

Challenges and changes in the policy and legislative environment

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For today...

1. Expropriation without compensation
2. Jobs Summit outcomes
3. Other legal and policy updates

Expropriation Without Compensation

Process

- Constitutional Review Committee

1. Provincial hearings July & August

= Overwhelming support for an amendment, but

- Debate reduced to pro v anti-land reform, little understanding of the technical nature of the proposal to amend section 25;

- Prof Ruth Hall: “asking the wrong questions to the wrong people”

2. National hearings (Parliament – September & October)

- Agbiz first organisation asked to present;
- Little support for an amendment – s25 not the problem.

Ruling party left with dilemma – populist support for EWC means it will be difficult to go back on an amendment, however will likely be highly qualified to negate any impact.

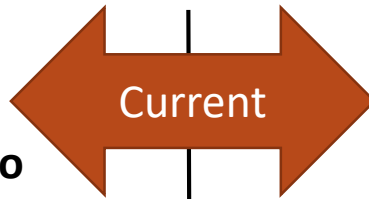
President Ramaphosa on 31 July 2018

- "A proper reading of the Constitution on the property clause enables the state to effect expropriation of land with just and equitable compensation and also expropriation without compensation in the public interest... Accordingly, the ANC will, through the parliamentary process, finalise a proposed amendment to the Constitution that outlines more clearly the conditions under which expropriation of land without compensation can be effected. The intention of this proposed amendment is to promote redress, advance economic development, increase agricultural production and food security."

Game changer? – I think not...

- Crafted to appeal to all sides (Exactly the same as ANC's December resolution);
- Unlikely to see detail before elections.

Inclusive economy



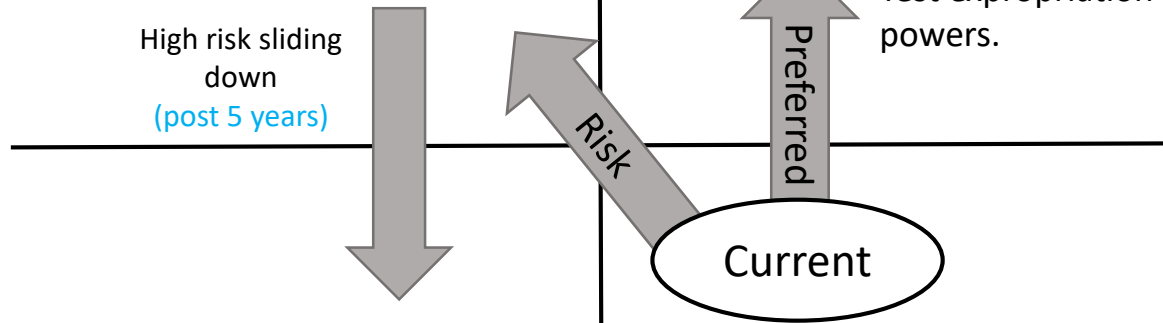
1. Gradual disinvestment scenario

- Rule of law maintained;
- No compensation for land;

2. Equitable, stable growth

- AgriBEE;
- Blended finance; and
- Test expropriation powers.

Weak recognition and access to property rights



Extension of strong property rights

3. Self-help scenario

- Indecision on land leads to land invasions.

4. Status-quo scenario

- Same, ineffective mechanisms maintained;
- Little market disruptions but huge inequality.

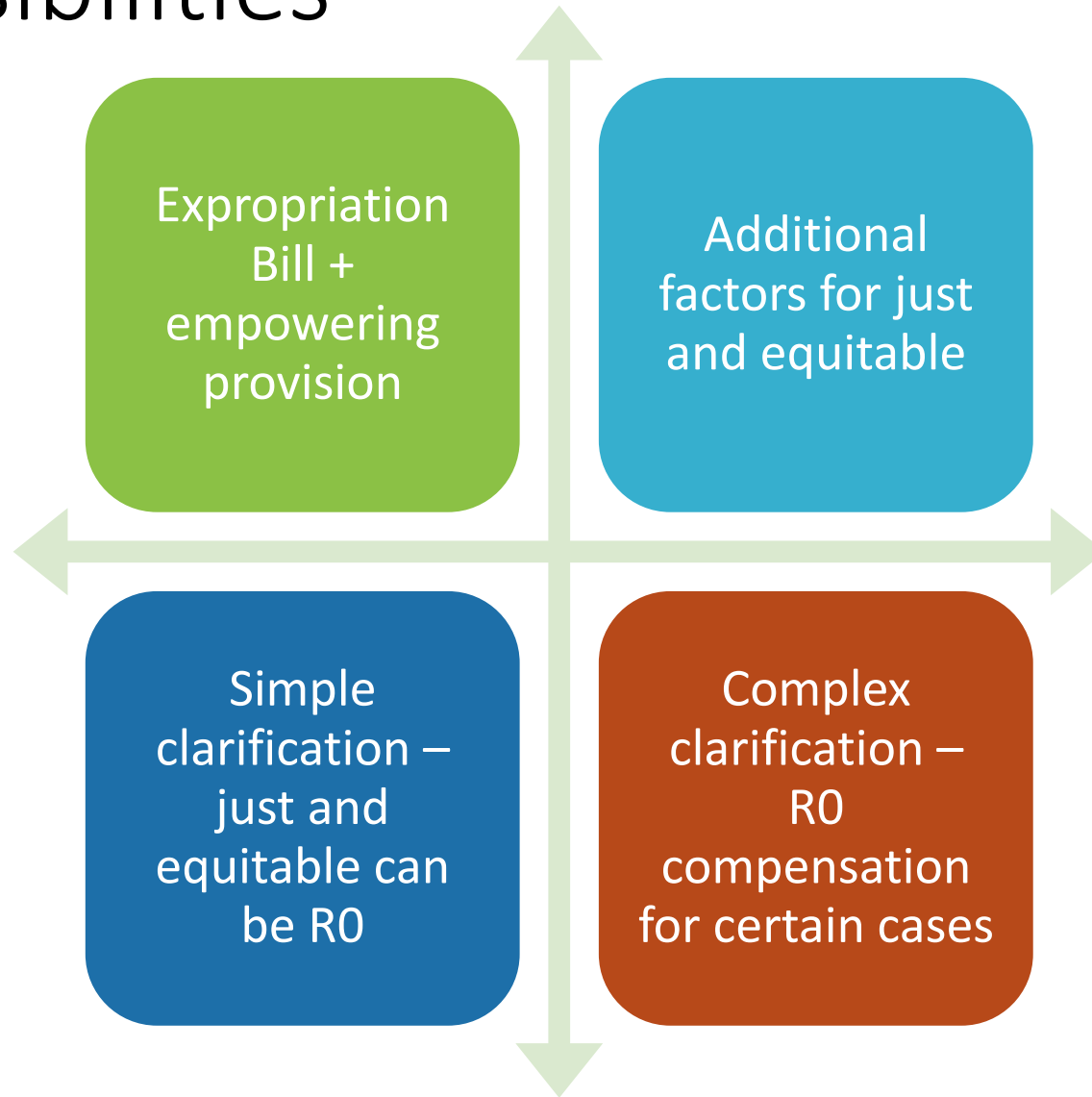
Concentrated economy



BFAP
DATA
DRIVEN
INSIGHT



Possibilities



Most likely scenario

Range of compensation to be prescribed by statute

- Section 25 already makes provision for a broad range of compensation depending on the facts; but
- Courts have not been called on to give guidance;
- Politically, no time to wait for test cases for guidance;
- Likely that the range and conditions will be spelled out in Expropriation Bill redraft;
- Accompanied by small amendment to s25 to prevent legal challenges.

Most likely scenario

Small amendment to Constitution accompanied by redraft of Expropriation Bill

- Hint: Expropriation Bill withdrawn from Parliament.
 - Comprehensive redraft very likely;
- Possible amendment: *“Just and equitable may be zero” or “Compensation may be prescribed by legislation, including zero compensation in certain instances...”*;
- State can express its conditions in re food security, financial sector concerns in the Expropriation Bill whilst staying true to the expectation of an amendment – albeit very qualified.

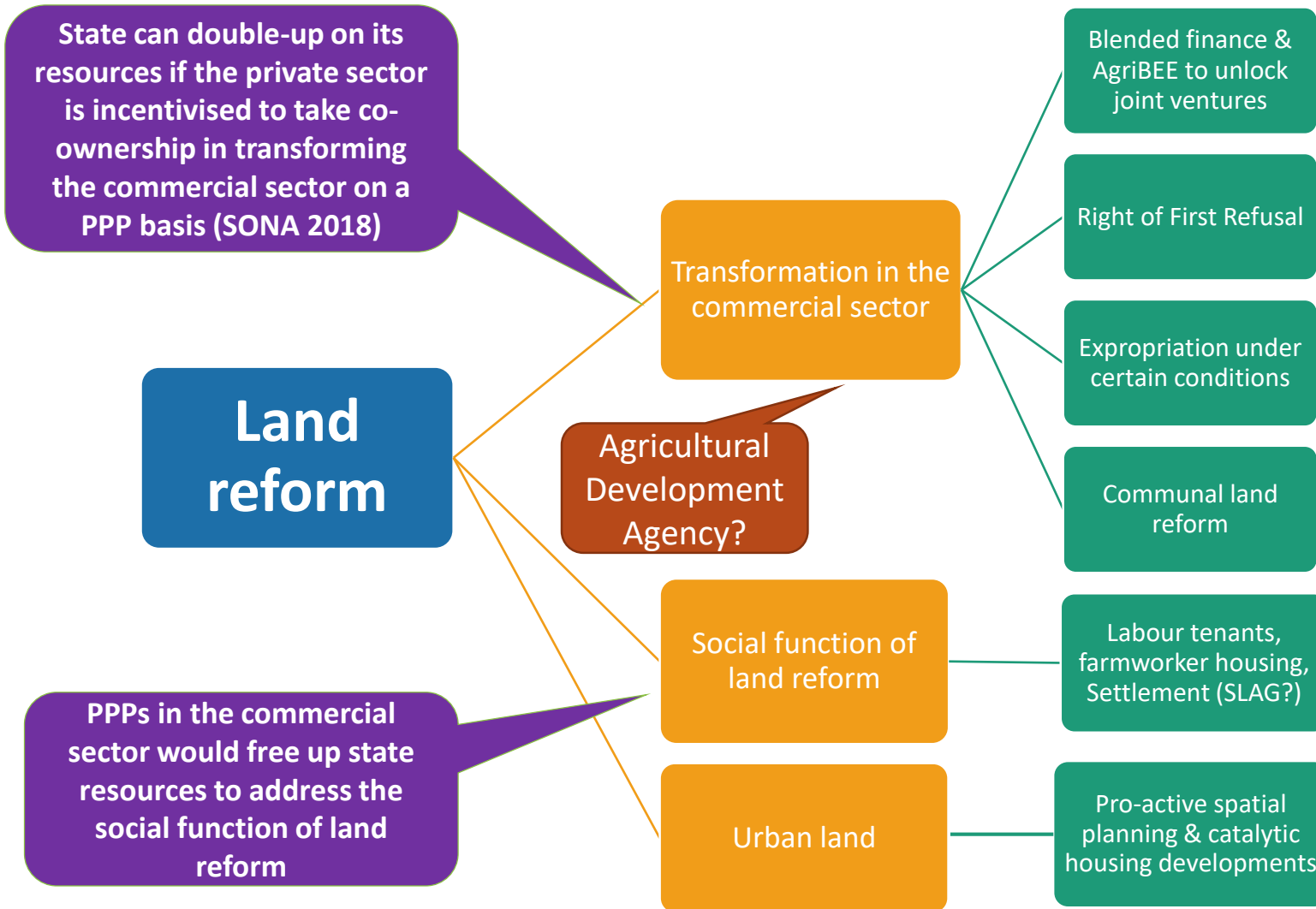
Most likely scenario

Possible content of Expropriation redraft:

- Perhaps R0 compensation for:
 - Unused;
 - Abandoned buildings;
 - Land bought for speculation;
 - Absentee landlords;
 - Land over 'ceiling'.
- Perhaps 'partial compensation' for:
 - Fixed improvements made, but not for the land;
 - Buildings, canals, infrastructure etc.
 - Bonded property & value of bond?

Still highly speculative, no certainties at present.

Land reform not just about expropriation



Agbiz involvement

Emerging as a respected thought leader on land reform

- Wandile Sihlobo & Nic Serfontein chosen for Presidential Advisory panel;
- Task team on Rural Development Agency;
- Jobs Summit –
 - Agricultural sector amongst the leading contributors to Jobs Summit agreement;
 - President Ramaphosa mentioned the Agbiz/BASA finance model by name;
- DRDLR workstreams on financing model & legal reform;
- Presentations at SARB, BER, BUSA, GIBS, Werksmans, embassies etc.



“Uncertainty creates opportunity”

- EWC remains a risk, but the final product will likely be qualified;
- Political landscape post-election a huge variable;
- Risk profile of the sector may change before any actual legal changes are effected.

➤ *“Uncertainty creates opportunity”*

- Partnerships, B-BBEE deals, etc., have a few distinct advantages:
 1. Set the terms for the deals;
 2. Choose own partner;
 3. Blended ‘soft’ finance may soon become a reality;
 4. May become a competitive, business advantage in the future.

No guarantee though that this will buy you any exemption

➤ **Other positive strides being made in agri-development.**



Jobs Summit

Presidential Jobs Summit 2018

- Held 4 & 5 of October 2018;
- preceded by significant work at Nedlac where:
 - Business;
 - Labour;
 - Government; and
 - Community

sought to agree on solutions to stimulate job creation in the economy;

- Basis for a social compact;



Introduction

Mandate:

- Agree to specific interventions that will stimulate the agricultural economy and create jobs;
- Gov & Labour pushed Business to agree on projects that will stimulate job creation;
- Business in turn pressed for urgent reforms in the policy environment;
- Agriculture featured heavily – seen as significant sector to grow employment;
- Agbiz took the lead on agricultural, agribusiness and land reform matters.

Agricultural specific initiatives

- Blended finance model for agricultural support;
 - Public sector grant (Jobs Fund, DAFF, DRDLR) matched with loan component (Land Bank & commercial banks) for agricultural development;
 - Agbiz/BASA blended finance model for land redistribution;
- Gov to prioritise 9 Agri-Parks
 - Agbiz & DTI to review 9 Agri-park's business plans and help to make them 'investment ready';
- Smart Villages: Farmworker Housing, Land Ownership and Agropreneurship;
- Industry co-finance or provide secondment of staff to help fill key vacancies, e.g. product approvals, inspectorate at ports of entry and exit;
- Government stimulus to build biosecurity capacity;
- Road to rail;
 - Look at feasibility of rejuvenating certain rail lines on a PPP basis between Transnet, DoT and commodity groupings.
- Create a platform to facilitate JVs between businesses and communities for specific agricultural development projects – cut through the red tape

Creating an enabling environment

- BASA/Agbiz blended finance model;
 - Comprehensive land reform legislative review;
 - Adapt credit legislation for agribusiness;
 - Streamline wheat tariff, CEC contracts, assignees for product approvals;
 - Rationalise food security mandate (DAFF/DoH/DTI);
 - Address municipal load shedding;
 - Accelerate publication of standards for bio-fuel;
 - Review water use authorisation application process & water master plan;
 - Extend “one environmental system” to agriculture
- = Integrate environmental, water and other permits

Cross-cutting work

Contributions also made to work on;

- Anti-corruption pledge;
- Institutional reforms to prevent corruption in land reform;
- Improved efficiency of Training Lay-off Scheme, Youth Employment Services and other job creating policy structures;
- Link up public employment programmes with skills demand in private sector, e.g.;
 - Working on Water;
 - Working on Fire.
- Water stewardship programmes
- BUSA/CCMA web tool to support SMEs with compliance.

Way forward

- Tough deliberations at Nedlac prior to summit; but
- Real work starts now – follow-up structures being put in place to ensure agreements are refined and implemented;
- M & E key;
- Lots of work for the sector, but also great opportunity to get PPPs going in earnest;
- Commitments publicly made by President;
 - No excuse for Government Departments to second-guess key aspects such as blended finance etc.
- **If we can action even half of the agreements, it will make a substantial difference in the sector.**

Miscellaneous

Other legal and policy matters

- Comprehensive producer support policy;
 - Deliberations at Nedlac, focus on coordinating and incentivising PPPs for agricultural support;
- Climate Smart Agriculture policy;
- Economic Regulator for Water and Master Plan;
- Draft Fertilizer Bill;
- Draft regulations for Hazardous Chemicals
- Carbon Tax Bill;
- Climate Change Bill;
- GHG Reporting Regulations, technical guidelines and national inventory;
- Waste Exclusion Regulations;
- Integrated Resource Plan for energy;
- Draft Exclusion Regulations for the National Minimum Wage;
- Competition Laws Amendment Bill.

Thank you

Questions or comments?