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LAND REFORM

So whose land is it anyway?

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"We the people of South Africa, declare for all our country and the world to know: the land shall be shared among those who work it! Restrictions of land ownership on a racial basis shall be ended, and all the land re-divided amongst those who work it to banish famine and land hunger; the state shall help the peasants with implements, seed, tractors and dams to save the soil and assist the tillers; freedom of movement shall be guaranteed to all who work on the land; all shall have the right to occupy wherever they choose; people shall not be robbed of their cattle, and forced labour and farm prisons shall be banished." – The Freedom Charter of the African National Congress adopted on 26 June 1955.

Public debate and discourse on land has rarely ever been centred around precisely who should benefit from the land reform programme. Despite the unprecedented interest and focus on land reform as one of the most elusive deliverables for the post-apartheid government, no efforts have, until recently, been made to legislate on the identity and selection criteria applicable in determining beneficiaries of land redistribution in particular.

The Presidential Advisory Panel on Land Reform appointed by President Cyril Ramaphosa, in its recommendations on page 93 of the Report, asserted that there is a need for a policy that will provide a clear criteria for beneficiary selection that will target the needs of specific categories of people as a priority group for land redistribution.

On 3 January 2020, the Minister of Agriculture, Land Reform and Rural Development Reform published the Draft National Policy for Beneficiary Selection and Land Allocation calling for public comment. The last day for the submission of comments is 3 March 2020.

The absence of a clear policy on precisely who should benefit from land reform, and in particular redistribution, has cost the country 25 years of shoddy and ineffective implementation of unclear, haphazard and illogical internal policies adopted by the Department of Agriculture, Rural Development and Land Reform ("the Department") The Department has often chopped and changed these policies over the years, each championed by a new Minister at the helm, involving a new approach with each new appointment. The Department has historically adopted a myopic view of land reform, with its skewed focus on farmland and agriculture, notwithstanding current statistics of the need for land and livelihood in urban and metropolitan areas.

The Special Investigation Unit Report published on 31 July 2018 uncovered a web of land reform projects involving land given to pals by various officials of the Department and wide-ranging corruption, to the detriment of those in desperate need for land.

To date, it has been unclear whether or not government policy favours a "pro-poor" approach or whether or not land reform is seen as a potential catalyst to open up markets, and to transform the commercial farming sector, to provide opportunities for youth, women, emerging black farmers and emerging black industrialists, or even a combination of both.

Publication of the Draft Policy was inevitably necessitated as a result of the failure by government to identify a political strategy and a streamlined and macro approach to determine which sectors of society would be prioritised in resolving the land question, for what purpose and to what end.

The identification and allocation of land by the Department has historically taken place without any transparency and/or accountability undermining administrative law principles enshrined in section 33 of the Constitution which obliges the State to take administrative decisions that are lawful, procedurally fair, and reasonable.

WHAT DOES THE DRAFT POLICY SAY?

The Draft Policy introduces new classes of persons who will benefit from the land redistribution process, and places these classes of persons at an advantage in how the Department will process allocate land.

It is evident from the Draft Policy that there is recognition that over 65% of the South African population resides and works in cities and metropolitan areas, and that the developmental needs of the country have drastically shifted since the Freedom Charter, and most certainly since the adoption of the 1997 Policy.

The *1997 White Paper on South African Land Reform Policy* identified the following classes of beneficiaries –

- individuals with no land, especially women;
- farm workers together with their families;
- labour tenants together with their families;
- individuals who live in urban and peri-urban areas who wish to upgrade their tenure rights;
- beneficiaries of the Land Restitution Programme; and
- individuals who have been dispossessed of their land which do not fall within the purview of the Restitution of Land Rights Act No. 22 of 1994.

It may be argued therefore that the 1997 Policy envisaged that a land reform programme would also serve as a poverty alleviation tool in favour of the most vulnerable members of society.

The new proposed class of beneficiaries introduced by the Draft Policy has, however, widened the scope and socio-economic status of potential beneficiaries. It identifies the following as potential beneficiaries –

- all previously disadvantaged South African citizens who are black;
- Indians, Coloureds and Khoi-San over the age of 18 years;
- women and people with disabilities;
- military veterans especially those who are unemployed;
- natural persons and legal entities;
- spouses of public servants on condition that those spouses are also declared public servants;
- communal farmers, township dwellers, and individuals living on state owned land and communal land who depend on subsistence farming;
- rural poor municipalities with a low revenue base;
- metros and cities, but only to the extent that the land is strategically located to address urgent needs;
- property developers on condition that they are registered with the authorities and be subject to the procedures that are prescribed in terms of the Interim Protection of Informal Land Rights Act No. 31 of 1996; and
- qualifying municipalities and communities in communal areas.

It is not clear why the draft Policy does not categorise women as a stand-alone category of beneficiaries, given the prevailing statistics that demonstrate women as being in the majority of people who not only work the land, but who also suffer the most in the context of illegal evictions. Similarly, persons living with disabilities ought equally to be considered and protected in a distinct category. Women continue to be bear the brunt of patriarchy in societies whereby headmen and/or traditional leaders continue to disregard the dignity and rights of women in the context of land allocations.

It is noteworthy to point out that non-South African citizens, foreign nationals, employees of the Department, politicians, state employees and public officials, persons who have already benefitted from the Land Redistribution programme, farmers who are leasing state-owned land and traditional leaders who are recognised by any law in the country are precluded from benefitting from the Draft Policy.

The Draft Policy introduces a Land Allocation Panel which is an independent non-statutory body aimed at dealing specifically with land redistribution applications and allocations in order to fast-track applications in light of the backlog that currently exists, and to ensure that the application process is transparent and open to the public. This panel will also serve as a dispute resolution body where parties will have an opportunity to appeal decisions pertaining to the selection of beneficiaries and allocation of land.

The Draft Policy demonstrates a shift in policy from one which solely utilised land reform as a potential poverty-alleviation tool which largely concerned itself with rurality and subsistence farming, to one which also recognises the duality and linkages between urban and rural life and livelihoods. The inclusion of cities, municipalities, property developers and metros denotes a realisation that land reform is not only capable of delivering social justice and social cohesion, but has a critical role in the unlocking of commercial value relevant to current developmental needs.

It is a welcome step in the right direction to finally lift the veil of secrecy regarding the manner in which land allocations are made and to whom.

The successful implementation of the Draft Policy in its final form, hinges on the ability, capacity and resourcing of the envisaged Land Allocation Panel, and a balancing act between prioritising the most vulnerable members of society and supporting and transforming the agrarian and property economy for growth and inclusivity.



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