



Case Notes 3

Presidential Advisory Panel Report on Land Reform and Agriculture: Some Thoughts and Reflections

About Seriti Institute

Seriti Institute, formed in 2009, is a social enterprise specialising in Community Development. Seriti's supports interventions which promote community self-reliance. Seriti implements and manages community development projects, and provides other technical services such as capacity building and training within communities it works in.

About Seriti TALKS

Seriti TALKS is a platform that brings together development practitioners, academics, policy makers, funders, and other stakeholders to share knowledge, ideas and experiences. The purpose of Seriti TALKS is to promote networking among all stakeholders involved in the development fraternity, while also trying to influence change among policy makers by disseminating best practice models of development.

The third "agricultural" series of the Seriti TALKS was held on the 29th August 2019 and focused on Land Reform and Agriculture.

Presidential Advisory Panel on Land Reform and Agriculture

The Presidential Advisory Panel on Land Reform and Agriculture was formed in September 2018, and part of its mandate was to explore the conditions under which expropriation without compensation (EWC) would work to achieve the required balance between growth and equity.

The Panel's work followed the mandate given to the President at the 54th Annual Conference of the Africa National Congress (ANC), where EWC was established as a preferred policy position to advance radical economic transformation.

The purpose of the Seriti TALKS discussion was to discuss the key messages of the Panel's report and provide some comments and reflections that would be part and parcel of a broader position of civil society.

While much debate was centered on the possibility of establishing EWC through an amendment of Section 25 of the Constitution, as well as indeed amendments of other associated legal instruments (e.g. The Sub-division of Agricultural Land Act). The Panel's report established that there were various land reform policy instruments that could be implemented without the need for legislative amendments. Some of the areas that do not require legislative amendments include:

- **The Land Reform Fund** – The establishment of a fund to support land reform, to provide farmer beneficiaries with post-settlement resource support. However, the report did not go far enough to establish who would hold the fund (i.e. whether it should be housed at the Land Bank or the Department of Agriculture, Rural Development and Land Reform), and how to apportion the share between large scale commercial versus smallholder commercial (and semi-commercial) agriculture. The Fund would help support the latter group in particular, who have not been able to access credit (with input suppliers demanding cash-on-delivery, while established farmers get 30-day credit arrangements).
- **A Land Audit** – it's important to establish who owns, where, and under what types of tenure arrangements. There are gaps in data on land ownership, with estimates suggesting that land transferred from white to black ownership being anything between 9% and 21%, depending on data assumptions and triangulation to close data gaps. Of-tenure rights such as PTOs are not formally recorded in the Deeds' Office.
- **A Land Donations Policy** – where commercial farmers, churches, and mines etc. donate land for redistribution to targeted communities. There is a suggestion that the donations tax should be revised downwards, the application of Sub-division of Agricultural Land Act should be reviewed, and the transfer costs from the Deeds Office should be brought down to reduce the costs of donating land to beneficiaries.
- **State's Land Administration** – in terms of capacity and processes that establish new and higher levels of transparency. The processes under which land reform was undertaken has been shrouded in secrecy, and this lack of transparency has been a key issue that has led to all sorts of corruption and rent-seeking behavior that threatens to derail progress on land reform. For instance, the beneficiary selection has not been as transparent, while the rights and obligations of District Land Reform Committees (DLRCs) (who are primarily responsible for beneficiary selection) have not

been clearly articulated. Decisions made by DLRCs have sometimes been reversed by the National Government.

- **Coordination of Water Use Right Allocation and Land Reform** – The need to align land ownership and water use rights, such that the acquisition of land is complemented with a set of water rights to go along with it, for farmers to effectively and efficiently utilise land and water for agriculture. The Panel Report recognises that water and land rights go hand-in-hand, and in the same vein, the need for policy coordination of the respective Departments which deal with agriculture and water. In most instances, land purchases for land reform are done without acquiring the water rights and this has led to challenges in the access and utilisation of water by land reform beneficiaries.

The Panel's report highlighted a number of key proposals where the majority agreed but highlighted dissenting opinions between panelists, which in some constituencies would be deemed controversial, and these include:

- **The EWC Approach¹** – The Panel did not agree on the need to amend Section 25 of the constitution to enable EWC, with one group of the mindset that the existing pieces of legislation are sufficient to expropriate without compensation, while others saw an amendment as a necessary move to speed up land reform. In principle, there is a recognition that expropriation could be used but as one of the tools or levers to redistribute land, and a means to attain equity. In that sense, it is important to note that expropriation is a last resort, rather than a first option.
- **Land Tax** – A need to investigate a possibility of a tax levied on unused agricultural land as a punitive measure on those holding unproductive or under-utilised farmland. The tax is based on an incentive system which promotes the optimisation of land use, by taxing increasingly more land which is under-utilised.
- **Land Ceilings** – a need to investigate a regulated land holding by limiting the size of parcels of land which can be held by any one individual or corporation. However, in its previous form, this policy was deemed un-implementable as it proffered a one-size-fits all to both intensive and extensive production systems across different agro-ecological zones.

¹ All political parties have offered markedly divergent positions, with those to the left advocating for wholesale expropriation coupled to nationalisation, and those to the right disagreeing with EWC in its entirety. The ANC has proffered a middle ground, which qualifies EWC to land held under certain conditions, including vacant, unused and under-utilised state land, as well as land held for speculation and hopelessly indebted land.

There are additional key areas that were discussed in the Panel's report, but which require further thought and debate.

- **Off-tenure Rights** – particularly with respect to how these can be alienated, and how customary law management law is not fully recognised within law. Of particular importance is the need to acknowledge that pure private ownership and pure traditional structures of ownership have both failed to address the land hunger issue. While the report acknowledges the mixed tenure model and multilevel ownership arrangements, there is a need to incrementally provide more clarity on the rights and obligations of customary land, and to codify these rights without necessarily assigning them terminology. For instance, there is a need for a simple tenure system that specifies and delineates communal and individual rights to land use and ownership, without being bogged down in legal technicalities. The approach to incrementally accord rights and obligations can be implemented on a case-by-case approach that recognises the nuances of different communities – e.g. areas where there are no chieftainships vs. traditional areas with chiefs etc.
- **Water Rights** – as discussed, water rights and land rights have to be aligned at policy level, the latter has to be implemented concurrently with the former. Since 1998, water is no longer privately owned and now held by the state as custodian on behalf of all South Africans. The State provides licenses to water users (and these licenses provide water use rights), but the general perception is that Government has insufficient capacity to manage water licenses centrally. Water users are generally the ones that manage the use of water – and coordinate through the Water Users Associations but these are seen as untransformed. There are instances in which water within canal systems have been set aside by government for transformation projects, but communities earmarked to benefits from these canals are either too far or do not have the infrastructure to access the water. The issue of water needs a commodity-based approach – for instance, the forestry industry has been better at managing the issue of water, especially with respect to streamflow reduction licenses.
- **The Subdivision of Agricultural Land Act 64 of 1998** – which the Panel's report recommended the President ascend to the repeal and sign the repeal into law. Generally, land acquired for land reform has to be sub-divided into smaller units. However, the principle that has been argued when looking at this piece of legislation is whether the acquired farm in question can be viewed as a “cohesive economic unit” – for instance, an orchard with a packhouse. In this instance, it will neither be productive nor economical to subdivide the farm. However, in other instances – such as pasturelands – there are grounds that would justify the need to subdivide the land into smaller farm units.

- **Balancing Growth and Equity** – The Panel’s report came against the backdrop of several years of below-par economic growth and near-stagnation, which has placed huge pressure on government to place more emphasis on growth. It would seem that over the past couple years, the need to increase growth and create more jobs has become a higher priority, and many feel that this strategy has been pursued at the expense of policies pursuing equity and restorative justice. A case in point is the eviction of farm workers when land purchases are concluded, and land is transferred to new owners. The fate of farm workers under land reform has often been uncertain, and experts argue that many farm workers are descendants of black people who refused to relocate to homelands. Against this historical fact, farm workers are entitled to and have as much right to redress as any of the Historically Disadvantaged Individuals (HDI) group.
- The need for a **National Spatial Development Framework**, which builds on, and extends the national, provincial and municipal planning provisions contained in the Constitution and to identify areas that are required to be commercially farmed for food security irrespective of who the owner is, versus areas which can have mixed uses including farming and human settlements.
- **Land Registry** – The Deeds Act only recognises formal ownership, and therefore there is missing data on large swathes of land that is under off-tenure ownership. We need a digitalised land registry that is akin to a National Traffic Information System (eNatis) which captures full information on all land in the country, backed by a land audit which would provide a more complete picture of land use and multi-level ownership patterns in the country.
- **Private-Public-Community Partnerships (PPCPs)** – these are now a pre-requisite to attaining higher levels of transparency and accountability in the acquisition and use of land and capital, particularly because communities are involved. Historical experience has shown that there is a limit to which private capital alone can go, as well as public sector projects. A more collaborative approach would be important in order to eradicate corruption and achieve higher levels of impact.

Next Steps and Way Forward

The release of the Report of the Presidential Advisory Panel on Land Reform and Agriculture to the public has seen various opinions and commentaries from various sections of the South African community. However, civil society has remained relatively quiet, with no real positions taken on the recommendations of the report.

The meeting sought to convene various development practitioners and thought leaders to share some thoughts and questions on the Panel's report, with a view of attaining a better understanding of its contents, as well as views around its recommendations.

The thoughts and views from the discussion will be documented and shared with Panel members, with the hope that these will find their way in discussions and deliberations at the end of September 2019 when Cabinet meets to engage the report, as well as various public views that may have been echoed during the period of its release.