

NATIONAL POLICY FOR BENEFICIARY SELECTION AND LAND ALLOCATION

Submission to the
DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM

from the
Institute for Poverty, Land and Agrarian Studies (PLAAS),
University of the Western Cape

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1. Introduction

- 1.1. The Institute for Poverty, Land and Agrarian Studies (PLAAS) is constituent unit under the Faculty of Economic and Management Sciences (EMS) at the University of the Western Cape (UWC).
- 1.2. PLAAS engages in research, training, policy development and advocacy in relation to land and agrarian reform, rural governance and natural resource management, and poverty and inequality. We aim for rigor in scholarship, excellence in training, and effectiveness in policy support and advocacy. It strives to play a critical yet constructive role in processes of social, economic and political transformation.
- 1.3. PLAAS has read and considered the implications of the National Policy for Beneficiary Selection and Land Allocation, and submits the following comments and recommendations to the Director-General: Rural Development and Land Reform.

2. Purpose of the policy

- 2.1. To provide a uniform, fair, credible and transparent process and criteria for selection of beneficiaries for land allocation or leasing of State properties;
- 2.2. To rekindle the class of Black commercial producers who were destroyed by the 1913 Land Act;
- 2.3. To address diverse or different land needs - agricultural production, human settlements, commonage, and residential and industrial development purposes;
- 2.4. To promote industrialization, changes in spatial development, support for township economies, and the creation of special economic zones and industries in rural areas through access to land;
- 2.5. To promote accountability and transparency within the Department in allocating State assets;
- 2.6. To ensure qualified, suitable and deserving candidates gain access to land on an equitable basis;
- 2.7 To ensure special and targeted groups of land reform beneficiaries (youth, women, people living with disabilities, producers on communal land and military veterans) gain access to land for production purposes;
- 2.8 To ensure that the selected beneficiaries have the skills and capacity to maintain immovable state assets;
- 2.9 To establish an independent Land Allocation Panel to preside over the selection of suitable candidates for land allocation;
- 2.10 To provide for a standardized national land application system to ensure a fair and

transparent process of beneficiary selection and the rationing of resources; and

2.11 To provide for the creation of a Provincial and National land application register for potential beneficiaries of land allocation.

3. OUR RESPONSE

Eligibility Criteria – Who qualifies

Agricultural Production:

31 We support that all previously disadvantaged citizens should be considered for the allocation of land for agricultural purposes. We acknowledge that the injustices of the past deprived Blacks, Indians and Coloureds including Khoi-San of the land. Thus, it is the mission of the democratic government to ensure that all South African citizens benefit from land reform. However, it is also important to take into consideration that the previously disadvantaged group referred to by the policy are also facing economic injustice and deprivation. The gap between the rich and the poor is increasing and this results in contestation over resources. It is up to government to ensure that the previously disadvantaged and currently advantaged do not benefit ahead of the poor.

This is our interpretation of the injunction in Section 25(5) of the Constitution, which requires that:

The state must take reasonable legislative and other measures to enable citizens to gain access to land on an equitable basis (RSA 1996: Section 25(5)).

It is therefore the case that equitable access to land – ie. land redistribution – is a rights-based programme, just like restitution and tenure reform. We have discovered in our research that many departmental officials consider redistribution not to be a rights-based programme, but to be discretionary. We believe this to be an incorrect understanding of the Constitution. The right of equitable access to land is a justiciable socio-economic right, which means that government is accountable to citizens to demonstrate that its programme of land redistribution meets constitutional muster. To demonstrate this, government's policies and programmes of land redistribution need to be reducing inequalities in access to land. These inequalities include but are not limited to race, class and gender.

Previous research on land redistribution shows that resource allocation for land reform tends to be skewed towards elites, a phenomenon which has come to be known as 'elite capture'. The

High-Level Panel report (2017), the Presidential Advisory Panel on Land Reform and Agriculture (2019) and the recently published PLAAS research ‘Elite Capture in Land Redistribution in South Africa’ (2019) all demonstrate that ***previously disadvantaged individuals who are currently advantaged are benefiting more from land reform compared to those who are still disadvantaged***. They are benefiting ahead of the poor. PLAAS research findings on Elite Capture on Land Redistribution in South Africa demonstrates how the ambiguity of the concept of the ‘previously disadvantaged’ has been used by economically empowered elites to use the redistribution programme to benefit them even though they can afford to purchase their own farm land, or access non-state financing to do so. The Department needs to come up with mechanisms to curb this phenomenon.

The policy lists women and people living with disabilities as one of the priority groups to qualify for the allocation of agricultural land. This is positive however; these priority groups have been listed before – and yet the statistics from government show that women have not been prioritised. Figures cited in the High-Level Panel report show that women constitute a small minority of beneficiaries, meaning that land redistribution is failing to reduce gender inequalities in land access. If government is to prioritise all previously disadvantaged South African citizens, it is imperative that the policy acknowledges that women are a social group that is previously and currently disadvantaged. It is the post apartheid state’s aim to include women in land reform and other policy programmes. But, the inclusion of women has often faced additional barriers due to the fact that they are often listed as a homogenous group. Women are not a homogenous group; they are differentially impacted by forces of gender, class, ethnicity and so forth. This political vision needs to respond to their contextual reality by stating how poor and economically marginalised women will specifically be prioritised in the allocation of land. In the previous policy documents, women have been listed as priority group, but in practice they are under-represented. We therefore, recommend that the Department adopts the recommendation by the Presidential Advisory Panel (2019) that ***women must constitute at least 50% of the beneficiaries of land reform, acquiring at least 50% of redistributed land or receiving at least 50% of the available budget. These are three ways in which gender inequality can be measured: (a) percent of beneficiaries; (b) percent of land; (c) percent of budget. Women should account for at least 50% of each.***

32 While people living with disabilities need numerous forms of targeted and appropriate help, their inclusion in the beneficiary selection here smacks of empty rhetoric and lip service. We are concerned that the list of targeted groups does not include the poor, the landless, farm workers and dwellers, marginalized youth and subsistence farmers that are historically and currently disadvantaged. It is our considered view that such groups must be a priority in order to ensure equitable access to land.

34 The State Land Lease and Disposal Policy (SLLDP) of 2013, which governed land redistribution until 2019, did not allow civil servants or their spouses to benefit from land redistribution. However, the 2019 version of the SLLDP introduced the idea, which is also reflected on this policy. Included also in this policy are the politicians (S.7.4.4) and traditional leaders (S.7.4.9). It is not clear what informs this decision. The constitution refers to equitable access to land. Priority should be given to those who are economically marginalized. If these groups are included strong measures must be put in place to guard against nepotism and conflict of interest.

Who does not qualify:

35 Although the policy aims to reach all previously disadvantaged citizens as noted in the previous sections, one needs to take note that amongst this group there are those who are currently advantaged. Thus, this section should make it explicit who does not qualify instead of repeating who qualifies and the terms in which they qualify for. The provision of a cooling off period for politicians holding office, state employees, employees of any company and public entities where government is a majority shareholder does not explicitly suggest that they do not qualify. Therefore, this clause has to be explicit in stating those who do not qualify at all, this is to avoid policy biases and ambiguity which often results in the manipulation of policy processes and engagement in corrupt means to obtain land.

36 Moreover, we would also like to caution against the 12-24 months cooling off period applicable to the above-mentioned applicants. The programmes intention should not be to encourage government officials to resign in order to benefit from the land reform programme but to ensure that the needs of the poor are met first and their livelihood and tenure are improved.

37 We welcome that the policy explicitly states that land reform beneficiaries who have incompetently used state land reform resources in some way, shall not benefit. However, we suggest that all current beneficiaries of the land redistribution programme of any kind should not qualify for future selection. This is to prevent an occurrence of double or multiple dipping in the allocation of land and also ensure that new entrants are given some access to land including those who have been previously excluded by the programme.

38 We recommend that no traditional leader should qualify for the allocation of agricultural land, even with proven involvement in farming at various scales. This is because traditional leaders benefit from government through remuneration and are administrators of land. We

maintain that priority and preference over land allocation should be given to the poor.

39 The policy outlines selection criteria for land redistribution beneficiaries in section 8. The requirements listed for the different category of farmer beneficiaries have the potential to exclude non-elite beneficiaries. For instance, to qualify for a mega or a large-scale farm, the beneficiary must have proof of own investment and an annual turnover of more than R10 million, and will only be provided with land, and no post-settlement support will be provided. Exceedingly few beneficiaries will meet these requirements. If they do it will only be the elites, who in most cases are men with businesses and powerful agribusiness companies. The same goes for the medium-scale farm beneficiaries. To ensure that access to these farms is not exclusionary government must provide all the required support for all scales of farming, but must adopt the equitable formula suggested in the Presidential Advisory Panel (2019), where it proposes that public resources must be rationed such that,

the land-poor households, smallholder commercial oriented, and middle-scale farmers are each allocated 30% of the public resources, and the large-scale commercial farmers are allocated 10%, since they have the ability to leverage private resources in most instances. There is also a need to clarify whether there will be any subdivision of farms to accommodate prospective beneficiaries interested in small-scale farming.

Control Measures

Agricultural production:

310 We welcome the introduction of skills audit as a measure to determine training needs for the potential beneficiaries (S9.1). This will help address the skills shortage, one of the critical barriers to the success of land reform.

311 The proposal to make commonage land available to the poor and less privileged residents (S 9.2.a) is welcomed. However, there needs to be strong measures to ensure that this undertaking is followed through as access to commonage land is in most cases captured by well-resourced elites. Access must also be widened on commonages in the urban areas.

Application processes for leasing land:

312 The policy proposes that some farms will be advertised for the selection of potential beneficiaries (S10.1). An online application system will be developed to ensure transparency (S10.2). However, the policy further states that “Communal residents, state land residents, Municipalities and developers defined above shall not be subjected to an advert but the allocation will be based on land needs assessment audit and shall apply directly to the State for

access to land.” Advertising farms has the potential to exclude those who do not have access to information, and it tends to favour elite beneficiaries who have access to information (Presidential Advisory Panel (PAP), 2019; Mtero et al., 2019). It will therefore be important to take deliberate measures to ensure that different forms of media available and accessible to non-elite beneficiaries are also used to advertise farms. The provision that walk- in assistance will be available at special dedicated provincial and District offices is a positive proposal.

313 We also welcome the proposal to allow communities or villagers that want to apply collectively for land (S11.5). To anticipate communities and villager applying for land collectively is a progressive move. This means that land redistribution can be used to cater for communities that do not meet the requirements to qualify for restitution but have a need for access to land.

Institutional Arrangements for Land Allocation:

314 The policy indicates that a National and Provincial Land Allocation and Selection Panel will be established to select beneficiaries (S12). There is no mention of the role of the District Land Reform Committee. Are they officially discontinued? This needs to be clarified as calls for participatory beneficiary selection and land allocation have been made to ensure proper selection of beneficiaries. We recommend that communities must be directly involved in the selection of the beneficiaries to ensure inclusivity and transparency.

Dispute Resolution:

3.16 The policy introduces a system where applicants may appeal when not appointed as beneficiaries or are not satisfied with the selection process. This is welcomed as it will ensure satisfaction and more transparency and accountability.

3.18 Currently, there is no recourse for applicants who have not been selected as beneficiaries of land reform. Allowing applicants to appeal their exclusion is a positive proposal, but to minimize disputes, the process must be transparent and participatory. This will prevent the stalling of the process of beneficiary selection and land allocation. There is a need to fast tract the development of Monitoring and Evaluation indicators.

4. Summary

Policy objectives	Our analysis of policy provisions
2.1. To provide a uniform, fair, credible and transparent process and criteria for selection of beneficiaries for land allocation or leasing of State properties;	This objective is partly realised.
2.3. To address diverse or different land needs - agricultural production, human settlements, commonage, and residential and industrial development purposes:	This objective is realised.
2.4. To promote industrialization, changes in spatial development, support for township economies, and the creation of special economic zones and industries in rural areas through access to land;	The policy may promote this.
2.5. To promote accountability and transparency within the Department in allocating State assets;	The policy provides some measures to promote such accountability.
2.6. To ensure qualified, suitable and deserving candidates gain access to land on an equitable basis;	The policy fails to provide for this.
2.7 To ensure special and targeted groups of land reform beneficiaries (youth, women, people living with disabilities, producers on communal land and military veterans) gain access to land for production purposes;	The policy promotes this, but does not ensure it. Stricter accounting and reporting requirements are needed.

<p>2.8 To ensure that the selected beneficiaries have the skills and capacity to maintain immovable state assets;</p>	<p>This provision reflects a misunderstanding of the reasons for land redistribution, which is not transferring responsibility for maintaining assets, but promoting equitable access to land as a right. We propose that this policy objective be removed.</p>
<p>2.9 To establish an independent Land Allocation Panel to preside over the selection of suitable candidates for land allocation;</p>	<p>The policy meets this objective, and we support the establishment of such a Panel to promote greater democratic participation and transparency.</p>
<p>2.10 To provide for a standardized national land application system to ensure a fair and transparent process of beneficiary selection and the rationing of resources; and</p>	<p>The policy makes such provision. In developing the system, application should be locally based - and not centralised at national level, which would exclude the marginalised. Further consultation should be undertaken on how applications can be made easier and more accessible.</p>
<p>2.11 To provide for the creation of a Provincial and National land application register for potential beneficiaries of land allocation.</p>	<p>The policy makes such provision, and responds to the proposal of the High-Level Panel.</p>
<p>2.2. To rekindle the class of Black commercial producers who were destroyed by the 1913 Land Act;</p>	<p>This objective reflects the draft Green Paper policy of 2011, and can only be one among several class objectives of land redistribution, since establishing commercial farmers would not, by itself, meet the constitutional requirement of equitable access to land. Reducing landlessness and homelessness need to be included alongside this objective.</p>

5. Recommendations

- 5.1. We welcome the publication of this draft policy, and the opportunity to comment on it. This reflects a significant step towards remedying the problems in the land redistribution programme.
- 5.2. We support and endorse the objectives, though note that establishing commercial farmers cannot be seen in isolation from addressing wider and diverse land needs, notably those of the landless and homeless who want and need land for purposes other than commercial farming.
- 5.3. We note that many of the provisions do not fully meet the objectives set out. Therefore while we endorse many of the objectives, our concerns are that the actual provisions are insufficient, and require greater elaboration, in order to ensure that the objectives are met in practice.
- 5.4. On the basis of the analysis and arguments outlined above, we suggest strongly that the National Policy for Beneficiary Selection and Land Allocation should not be adopted in its current form.
- 5.5. We recommend that the policy be withdrawn and redrafted after due consideration of these and other arguments.
- 5.6. We offer to make available our time and expertise, to contribute to tightening up certain provisions in the policy, and making any helpful input as may be required.
- 5.7. We look forward to further engagement with the Department on this matter, and assure you of our commitment to strengthening the land redistribution process.

The following PLAAS staff members have endorsed this submission:

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