



We develop the South African Agricultural Industry.  
Ons ontwikkel die Suid-Afrikaanse Landbou Industrie.

# Presentation to FERTASA congress

## Land Reform in 2019

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# Introduction

- Land reform has become a burning issue – highly politicized and emotive;
- Big Debate program on TV 2 on 10 March illustrated this clearly, as did the CRC hearings in the provinces;
- Central theme for the election campaigns of all the bigger parties;
- Main issue is that of compensation – this is unfortunate, because, according to the High level Panel Report, that is not the main cause of the failure of land reform.





## Section 25 of the Constitution

- The Constitutional Review Committee has recommended that section 25 be amended to make explicit what is implicit in the section, namely to provide for expropriation without compensation.
- An Ad Hoc Committee of Parliament has been appointed to come up with a wording. Report was adopted on 13 March. Report lists a number of possible changes in wording proposed by various experts.
- Bill will have to be drafted and tabled in Parliament after the elections – lengthy process;
- In the meantime the work of the inter-ministerial task team and advisory panel are carrying on.



# The Expropriation Bill



- Bill was published for public comment on 21 December.
- New section 12(3) makes provision for expropriation at nil compensation where land is taken in the public interest.
- Any land taken in the public interest, however all relevant factors to be considered.
- 5 specific categories mentioned : abandoned land, land held purely for speculation, land occupied by labour tenants, land held by SOE 's and land where extent of state investment is higher than market value.
- Agri SA comments sent to affiliations and submitted to the DPW.
- Bill will be tabled in Parliament after the elections. Public consultation process will then follow.

**Slide 4**

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**CC1** Charles Crosby, 2019/03/04



# Regulations of Valuer- General

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- Final regulations published in November 2018.
- Current use value formula leading to very low offers of compensation.
- Agri SA involved in Melmoth case where approach by Valuer-General were successfully challenged.
- VG claimed that court had no jurisdiction over compensation and Minister claimed she was bound by VG offer.

## Agri SA's mandated position on section 25 of the Constitution

- Section 25 is both a guarantee **of existing and future property rights** and an instruction to rectify the skewed ownership and tenure patterns of the past
- There is **no lack of policies and laws** to give effect to section 25's mandate for land reform;
- There may be scope for a **redistribution framework law**
- In Agri SA's considered view the problem is **a lack of implementation**, not a constitutional impediment or even a legislative one
- **Policies keep on changing**, rather than focussing on getting implementation right, there has been a plethora of policies, draft policies and programmes
- **Private sector** can play a role in implementation in partnership with government
- **Changing section 25** is not going to fix the problems that we are experiencing with land reform, and it will cause a host of other problems.

Act 108 of 1996

The  
Constitution  
of the Republic of South Africa, 1996



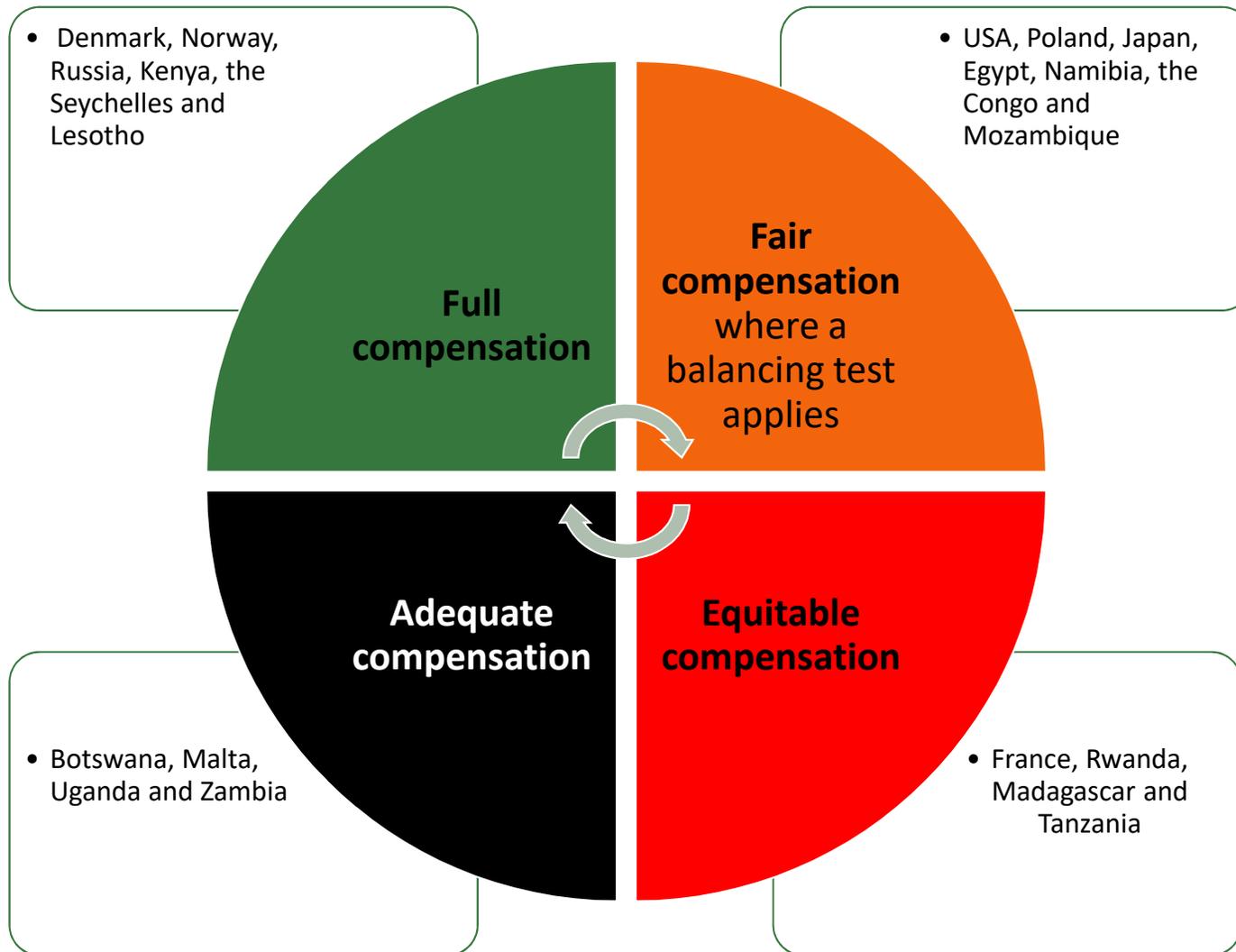


## International and comparative law perspective

<b>Section 25</b>	Section 25 cites a fundamental human right, which is protected in terms of international human rights instruments such as the United Nations' Universal Declaration of Human Rights, the European Convention on Human Rights and the African Convention on Human Rights
<b>Human Right</b>	No attempt has ever been made in South Africa to scrap or amend a fundamental human right
<b>Compensation</b>	The modern approach to compensation is based on the principle of equality in the bearing of public burdens. Equitability in respect of a public liability is a principle adopted by French, German and American law. According to this approach, "where one or more individuals has to bear a sacrifice (being the loss of property) for the common good, their individual and excessive burden should be compensated by the community (thus the State)
<b>Equitability principle</b>	If South Africa were to scrap the equitability principle, we will be out of step with most African countries
<b>Best practice for expropriation</b>	Food and Agricultural Organization (FAO) of the United Nations published a guide on international best practice for expropriation
<b>Requirements</b>	The guide requires, among other things, clear and transparent procedures for forced acquisition of property, and compensation that will ensure that the affected persons are not worse off after expropriation than they were before. It further states that affected persons must not only be compensated for the loss of land but also for improvements made and for the disruption that accompanies expropriation



# International and comparative law perspective





# OUTCOMES AND CONSEQUENCES

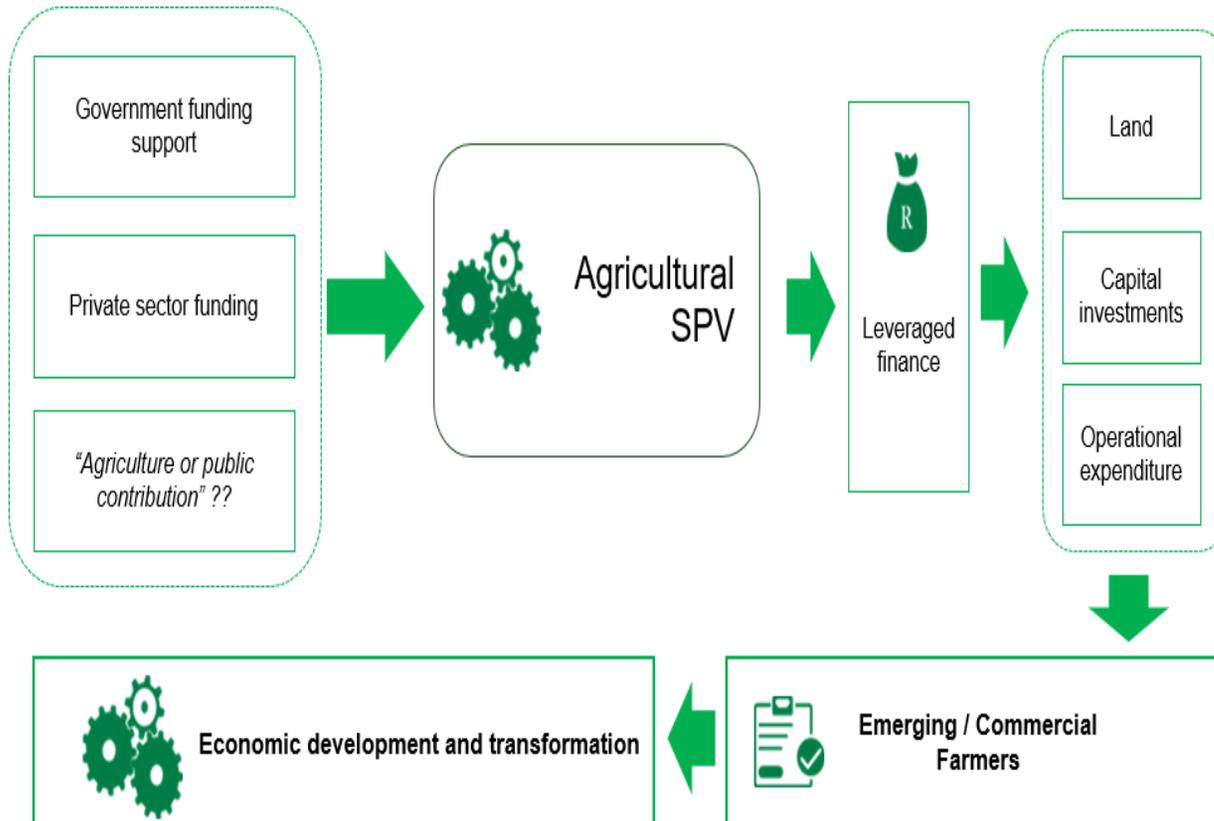
- EWC can be very damaging – mere debate has had an impact on investor confidence.
- Worst case scenario –collapse of economy and food insecurity..
- At the same time we cannot go on as usual – people are getting impatient – if people take law into their own hands – social instability and conflict.
- Depends on how it is done.
- EWC is however not the solution to the land problem, it is far more complex than that.





## Agri SA plans for sustainable land reform and rural development

### Agricultural Special Purpose Vehicle



Agri SA's land plan is set out in a holistic plan and a financing plan. These two plans are closely aligned to the land audit and related strategy.

The holistic plan contains the following elements:

- *Sustainable restitution models*
- *Support for farmers in communal areas*
- *A social compact*
- *Promotion of a partnership approach between commercial farmers, farm workers, communities and emerging farmers*
- *A public-private sector partnership for implementation (special purpose vehicle)*
- *Viable, affordable finance for new farmers*
- *A Special Purpose vehicle for implementation*

Source: Agri SA



## BELA-BELA LAND SUMMIT

- Showcase best practice;
- Many partnership / joint venture models;
- Very well received;
- We need to roll out these models at scale;
- Incentives and financing required to do this.





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# Way forward

- Debate will be with us for some time;
- Likely to heat up as elections draw closer;
- We need cool heads and an active citizenry;
- A fundamental right in the Constitution should not be amended for political reasons.
- Ordinary people and industry need to participate in the debate in an informed manner;
- Urban housing the greatest need – this should be prioritized.
- We need a development fund to finance new black farmers.



**Agri SA's Land Plan and Funding Plan propose the following salient solutions:**

- *Partnership models;*
- *A Special Purpose Vehicle for implementation;*
- *Sustainable financing models;*
- *A Social Accord; and*
- *Support for communal farmers.*

## Conclusion

- Agri SA is firmly of the view that:
- The property clause in the Constitution is not an impediment to land reform
- The real reasons for the slow pace of land reform relate primarily to deficiencies and inefficiencies in planning, execution and sustainable support, which must be urgently addressed. These reasons do not justify an amendment to section 25 of the Constitution
- The public debate must be based on credible and relevant information on land ownership, with particular reference to state owned land available for land reform
- The economic consequences of expropriation without compensation must be properly and fully considered
- The principle of legality must be honored and there must be a clear understanding of the circumstances under which the power to expropriate land without compensation may be exercised, by whom and in respect of which land owners
- Current land owners should not be required to bear a disproportionate burden of the imperative for land reform in the public interest. Standard should be prompt, adequate and effective compensation.



## Disclaimer

- Everything has been done to ensure the accuracy of this information, however, Agri SA takes no responsibility for any loss or damage incurred due to the usage of this information.



**THANK YOU!**



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