

Land redistribution

A review of the findings of the High Level Panel Report on the Assessment of Key Legislation and the Acceleration of Fundamental Change – December 2017

This summary is derived from pp 200-223 of the High-Level Panel Report.

Key issues at a glance

Core problems	Principal HLP recommendations
<ul style="list-style-type: none"> ● Section 25.5 makes provision for the right to equitable access to land. This right remains undefined. ● Legislation has failed to meet the objectives outlined in the Constitution and in policy documents. ● Redistribution has been slow transferring 5.46% of commercial agricultural land to date. ● The pace has declined since 2008. ● Shifting policy positions. ● Evidence that land redistribution is increasingly benefitting elites with no monitoring mechanisms to prevent this. ● Women constitute only 23% of programme beneficiaries. ● Lack of clarity about tenure rights of programme beneficiaries. ● Failure of current leasehold model to record rights, issue and manage leases. ● Lack of programme impact monitoring. ● Weak intergovernmental co-ordination and misalignment of budgets. 	<ul style="list-style-type: none"> ● A National Land Reform Framework Bill is proposed. ● This law will operationalize ‘equitable access’ and provide a transversal framework for all aspects of land reform. ● It will establish in law the guiding principles for redistribution, restitution and tenure reform. ● It will set legal criteria for beneficiary selection; land acquisition and the choice of land for redistribution. ● It will provide measures to ensure transparency and accountability. ● It will make provision for subdivision and commonage. ● It will enable allocation of secured long-term use and benefit rights. ● It will provide for alternative dispute resolution and a Land Rights Protector.

Problem statement

Legislation has failed to meet the objectives outlined in the Constitution and in policy documents. The Provision of Certain Land for Settlement Act, 126 of 1993, which is used for land redistribution, is permissive rather than prescriptive. It is therefore an inadequate vehicle to give effect to the Constitutional commitment to ‘equitable’ access to land.

The Constitution provides a right of equitable access to land: 'The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis' (Section 25(5)). However, the content of this right has not been defined in legislation nor tested in the courts.

'The meaning of Section 25(5) has not in the past 20 years been interpreted judicially; in other words, while other provisions, such as the right to restitution and to secure tenure, have been extensively challenged and adjudicated in the courts, what constitutes adequate measures to 'enable citizens to gain access to land on an equitable basis' has not. There is no existing jurisprudence related to this right.' (p. 205 – emphasis added).

What is the research evidence?

Slow pace: The pace of land reform has been slow. 'Since the inception of the land redistribution programme, an annual average of 214,415 ha, amounting to a total of 5.46% of commercial agricultural land, has been redistributed.' (p. 209) This includes transfer of ownership (through SLAG and LRAD), state purchase (through PLAS) and acquisition of shareholdings (equity schemes, 50/50).

Slowing down further: There has been a marked decline in the pace of land redistribution, from a peak in 2008. This is largely due to the decline in budgets (in real and nominal terms), to 0.2% of the national budget in 2016/17, and the diversion of budget away from land acquisition towards Recap, AgriParks, NARYSEC and other purposes. The contribution of farmland prices is somewhat unknown as the DRDLR has not commissioned any studies on price trends since 2009.

Changing policy agendas: The development of policy and law has drifted away from its initial pro-poor stance and lacks a vision for inclusive agrarian reform. 'The trajectory of land redistribution over the past twenty years reflects changing policy agendas and ideological positions. Not only has land redistribution fallen far short of official government targets and public expectations, its focus, criteria and modus operandi have also undergone several significant shifts.' (p. 207)

Eligibility: 'Eligibility is broad and unclear, yet new insistence on 'production discipline' suggests that those with the resources to continue commercial farming operations will be prioritised, and that the state will evict its beneficiary tenants unable to do so. Initially described as an alternative to the 'willing buyer, willing seller' approach, PLAS has widened the discretionary powers of officials. While discursively framed as part of a radicalisation of the reform process, the redistribution process appears to be narrowing and is showing signs of elite capture.' (p. 207)

No system for rationing public resources: 'In the absence of a means test and leveraged grant, there is no way to assess the degree to which the purported target beneficiaries are in fact being targeted, and which of these target groups are being prioritised. There are thus no measures in place for Parliament or the public to assess whether the right to equitable access to land is being realised, or the land reform budget is instead being diverted to politically connected elites.' (p. 217). The DRDLR has also failed to establish a database of applicants at district level, as the basis for transparent decision-making and allocation processes.

Gender inequality: Despite policy pronouncements of prioritizing women applicants, official data show that women are marginalised within the land redistribution programme, constituting only 23% of the beneficiaries nationally.

Corruption and ineptitude: The public hearings saw people around the country complaining about ‘officials whom they allege are unhelpful, rude and dismissive of their concerns’ and alleged corruption. ‘The problem of corruption has been confirmed by recent Special Investigating Unit investigations and proclamations, and the suspension of senior officials in the Department of Rural Development and Land Reform.’ (p. 203).

Tenure security issues: The HLP found evidence of severe problems of tenure insecurity – the content and governance of land rights – in the context of land redistribution projects. So, the problems extend beyond the ‘slow pace’ and include questions about who is getting the land and how such allocation decisions are made, and also the question of what they get – what tenure rights, whether or how these are secured, and settlement and production support.

Land administration failures: The HLP found severe problems with the leasehold model in redistribution. Since 2011, the state has stopped giving people land purchase grants or subsidies with which to buy land. Instead, government buys land and retains ownership, while allocating leases. In terms of the State Land Lease and Disposal Policy of 2013, these are meant to be 30-year leases, for which lessees are meant to pay 5% of net annual turnover as rent. The HLP called into question the state’s ability to conduct the state land administration required to provide tenure security to land beneficiaries. Beneficiaries typically get conditional use rights and in many cases, people have no recorded rights whatsoever – which means that in these cases, even where the state has bought land, it has failed to redistribute land rights.

Impacts on livelihoods: There is inadequate evidence on the livelihood impacts of land redistribution. Is it reducing poverty and improving livelihoods, or not? The DRDLR does not have a functional monitoring and evaluation programme that is able to provide evidence of this. In the past, it has commissioned several Quality of Life reports that provided such evidence. The last such study was conducted in 2006 and published in 2009. Ongoing data collection, and a panel data survey, are needed, along with clear ‘outcomes indicators’ that specify what criteria constitute ‘success’ and how this can be measured.

Production support: There is no national information on production support provided in redistribution projects. There is evidence that many projects lack implements or even basic forms of support. The main mechanism for production support is Recapitalisation and Development Programme (Recap) funding, but this is typically delayed and only a small proportion of projects receive it. The DPME review of Recap proposed it be scrapped entirely. There is weak coordination between DRDLR and DAFF (and provincial departments of agriculture) and misalignment of their mandates and budgets.

What government is proposing

There is currently no proposed legislation on redistribution *per se*.

In 2017, the President sent the Expropriation Bill back to the National Assembly and NCOP for further consultation.

HLP recommendations

Recommendation 3.1: Proposal for a new framework law on land reform

A National Land Reform Framework Bill is proposed, which will operationalize ‘equitable access’ and provide a transversal framework for all aspects of land reform. It will not replace any other law. It will establish in law the guiding principles for redistribution, restitution and tenure

reform, and set legal criteria for beneficiary selection; land acquisition and the choice of land for redistribution; transparency and accountability; subdivision; commonage; allocation of secured long-term use and benefit rights; alternative dispute resolution and a Land Rights Protector.

Conclusion

Section 25(5) of the Constitution states that: 'The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis'. The HLP recommendation for an overarching Framework Act seeks to provide a foundation to integrate and align different elements of the land reform programme while giving legal effect to the rights contained in Section 25(5).