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### **South Africa land reform policy update**

**Report Categories:**

Agricultural Situation

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**Report Highlights:**

Following wide criticism of the land reform policy proposals in South Africa, there have been positive developments driven by the open engagement and invitations by the Minister of Rural Development and Land Reform, and the Minister of Agriculture, Fisheries and Forestry to various industry organizations. Industry has welcomed such engagements by government and is of the position that the success of land reform will depend on government leveraging the successful work and land reform projects already being undertaken by the industry. Industry has also encouraged government to consider the alternative policy proposals that have been presented and to prudently manage the political interest or expectations during this process. Post will continue to monitor developments regarding land reform policy in South Africa.

## Background

On October, 16, 2014, at the AgriSA annual congress, the Minister of Rural Development and Land Reform, Mr Gugile Nkwinti welcomed the alternative proposals on land reform by AgriSA`s Technical Task Team on land reform and the proposals presented by the Land Bank. The proposals can be found on the following links; [Download AgriSA presentation on land reform](#); [Download AgriSA holistic plan on land reform](#) and [Download the Landbank`s sustainable land reform approach](#). These proposals demonstrated that there are workable and successful land reform models that government could adapt e.g. land reform in the sugar industry. Some of the proposals indicated that there is strong interest by industry including the banking/financial sector to support the land reform process, if undertaken appropriately.

Minister Nkwinti encouraged the industry to continue to engage government on alternative land reform models and promised that the AgriSA`s Technical Task Team on Land Reform will be included in the National Reference Groups (NAREG) process. The following day at the congress, the South African Minister of Agriculture, Fisheries and Forestry, Mr. Senzeni Zokwana also stressed the importance of partnerships to create a sustainable agricultural sector, and encouraged an open and not too reactionary debate to different options in addressing the sensitive land reform issue.

Minister Zokwana has echoed similar sentiments in the past, e.g. at the PMA Fresh Connections Southern Africa conference held in South Africa, from August, 13 to 14, 2014, the Minister assured delegates that South Africa will not implement any land reform policy that will result in the expropriation of land without compensation, and encouraged industry to engage government in drafting sustainable land reform policies. Minister Nkwinti and Minister Zokwana also shared similar consistent messages at the African Farmers Association of South Africa (AFASA) conference held on October, 20 to 21, 2014. In addition, on September, 4 to 6, 2014, the Ministry of Rural Development and Land Reform hosted a three day Land Tenure Summit, to address the challenges facing land tenure in commercial and communal areas; how best to resolve the land reform issue; and to align land reform policies to the ANC resolutions, and the NDP.

Post views the above as positive developments on the land reform debate in South Africa following wide negative media coverage early this year, based on governments approach and proposed controversial land reform policies.

## Land reform regulations recently passed or proposed

Table 1 shows the contentious land reform policies recently proposed by South Africa and were widely criticized.

**Table 1: Contentious regulations recently passed or proposed by government**

Name	Link	Comment
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Restitution of Land Rights Amendment Act, 2014 (Act No. 15 of 2014)	<a href="#">Download</a>	Passed on July, 1, 2014. The key change is that the cut-off date for lodging land claims was opened and extended to December 2018.
Land Tenure Security Policy for Commercial Farming Areas	<a href="#">Download</a>	The policy proposes a number of land tenure security interventions, including a decentralized land rights management system, an awareness and capacity building program, redistributive measures, incentives for farm owners to improve farm worker services and housing, a farmworker grant and a focus on alternative dispute resolution. The policy is planned to be implemented in a phased manner over four years, from 2013 to 2017.
Strengthening the relative rights of people working the land	<a href="#">Download</a>	The policy was published as a draft proposal for discussion, as part of the 'Land Tenure Security Policy for Commercial Farming Areas'. One of the contentious proposals is that farm owners should share 50% of the farm's equity with employees.
Green Paper on Land Reform	<a href="#">Download</a>	The Green Paper was published in 2011 and lays out the government's vision for the need for land reform and envisions a four-tiered land ownership structure comprised of state owned lands that can be leased, private and foreign owned lands with limitations, and community lands.

**Source: Department Rural Development and Land Reform**

### **Restitution of Land Rights Amendment Act**

On July, 1, 2014, government passed the Restitution of Land Rights Amendment Act, 2014 (Act No. 15 of 2014) which re-opened and extended the deadline for lodging land claims from December, 1998 to the end of December, 2018. Minister Nkwinti through media statements indicated that the reasons for re-opening and extending the deadline was that while there is an estimated 397,000 valid restitution claims, only about 80,000 claims were lodged by the 1998 deadline due to the slow and inefficient manual process at the time.

This amendment was widely criticized by industry. AgriSA indicated that reopening the land claims process would add further uncertainty in the agricultural sector and make it less attractive to investors. In addition, AgriSA highlighted the poor government administration and lack of capacity during the previous process, and suggested that the government should have considered clearing the backlog of about 10,000 land claims from the previous deadline prior to opening up the process. Other industry contacts have also questioned the government's ability to cover the massive costs estimated at R197 Billion (US\$18 Billion) that could result from re-opening land claims.

### **Strengthening the relative rights of farm workers**

On August, 2, 2013, government passed a draft policy proposal, 'Strengthening the relative rights of people working the land' as part of the sub-policy of the 'Land Tenure Security Policy for Commercial

Farming Areas'. The policy makes several proposals, however, the most contentious proposal is that farm owners should hand over 50% of the farm's equity to employees based on the number of years they have worked on the farm. Minister Nkwinti was quoted by the media stating that this policy was prompted by the reluctance of industry stakeholders to come up with proposals that would progress land reform.

The Institute of Poverty, Land and Agrarian Studies at the University of the Western Cape has termed the proposal as "smoke and mirrors" given that it was passed close to the national elections. The Transvaal Agricultural Union and AgriSA described the policy proposal as being unfair to farmers and unworkable. The KwaZulu Natal Agricultural Union (Kwanalu) issued a statement that the proposed policy could lead to disinvestment in the KwaZulu Natal province that already faces challenges with significant land claims. Kwanalu also argued that a similar policy, the Farmworker Equity Scheme (FES) programme allowed farm workers to obtain shares but was unsuccessful as it was not implemented in a more efficient way.

Section 25 (2) of the South African Constitution provides assurance that land may not be expropriated without compensation. At this stage, post anticipates that any land reform policy proposal that violates this constitutional right has minimal chance of being passed, as it requires an amendment to the constitution, which is only possible if endorsed by the ruling party (currently the African National Congress). The proposed policy, that will see farm owners ceding 50% of their farms to employees without compensation, possibly violates section 25(2) of the constitution. As a result, post anticipates that this policy will not be passed, given that the ANC has distanced itself from the proposed policy through media reports.

### **Other land reform regulations being considered**

The Ministry of Rural Development and Land Reform has indicated that it intends to pass more bills related to land reform before the end of 2014. These are the Electronic Deeds Registration Bill; Regulation of Land Holdings Bill; Extension of Security of Tenure Amendment Bill; Communal Property Associations Amendment Bill; and the Communal Land Tenure Bill.

The objective of the Regulation of Land Holdings Bill is to limit foreign land ownership in South Africa. This bill has been criticized because the area of land owned by non-South Africans is relatively insignificant (approximately 5% to 7 %) and not the key reason for the slow transfer of land to black South Africans. The bills relating to communal land (Extension of Security of Tenure Amendment Bill, Communal Property Associations Amendment Bill and the Communal Land Tenure Bill) could be useful in providing security of tenure in communal areas. However, their effectiveness will only be achieved if the power that traditional leaders hold over the use of land in the communal areas is addressed. This has been cited as one of the major reason that has prevented communal areas from being developed and used more productively.

### **Current developments on land reform policy**

There is a growing consensus by industry that the National Development Plan (NDP) provides the right fundamentals and a good guiding vision for land reform policy, and that the NDP proposals are not

prescriptive but offer alternative sustainable land reform models that should be considered by South Africa. [Click here to download the NDP proposal on land reform](#). However, such a positive vision still needs to be reflected by the Ministry of Rural Development and Land Reform whose recent policy proposals seem misaligned to the NDP vision and have been widely criticized by industry.

The Ministry of Rural Development and Land Reform, and the Ministry of Agriculture, Forestry and Fisheries currently seem to be consistent in their message of encouraging engagement and proposals by industry on land reform policy, as evidenced at the AgriSA annual congress, PMA conference, AFASA conference and the Land Tenure Summit. Post contacts have confirmed that similar engagements by government with industry are also taking place in private. Industry has welcomed such engagements by government and is of the position that the success of land reform will depend on government leveraging the work already being undertaken by the industry. Industry has also encouraged government to consider the alternative policy proposals that have been presented and to prudently manage the political interest or expectations during this process. Post will continue to monitor developments regarding land reform policy in South Africa.

#### Other Related Links

Internet / GAIN Link	Title
<a href="#">Download</a>	South African Constitution (Section 25 to 27 applies)
<a href="#">Download</a>	National Development Plan (NDP)
<a href="#">Download</a>	Land Reform Acts
<a href="#">Download</a>	Land Reform Policies
<a href="#">Download</a>	Land Reform Bills