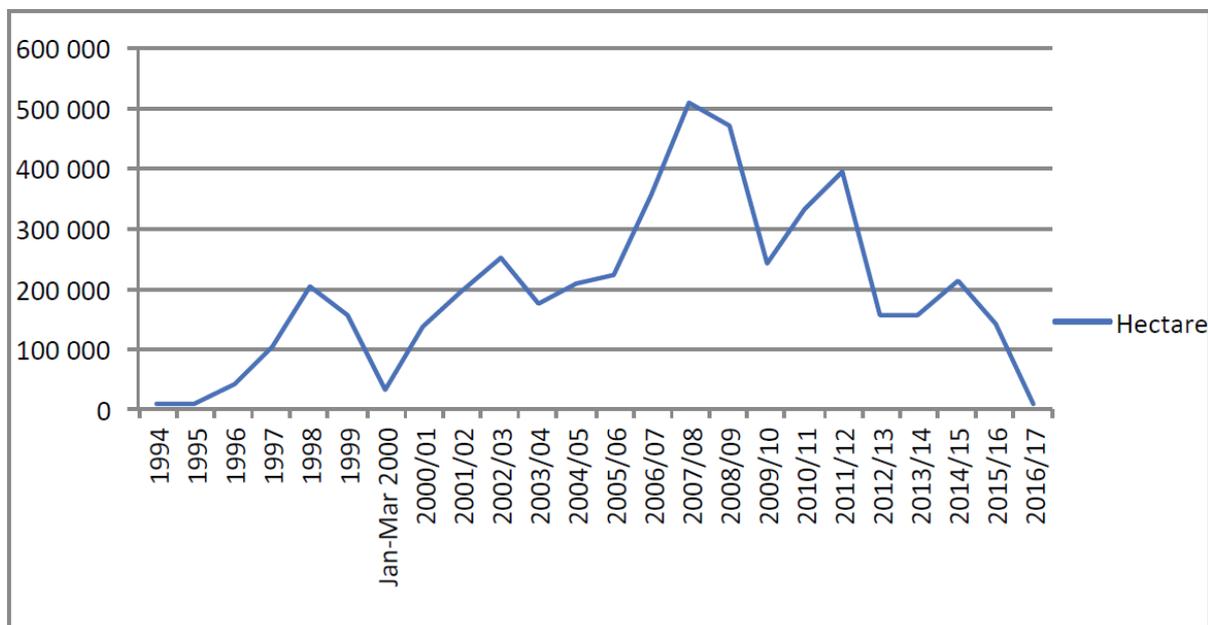
Figure 2: Land redistributed as a proportion of the total commercial agricultural land in South Africa and in relation to the 30% target¹⁸



(Source: adapted from Kepe and Hall 2016).

Kepe and Hall (2016) argue there have been fluctuations in land redistribution related mainly to changes in ministers and also in budgetary allocations. The patterns of land redistribution (see Fig 3) reveal that 2008/09 and 2015/16 represent the highest point of land redistribution while the financial year 2000/01 represents the lowest point. In spite of these changes or fluctuations, the underlying point is that the changes in land reform budgetary allocations have been woefully insubstantial and constantly below 1% of the national annual budgetary allocations.

Figure 3: Hectares redistributed by year, nationally, 1994-2016¹⁹



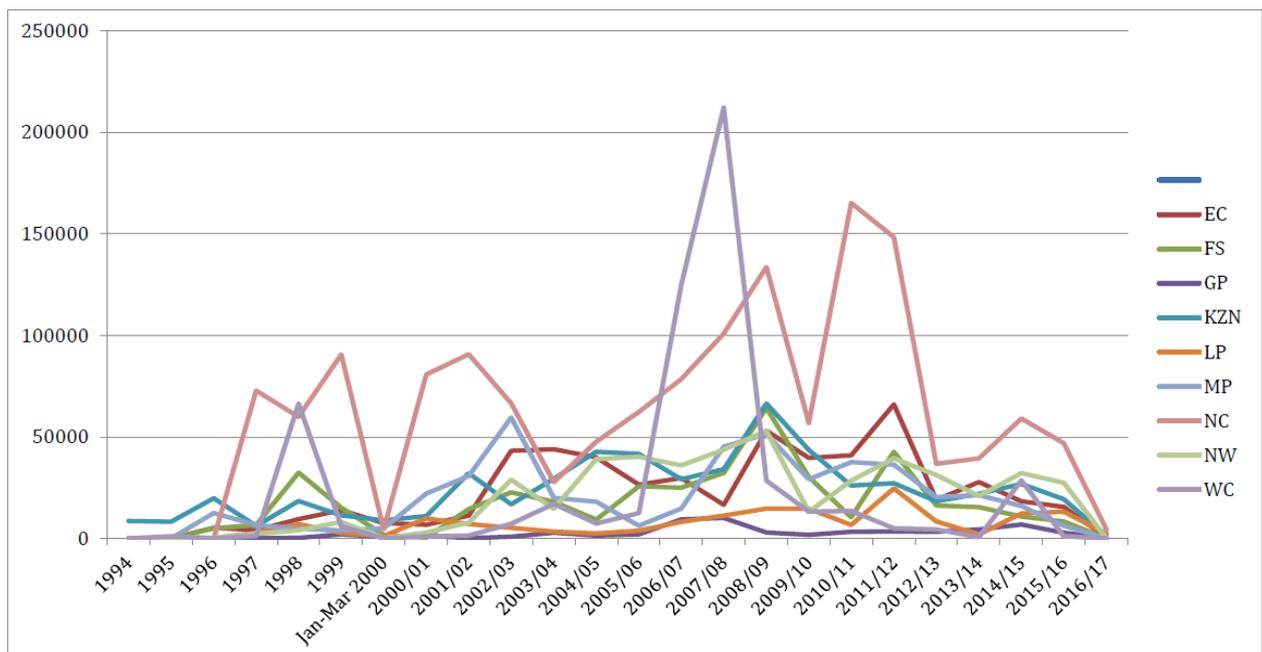
(Source: Kepe and Hall 2016).

¹⁸ Kepe, T and Hall, R. 2016. Land Redistribution in South Africa. Commissioned report for High Level Panel on the assessment of key legislation and the acceleration of fundamental change, an initiative of the Parliament of South Africa, 28 September 2018.

¹⁹ Kepe, T and Hall, R. 2016. Land Redistribution in South Africa. Commissioned report for High Level Panel on the assessment of key legislation and the acceleration of fundamental change, an initiative of the Parliament of South Africa, 28 September 2018.

Besides the broader, aggregate national patterns on the scale of land redistribution in South Africa, there are equally important statistics on provincial patterns and gender dynamics. Available data reveals that more land has been redistributed in the Northern Cape (see Fig. 4 and 5). The Northern Cape Province is largely dry and arid. Extensive livestock grazing which require vast tracts of land is the predominant agricultural activity. Much of the land in the Northern Cape was redistributed through the commonage programme. Increases in the amount of land redistributed in the last decade has been through PLAS which became the primary programme for land redistribution from 2006 and gradually replaced LRAD. Most land redistributed in recent years has been through the PLAS programme (see also Fig. 5).

Figure 4: Redistribution in hectares by province, 1994-2016²⁰



(Source: Kepe and Hall 2016).

National data on land redistribution programmes shows interesting provincial variations (see Fig 5)

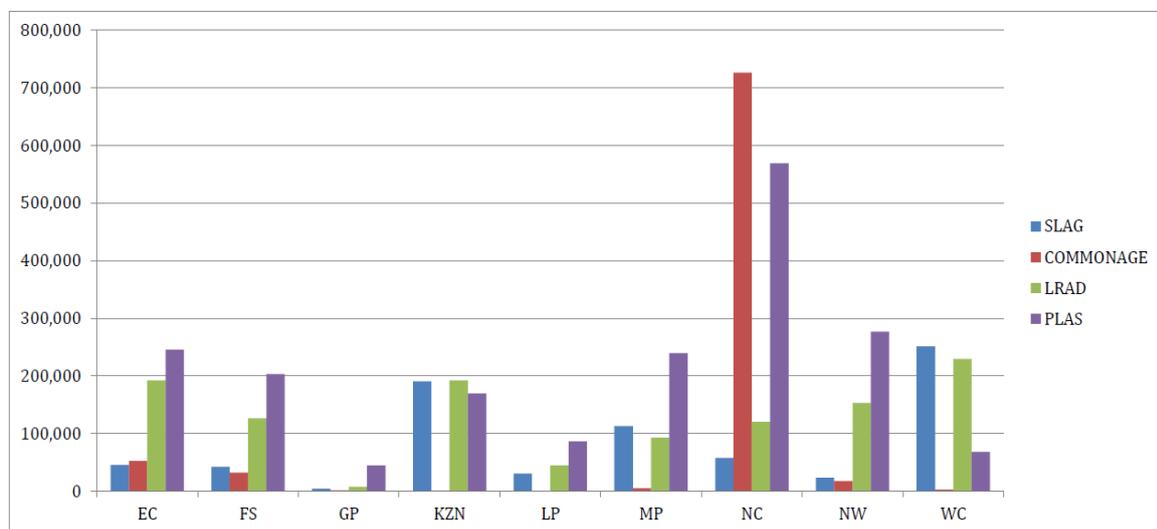
- More land was redistributed through SLAG in the early years of land reform and this is evident in the Western Cape, KwaZulu-Natal. The high point of land transfer through SLAG was between 1994 and 2000.
- The Northern Cape has the highest amount of land transferred through the commonage system, which ran concurrently with SLAG. Extensive livestock grazing is the predominant agricultural activity and naturally requires vast tracts of land. Most of the land redistributed under the commonage programme is the semi-arid Northern Cape.
- Other provinces where relatively more land was transferred through the commonage system are the Eastern Cape, Free State and to a lesser extent the North West.
- Interestingly, the commonage programme was not promoted in Gauteng, KwaZulu-Natal and the Western Cape while there was no commonage projects in the Limpopo.

²⁰ Kepe, T and Hall, R. 2016. Land Redistribution in South Africa. Commissioned report for High Level Panel on the assessment of key legislation and the acceleration of fundamental change, an initiative of the Parliament of South Africa, 28 September 2018. See also HLP Report (2017).

- Data on LRAD, from 2001-2011, shows that most land was redistributed in Western Cape and Eastern Cape. This is followed by KwaZulu-Natal and Limpopo. Less land was redistributed through LRAD in Gauteng, followed by Limpopo, Mpumalanga and the Free State.

In terms of gender representation, national statistics show that women are underrepresented in land redistribution. Only 23% of women have benefitted from the land redistribution since the inception of the programme. In spite of the emphasis on gender equity at broader policy levels, there has been lack of clear criteria and processes for gender inclusion and prioritisation at programme and project levels. There is a possibility that the proportion of women who have benefitted is lower than 23%. This is because in Limpopo, the proportion of women who benefitted from land redistribution is uncharacteristically high. There is no clear explanation as to why this might be the trend and this may reflect unreliable data²¹.

Figure 5: Hectares acquired and redistributed, by province, 1994-2016²²



(Source: Kepe and Hall 2016).

8. Livelihood and production outcomes in land redistribution

There is generally insufficient data on the performance of land redistribution in South Africa. However, some key studies have produced important statistics on land redistribution outcomes. The Department of Land Affairs published two Quality of Life Surveys which provide insights into the production and livelihood outcomes on land reform projects²³. Overall, evidence from these surveys shows that land reform beneficiaries are relatively better-off than the majority of rural dwellers who did not benefit from land reform. However, it is not possible to ascertain from the findings whether

²¹ Kepe, T and Hall, R. 2016. Land Redistribution in South Africa. Commissioned report for High Level Panel on the assessment of key legislation and the acceleration of fundamental change, an initiative of the Parliament of South Africa, 28 September 2018.

²² Kepe, T and Hall, R. 2016. Land Redistribution in South Africa. Commissioned report for High Level Panel on the assessment of key legislation and the acceleration of fundamental change, an initiative of the Parliament of South Africa, 28 September 2018.

²³ See Department of Land Affairs 1998 and 2000 Annual Quality of Life Reports. Pretoria. For a more detailed analysis and evaluation of these surveys see Kepe and Hall (2016) pp. 51-55.

land reform beneficiaries accessed land because they are better-off or they are better-off because they accessed land²⁴. This is because there was no comprehensive and systematic baseline data on the socio-economic profile of the beneficiaries at the point of their entry into the land reform programme. Other key studies on land redistribution outcomes include:

- A national evaluation of 1002 land reform projects under the LRAD programme revealed that 28% of the projects were stable, 21% had improved in performance, 22% showed marginal benefits while 29% had failed. The beneficiaries identified farming as an important source of income (41%) while some of the beneficiaries (38%) reported an improvement in incomes. While only 21% of the projects had improved in performance, land remained an important livelihood resource for the beneficiaries. Access to land was linked to other non-monetary benefits. The non-monetary benefits included improved tenure security (42%), food security (34%) and access to grazing (34%)²⁵.
- Kirsten and Machete's study in North West looked at commercial 'viability' and the set of constraints inhibiting historically disadvantaged individuals from becoming 'progressive' farmers. Out of the 177 farmers, more than a quarter (27%) did not meet the criteria of commercial 'viability'. Some problems identified include group conflicts, poor infrastructure and insufficient farm income generated from the projects. Farm infrastructure had deteriorated or had been vandalised on 50 of the 177 farms. No production was taking place on 30 of the farms²⁶.
- A study of the PLAS farms leased through the State Land Lease and Disposal Policy looked at 62 land redistribution projects selected from five provinces namely the Eastern Cape, Free State, KwaZulu-Natal, North West and the Western Cape. Findings from this research reveal that there is a rise of elite capture in land redistribution. Well-off beneficiaries, for instance, urban-based business people and the politically-connected are being allocated land and accessing production support ahead of the rural poor. Out of the 62 land reform projects, nearly half (44%) of the farms were allocated to well-off men 'stepping in' by bring capital from other businesses outside of farming²⁷.

Evidence on the production and livelihood outcomes shows that land redistribution projects have relatively improved the level of livelihood amongst the beneficiaries. However, production outcomes have generally been poor. The poor production outcomes are primarily a result of inadequate production or post-settlement support following the transfer of land to the beneficiaries. There has also been shift from pro-poor land reform as priority to commercial success as an overriding goal in land redistribution. This has happened alongside the rise in elite capture as the rural poor are increasingly underrepresented in land redistribution. Well-off individuals are allocated land ahead of the landless and land-poor households, smallholder farmers, farmworkers and farm dwellers, and women. Beneficiary targeting and selection processes need to be more participatory, democratic and transparent so as to accommodate the poor social groups in land reform.

²⁴ See Kepe and Hall (2016).

²⁵ Umhlaba Rural Services. 2009. National assessment of the comprehensive rural development pilots, report submitted to the Department of Rural Development and Land Reform.

²⁶ Kirsten, J and Machete, C 2005 Appraisal of Land Reform Projects in Northwest Province. University of Pretoria, Pretoria.

²⁷ Mtero, F., Gumede, N and Ramantsima, K. 2019. Elite Capture in Land Redistribution in South Africa. PLAAS Research Report No. 55, University of Western Cape, Bellville.

9. Constraints to equitable access to land

9.1 Legislative gaps undermine equitable access to land

The High-Level Panel Report (2017) and subsequently the Expert Report on Agriculture and Land reform identify the need for an appropriate land redistribution law to operationalise equitable access to land. The Land Reform: Provision of Land and Assistance Act 126 of 1993 is insufficient. It provides the Minister with too much discretionary power on the allocation of resources. Appropriate legislation would essentially ration the use of public resources and prescribe specific limits on the expenditure of public resources. This overarching law will define what ‘equitable access to land’ means, outline the mechanisms and processes for land identification and acquisition, beneficiary targeting and selection, gender equity and other key indicators pro-poor land redistribution. A draft Land Redistribution Bill is a proper basis for a fully-fledged land reform law.

9.2 Insufficient budgetary allocation

Land reform has perennially been under-funded. The policy rhetoric on land reform as key to addressing the challenges of poverty, inequality and unemployment has not been matched with commensurate efforts in availing public resources to support land reform. Land reform budgets in South Africa have generally been around 1% of the national budget. In the 2007/08 financial year, the land reform budget reached a peak of 1.09% only to drop in the 0.78% of the national budget in 2015/2016 financial year²⁸.

9.3 Land identification and acquisition

Much of the debate on land redistribution has focused on the issue of how to acquire land. The main focus has been on especially how to stimulate the supply of more land onto the market for acquisition either through market mechanisms or expropriation. Market-based land reform through the principle of “willing buyer, willing seller” means that individual parcels of land are acquired instead of block acquisitions. This has made areas-based planning in land redistribution difficult. Matching land needs to the available land is important. Areas-based planning provides the basis for ascertaining who needs what land²⁹.

Land redistribution shifted from supporting multiple livelihoods and diverse land-use activities, such as provision of land for settlement purposes. SLAG was more flexible and inclusive in allowing for diverse land-use activities. Since the commencement of LRAD, there is a narrow focus on agricultural production in land redistribution. However, land demand surveys have shown that land reform beneficiaries also require land for various reasons and multiple purposes. Alongside the narrow focus on agriculture, there has been a neglect of the ‘urban land question’ which is key to the transformation of apartheid geography in urban areas.

9.4 Beneficiary identification and targeting

Initially, SLAG required land reform beneficiaries to go through a means-tested to ensure eligibility on need basis. The government subsequently introduced LRAD, which emphasised commercial success in land reform. Thus, in LRAD, beneficiaries were not means-tested and qualified for a grant on a

²⁸ Kepe, T and Hall, R. 2016. Land Redistribution in South Africa. Commissioned report for High Level Panel on the assessment of key legislation and the acceleration of fundamental change, an initiative of the Parliament of South Africa, 28 September 2018.

²⁹ See Hall (2009), Another Countryside.

sliding scale depending on the size of their own contribution. According, both the poor and relatively well-off beneficiaries competed for grants within the LRAD programme. The overarching idea in the LRAD programme was to create a class of large-scale black commercial farmers and deracialise the commercial farming sector. Well-off beneficiaries benefit from land reform while the poor amongst the historically disadvantaged are excluded. In the current PLAS programme, there is no rationing of public resources in land redistribution and resources are public resources are spent on a few select beneficiaries.

9.5 Gender equity

Available national statistical figures on land redistribution show that women are grossly underrepresented in land redistribution. Only 23% of the land acquired since the inception of the land redistribution programme was allocated to women³⁰. However, the figures from Limpopo are uncharacteristically high and there is uncertainty on their accuracy. This suggests that this figure might be lower than 23%. In land reform, 'first-tier' policy documents operating at the high level of general principles emphasize gender equality in land reform. Yet 'second-tier' or middle level policy documents, such as criteria for project approval, monitoring and evaluation, briefs for consultants and training materials for staff do not sufficiently operationalize gender³¹.

9.6 Securing land rights

PLAS and subsequent policies like SLLDP are based on the leasehold system. Land reform beneficiaries lease land from the state and there is no transfer of ownership. In strategic partnerships and share ownership schemes, the state leases land to strategic partners, while beneficiaries remain workers on state land. There is need to ensure security of tenure for the different forms of tenure rights in land reform including the leasehold system. Widespread tenure insecurity and precarious land rights undermine equitable access to land. The historically disadvantaged individuals do not fully enjoy property rights as land reform beneficiaries under the leasehold system.

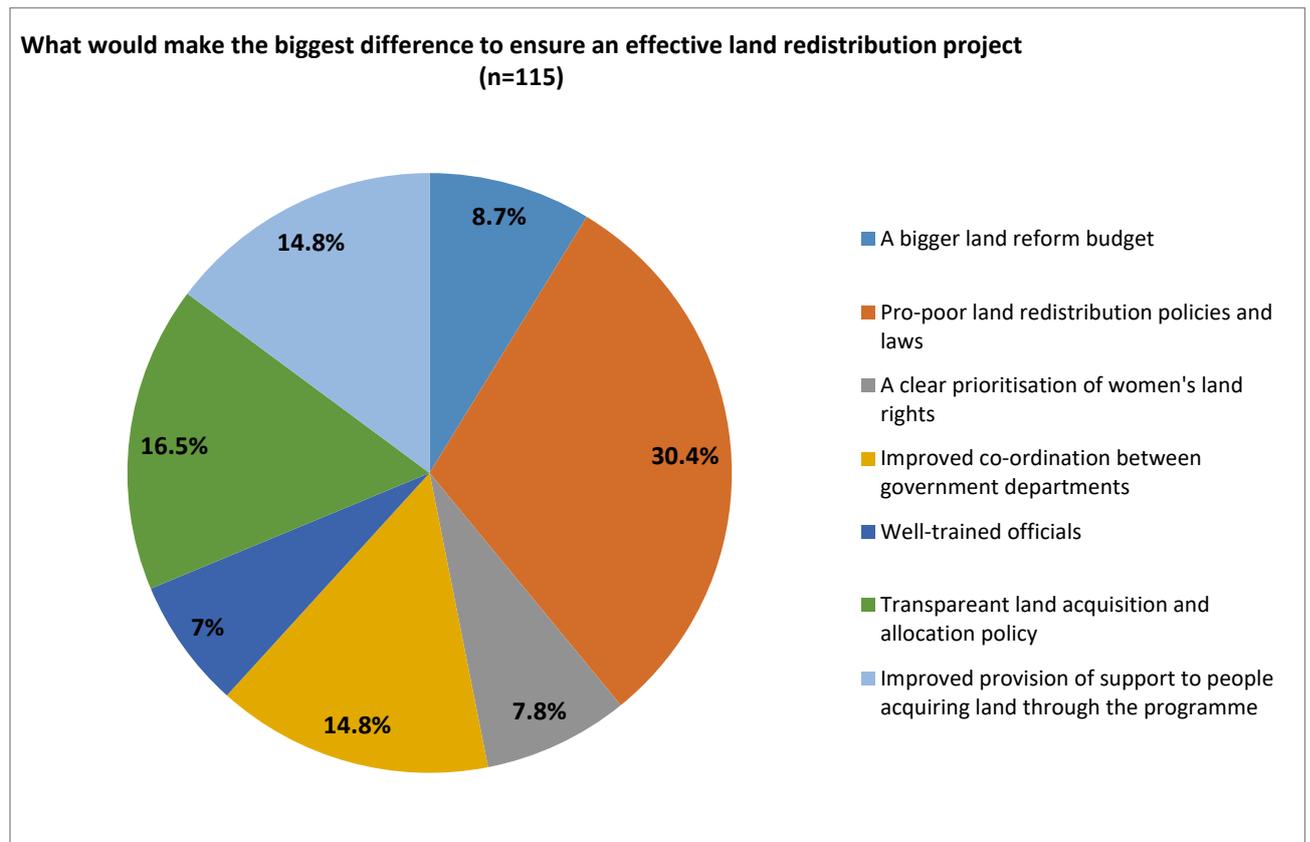
9.7 Climate change and ecological constraints

Land reform in South Africa has not fully addressed key questions on climate change and agro-ecological constraints shaping farming in South Africa. South Africa's is largely a dry country with limited arable land. There are no long-term plans to ensure that land reform responds to the threats of climate change.

³⁰ Kepe, T and Hall, R. 2016. Land Redistribution in South Africa. Commissioned report for High Level Panel on the assessment of key legislation and the acceleration of fundamental change, an initiative of the Parliament of South Africa, 28 September 2018.

³¹ Walker, C. 2003. Piety in the sky? Gender policy and land reform in South Africa. *Journal of Agrarian Change*, Vol. 3, No. 1-2, 113-148.

Figure 6: LandNES community survey (n=115)



10 Some conclusions and policy recommendations

The fact that land reform is in crisis and there is need for urgent policy interventions is indisputable (see Fig. 1). Data from the LandNES community survey, representing the views of civil society, also identifies specific interventions that may enhance the effectiveness of the land redistribution in South Africa (see Fig. 6). Below are some of the key policy recommendations that emanate from issues discussed in this policy brief. These recommendations also confirm some of the key policy proposals made in the Expert Report on Land Reform and Agriculture (2019) and the HLP Report (2017).

10.1 Develop appropriate legislation to govern land redistribution

The primary law governing land redistribution, the Land Reform: Provision of Land and Assistance Act, 126 of 1993 has been ineffective in ensuring equitable access to land. A Land Reform Law that operationalises equitable access, rations the use of public resources, outlines clear processes and mechanisms for land identification and acquisition, beneficiary targeting and selection, and how to secure land rights of beneficiaries is urgently required.

10.2 Clarify who will benefit from expropriation without compensation

The Amendment of the Constitution to, among other things, clarify conditions under which land may be expropriated without compensation and the finalisation of the Expropriation Bill are likely to accelerate land acquisition. However, a long-standing challenge is to clarify who land redistribution is

meant to benefit. The failure to clearly identify the target beneficiaries and provide specific guidelines on how they will be prioritised results in the exclusion of the poor social groups in land redistribution.

10.3 Land identification and acquisition

There is need to implement area-based planning and match the available land to the need of the beneficiaries. This requires local municipalities to play a lead role and integrate land reform into the Integrated Development Plans. Local structures, especially Beneficiary Selection Committees, are key in ensuring a people-driven and participatory and consultative land redistribution programme.

10.4 Beneficiary selection and targeting

Transparent processes to identify and select beneficiaries are important. It is imperative to ensure that systematic databases of potential applicants are maintained. A publicly available list of applicants at all district land reform offices will ensure transparency and enhance land governance in land reform delivery processes.

It is imperative to develop clear beneficiary selection guidelines. There is a need to ration public resources and ensure that the different social groups amongst the historically disadvantaged access land and production support. This Policy Brief supports the Expert Report on Land Reform and Agriculture's (2019) proposal to allocate 30% of the budget to the landless and land-poor, 30% to small-scale farmers, 30% to medium-scale farmers and the remaining 10% to large-scale commercial farmers. The rural poor, namely farm workers, farm dwellers and labour tenants need to be part of the landless and land-poor households and small-scale producers benefiting from land allocation.

10.5 Prioritise gender equity

Women continue to be underrepresented in land redistribution and it is important to develop clear criteria for selection and inclusion of women at project level. There is merit in the Expert Report on Land Reform and Agriculture's (20019) recommendation that it is imperative to ration public resources across different priority groups. The allocation of resources should prioritise women who continue to be under-represented in land reform. Women should actively participate in land reform processes which include land identification and acquisition, beneficiary targeting and selection, and decision-making processes in relation to provision of production support.

10.6 Develop monitoring and evaluation systems

The absence of up-to-date data on land reform outcomes prevents the development of effective monitoring and evaluation systems and measures. There is for the government to develop systematic data gathering processes to evaluate and monitor performance in land redistribution and land reform in general. This information should also be used to monitor if land is effectively used for its intended purposes and to prevent the elite capture of resource by the well-off groups in society. This data should be publicly available to ensure transparency and enhance land reform governance.

10.7 Factor in climate change in land reform planning

Land reform has generally been implemented without sufficient support mechanisms, for instance, access to markets, information and extension services. Also, the government has often failed to provide vital resources such as water, seeds and fertilisers. However, in addition to these long-

standing shortcomings, new challenges related to climate change have surfaced and become increasingly prominent. Land acquisition and allocation proceeds without appropriately factoring in the increasingly precarious bio-physical conditions under which land reform beneficiaries have to operate. Land is often allocated to farmers without water rights. There is also insufficient infrastructure for irrigation and existing farming practices are not sufficiently adaptive to the increasingly precarious ecological environment.

10.8 Increase the budgetary allocation for land reform

Success in land reform in terms of acquiring more land and providing more production support to land reform beneficiaries will require more funding from the state. In most cases, the state has acquired land and failed to provide production support to the newly settled farmers. This largely explains the failure of land reform projects to increase production and farm output.