

Parliamentary oversight – proposed Land Framework Act

- Lack of policy coherence – no white paper since 1997
- Makes it impossible to assess whether bills advance agreed goals
- Problem of constant ad hoc policy changes, some implemented despite not being made public
- Budget reallocated away from laws on statute book (eg ESTA and LTA) to new policies (eg One household one hectare)
- Major legal implications – budget used for purposes not approved by Parliament cf AG findings
- Makes it impossible for Parliament to monitor budget expenditure and keep track of new schemes

Need for policy coherence

- Danger of getting lost in the detail if big picture is not clear and laws are not sequenced correctly
- Parliament overly dependent on the executive to draft laws
- When HLP gave interim report back to Speakers Forum received very positive response to problem statement –that land reform budget and resources are being diverted to various elites, rather than used effectively for redistribution, restitution and tenure reform (eg recap)
- Speakers had been at public hearings and heard testimony of ordinary people

Incoherence - CPA Amendment Bill

- CPA Amendment Bill introduced before CLTB
- Once you read CLTB, explains proposed amendments to CPA Act.
- MPs have to try to decipher intention behind CPA amendments without having the CLTB big picture in front of them
- May not agree with CLTB when it comes to Parliament, but only then will it become clear how CPAs were being reshaped for purposes of CLTB

Draft Bills to address the problem

- Speakers Forum asked for urgent interventions – especially in relation to mining on communal land
- Asked Panel to come up with draft bills rather than general recommendations
- Concern about need for Parliament to have legislative drafting capacity
- Land Framework Bill – Attempts to provide coherence between 3 legs of land reform, redistribution, restitution and tenure

Redistribution, Restitution and Tenure

- Redistribution and restitution are discrete programmes
- Tenure is cross cutting. Various different types of tenure insecurity – farm workers, communal areas, those living in shacks around the city
- Tenure also cross cutting because relates to the form of rights (tenure security) that people will get through restitution and redistribution

Delivery failures in restitution and redistribution

1. Failures of delivery in redistribution and restitution

- Allegations of elite capture of land reform budget and farms
- Imposition of large group model and of strategic partners – people locked into internal disputes – no agency
- Long delays in acquiring land – allegations that some claims prioritised at the expense of others

Dispossession and vulnerability in relation to tenure issues

2 Failures in tenure reform – different

- Groups with informal rights more vulnerable now than during apartheid, particularly in communal areas.
- People dispossessed by mining and development on communal land especially in mining areas and on Ingonyama Trust land in KZN

Overlap: Delivery failures and tenure issues

- The relatively few people who do manage to obtain redistribution land, remain tenants of the state with 'conditional use rights' subject to 'productivity'
- Claimants amalgamated into large groups under CPAs or Trusts. No enforceable land rights vesting in families or individuals
- Superimposition of strategic partners – often white
- No agency, no ownership – makes productive agriculture impossible

Trends since 1994

- Changing policy agendas and ideological positions over time. Not only has land redistribution fallen far short of official government targets and public expectations, but its focus, criteria and modus operandi have also undergone several significant shifts leading to confusion on the ground and complaints of constantly shifting 'goal posts' by beneficiaries.

Slow pace

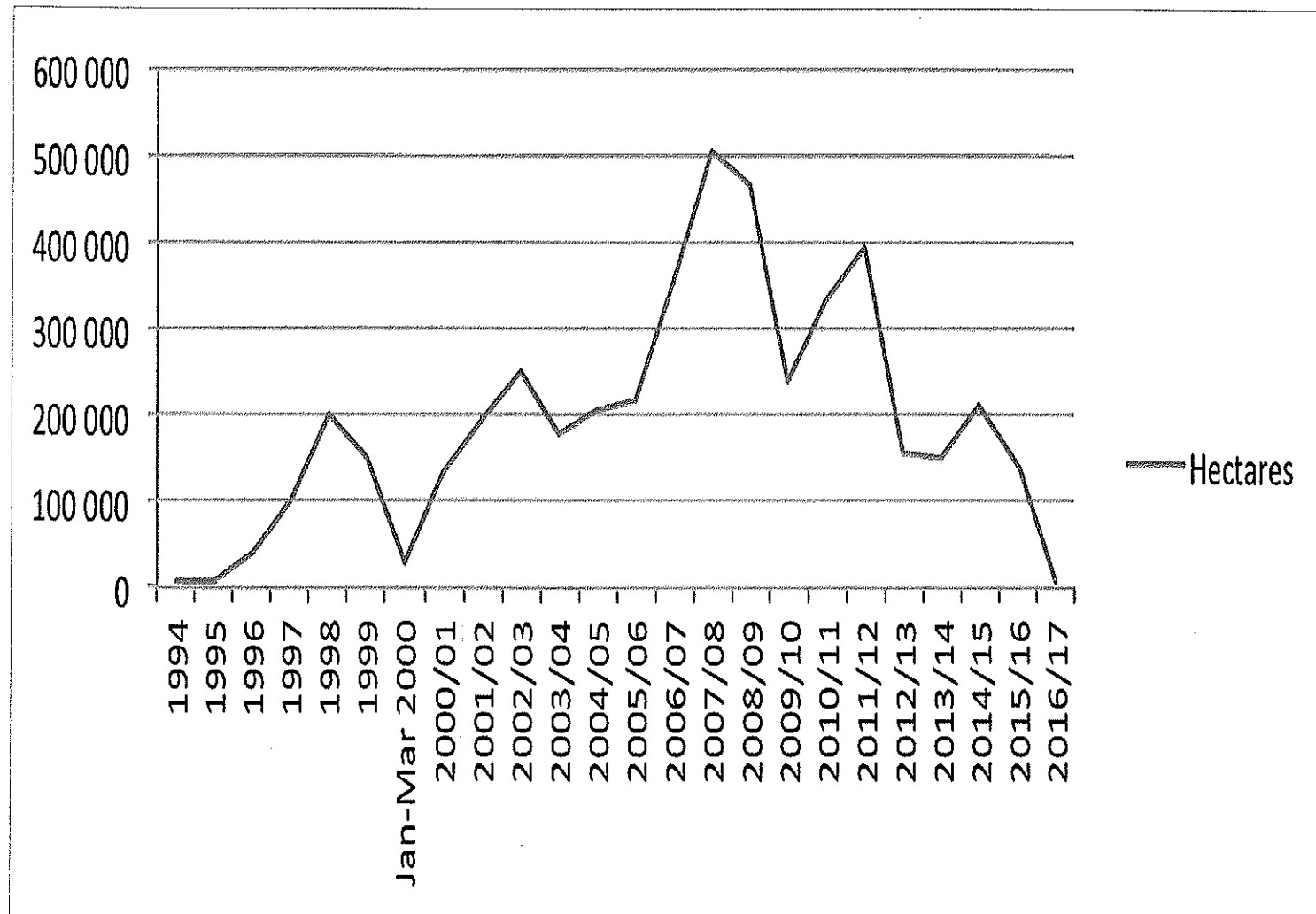
- RDP target of 30% of white agric land to be transferred to black people by 1999.
- Means tested – poor qualified for subsidy to acquire land through SLAG
- By 1999 only 1% transferred
- By 2004 only 3%
- By 2013 only 6.5%

	Acquisition	Tenure	Class agenda	Land use
SLAG (1995-2000)	Market-based purchase	Transfer of title	Means-tested (ie. pro-poor)	Multiple livelihoods
LRAD (2000-2010)	Market-based purchase	Transfer of title	Not means-tested (unclear)	Agriculture only
PLAS (2006-now)	Market-based purchase	No transfer of title	Not means-tested (unclear)	Agriculture only

Pace of land redistribution

Downward trend in the pace of redistribution, measured by hectares, since 2008, as shown in the next slide. The pace of redistribution has fluctuated with the changing of ministers but also in response to changes in budget allocation. The high point of redistribution was in 2007/08, and 2015/16 was at the lowest level since 2000/01.

Amount of land transferred through land redistribution, in hectares per year



Gender and selection criteria

- Gender emphasised, but women only 23% of beneficiaries (data unclear)
- Shift from pro poor bias to very opaque selection criteria culminating in Recap and Dev Programme
- DPME report about Recap that no beneficiary selection criteria, and richer benefit disproportionately to poor
- No adequate criteria to measure who is benefitting – can't measure whether 'equitable' standard in 25(5) is being achieved

Outcomes for redistribution

NW study in 2005

- one-third were locked in intractable conflict and, as a result, the majority of their members had lost interest in the project and had de facto exited;
- 55% of projects had no implements for production and 27% had inadequate implements; and
- more than a quarter of projects had not produced anything since taking ownership of their land.

Why?

- Problems with the type of business plans required for project approval. These are widely ignored and, even where they are implemented, correlate negatively with project success.
- Blame put on failures of the project members themselves (such as conflict, lack of skills and poor management) and the inadequate character of support from government institutions.
- But what about the business plans themselves and the model of agriculture they default to?
Large scale commercial

Questions also need to be raised about the quality of the relationship between beneficiaries and mentors/strategic partners, particularly control over land, capital and production. In particular, what voice do the beneficiaries have in these situations, and if the relationship is unequal, what processes are in place to deal with that?

Major problems of post transfer support and coordination between DRDLR and DAFFA are repeatedly documented in research studies

Figure 2: Land Reform Grants compared to Land Reform expenditure for 1996/97-2014/15 period (in million Rands)

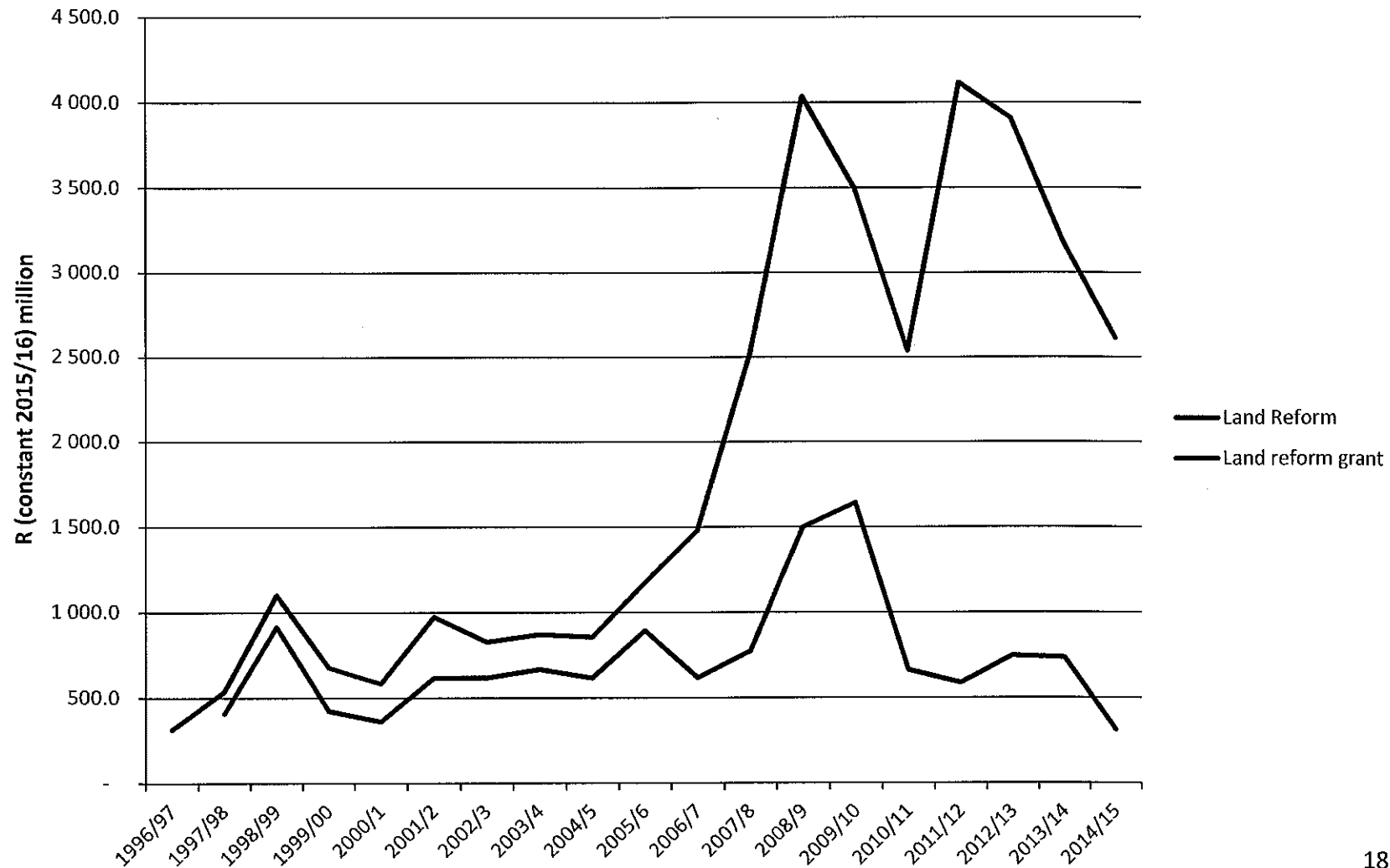
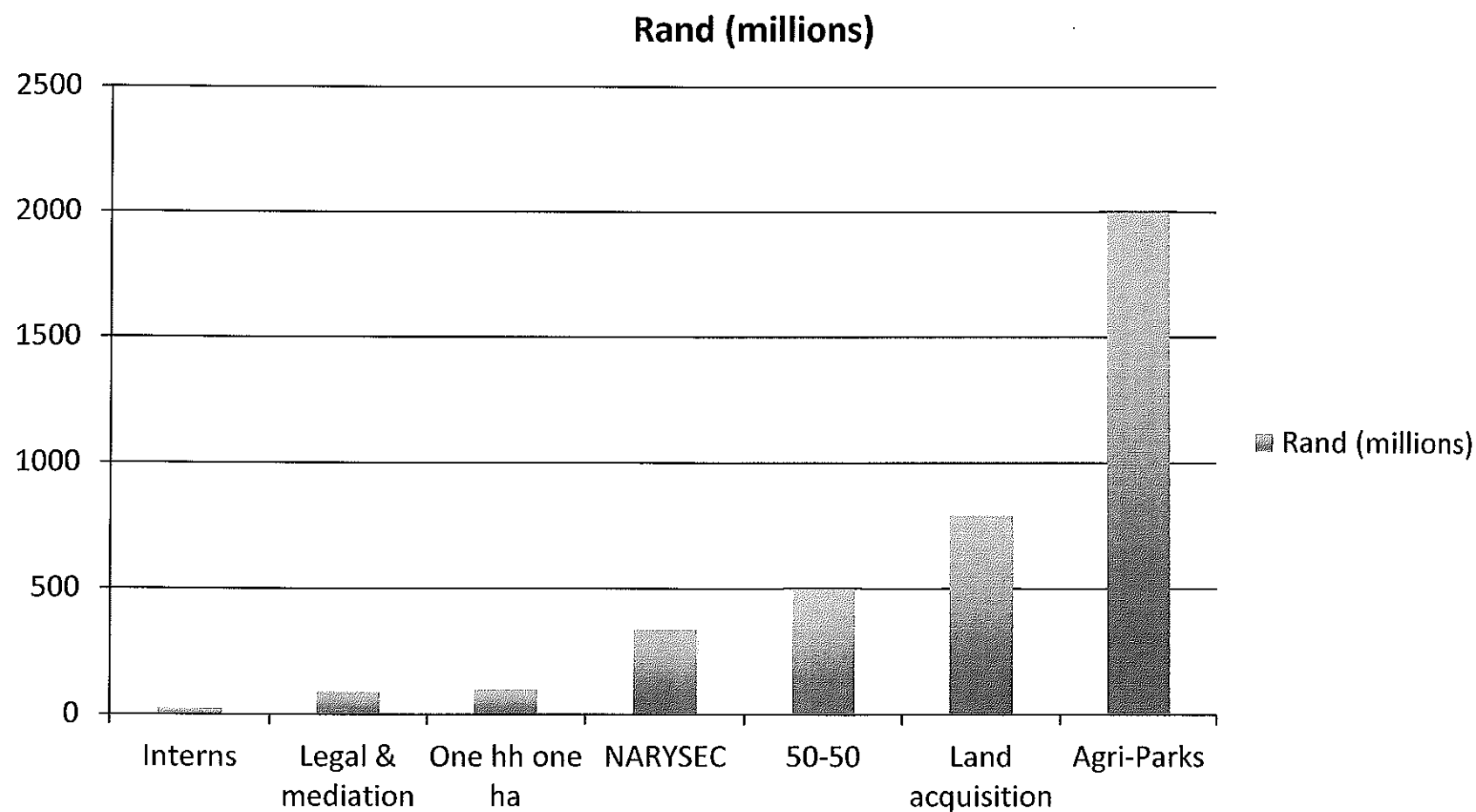


Figure 3: Re-allocation of Land Reform budget, 2016/17



No law defining

- Who should get the land?
- How the land should be used – what type and scale of farming? What about settlement and multiple livelihoods? How will land reform help to address spatial inequality?
- How should land be identified and acquired? Should redistribution be restricted to those properties that are offered for sale – i.e. no targeting? Or should there be area-based priorities?
- What rights should beneficiaries have? Should they be owners of the land? Or long-term lessees?

Lack of legal criteria and measures

- Enables elite capture
- Lack of transparency and accountability
- Makes oversight and M&E very difficult because of lack of data against which to measure whether equitable access has been achieved.
- Failure of redistribution has led to restitution programme being swamped by claimants who do not qualify, but see as only way to get land.

Proposed National Land Reform Framework Bill (draft as annexure to report – L1)

- Coherent cross cutting guiding principles in respect of redistribution, restitution and tenure – how they relate to one another.
- Defining ‘equitable access’ to land and criteria to measure progress
- Setting out beneficiary selection criteria
- Clear institutional arrangements (particularly at district level)
- Alternative dispute resolution – Land Rights Protector

Issue of post settlement support

- Agric cannot be productive with large group model—doomed to fail
- Need to sub-divide land and provide family based rights – Repeal Act passed by Parliament but not brought into operation. Why?
- All agric support geared to model of commercial farming – no extension services provided to emergent farmers
- Breakdown of agric colleges
- Problem of marketing – closed value chains but could regulate through Competition Commission
- Lack of vision of integrated approach supporting both small scale and large scale farmers with targeted support for small scale. Can work cf wool growers in Eastern Cape.