

STATE OF THE NATION ADDRESS

16 February 2018 3 min read

The [National Land Audit](#) has recently been made public. This report was primarily phase 2 of a Land Audit that was conducted in 2011. Whilst it was anticipated that phase 2 of the Land Audit would provide clarity in terms of who owns what land in SA, the audit was still dogged with the following challenges:

- The Deeds Registry, being the primary source of data available of registered and surveyed land, does not include a legal obligation for a landowner to state his/her/its race. In this regard, the reliability of the audit remains questionable;
- Significant pieces of land remain unregistered and unsurveyed especially in the Eastern Cape – which means that the Deeds Registry information cannot be relied upon;
- There remains a philosophical conundrum between individual land ownership and communal land ownership amongst the black majority. It will be interesting to note how government will deal with expropriation without compensation as a means to redistribute land to the black majority, if the sources of data on land, do not and cannot assist with certainty in terms of the identification of white landowners and black beneficiaries of land. It remains to be seen how expropriation without compensation will impact current black landowners;
- There is a concept of a "land reform Fund" that is being proposed, which would be set up by the levying of a tax to be levied on landowners in order to fund "post-settlement" in order to support and accelerate land reform programmes. Whilst this matter falls within the scope of fiscal planning, it is likely to trigger legislative challenges;
- There is a proposal of "common property" where Land vests in the State which will have to pass constitutional muster. The government will have to show that the proposal to have land vest in the State is a lawful, reasonable, fair and constitutional limitation of the right not to be deprived of property; and
- The introduction of a Land Administration Commission under the auspices of the Department of Rural Development and Land Reform. In this regard, we already have the Commission for the Restitution of Land Rights that functions under difficult conditions with it being underfunded. It will be interesting to see whether or not the President mentions the LAC as a body which will be tasked with the finalisation of the conduct of a final Land Audit and to what extent this important Department will be funded in terms of the National budget, given that it has historically enjoyed less than 1% of the national budget.



@werksmans