

GUIDELINES FOR ALIGNING LAND-WATER REFORM PROCESSES FOR TRANSFORMATION IN SOUTH AFRICA

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Guidelines for Aligning Land-Water Reform Processes for Transformation in South Africa

Report to the
WATER RESEARCH COMMISSION

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EXECUTIVE SUMMARY

1 INTRODUCTION

With the end of the Apartheid era, the government of South Africa embarked on the development and implementation of policies, programmes and strategies to tackle the social and economic injustices propagated by past regimes. Whilst there has been extensive investment by government to redress the past imbalances in access to land and water, limited success has been recorded.

Recognising the need to explore these issues and their role in driving transformation, the Water Research Commission (WRC) appointed Pegasys Institute to undertake a study to identify opportunities for better alignment between land and water reform processes. The study focused on the Inkomati-Usuthu Water Management Area (IUWMA) and identified two pilot study areas to be involved in the project: Kaap River and Lower Komati River catchments.

2 SOUTH AFRICAN LAND AND WATER REFORM FRAMEWORK

2.1 Legal Framework

South Africa's legal environment is framed by the Constitution of the Republic of South Africa. Part of the Constitution is the Bill of Rights that holds the State accountable to "protecting the rights and dignity of the country's citizens".

2.1.1 *Legal framework: water*

The first major piece of water-related legislation post-apartheid was the National Water Services Act (No 108 of 1997) and the National Water Act (NWA) (No 36 of 1998). These two Acts provide the framework for water resource management and water supply services and establish the State as the primary custodian of all water resources in the country.

2.1.2 *Legal framework: land*

South Africa's legislation related to land underwent significant revision after 1994 to address the past injustices caused by apartheid and a range of amendments to existing Acts was undertaken as well as the introduction of new Acts.

2.2 Policy Framework

During apartheid, the majority of the black population was subjugated and dispossessed of their land and water. Once the country became a democracy, social policies took a shift and were revised to reflect the new values of the country, i.e. non-discrimination, fairness and equality.

2.2.1 *Policy framework: water*

In 1997, the State developed the White Paper on National Water Policy for South Africa which provided the framework for water resource management in the country. The policy was important in that it recognised the need for reform in the water sector to achieve equality and equitable access by all South Africans.

2.2.2 *Policy framework: land*

Due to the need for a new policy framework to guide land reform, the government developed the 1997 White Paper on South African Land Policy which identified three programmes to achieve land reform: 1) the land redistribution programme; 2) the land restitution programme; and 3) the tenure reform programme.

2.3 Strategy Framework

2.3.1 *Strategy framework: water*

One of the key strategies that guided water resource management in the country is the National Water Resource Strategy (NWRS) which aims to ensure that water resources are efficiently and sustainably managed in an equitable manner. DWS also developed the Water Allocation Reform Strategy (WARS) in 2008 which guides water allocation reform to benefit HDIs. In 2018, DWS developed the National Water and Sanitation Master Plan (NWSMP) that emphasised the lack of alignment between land and water reform, noting that beneficiaries of land reform projects were often awarded land without water rights.

3 SALIENT FINDINGS FROM IUCMA PILOT AREAS

3.1 Root Causes for Water Reform Challenges

3.1.1 *Political will, policy and legislation*

➤ *Economic growth prioritised over social development*

One of the primary challenges to the implementation of successful water reform is the perpetuation of a narrative that views large-scale commercial farming as the only meaningful and impactful water use that benefits the economy while small-scale use is seen as inefficient and environmentally damaging. However, this narrative has not been adequately debated to establish the production and water use efficiencies of large-scale farmers. The context of water scarcity has also further entrenched the status quo as water use for productive and economically beneficial activities as well as the need for conservation of water resources places social development and reform in an inferior position.

➤ *Misinterpretation of the law*

The Department has taken many ELUs and large-scale commercial users to court to contest water use and the need for water reallocation. However, interpretation of the law has varied between the defendants, the courts and DWS with many instances of DWS losing the case.

➤ *Lack of recognition of customary water rights*

The current legislative framework does not legally recognise informal water rights under customary law for which many rural black South Africans still operate under and in some instances, can declare such water use illegal, placing further hurdles for rural poor to overcome.

➤ *Absence of water rights linked to land*

Due to lack of post-settlement support and the absence of water rights on some of these farms, the failure of the land reform programme could be seen as inevitable. Apart from the negative impact on agricultural productivity, financial institutions including the Land Bank refuse to provide loans and/or insurance to

beneficiaries without the water rights as collateral. This prompts many land reform beneficiaries to abandon the restituted farm.

➤ *Difficulty in managing competing actors and needs*

Water touches all sectors of the economy and the need to balance competing needs of different actors and interests within a complex social, political and economic environment has been difficult to achieve.

3.1.2 *Strategic, planning and regulatory instruments*

➤ *Limited development and implementation of the water allocation plans*

Water allocation plans are considered a critical instrument in supporting water reform as these plans aid in the equitable and efficient allocation of water that prioritises transformation of historically disadvantaged individuals. However, there has been limited development or implementation of these plans with only the IUCMA currently being in the process of developing the first water allocation plan.

➤ *Complex licensing processes*

Licensing was viewed as a tool to aid in water allocation reform; however, many commercial farmers still operate under ELUs with many of the ELUs operating without metering making it difficult for DWS to effectively monitor and enforce. Licensing can be slow and complicated with massive backlog and processing times varying from 3 to 12 months, slowing the reform process down.

➤ *Limited integrated planning*

To promote agrarian reform, irrigatable land needs to be restituted and redistributed, with the accompanying water rights. Access to water is only one aspect of the land reform process. As noted earlier, majority of the land and water reform journeys have occurred parallel but separate to each other with the different departments operating in siloes.

➤ *IWRM in developing countries*

South Africa is known for its well-developed policies, however, its translation to implementation is often poor. The adoption of integrated water resources management (IWRM) is not necessarily the best fit for developing nations that lack capacity, technical expertise and budget to effectively implement.

3.1.3 *Institutional capacity*

➤ *Institutional transformation*

Although the NWA makes provisions for the establishment of catchment management agencies (CMAs) to aid in water allocation and reform, to date only two CMAs are operational. Many of the irrigation boards have not transformed into water use associations and still operate under the old Water Act of 1956. Irrigation boards are often viewed as an institution from the apartheid era and consequently, many rural black farmers view the institutions with distrust. In addition, the lack of clarity from government regarding processes and timeframes for transformation of irrigation boards has stalled the process.

➤ *Untransformed water sector*

The status quo of the water sector has remained largely intact despite attempts by government to transform it. The NWSMP (2018) noted that only 5% of water used in agriculture is used by black farmers.

➤ *Limited coordination of key sector departments*

DWS's lack of coordinated data and communication together with high staff turnover has also contributed to water reform's poor implementation. Furthermore, confusion abounds due to mining, energy and land affairs being a central government competency while agriculture and the environment fall under provincial competencies, creating a complex institutional setup that is difficult to navigate through.

➤ *Institutional funding and resources*

Limited and inconsistent funding from the DWS has had an impact on the IUCMA's process to progress their WAP. The IUCMA also has limited staff to conduct all the functions delegated to the CMA, and as such, has to prioritise their workplans accordingly.

➤ *Water rights are available, but infrastructure is limited*

According to the irrigation board engaged with for this project, infrastructure is a critical problem that many land reform beneficiaries have to deal with. It was highlighted that all small-scale HDI farmers registered with the irrigation board have water rights for their farms, but the lack or limited infrastructure on the farm means that small-scale farmers lack the ability to move water from the source to areas where it is needed for their farming operation.

3.1.4 *Knowledge and information management*

➤ *Inadequate stakeholder participation*

While the importance of stakeholder participation is recognised by government, often, these engagements follow a top-down approach that prevents beneficiaries and small-scale farmers from actively engaging and participating. This has resulted in a misalignment between government and small-scale farmers regarding the latter's needs and challenges.

➤ *Managing expectations for both government and beneficiaries*

Not all beneficiaries of water allocation and land reform have the will, the determination, the resources or the ability to take on full scale commercial farming. Beneficiaries need to be made aware of what is required to successfully manage a commercial farming enterprise and need to be given the opportunity to decide whether they want to follow this route.

➤ *Limited translation of instruments into pragmatic guidelines/protocols*

Very few of the policies, legislation and strategies have been translated into pragmatic and simplified tools/guidelines for on-the-ground implementation, not only for government officials, but also to help build awareness and capacity of reform beneficiaries.

➤ *Inadequate monitoring and reporting on actual water*

Accurate records for individual farmers are limited, which creates uncertainty in the actual availability of water to be redistributed under the reform process.

3.2 Root Causes for Land Reform Challenges

3.2.1 *Political will, policy and legislation*

➤ *Susceptibility to corruption*

Although policy and legislation are designed to enable land reform that promote rural development and poverty alleviation through targeting of beneficiaries in most need, the process is susceptible to corruption. The lack of transparency around many of the land reform programmes has been cited by Dawood (2016) as a key issue that needs to be addressed.

➤ *Tenure reform*

In spite of government's post-apartheid outlook to improve the status of farm workers living on farms; their status remains fragile. The tenure laws that were designed to upgrade the rights of people who live on privately owned farms either as current or past farmworkers has failed to significantly improve their land ownership rights.

➤ *Communal property associations (CPAs)*

Although CPAs were seen as a useful tool to enable land reform by allowing groups of people to work together on a piece of land, there are many inherent challenges in the design. Not all of the members of the CPAs are committed to farming and conflict is common within CPAs.

➤ *Complexities and challenges with the implementation of Acts*

The complexity of the various Acts that touch upon land reform make it difficult to ensure that land reform can be achieved within the legal context. The various Acts, while developed in some instances to specifically address land reform, have certain problems that make enforcement and implementation challenging.

3.2.2 *Strategic, planning and regulatory instruments*

➤ *Inappropriate programme design*

None of the land reform programmes have succeeded in achieving its objectives. In many land reform projects, land is often owned by DALRRD who leases it out to HDIs resulting in a form of temporary ownership that SSFs and RPFs found limiting when attempting to obtain loans from financial institutions.

➤ *Policy guidance*

Currently, there is lack of policy guidance for agrarian reform to guide land reform. There is no clear understanding of the ultimate goal of land reform and policy is vague on what types of farming are to be promoted.

➤ *Willing seller-willing buyer*

The South African government adopted a willing seller-willing buyer approach to the acquisition of farms for land reform purposes. This approach has proved to have a minimal impact on the racial distribution of agricultural land and is regarded as a critical factor hampering implementation of land reform.

3.2.3 *Institutional capacity*

➤ *Institutional challenges of the State*

Challenges include lack of capacity; challenges in planning design and implementation thereof; lack of coordination; poor policy alignment and integration; an absence of monitoring and evaluation; paucity in compliance and enforcement; constraining bureaucratic processes; weak implementation; vague and sometimes ambiguous roles and responsibilities; and other institutional challenges.

➤ *Inadequate budget allocation*

Despite government prioritising land reform over the years, budget allocations to effect land reform have been inadequate to address the scale of the complex nature of land reform. Furthermore, funding for land reform is not coordinated and this is coupled with underfunding for certain programmes.

➤ *Post-settlement support*

One of the biggest challenges in the land reform process is the inadequate and/or inappropriate post-settlement support provided to beneficiaries once the land has been awarded to them. Government has failed over the years to provide sufficient post-settlement support to beneficiaries with past attempts either being inadequate, inappropriate, uncoordinated and/or delayed

3.2.4 *Knowledge and information management*

➤ *Business process maps of reform processes*

There are no standard operating procedures, process map or guidelines that provide the critical information required for land-water reform. Land reform processes are not consistent across provinces, partly due to the lack of data and information to guide decisions.

➤ *Scale and type of agricultural production*

Current reform programmes rely on the incorrect assumption that all beneficiaries wish to be large-scale commercial farmers. There are many types of farmers including subsistence, smallholder, and emerging farmers, all of which can apply to land reform beneficiaries.

4 TOWARDS ALIGNMENT IN LAND-WATER REFORM

A Theory of Change can be put forward that provides a structured intervention logic towards aligned land and water reform outcomes.

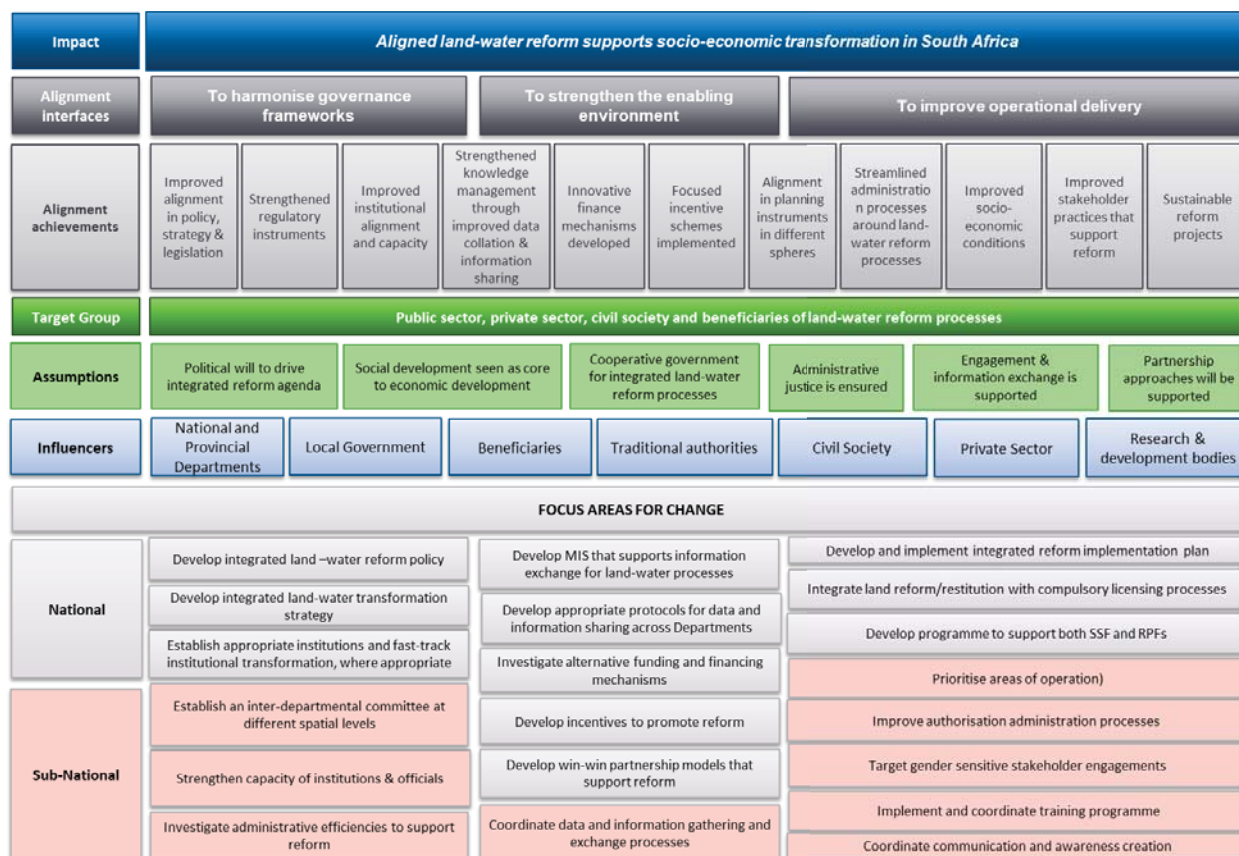


Figure E1: Theory of change for the land-water alignment

It is important to note that this study has not undertaken the detailed process analysis that is really required to resolve a more rigorous alignment.

Three alignment interfaces are identified in the Theory of Change:

- Harmonising Governance Frameworks,
- Strengthening the Enabling Environment, and
- Improving Operational Delivery.

Under each of these interfaces, a suite of interventions has been developed that details the actions to be undertaken to address challenges to alignment of land and water reform.

5 TOWARDS IMPLEMENTATION

In moving towards implementation of integrated land and water reform, it is critical that there is joint responsibility, commitment, coordination and cooperation between the relevant government ministries, agencies and other institutions that play a role in implementing these reform processes.



The degree to which these reform processes can be integrated is moot and requires a far more detailed policy and process analysis, however, whether integrated or just aligned there is a requirement for a collective approach that is championed at a governmental level, by Ministers as well as by the departments they oversee. In exploring an integrated or aligned policy, there will be a need to review various legal instruments (law and regulation) to ensure that this is consistent and supportive of the policy.

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LIST OF ACRONYMS

Acronym	Definition
CASP	Comprehensive Agricultural Support Programme
CCAW	Coordinating Committee on Agricultural Water
CMA	Catchment Management Agency
CPA	Communal Property Association
CRDP	Comprehensive Rural Development Programme
CRLR	Commission on Restitution of Land Rights
CSO	Civil Society Organisation
DAFF	Department of Agriculture, Forestry and Fisheries
DALRRD	Department of Agriculture, Land Reform and Rural Development
DEFF	Department of Environment, Forestry and Fisheries
DRDLR	Department of Rural Development and Land Reform
DWS	Department of Water and Sanitation
e-WULAAS	Electronic Water Use Licence Application and Authorisation System
ELU	Existing Lawful Use
GEAR	Growth, Employment and Redistribution
HDI	Historically Disadvantaged Individual
IUCMA	Inkomati-Usuthu Catchment Management Area
IUWMA	Inkomati-Usuthu Water Management Area
IWRM	Integrated Water Resource Management
KNP	Kruger National Park
KZN	KwaZulu-Natal
LARP	Land and Agrarian Reform Project
LRAD	Land Redistribution and Agricultural Development Programme
NDP	National Development Plan
NT	National Treasury
NWA	National Water Act
NWRS	National Water Resource Strategy
NWSMP	National Water and Sanitation Master Plan
PLAS	Proactive Land Acquisition Strategy

Acronym	Definition
PTO	Permission to Occupy
RADP	Recapitalisation and Development Programme
RPF	Resource-Poor Farmer
SAAFWUA	South African Association of Water Users Associations
SIU	Special Investigating Unit
SLAG	Settlement Land Acquisition Grant
SSF	Small-Scale Farmer
WAP	Water Allocation Plan
WARMS	Water Authorisation Registration Management System
WARS	Water Allocation Reform Strategy
WRC	Water Research Commission
WUA	Water User Association
WULA	Water Use Licence Application

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1 INTRODUCTION

1.1 Background

With the end of the apartheid era, the government of South Africa embarked on the development and implementation of policies, programmes and strategies to tackle the social and economic injustices propagated by past regimes. The highly unequal distribution and beneficiation from natural resources (including water and land) were characteristically skewed towards a minority white population and were subsequently identified by government as a key impact area for advancing widespread pro-poor socio-economic transformation. Whilst there has been extensive investment by government to implement policies, through associated strategies and programmes, to redress the past imbalances in access to land and water, limited success has been recorded from the typically lengthy and inadequate processes. It has been largely accepted that both land and water reform programmes have not achieved the required level of impact and that there is still a significant amount of work required to realise redress.

The Constitution sets the aspirations for societal change by outlining the rights in South Africa. The National Development Plan (NDP) provides a roadmap for realising the desired socio-economic change. Over the last few years there has been increasing political pressure in South Africa to show progress in achieving redress. This has been most pronounced within land reform where the government has set a target to transfer 30% of land to black South Africans by 2014. Unfortunately, these were not achieved for several reasons. A key issue was the linkage to the water reform process.

There have been several studies trying to unpack the various challenges, however, gaps still exist in finding pragmatic linkages between land and water reform and promote alignment in these programmes. To date, land and water reform have largely been occurring separately from each other and this has contributed to many missed opportunities, socio-economic hurdles and limited realisation of outcomes. While the National Water Resource Strategy 2 (NWRS2) advocates for joint land, water and agrarian reform, and advocates for the provision of a supportive policy environment, there continues to be a disconnect between the implementation of land and water reform. The slow pace in socio-economic transformation continuing propagate levels of poverty and unemployment rates within communities.

Recognising the need to explore these issues and their role in driving transformation, the Water Research Commission (WRC) appointed Pegasys Institute to undertake a study to identify opportunities for better alignment between land and water reform processes. The study provided insights and lessons on how the land and water reform processes can be better aligned to drive transformation in South Africa. The study focused on the Inkomati-Usuthu Water Management Area (IUWMA) and identified two pilot study areas to be involved in the project: Kaap River and Lower Komati River catchments.

The objectives of this study were:

- i. To **understand the barriers to an integrated land and water reform** approach in the context of the two focus areas in Mpumalanga (IUWMA): Kaap River and Lower Komati River catchments;

- ii. To **identify opportunities/ mechanisms/ interfaces for adopting an integrated land-water reform process** that can support the water allocation plan (WAP) process of the Inkomati-Usuthu Catchment Management Agency (IUCMA) in the areas of focus; and
- iii. To **develop guidelines for an integrated land, water (and agrarian) reform process**, that have the potential to be upscaled nationally.

This document forms part of Objective 3 and is the guideline document for integrating land, water (and agrarian) reform processes. This guideline provides the information and guiding steps for implementing agencies and partners towards the realisation of more alignment between water and land reform processes (and subsequently agrarian reform processes). The guideline was informed by a range of processes that led to the development of this document (see Figure 1). This includes a literature review and root cause analysis conducted earlier in the study. Stakeholder engagements were also undertaken to inform the root cause analysis and workshops were held in the pilot study areas with relevant stakeholders to obtain further inputs for the root cause analysis. Using the root cause analysis as well as key insights from stakeholder engagements, this guideline was developed.

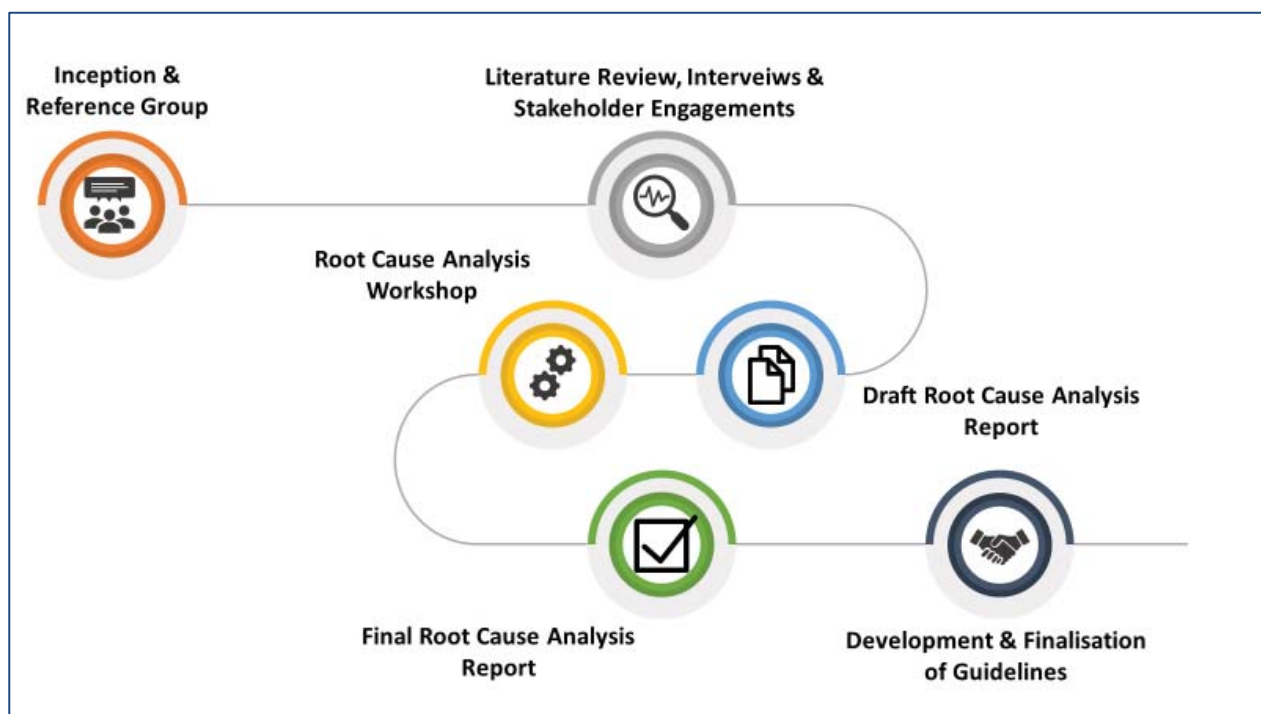


Figure 1: Process overview journey-map towards root cause analysis and guidelines

The guideline provides insights into underlying root causes for slow progress towards transformation and more importantly, the possible opportunities and steps that can be deployed to tackle these identified root causes, to guide quicker progress towards intended transformation objectives.

While the ongoing public debate on the failures and solutions to land and water reform processes is detailed and complex, it is unlikely that this document would cover all related issues as specific lessons have been drawn from the case study areas in Mpumalanga. The focus of this document, therefore, is understanding

how to navigate the underlying root causes for misalignment that propagate the slow realisation of the objectives of government's reform programmes and for officials in this area of work to understand the key linkages and interfaces.

1.2 Target Audience

These guidelines are applicable to all government sectors players and parties involved in or seeking to improve processes of the land and water reform. The guideline provides insights into how the underlying causes of known challenges of government reform processes can be addressed to fast track attainment of transformation objectives. The guidelines can be applied by sectors including government, private, civil society, and academia (including students and research institutions).

- The guideline is specifically important for government entities and their staff involved in planning, budgeting for and implementing the reform programmes. The document speaks to all levels of government implementers from national (policy, strategy, planning and programming level), all the way to the grassroots implementing agencies such as the catchment management agencies (CMAs) for water reform.
- With respect to private sector entities partnering with government through contracts, their understanding of underlying causes of failed reform programmes will enable provision of better-informed support in partnership with government helping to close existing gaps in reform processes.
- The guideline is also applicable to civil society organisations (CSOs) who play an important role in advocacy and echoing the voices of marginalised and poor segments of our society. The guideline will equip the CSOs and like-minded organisations for advocacy by providing 'evidence based' knowledge on underlying root causes and solutions as discussion points for addressing the existing injustices in the land and water reform processes for the benefit of beneficiary communities.
- The subject of pro-poor socio-economic transformation is important for South Africa. Research is critical to developing the knowledge base, evidence, and solutions for addressing existing gaps in transformation programmes. Research institutions, academics as well as students, will benefit from this guideline and related report on underlying causes of failed reform programmes. The insights will be useful for documenting more widely (by other researchers), helping to build on the existing knowledge base for fast tracking socio-economic transformation in South Africa.

More broadly, knowledge on transformation through land and water reform is important for all citizens of South Africa, and this series of documents provides further insights into the land-water reform processes and their areas of alignment and integration.

1.3 How to Use this Guideline

It is important that a reader identifies the critical issues that apply to their work in the process of land and water reform and look at the specific guidelines that apply. The table of contents of this document will be a quick way to identify areas that apply/align with one's work.

This document includes the introduction above which provides a high-level overview of this project and the guidelines. Chapter 2 looks at the South African Land and Water Reform Framework which includes the

legal, policy and strategy framework for land and water reform as well as the programmatic drivers for change. The findings from the pilot study areas in the IUCMA are discussed in detail in Chapter 3 which includes the root causes identified for land and water reform. Chapter 4: Towards Alignment in Land-Water Reform looks to address some of these root causes through a Theory of Change as well as a suite of high-level interventions to address the challenges in aligning land and water reform. The last chapter is titled Towards Implementation and provides the concluding remarks for this document and summarises what has been discussed earlier, namely around the interventions required to align land and water reform.

The guideline is by no means a standalone document, and readers intending to get a holistic understanding of the land and water reform should widen their reading scope to cover policy, legal and regulatory instruments as well as literature from other authors in the sector.

2 SOUTH AFRICAN LAND AND WATER REFORM FRAMEWORK

The South African Land and Water Reform Framework is supported by several legislative, policy and strategic instruments, as depicted in Figure 2 below for the land and water reform processes.

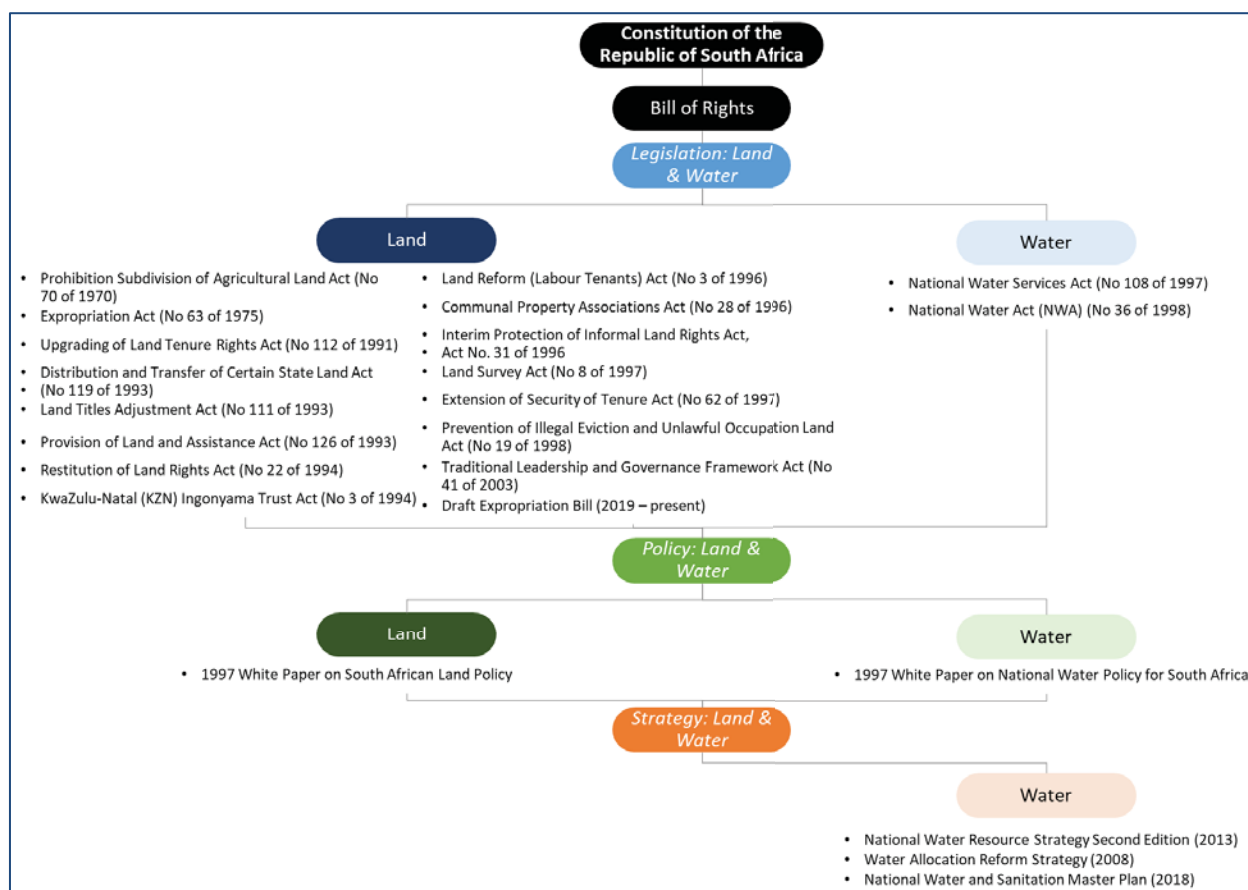


Figure 2: Legal, policy and strategy framework

2.1 Legal Framework

South Africa's legal environment is framed within the ***Constitution of the Republic of South Africa***. Approved in 1996, the Constitution can be regarded as the supreme law of the land and is the ultimate framework within which all other laws operate. South Africa's transition from apartheid to a democratic government required a reconfiguration of the legal framework to address transformation across all levels of society. The Constitution is highly regarded internationally and is essential when considering any form of transformation as it is the guiding principle and foundation for the country's democracy (Republic of South Africa, 1996).

Within the Constitution is the Bill of Rights which "enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom" and is one of the key legal documents that holds the State accountable to protecting the rights and dignity of the country's citizens (Republic of South Africa, 1996).

While the above legislation is very broad and high-level for the purpose of this guideline, it is important to consider the overarching legal framework within South Africa and how legislation is guided by a strong social imperative which often forms the foundation of many of the country's legislation, policies and strategies. It is not possible to consider land and water reform without understanding the strong social dimension involved, particularly around transformation and the country's past of racial discrimination.

2.1.1 Legal framework: water

In light of the above, South Africa underwent a period of revision of its water legislation to address transformation by promoting equity, sustainability and socio-economic growth. The Constitution of South Africa with its Bill of Rights established access to water as a basic right. Using this as a foundation, the State underwent a reconfiguration of old water laws and regulations to ensure that past injustices promulgated by the apartheid regime were addressed. The first significant water-related legislation, post-apartheid, were the **National Water Services Act (No 108 of 1997)** and the **National Water Act (NWA) (No 36 of 1998)** (Republic of South Africa, 1997; Republic of South Africa, 1998). These two Acts provide the framework for water resource management and water supply services and established the State as the primary custodian of all water resources in the country. The NWA also prioritised the basic right of access to water and included the concept of a Reserve that considered both the human right to water and the ecological needs of the water resource itself. The NWA also established the use of a formal water licensing system to address past inequalities by equitably redistributing the resource. (Movik, 2012). Of particular importance, is the provision for Catchment Management Strategies and Water Allocations Plans (WAPs) which includes the allocation of water in an equitable and efficient manner that prioritises historically disadvantaged individuals (HDIs) in order to achieve transformation. Another important aspect of the NWA is the categories of water use defined within the Act:

1. Schedule 1: Low-volume water use for primarily domestic purposes.
2. Existing lawful use (ELU): Water use that lawfully occurred in the period two years before the promulgation of the NWA. This was viewed as an interim measure to bridge the gap between the old water act and the NWA.
3. General authorisation: Provides permission to use water without having to apply for a water use licence for activities or water use listed under Section 21 of the NWA.
4. Water use licence: Users are required to apply for a water use licence for water use activities as listed under Section 21 of the NWA and includes water use that exceeds the criteria for Schedule 1, water use that is taking place or planned to take place after 1998 and water use that exceeds the conditions as stipulated in the General Authorisation.

2.1.2 Legal framework: land

Due to the history of systemic dispossession of Black African, Indian and Coloured people (hereafter referred to collectively as black people/population) of their land during colonialism and apartheid, the need

for revision of old land-related legislation was a critical step for the democratic government. This required a significant overhaul of past laws and the development of new legislation that targeted past land dispossession along racial lines. The legislation was revised to address transformation in the land space to support the 1997 White Paper on South African Land Policy (discussed in Chapter 2.3). Some of the new Acts that were developed post-apartheid are listed in Table 1:

Table 1: Acts within the context of land reform, adapted from the Final Report of the Presidential Advisory Panel on Land Reform and Agriculture (South African Government, 2019; Advisory Panel on Land Reform and Agriculture, 2019)

Act	Comment
Subdivision of Agricultural Land Act (No 70 of 1970)	A law established during apartheid that is still enforceable. Includes provision for the prohibition of subdivision of agricultural land. It was meant to protect and promote viable production capacity for the agriculture sector
Expropriation Act (No 63 of 1975)	Allows for expropriation for property only for public purpose or interest and requires an agreement between the owner and state with reasonable terms
Upgrading of Land Tenure Rights Act (No 112 of 1991)	Allows for the conversion of permissions to occupy to “freehold”
Distribution and Transfer of Certain State Land Act (No 119 of 1993)	Allows for the distribution and transfer of specific land belonging to the State and designated by the Minister
Land Titles Adjustment Act (No 111 of 1993)	Includes provisions for administrative measures to update title deeds where the ownership details in the deeds registry is not up to date
Provision of Land and Assistance Act (No 126 of 1993)	Allows for the designation of certain land, the regulation of the subdivision of such land and the settlement of persons thereon. It also includes provisions for the acquisition, maintenance, planning development, improvement and disposal of property and the provision of financial assistance for land reform purposes.
Restitution of Land Rights Act (No 22 of 1994)	Allows for the restitution of rights in land to people dispossessed of their land rights after 19 June 1913 due to past racially discriminatory laws. Also responsible for the establishment of the Commission on Restitution of Land Rights and Land Claims Court.
KwaZulu-Natal (KZN) Ingonyama Trust Act (No 3 of 1994)	Allows for the establishment of the Ingonyama Trust and for the holding of land in the trust. The board for the Trust is the custodian of the land previously administered by the past KZN government. The Trust currently has vested ownership of 2.8 million ha of communal land on behalf of King Goodwill Zwelithini, the sole trustee.
Land Reform (Labour Tenants) Act (No 3 of 1996)	Makes provision for the security of tenure of labour tenants and people occupying or using land due to their association with labour tenants. It also allows for the provision for acquisition of land and land rights by labour tenants. The aim is to secure tenure rights of existing and former labour tenants including regulation and prohibition of illegal evictions.

Act	Comment
Communal Property Associations Act (No 28 of 1996)	Allows for communities to form juristic persons a.k.a. communal property associations (CPAs) to acquire, hold and manage property as agreed by the community and in terms of a written constitution.
Interim Protection of Informal Land Rights Act, Act No. 31 of 1996	Allows for the temporary protection of certain rights and interests in land which are not adequately protected by law.
1997 White Paper on South African Land Policy	Provides the framework for land reform by outlining the three key elements of the land reform programme: restitution, redistribution and tenure reform
Land Survey Act (No 8 of 1997)	Allows for the regulation of the survey of land in the country
Extension of Security of Tenure Act (No 62 of 1997)	Allows for the facilitation of long-term security of land tenure, regulation of the conditions of residence on certain land and regulation of the conditions on and circumstances under which persons with rights to reside on land may be terminated
Prevention of Illegal Eviction and Unlawful Occupation Land Act (No 19 of 1998)	Supports the Constitution Section 26(3) whereby no one may be evicted from their home or have their home demolished if there is no order of court that considers all relevant circumstances. This also refers to arbitrary evictions.
Traditional Leadership and Governance Framework Act (No 41 of 2003)	Allows for the institutionalisation of traditional leadership in the country by providing for the transition of tribal councils to traditional councils with 40% elected members and one third being women members.
Government Immovable Asset Management Act (No 19 of 2007)	Provides a uniform immovable asset management framework that encourages accountability and transparency in government, ensures effective immovable asset assessment in government and ensures coordination of the use of immovable assets within the context of service deliverer objects.
Draft Expropriation Bill (2019-present)	The Expropriation Bill is in its draft stage and aims to provide for expropriation of property for public purposes or in the public's interest

2.2 Policy Framework

During apartheid, the majority of the black population was subjugated and dispossessed of their land and water. As such, social policies during that time catered primarily for the minority white population and resulted in extreme levels of poverty and limited access to resources amongst the black populations. However, once the country became a democracy, social policies shifted and were revised to reflect the new values of the country, i.e. non-discrimination, fairness and equality. Examples include the removal of institutional racism and the introduction of social rights that were not dependent on race. Ultimately, the reform of social policies that took place after 1994 aimed to deracialise social rights and universalise social policies for the benefit of all South Africans. This gave rise to targeted social policies that aimed to address past inequalities, often through the mechanism of broad-based black economic empowerment

(Leubolt, 2014). In addition, many policies also leaned towards pro-poor approaches or socio-economic development that uplifted and benefitted the poor. This was to support rural black populations, many of which were in poverty due to apartheid and its racially discriminating laws. The general social policies after apartheid emphasised transformation and reinforced the Constitution and the Bill of Rights. This drive highlights government's willingness to consider the strong social aspects that underlie land and water reform and provides a framing for land and water reform in which social upliftment and transformation remain critical.

2.2.1 Policy framework: water

In 1994, the government of South Africa found itself in need of new policies to guide the country going forward, noting the need for transformation to address past injustices due to the previous apartheid regime. In 1997, the State developed the **White Paper on National Water Policy for South Africa** which provided the framework for water resource management in the country (Department of Water Affairs, 1997). The policy was important in that it recognised the need for reform in the water sector to achieve equality and equitable access by all South Africans. This policy ultimately guided the development of future legislation and strategy and helped to frame water resource management under the provision that water resource management ensures equitable and fair access of water for all.

2.2.2 Policy framework: land

Due to the need for a new policy framework to guide land reform, the government developed the 1997 **White Paper on South African Land Policy** which identified three programmes to achieve land reform: 1) the land redistribution programme which focused on widening access to land for the black population; 2) the land restitution programme which aimed to restore land or provide alternative compensation to those who have previously been dispossessed of land due to past racially discriminatory practices since 1913; and 3) the tenure reform programme which looked to secure land and/or property rights of people living under insecure arrangements on land owned by others (including land owned by the State and private owners) (PLAAS, 2016). Also, three principles that underlie land reform are: deracialising the rural economy; democratic and equitable allocation and utilisation of land across race, class and gender; and sustained production discipline (DRDLR, 2011)

This policy frames reform in the context of redressing injustices of apartheid, fostering national reconciliation and stability, underpinning economic growth and improving household welfare and alleviating poverty (Department of Land Affairs, 1997)

2.3 Strategy Framework

2.3.1 Strategy framework: water

One of the key strategies that guided water resource management in the country is the **National Water Resource Strategy** (NWRS) which was published in 2004 with the second edition, NWRS2, being published in 2013. The NWRS2 aims to “ensure that national water resources are protected, used, developed,

conserved, managed and controlled in an efficient and sustainable manner towards achieving South Africa's development priorities in an equitable manner over the next five to 10 years" (Department of Water Affairs, 2013). It also highlights the limited achievements by government since the promulgation of the NWA in 1998 to significantly achieve water allocation reform in the water sector. In response to this, the NWRS2 further emphasises the importance of water allocation and compulsory licencing to achieve poverty eradication and improvement of livelihoods (Department of Water Affairs, 2013).

To further the goal of water allocation reform, the Department of Water and Sanitation (DWS) (then the Department of Water Affairs and Forestry) developed the **Water Allocation Reform Strategy** (WARS) in 2008 which guides water allocation reform to benefit HDIs (Department of Water Affairs and Forestry, 2008). However, water allocation reform struggled to gain traction in the sector and the **National Water and Sanitation Master Plan** (NWSMP) of 2018 recognising the challenges experienced by government to sufficiently address historical racial discrimination in access to water since the promulgation of the NWA in 1998. The NWSMP also emphasises the lack of alignment between land and water reform, noting that beneficiaries of land reform projects were often awarded land without water rights. To address some of these challenges, the plan includes key actions to support water reform including the alignment of water, land and agrarian reform programmes and linking them to the Irrigation Strategy (Department of Water and Sanitation, 2018).

2.4 Programmatic Drivers for Change

2.4.1 Water for growth and development framework

The Framework for Water Growth and Development highlights the centrality of water to all South African sectors and the necessity of taking a cross-sector approach to ensuring water security and balancing water interests. The framework also further cements the DWS's goal to diversify the country's water mix and intervention measures, with a strong imperative of improving monitoring and compliance mechanisms.

2.4.2 Programmes and support mechanisms

As government undertook land reform over the years, a range of programmes and support mechanisms were developed and implemented to help achieve the objectives of land reform (Figure 3).

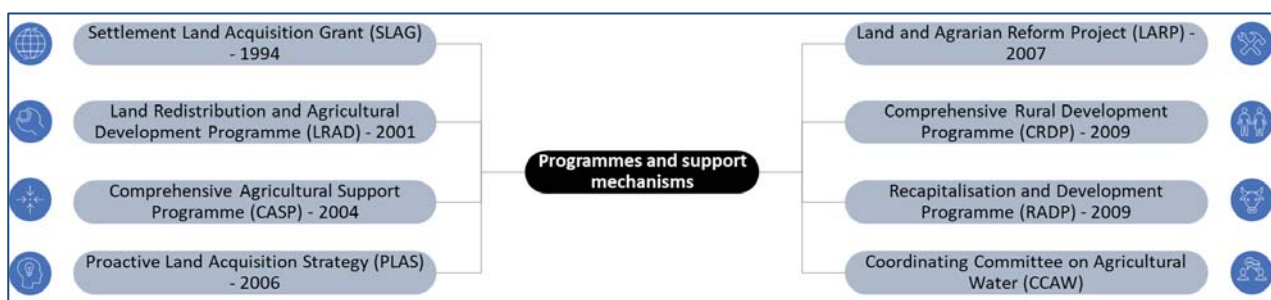


Figure 3: Programmes and support mechanisms

Settlement Land Acquisition Grant (SLAG)

SLAG was implemented soon after 1994 and involved targeting families with income of less than R1 500 per month. The grant was focused primarily on poverty alleviation and cash grants of R16 000 per household were allocated to previously disadvantaged individuals. The programme failed due to disputes arising from overcrowded projects. In many instances, beneficiaries grouped together to collectively purchase land through pooling of funds. Often, the value of the grant was insufficient to purchase land, prompting beneficiaries to form groups. The resultant groups often had conflicting objectives and disputes over access and benefits ensued (Ranwedzi, 2013).

Land Redistribution and Agricultural Development Programme (LRAD)

In 2001, the LRAD programme was developed, replacing SLAG. It was developed with the support of the World Bank and offered a sliding scale grant for land acquisition ranging from R20 000 to R100 000. The LRAD grant required a contribution of in cash or kind which subsequently determined the value of the grant. Only a small number of applicants fell within the upper end of the sliding scale grants (PLAAS, 2016). The structure of the LRAD programme encouraged group-based projects. Although it allowed individual beneficiaries, increasing land prices posed significant challenges, thus favouring group-owned projects to match land prices (Ranwedzi, 2013).

Comprehensive Agricultural Support Programme (CASP)

The CASP was implemented in 2004 and aimed to provide post-settlement support to beneficiaries of land reform. CASP was managed by the Department of Agriculture, Forestry and Fisheries (DAFF) (now the Department of Agriculture, Land Reform and Rural Development) and disbursed funding that sought to improve provision of support services relating to agricultural development. The programme placed strong emphasis on women, youth and people with disabilities. Initially, CASP was targeted more towards emerging and commercial farmers and not subsistence farmers. However, CASP struggled to reach its target groups and the support was not comprehensive with focus being more on infrastructure than capacity building and linking of beneficiaries to markets. There was also a disjunct between the support provided by CASP and the needs of the beneficiaries (Business Enterprises University of Pretoria, 2015).

Proactive Land Acquisition Strategy (PLAS)

PLAS was introduced in 2006 replaced the previous LRAD programme. It was based on a supply-driven model but also operated within a willing seller-willing buyer approach. PLAS establishes the State as the lead driver of land redistribution rather than the beneficiary approach employed by the previous programmes. Strategically located farms were purchased by the State and rented to beneficiaries for 3-years. If the beneficiary proved to be successful in utilising the land in a productive manner over the 3-year period, the land would be transferred to him/her. However, the privatisation of land through the PLAS mechanism has been halted since 2009 by the Minister of the DRDLR (now DALRRD). Through PLAS, the State became more responsible for lease administration and DALRRD struggled to cope with this due to capacity constraints. In addition, the structure of PLAS resulted in increasing reliance of the beneficiaries

on the State due to the use of short-term lease agreements that do not fit production cycles of different commodities. The temporary nature of ownership of the farm meant that financial institutions were reluctant to issue loans to beneficiaries or for beneficiaries to invest in the land. PLAS also struggles with land identification process as there is no clear approach on how DALRRD will identify land. DALRRD relies on the market to supply available land, a similar approach observed in LRAD and SLAG (Ranwedzi, 2013; Dawood, 2016).

Comprehensive Rural Development Programme (CRDP)

In 2009, CRDP was launched which targeted nodes where poverty is deeply entrenched and adopted an agrarian transformation approach. The CRDP also involved development of community members in specialist training to be utilised in micro-projects. DALRRD was envisioned as playing a coordinating role in the programme. In 2014, the programme was assessed and key challenges identified were the difficulties in working between different departments and the short-lived nature of the jobs created (PLAAS, 2016). The CRDP envisions land reform as a stand-alone component and linkages to rural development and agrarian reform are lacking. This has resulted in siloed approach by DALRRD during implementation with rural development and land reform being two separate programmes (Dawood, 2016).

Recapitalisation and Development Programme (RADP)

The RADP was introduced by DRDLR (now DALRRD) in 2009 and in 2014, replaced all other forms of funding for land reform. The programme makes use of business plans developed by private sector partners or officials and targets failed land reform and some restitution projects. Funding is for a maximum of five years and beneficiaries must have secured partners from the private sector as mentors or through share-equity schemes or thorough contract farming. The programme has many shortcomings including inadequate technical knowledge transfer from the partner to the beneficiary. Also, there was lack of clarity around the selection criteria used to identify beneficiary farms and the RADP overlapped with CASP which is being implemented by DAFF (now DALRRD) resulting in duplication of processes with limited coordination between the two departments (PLAAS, 2016; Dawood, 2016).

Coordinating Committee on Agricultural Water (CCAW)

CCAW is the Coordinating Committee on Agricultural Water and serves as an intergovernmental forum to address agricultural water use development issues. The committee allows for streamlining of processes between the different departments relevant to agricultural water use as well as providing the opportunity to broaden participation for other stakeholders. CCAW was established in terms of the National Guidelines for Integrated Management of Agricultural Water Use with the aim of each province having their own CCAW (Ncube & Mavumengwana, 2016). CCAW was envisioned as the organisation responsible for evaluation of any water use license application that is submitted to DWS. However, the establishment of effective CCAWs across the provinces has been limited and the few CCAWs that have been established vary in their functions (Funke & Jacobs, 2010).

The route to enable land reform has been complex with the priorities of policies shifting over time (1994 to present), in response to wider political dynamics. The journey of land reform has been discussed in the above chapters and is summarised in Table 2 below.

Table 2: Summary of land reform in South Africa, adapted from the PLAAS Diagnostic Report on Land Reform in South Africa (PLAAS, 2016)

Period	Key land reform policies and changes
1994-1999	<ul style="list-style-type: none"> • The early years of democracy were strongly focused on inclusive policy making processes. • Progress was slow in the first five years of land reform, and many of the initial targets were not met. The amount of land redistributed by March 1999, for example, amounted to only 650 000 ha or less than 1% of private farmland, as compared to the target of transferring 30% within 5 years. • In 1999 the Restitution Act was amended to allow the programme to move from a cumbersome, courts-driven process into one with considerable administrative leeway.
1999-2009	<ul style="list-style-type: none"> • In this period, priorities shifted from a strong focus on meeting the land needs of the poor to servicing a group of aspirant black commercial farmers, and market efficiency and the deracialisation of commercial farming received renewed emphasis. • A 'land redistribution and agricultural development' (LRAD) programme replaced earlier policy frameworks for redistribution and was to be complemented by a 'comprehensive agricultural support programme' (CASP). • The target date for redistribution of 30% of agricultural land was set at 2014, implying an average annual transfer of 1.64 million hectares. • By September 2009 government reported that in fifteen years a total of 3.04 million hectares had been transferred to 185 858 beneficiaries through redistribution. • Land restitution speeded up dramatically in this period. Government reported that by 2009 the land restitution programme had resolved 75 787 claims, the great majority being urban claims resolved through cash pay-outs, using 'standard settlement offers' of around R40 000 • A National Land Summit held in 2005 agreed on a review of 'willing seller, willing buyer', the expanded use of expropriation, and a proactive role for the State. • The African National Congress's (ANC's) National Conference in Polokwane in 2007 emphasized the need for an 'integrated programme of rural development, land reform and agrarian change'
2009-2016	<ul style="list-style-type: none"> • After 2009, rural development, food security and land reform were identified as priorities of the incoming President Zuma, and DRDLR was created under Minister Gugile Nkwinti. • In 2009 government launched the Comprehensive Rural Development Programme (CRDP), aimed at creating 'vibrant and sustainable rural communities'. • The strategy of the CRDP is based on a notion of 'agrarian transformation', defined as 'rapid and fundamental change in the relations (meaning systems and patterns of ownership and control) of land, livestock, cropping and community', with the objective of promoting 'social cohesion and inclusive development of rural economies'. • A Green Paper on Land Reform was published in August 2011, but was very short on detail, being only eleven pages long, and contained only general statements of principle. The main focus of the Green Paper is on developing a 'four tier' tenure system, comprising leasehold on State land; freehold 'with

Period	Key land reform policies and changes
	<p>limited extent', implying restrictions on land size; 'precarious' freehold for foreign owners (i.e. with obligations and restrictions); and communal tenure.</p> <ul style="list-style-type: none"> • The Restitution of Land Rights Amendment Act of 2014 opens up land claims for another five years, until 2019. This affects thousands of existing claims that have not been settled, as well as another 20,000 that are settled but not yet implemented. This has led to fears that existing claims could be swamped by the new claims lodged since 2014. • The Amendment Act has recently been struck down by the Constitutional Court, on procedural grounds, which calls into question the future of the re-opening of land restitution claims. • The State Land Lease and Disposal Policy of 2013 applies to farms acquired through PLAS, which has replaced the LRAD programme. • The Recapitalisation and Development Policy Programme (RADP) of 2014 replaced all previous forms of funding for land reform, including settlement support grants for restitution beneficiaries. Business plans written by private sector partners or officials are used to guide decision-making. • The Agricultural Landholding Policy Framework of 2013, which is not yet law, proposes that the government designate maximum and minimum landholding sizes in every district. • A 2014 policy document on 'Strengthening the Relative Rights of People Working the Land', also known as the '50/50' policy, has not yet been approved. • A new Expropriation Bill was introduced in 2015 and approved by parliament in 2016. It aims to bring the law in line with the constitution, specifically in relation to allowing compensation that is below market value but is 'just and equitable'. • The Act allows for oversight of expropriation processes by the courts, important when the levels of compensation on offer by the State are disputed.
2016-2019	<ul style="list-style-type: none"> • The Expropriation Bill is in its draft stage and aims to provide for expropriation of property for public purposes or in the public's interest. •

The legislative, policy and institutional context for land reform is complex and despite extensive laws and policies that aim to enact land reform in a just and equitable manner, land reform has occurred at a slow pace with very few actual success stories under its belt. Recent times have seen the South African citizens express their displeasure with the process and the lack of tangible results in land reform. Furthermore, other challenges including corruption and appropriation of the land reform process to benefit the elite and lack of alignment with water reform have resulted in land reform projects that ultimately disadvantaged the intended beneficiaries, i.e. poor black rural people (PLAAS, 2016).

In addition, land reform cannot be referred to without understanding the close relationship between land and agrarian reform. Agrarian reform includes land reform as well as other aspects relating to agriculture including training of beneficiaries in farming, providing farming equipment and finance and improving access to agriculture markets. Agrarian reform looks at land reform by providing a purpose for the land to be used under and providing support that enables agricultural activities that empower the rural poor. Although land reform is necessary to address past injustices under apartheid, it is not the ultimate endgame of the process, but rather requires ongoing support through agrarian reform to ensure that the land benefits the beneficiaries and meets their needs and wants. Land reform must align with policy that is designed to effect agrarian

reform (Cousins et al., 2018). Challenges around inadequate post-settlement support and inheritance of historical water-related debt has made it difficult for beneficiaries to succeed and thrive in agricultural activities on their restored land.

3 SALIENT FINDINGS FROM IUCMA PILOT AREAS

Despite government's good intentions and well-thought out policies and legislation to promote transformation through land and water reform, implementation has remained a challenge. There are limited success stories regarding land and water reform owing to a range of issues and challenges. Based on the literature review as well as targeted stakeholder engagements in the pilot areas within the IUWMA, root causes were identified to help understand how to tackle the issues of alignment around land-water reform. These challenges can be understood across key thematic areas and are presented for the water and land reform processes.

3.1 Root Causes for Water Reform Challenges

3.1.1 *Political will, policy and legislation*

➤ *Economic growth prioritised over social development*

One of the primary challenges to the implementation of successful water reform is the perpetuation of a narrative that views large-scale commercial farming as the only meaningful and impactful water use that benefits the economy while small-scale use is seen as inefficient and environmentally damaging (Funke & Jacobs, 2010; Peters & Woodhouse, 2019; Movik, 2012; Kemerink et al., 2011; Schreiner, 2013). South Africa's post-apartheid State initially relied on loans from the World Bank and International Monetary Fund which necessitated South Africa adopting a neo-liberal approach. The Growth, Employment and Redistribution (GEAR) strategy, which was implemented in 1996, further emphasised this position by stimulating economic growth through promotion of investor confidence. The economic contribution that large-scale commercial farmers make, coupled with their perceived role in ensuring food security, has skewed the perception of government to achieve water reform without necessarily disrupting current large-scale farming activities. The WARS, despite identifying the need to implement water reform that specifically targets HDIs, notes that water reform should be executed in a manner that does not arbitrarily curtail water use of ELUs so as to minimise disruption to the economy (Department of Water Affairs and Forestry, 2008).

However, this narrative has not been adequately debated to establish the production and water use efficiencies of large-scale farmers. For example, much of the water use and wastage is also attributed to commercial agriculture and this flies in the face of the production and efficiency narratives. The validation and verification process that has been completed in some water management areas might be a useful starting point in understanding and unpacking the production and efficiency narratives. Besides, these narratives also tend to ignore the historical processes and programmes of heavy subsidies that were invested by the State in commercial agriculture to ensure its success. Small-scale use is often viewed as inefficient and unproductive with past failed reform projects underscoring this stance. The fact that examples of small-scale users and uses that have failed abound does not also help matters for the HDIs in that it feeds the failure and unsustainable narrative. This is so notwithstanding the fact that the existing models through which small-scale use and users are given support have been problematic and have been largely forced as top-down by Departments rather than bottom-up initiatives.

The context of water scarcity has also further entrenched the status quo as water use for productive and economically beneficial activities as well as the need for conservation of water resources places social development and reform in an inferior position. Water use by ELUs that is sanctioned as “legal and legitimate” entrenches this notion. In contrast, emerging farmers are regarded as inefficient, unproductive and ill-disciplined to manage the resource (Peters & Woodhouse, 2019). The land reform programme in Zimbabwe is also used as a red flag to underscore the ‘negative impacts’ of reform and further builds on the notion that reform is only successful if it favours large-scale economic activities. This has tended to stifle any creative thinking around water and land reform to transform the lives and livelihoods of the HDIs and their participation in the mainstream water-based (and catalysed) agro-economy.

➤ *Misinterpretation of the law*

The Department has taken many ELUs and large-scale commercial users to court to contest water use and the need for water reallocation. However, interpretation of the law has varied between the defendants, the courts and DWS with many instances of DWS losing the case (Gosling, 2018). The continuous losses by DWS in the courts, coupled with the extra financial burden such losses entail, has resulted in reluctance in DWS to pursue matters in Courts. By so doing, this has also only served to maintain the status quo and slow the pace of transforming the water sector for inclusive participation by the HDIs.

➤ *Lack of recognition of customary water rights*

The NWA has proven to be essential to transforming the water sector from a system that benefitted only a few to a system that promotes sustainable, efficient water management that benefits all South Africans. However, the current legislative framework does not legally recognise informal water rights under customary law, under which many rural black South Africans still operate (Schreiner & Van Koppen, 2018). In many of the rural areas, the State has failed to provide adequate water and sanitation services, prompting the need for the local population to follow traditional means of water management. An example of this is reported by Malzbender et al. (2005) in the Tshikombani village of the Tzaneen Municipality in the Limpopo Province. The villagers installed their own water supply system that was self-financed and self-regulated and was managed by the traditional leader. Through the use of informal customary law, the community managed to adapt and manage their water resources that benefitted the village as a whole. The current environment does not recognise customary rights and in some instances, can declare such use illegal, placing further hurdles for rural poor to overcome (Schreiner & Van Koppen, 2018). However, the disadvantage of customary law is the disempowerment of women as most customary systems are extremely patriarchal with women having little power in decision-making. There can also be a strong distrust of traditional leaders due to them being used as tools by the apartheid government to control the black populations in the former homelands. Local government needs to play a stronger role in facilitating engagements and building trust between traditional authorities and systems and the community (Kemerink et al., 2011).

➤ *Absence of water rights linked to land*

There have been many instances of land reform projects failing once the land or farm has been awarded to the beneficiaries. Due to lack of post-settlement support and the absence of water rights on some of these

farms, the failure of the programme could be seen as inevitable. While DWS and DALRRD have now noted the linkages between land and water reform, the previous programmes lacked this alignment and there were many land reform beneficiaries that were unable to farm due to the absence of water rights.

Many restituted farms in the pilot study areas lack the associated water rights. Apart from the negative impact on agricultural productivity, financial institutions including the Land Bank refuse to provide loans and/or insurance without the water rights as collateral. This prompts many land reform beneficiaries to abandon the restituted farm. There are also instances where land reform beneficiaries lease the land back to large-scale commercial farmers, which inadvertently undermines the objectives of the land reform programme.

According to government officials in the pilot study areas, the reasons for the absence of water rights is varied. In some instances, the previous owners of the land accumulated large water bills that remain unpaid. The continued non-payments resulted in the water rights being withheld until the outstanding debt is settled. These amounts are often exorbitant and well beyond the financial means of small-scale farmers (SSFs) and resource-poor farmers (RPFs). In addition, there is still uncertainty on who is responsible for payment of this debt.

Other reasons for the absence of water rights include transfer of water rights by the previous landowner prior to the transfer of land to the land reform beneficiaries. Due to the practise of transferring water rights, which has come into question in recent times, landowners would transfer water rights resulting in land lacking the associated water rights.

The approach employed by the Commission on Restitution of Land Rights (CRLR) also highlights the disjunct between land and water reform. In the research process, the status of water rights is not thoroughly explored nor established. This is because the research conducted by CRLR during the land restitution process focusses strongly on land and property rights (this excluded properties obtained from private owners), with little cognisance of the water rights. Greater emphasis is placed on historical ownership of land while the status of water rights of the property is assigned a lesser priority.

➤ *Difficulty in managing competing actors and needs*

Water touches all sectors of the economy and the need to balance competing needs of different actors and interests within a complex social, political and economic environment has been difficult to achieve. Commercial farmers are equipped with the necessary knowledge and political clout to ensure that their interests remain a priority to government, while other sectors such as energy, urban and industry are also indirectly prioritised over the rural poor (Movik, 2009). Effective water reform that is felt across all levels of society requires strong political will which has been lacking and fragmented by government (Funke et al., 2007). As a developmental state, the lack of intentionality by the key government stakeholders from land, agriculture and water to establish a proactive one-stop-shop for facilitating support to small-scale productive water uses by HDIs has been one of the biggest challenges. Examples are numerous of small-scale users reporting the challenges faced when applying for a water use authorisation. The main one being the siloed

nature of the administrative process and the onerous requirements which do not make it easier to access such authorisations (Pegasys Institute, 2018).

3.1.2 *Strategic, planning and regulatory instruments*

➤ *Limited development and implementation of the water allocation plans*

It has proven difficult to balance and manage the competing needs of the different actors in the water sector. Water touches on all aspects of life and is a crucial resource for many sectors and this requires government to be able to balance the various needs while promoting transformation. This creates a very complex social, political and economic environment that is difficult to navigate and hinders attempts to achieve water reform. In the IUWMA, water demand in the catchment is estimated to be around double the water availability. Eighty three percent of estimated demand is from irrigated agriculture, thus highlighting the crucial role irrigated agriculture plays in the reform processes and more specifically in WARS (Peters, 2019).

In the Inkomati catchment, reserving water for ecosystem services is strongly advocated by important tourist interests trading on their proximity to the Kruger National Park (KNP), and that environmental flows are now given effect through gazetted Resource Quality Objectives (ecological reserve). These are downstream from most other water users in the catchment and represent a strong economic hub for the catchment. The park has aligned its scientific efforts to track the implementation of these environmental flows following work of the national River Ecostatus Monitoring Program. The status-quo is that, at present, these environmental flows satisfy international agreements stipulating minimum levels of cross-border flows downstream into Mozambique. As a prior right to water under the NWA, this environmental, or 'non-economic' use of water to maintain ecological flows does not require payment of water fees. Despite the early contestations around these allocations, progress had been made to manage for the environmental flows based on mutual socio-economic interests between the irrigation sector (responsible for a large tract of transformed agricultural land in Nkomazi region), the KNP and the IUCMA, notably through the Crocodile River Operations Committee and other bodies (e.g. Tickner et al., 2020; Harwood et al., 2017).

There has been limited implementation of key planning instruments, with South Africa's first water allocation plan being developed by the by the IUCMA.

➤ *Complex licensing processes*

Licensing was viewed as a tool to aid in water allocation reform; however, many commercial farmers still operate under ELUs. The licensing can be slow and complicated with massive backlog and processing times varying from 3 to 12 months, slowing the reform process down. Engagements with an irrigation board in the pilot study areas (which is a registered service provider to assist with water use license application (WULA)) also revealed this. The online system, e-WULAAS (electronic Water Use Licence Application and Authorisation System), has helped to reduce manual processes but the application process is still long. Officially, the duration for the processing of an application is 300 days which DWS is aiming to reduce to 96 days. The completed application is referred to the local CMA by the irrigation board, which then refers it on to DWS Head Office in Pretoria. It is this process that takes the longest and timeframes can extend to 2

years. However, according to the irrigation board interviewed for this study, farmers that have applied for a water use licence and are still awaiting approval are allowed to use water for their farming activities, but within limits as stated in the application. In many instances, farmers are allowed to use the water that is allocated to them, as per the application, but are not allowed to use all of the allocated water until the application is approved. It should be noted that this was observed within the pilot study areas, specifically relating to the area managed by the irrigation board engaged with. This practice might not be observed within other water management areas.

The complex application process (see Figure 4 below) is easy for large-scale commercial farmers that have the knowledge, skills and funds to support it, things that small-scale users lack. The licensing process also relied on an accurate assessment of available water resources through the Water Authorisation Registration Management System (WARMS). However, the data on the WARMS system is inaccurate resulting in the Department lacking a legally sound and numerically accurate basis to reallocate water. Many ELUs operate without metering making it difficult for DWS to effectively monitor and enforce. The irrigated agriculture actual volumes are usually known by irrigation boards who do not share this information and use it in court to contest finding made by the Department (Ncube, 2018; Funke & Jacobs, 2010; Movik, 2009). This brings to question the narrative of production efficiencies by the sector.

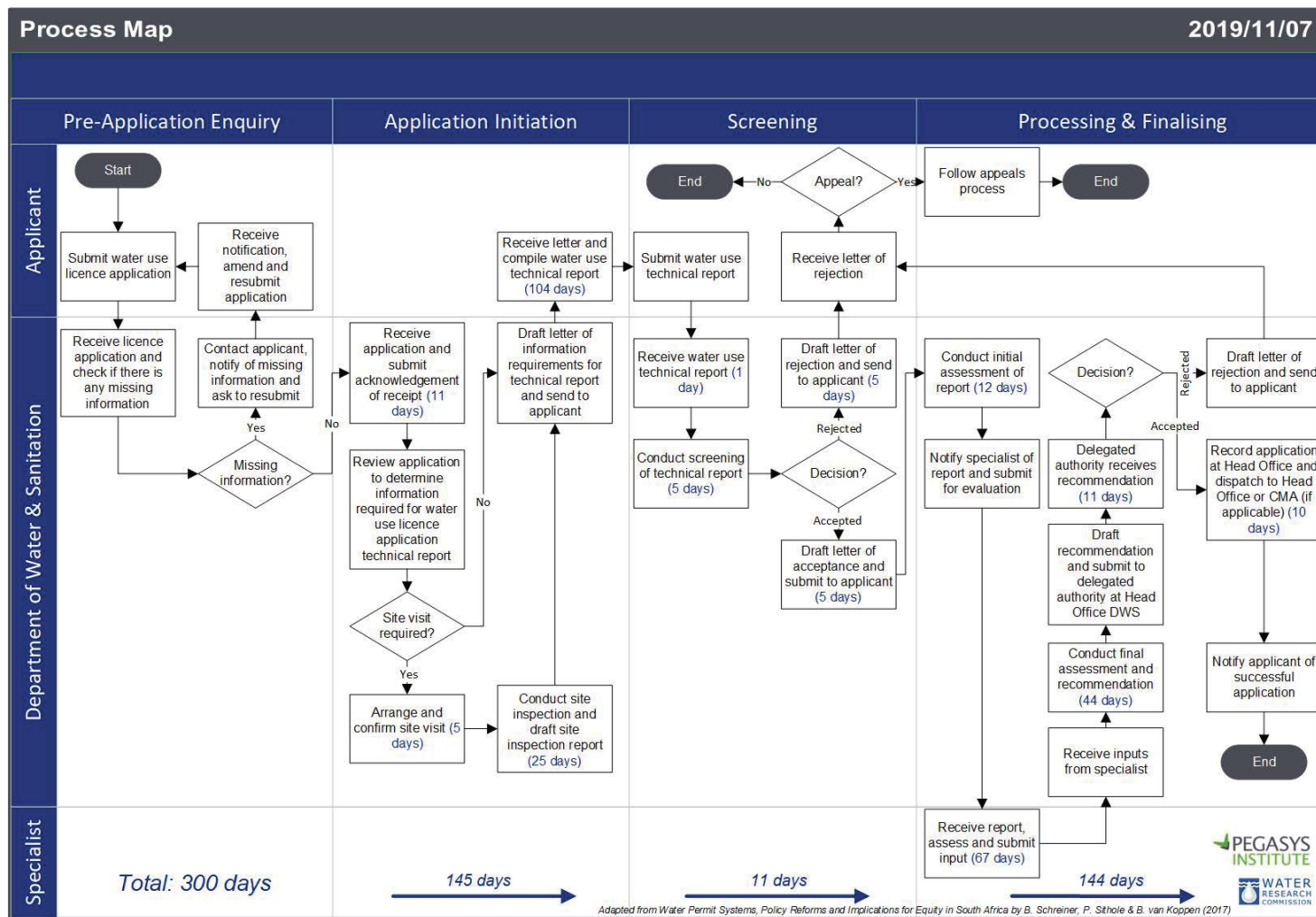


Figure 4: Water use application process, adapted from *Water Permit Systems, Policy Reforms and Implications for Equity in South Africa*, 2017 (Schreiner et al., 2017)

➤ *Limited integrated planning*

The core component of agrarian reform is more equitable access to the assets of land, water, markets, capital, technologies and skills. It seeks to overcome the territorial boundaries created during apartheid and, to some extent, the urban-rural divides (DBSA, 2009). Regulation of water resources can support agrarian reform by ensuring that these resources are made available in a fair and sustainable manner. To promote agrarian reform, irrigatable land needs to be restituted and redistributed, with the accompanying water rights. Access to water is only one aspect of the land reform process.

As noted earlier, majority of the land and water reform journeys have occurred parallel but separate to each other with the different departments operating in siloes. This lack of integrated planning and coordination has resulted in fragmented implementation and limited post-settlement support to beneficiaries.

➤ *Integrated Water Resource Management (IWRM) in developing countries*

South Africa is known for its well-developed policies, however, its translation to implementation is often poor. Often, many policies sound good on paper, but lack a practical and pragmatic approach towards implementation (Funke & Jacobs, 2010). The adoption of integrated water resources management (IWRM), while seen as a best practise for water resource management, is not necessarily the best fit for developing nations that lack capacity, technical expertise and budget to effectively implement. There is no one-size-fits-all approach to IWRM but the current vision of IWRM that is utilised in South Africa has struggled to incorporate water reform in the context of the apartheid legacy (Funke & Jacobs, 2010; Funke et al., 2007).

3.1.3 *Institutional capacity*

➤ *Institutional transformation*

Although the NWA makes provisions for the establishment of CMAs to aid in water allocation and reform, to date only two CMAs are operational. CMAs are envisioned as crucial institutions to aid in water use license authorisations and water allocation reform and will reduce the burden on DWS. Nationally, the delays in the establishment of CMAs have had far reaching consequences in hindering transformation. Water User Associations (WUAs) were to be established at the local level and would replace former irrigation boards which historically represented the interests of white-owned agriculture (Méndez-Barrientos et al., 2016). WUAs / irrigation boards are a critical institution for many farmers as their support can help emerging farmers secure water rights and address issues around water and agriculture. Many of these irrigation boards still operate under the old Water Act of 1956 which includes the mandate to manage all water resources (excluding groundwater) in the irrigation districts (areas determined under the old Act and related to the land surrounding rivers and streams). This allows them to provide crucial services to water users under their jurisdiction. The irrigation board that was engaged with for this study explained that they provide assistance to all farmers (large-scale, small-scale and HDI farmers) in the region and in many cases, serve as the intermediary between the farmers on the ground and DWS and DALRRD.

However, irrigation boards are often viewed as an institution from the apartheid era and consequently, many rural black farmers view the institutions with distrust and see the lack of transformation into WUAs as further

entrenchment of the status quo and favouritism of the minority white populations. Engagements with SSFs and RPFs in the pilot areas highlighted similar findings. Within the irrigation boards in the pilot areas, which are meant to be representative of water users in a given sub-catchment in relation to the allocation of water to their members, it is reported that these are predominantly managed by the white members. Subsequent to this arrangement, there is the perception by SSFs and RPFs of underlying/apparent lack of transparency in some of the decisions and dealings of the irrigation boards, especially with regard to the processes of water allocation.

While irrigation boards have indicated their willingness to transform in WUAs, the lack of clarity from government regarding processes and timeframes has stalled the process. The irrigation board that was engaged with from the pilot study areas indicated that all paperwork was completed to begin the process of transformation when the new Water Act of 1998 was implemented, but there has been limited guidance from government on the way forward and the lack of clear processes to transform irrigation boards has halted the process.

The lack of relevant and local level institutions to support water reform has hampered implementation at the local level (Funke et al., 2007). Currently, smallholder farmers that are not part of a WUA and/or irrigation board struggle to access water for agricultural purposes (Ncube, 2018). This then requires a more collective approach to water sector reform that incorporates allocation reform together with processes to support institutional reform. Without this integrated approach there is a real risk that radical opportunism might creep in the water sector and be used to disrupt the institutions.

Furthermore, confusion has been created over the State's aim to decentralise water resource management. Although CMAs are envisioned as key to this, nationalisation of water use through the nationwide WARMS database and licensing system creates a central authority for issuing water rights, in contrast to the decentralised approach of CMAs (Movik, 2012). In addition, only a very limited set of functions have been delegated by DWS to the two operational CMAs which constrains their ability to perform the role envisaged for them by the NWA. The role of responsible authority for issuing of water use licences remains with DWS, although the NWA ultimately sees this function being performed by CMAs.

It must be noted that the IUCMA, being an established CMA in the country, has started their WAP and the process for this is being developed organically. As IUCMA is leading the WAP process in South Africa, the lessons learned from this can provide useful insights into water allocation and water reform that can aid other provinces in developing WAPs.

➤ *Untransformed water sector*

The status quo of the water sector has remained largely intact despite attempts by government to transform it. Irrigation boards have struggled to transform to water user associations, something that is crucial for emerging farmers as these bodies control water for agricultural purposes. The NWSMP (2018) noted that only 5% of water used in agriculture is used by black farmers (Department of Water and Sanitation, 2018). As well as the limited levels of transformation amongst the water sector, ineffective institutions, non-compliance by some large-scale commercial farmers, limited to non-implementation of legislation, and

inability of DWS to exercise its regulatory responsibility have all contributed to the untransformed state of the water sector (Advisory Panel on Land Reform and Agriculture, 2019).

➤ *Limited coordination of key sector departments*

DWS's lack of coordinated data and communication together with high staff turnover has also contributed to water reform's poor implementation. Water quality has been deteriorating exponentially in recent years with incidences in the Hartbeespoort Dam and Vaal River in North West and Gauteng respectively highlighting the challenges that DWS are facing. Many municipalities are struggling to reach their targets with many being placed under administration resulting in lack of maintenance of infrastructure and the subsequent discharge of sewage into natural river systems. These targets are often set nationally with little understanding of the challenges faced on the ground (Funke & Jacobs, 2010). Furthermore, confusion abounds due to mining, energy and land affairs being a central government competency while agriculture and the environment are joint national and provincial competencies, creating a complex institutional setup that is difficult to navigate through (Funke et al., 2007). The lack of accountability in government has created the impression that government does not care about targets being met and mandates being carried out effectively (Rall, 2019; Schreiner & Van Koppen, 2018; Funke & Jacobs, 2010; Schreiner, 2013). The range and scale of challenges in DWS further emphasises its inability to cope with current problems, this puts to question the DWS' capacity to roll out and implement an effective water reform that aligns with land reform.

➤ *Institutional funding and resources*

Limited and inconsistent funding from the DWS has had an impact on the IUCMA's process to progress their WAP. Much of its funding has been from fixed-term projects funded by bilateral aid rather than on core funding from the Department (Peters, 2019). The IUCMA also has limited staff to conduct all the functions delegated to the CMA, and as such, has to prioritise their workplans accordingly.

➤ *Water rights are available, but infrastructure is limited*

According to the irrigation board engaged with for this project, infrastructure is a critical problem that many land reform beneficiaries have to deal with. It was highlighted that all small-scale HDI farmers registered with the irrigation board have water rights for their farms, but the lack or limited infrastructure on the farm means that small-scale farmers lack the ability to move water from the source to areas where it is needed for their farming operation. In these cases where the farms have been allocated to beneficiaries with the water rights, the infrastructure on site is inadequate (sometime due to vandalism and lack of maintenance) to transport and store water from rivers and streams. This means that water cannot be utilised by HDIs and land reform beneficiaries as they lack the necessary funds to build their own infrastructure. Infrastructure is typically a function of DAFF and DRDLR, which provide grants and assistance to support infrastructure development (the departments have now merged into DALRRD). However, according to the irrigation board, accessing these grants can be difficult and time consuming due the complicated administrative processes, slow processing times and limited awareness amongst land reform beneficiaries of the various grants and support programmes available to them.

3.1.4 Knowledge and information management

➤ *Inadequate stakeholder participation*

While the importance of stakeholder participation is recognised by government, often these engagements follow a top-down approach that prevents beneficiaries and small-scale farmers from actively engaging and participating. An example of this was observed during the establishment of the IUCMA which struggled to achieve meaningful dialogue amongst all relevant stakeholders. This resulted in the IUCMA unintentionally favouring ELUs as they were unaware of the problems faced by emerging farmers (Peters & Woodhouse, 2019). This top-down approach often leads to users on the ground being misrepresented and their needs being inadequately understood. A critical part of the engagement process is building the right capacities, so that meaningful engagement can occur. Currently, there still exists a divide in knowledge, experience and resources between the emerging farmers that require access to water rights, and commercial farmers.

In addition, many small-scale farmers and RPFs lack the necessary knowledge of water rights and the process to obtain them. Many of these farmers that form part of land reform beneficiaries are primarily from rural areas and are predominantly the elderly, who have poor literacy levels. This has severely limited their appetite to pursue farming on restituted farms as well as their understanding of the requirements to obtain assistance or support in land and/or water reform processes. Furthermore, most are unaware of where the information around water rights can be accessed. Local offices for DALRRD are scattered and located away from rural areas and farms making it difficult for RPFs and beneficiaries with limited access to finance. This has also made it difficult for government to reach and support rural and small-scale farmers with most of government being under capacitated to sufficiently address the needs of individual farmers.

This has resulted in a misalignment between government and small-scale farmers regarding the latter's needs and challenges. It should also be recognised that not all beneficiaries want to be farmers, and government needs to shift their approach from transactional to transformative. This means ensuring socio-economic growth and development for the beneficiaries in a way that addresses their aspirations.

➤ *Managing expectations for both government and beneficiaries*

Not all beneficiaries of water allocation and land reform have the will, the determination, the resources or the ability to take on full scale commercial farming (Nortje, 2014). Beneficiaries need to be made aware of what is required to successfully manage a commercial farming enterprise and need to be given the opportunity to decide whether they want to follow this route. This links again to the Government's approach of transformative vs transactional approach to transformation in implementing water and land reform. Beneficiaries should have the right to choose and have alternative ways to improve their socio-economic circumstances.

➤ *Limited translation of instruments into pragmatic guidelines/protocols*

As seen from Chapter 2, there is a plethora of legislation, policy and instruments to guide the reform processes. However, very few of these have been translated into pragmatic and simplified tools/guidelines for on-the-ground implementation, not only for government officials, but also to help build awareness and

capacity of reform beneficiaries. The availability of these tools/guidelines in local languages will also go far in creating awareness and building capacity.

➤ *Inadequate monitoring and reporting on actual water*

Accurate records for individual farmers are limited, which creates uncertainty in the actual availability of water to be redistributed under the reform process. This is due to the changing requirements of water use over time. In some instances, water users could be using more or less water than their licensed allocation. Often, the ELU quantity is billed and seen as “allocated”, without verification. The IUCMA for instance has shown that there have been such disparities when water users were asked to register their ELU. This has led to the need for a validation and verification process to help inform an up-to-date water allocation plan.

3.2 Root Causes for Land Reform Challenges

3.2.1 Political will, policy and legislation

➤ *Susceptibility to corruption*

Although policy and legislation are designed to enable land reform that promotes rural development and poverty alleviation through targeting of beneficiaries in most need, the process is susceptible to corruption. In 2019, it was uncovered that farms and grants to the value of millions of rand were handed out to beneficiaries who did not qualify. According to Maughan (2019a, b), the fraud and corruption were conducted on a large scale by various government officials. The Special Investigating Unit (SIU) conducted a seven-year investigation whereby large-scale looting and appropriation of the land reform process was done to benefit an elite few. Thirty-seven officials within the DRDLR (now DALRRD) were found guilty of misconduct. The SIU investigation revealed systemic weaknesses in the land reform programme as well as inadequate systems, controls and mechanisms. Thousands of alleged beneficiaries informed the SIU that they were not aware of any land reform project, had never been or worked on the farm and did not qualify for grants (Maughan, 2019b). The challenges around corruption of the land reform processes is also well known amongst farmers and beneficiaries. It was reported by Kan-Berman (2016) that some black farmers who were leasing land from the State were reluctant to invest in the land as they were concerned that the land will be taken away from them and given to the politically-connected (Kane-Berman, 2016).

The lack of transparency around many of the land reform programmes has been cited by Dawood (2016) as a key issue that needs to be addressed. All grants are lumped together as a single line item in the budget with no breakdown of how the grants were distributed and spent; how many beneficiaries qualified for each grant; what grant criteria were used; and how the grants are being monitored (Dawood, 2016). This enables appropriation of the land reform process to lend itself to fraudulent transactions being made and also makes monitoring, reporting and tracking difficult.

➤ *Tenure reform*

In spite of government’s post-apartheid outlook to improve the status of farm workers living on farms; their status remains fragile. The tenure laws that were designed to upgrade the rights of people who live on privately owned farms either as current or past farmworkers has failed to significantly improve their land

ownership rights. A national evictions survey showcased the extreme rate at which black people are being forcibly evicted from farms since 1994 with an estimated 940 000 farm dwellers being forcibly evicted between 1994 and 2003 (Hall, 2009). As long as mass farm evictions continue to occur, either legally or illegally, with limited support from government for evicted farm dwellers, the land reform process will continue to be regarded as a failure.

➤ *Communal property associations (CPAs)*

Although CPAs were seen as a useful tool to enable land reform by allowing groups of people to work together on a piece of land, there are many inherent challenges in the design. Not all of the members of the CPAs are committed to farming and conflict is common within CPAs. This often led to scenarios where only a few members of the community do farming-related activities or land beneficiaries lease the land back to the previous owners. As noted by Kane-Berman (2016), collective ownership has resulted in many failed land reform projects.

Engagement with SSFs and RPFs in the pilot areas revealed similar findings. Most small-scale farmers and RPFs lack individual farm units and farm collectively on shared properties. This form of land rights comes with its own set of challenges with permission to occupy (PTOs) representing a tenuous and fragile version of land rights while CPAs are not always conducive to large-scale commercial farming. In addition, many of these farmers operate on an irrigation scheme basis which again results in a form of collective farming, which is not always an appropriate form of farming for land reform beneficiaries. Collective farming can lead to conflict and limited collaboration amongst the farming communities of CPAs which hinders the success of a farming venture.

➤ *Complexities and challenges with the implementation of Acts*

The complexity of the various Acts that touch upon land reform make it difficult to ensure that land reform can be achieved within the legal context. The various Acts, while developed in some instances to specifically address land reform, have certain problems that make enforcement and implementation challenging.

- Subdivision of Agricultural Land Act (No 70 of 1970)

The Act, despite being established during the Apartheid years, is still enforceable today and further promulgates the view that small-scale farming is not viable or efficient. By preventing subdivision of agricultural land, the Act goes against the land reform agenda. Although the Provision of Land and Assistance Act (No 126 of 1993) does allow for the prohibition to be waived in certain instances, very few cases of this have been enacted for land reform purposes. Despite the Act being repealed by Section 1 of the Subdivision of Agricultural Land Act Repeal Act (No. 64 of 1998), this has not been signed into law (Advisory Panel on Land Reform and Agriculture, 2019).

- Expropriation Act (No 63 of 1975)

The archaic mechanism that the Expropriation Act of 1975 provides to enable expropriation is outdated and not applicable in the context of post-apartheid South Africa. The focus on agreeable terms between the

owner and State does not align with the current reform agenda and has necessitated the need for a revised Expropriation Bill which is currently being drafted.

- Upgrading of Land Tenure Rights Act (No 112 of 1991)

The upgrading of land tenure rights depends on land being cadastrally surveyed. However, there has been limited surveying of land in the former homelands and this lack of information hampers the process. In the instances where land has been surveyed, the title deeds and deeds of grants are out of date and there are also overlapping rights of owners, tenants and occupiers (Advisory Panel on Land Reform and Agriculture, 2019).

- Provision of Land and Assistance Act (No 126 of 1993)

Although the Act enables land reform, it has proven to be inadequate in sufficiently addressing land redistribution challenges. Although the Constitution recognises the State as the responsible party to undertake reasonable legislative measures to provide citizens with access to land, there is lack of clarity on the category of persons who are eligible to be a beneficiary. Furthermore, the powers afforded to the minister lack transparency and there are limits to which the minister can be held accountable. Initially, DRDLR (now DALRRD) was placed as the core department to facilitate redistribution but there was limited reference to other government departments such as DAFF (now DALRRD), DWS and the Department of Public Works, all of which play a key role in land reform (Advisory Panel on Land Reform and Agriculture, 2019). This further hinders any attempts at coordinating land reform resulting in siloed processes that ultimately disadvantage the beneficiaries. The merger of DAFF and DRDLR into the DALRRD in 2019 does acknowledge some of these challenges and aims to promote coordination and collaboration between the two previously separate entities.

- Restitution of Land Rights Act (No 22 of 1994)

The State has primarily focused on restitution with urban land claims being the easiest to settle due to their status being non-restorable and, subsequently, leaving no other option but to use financial compensation. The severe disadvantage of this Act is that it places the onus on the claimants to prove their case with many claimants lacking the knowledge and skill to substantiate their claims. The land claims process is also very complicated and difficult for the rural poor to understand (see Figure 5 below).

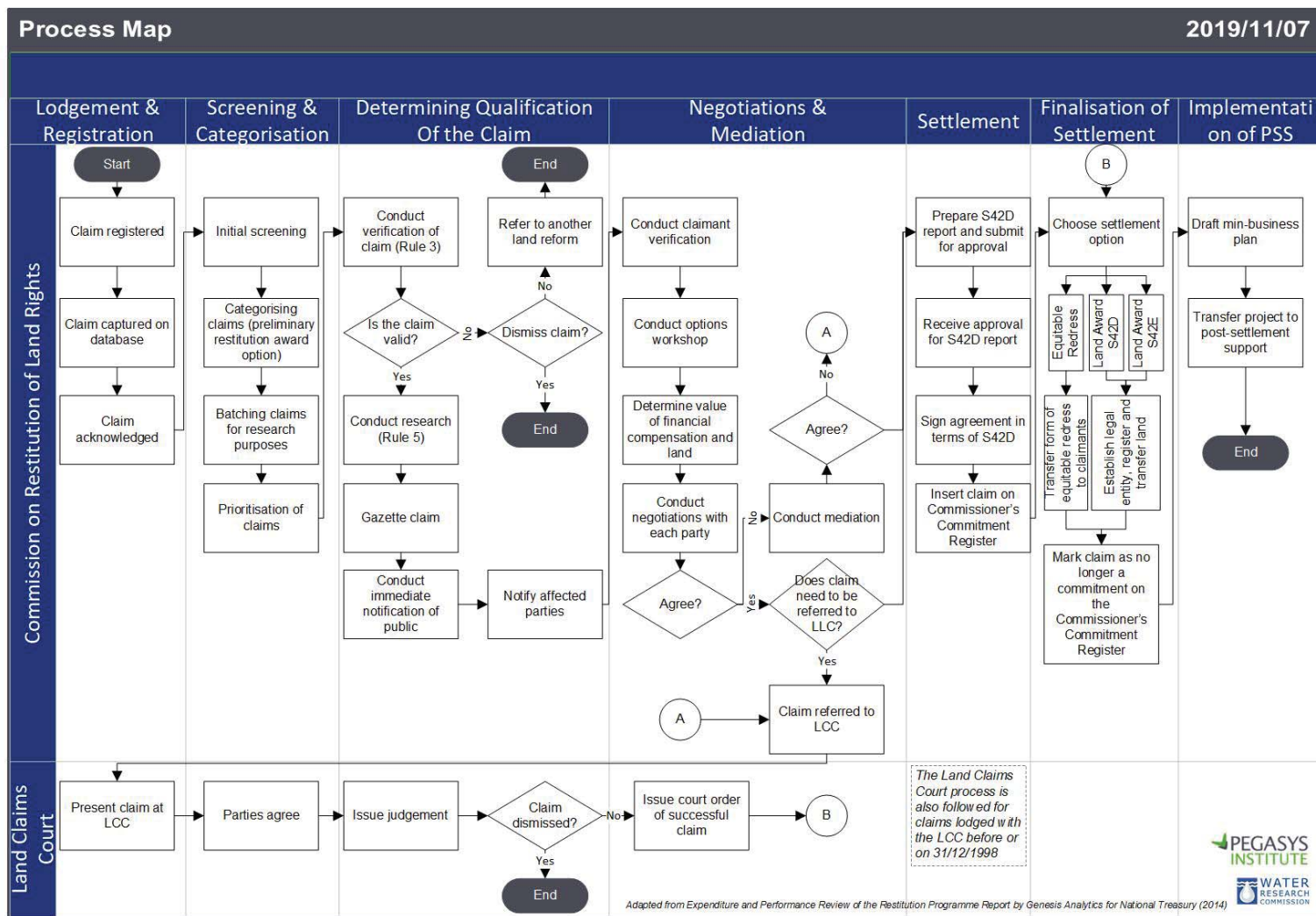


Figure 5: Land claims process, adapted from *Expenditure and Performance Review of the Restitution Programme Report* by Genesis Analytics for National Treasury, 2014 (Genesis Analytics , 2014)

The inclusion of a cut-off date in the Act discounts claimants who experienced dispossession of land prior to this date. The 19 June 1913 cut-off date discounts the fact that dispossession was occurring many years before this and that most claimants, by 1913, lacked rights on lands, but rather were assigned tenant and occupier status. This has created the problem of different values for different types of rights with lost “rights in land” (as well as labour tenancy and occupier rights) being regarded as lesser rights than ownership and freehold titles. The Act does not ring-fence land that has been restored from being considered in future overlapping claims. An example of this was the reopening of land claims in 2014 which saw the Commission of Restitution of Land Rights receive more than triple the number of claims previously received before 1998 with most being on land claims that have already been settled. The Act also does not make any provisions for the State to provide post-settlement support, an aspect that is crucial for the success of any type of land, water and/or agrarian reform. There are numerous projects of restored land that ultimately failed in uplifting the claimants due to lack of post-settlement support (Advisory Panel on Land Reform and Agriculture, 2019).

- KwaZulu-Natal (KZN) Ingonyama Trust Act (No 3 of 1994)

The Ingonyama Trust was established in 1994 to administer affairs relating to the land that was previously administered by the former KZN government, with King Goodwill Zwelithini being the sole trustee. The Trust owns 29.67% of deeply rural land in KZN and is administered by traditional leaders under King Goodwill Zwelithini. Recently, the Trust has come under scrutiny in the light of expropriation without compensation. Due to the King being the sole trustee of the Trust, he is the de-facto owner of the land. Over the years, there have been reports of the Trust being mismanaged and disadvantaging the communities who live on land administered by it. Most of the rural poor who live on the land lack title deeds but rather, possess Permission to Occupy (PTO) certificates. These PTOs allow the citizens to live on the land and build houses, but these citizens cannot, in essence, own the land, thus not providing secure tenure. Although the Upgrading of Land Tenure Rights Act allows for conversion of PTOs into title deeds, little evidence of this is observed in the Ingonyama Trust. Rather, the King has converted the PTOs into leases with rentals, thereby extracting rentals from the persons occupying the land – thus defying the purpose of the original process and further increasing the level of insecurity in tenure. This has negatively impacted the ability of the rural poor in the region to uplift themselves due to lack of ownership of land and the inability to utilise the land to its fullest potential for their own benefit. Furthermore, the Ingonyama Trust perpetuates gender discrimination in its strongly patriarchal structure. The Ingonyama Trust Board also makes a significant income from corporate large-scale commercial leaseholders to the tune of R90 million a year, highlighting how the current structure of the trust benefits only a few while disadvantaging the rural poor (Advisory Panel on Land Reform and Agriculture, 2019; Van Zyl, 2018) .

- Land Reform (Labour Tenants) Act (No 3 of 1996)

This Act was seen as pivotal in enabling former and current labour tenants to claim and acquire ownership of the land they occupy. However, the State has struggled to implement this Act and evictions have continued. There are also still a significant number of unprocessed labour tenancy applications that further hinders the process (Advisory Panel on Land Reform and Agriculture, 2019).

- Communal Property Associations (CPAs) Act (No 28 of 1996)

Despite the Act aiming to establish a juristic person to jointly manage the land, little support has been provided by the State to assist with the administration of CPAs. Although it is the responsibility of DALRRD and the Commission on the Restitution of Land Rights (CRLR) to oversee and support CPAs, this has not happened in practise. CPAs also pose a variety of problems in terms of land allocation and governance amongst the communities due to project design and amalgamation of different groups within CPAs. There is also conflict between CPAs and traditional leaders over control and land governance which further complicates the matter (Advisory Panel on Land Reform and Agriculture, 2019).

- Interim Protection of Informal Land Rights Act, Act No. 31 of 1996

The Act was established to recognise informal rights to land but was always regarded as a temporary measure towards the eventual securing of rights of people occupying land without formal documented rights through the support of more comprehensive law. However, this has not materialised, and the Act has continued to govern informal communal occupation of land (Advisory Panel on Land Reform and Agriculture, 2019).

- Extension of Security of Tenure Act (No 62 of 1997)

The Act is used to provide legal protection to occupiers of agricultural land against illegal evictions. However, many landowners with access to courts and superior legal representation have used the Act to conduct legal eviction of workers, thus the Act does not necessarily protect tenants from eviction. There is also evidence that many farm evictions are being conducted illegally without court orders (Advisory Panel on Land Reform and Agriculture, 2019).

- Prevention of Illegal Eviction and Unlawful Occupation Land Act (No 19 of 1998)

The Act aims to protect occupiers that do not have PTOs with a strong focus on vulnerable groups including women, children and elderly. The Act also makes provision for the State to provide alternative accommodation if an eviction order is granted. Again, the Act provides protection to land occupiers without documented rights from eviction. However, the South African Constitution allows for evictions and the Acts are only there to guide how and when evictions can occur. Land grabs (where persons who are awaiting land allocation forcibly move onto or settle on a given piece of land) have become increasingly common in response to the slow land reform process. At the same time, land owners including private owners and the government are within their rights to conduct evictions as long as it is legal (Advisory Panel on Land Reform and Agriculture, 2019).

- Traditional Leadership and Governance Framework Act (No 41 of 2003)

The Traditional Leadership and Governance Framework Act aims to consolidate traditional councils and other institutional structures with the Constitution by still granting authority to traditional bodies as long as it is within the legal framework of South Africa. The Act allows for living customary laws and customs, but these must prevent discrimination and promote gender equality. Unfortunately, the traditional landscape is still patriarchal in nature with many traditional leaders exploiting this system and further entrenching gender

discrimination. Furthermore, the Act does maintain a distorted understanding of customary law based on the previous apartheid government by reaffirming geographical boundaries of old tribal authorities according to the apartheid administration. Many traditional councils are legally invalid, and others are charging illegal tribal levies (Advisory Panel on Land Reform and Agriculture, 2019). There are many cases where traditional leaders perform unregulated land administration functions that fall outside the legal framework (Funke & Jacobs, 2010). The Commission on Traditional Disputes and Claims which was established to deal with these issues is overwhelmed and not sufficiently equipped to deal with the complexity and sheer number of disputes. There are also instances where traditional authorities have unilaterally sold land without the consent of the community members (Advisory Panel on Land Reform and Agriculture, 2019; Lodge, 2018).

Engagements with some female HDI farmers in the pilot study areas also revealed some challenges with regards to the traditional authorities. The few female farmers engaged with for this study all occupied restituted land that is administered by traditional authorities. These farmers were young and expressed their dissatisfaction with this arrangement as they were vulnerable to the patriarchal tendencies of traditional authorities. It was also reported that many of the small-scale farmers who occupy land administered by traditional authorities in the Kaap region had to pay a yearly fee to the chief for occupying land. No reason is provided for this yearly fee or what the money will be used for. This lack of transparency and borderline illegality of billing community members for occupying land underscore the lack of accountability and limited regulation of traditional authorities.

- Government Immovable Asset Management Act (No 19 of 2007)

This Act allows for the State to determine the amount of land currently owned by the State within the context of redistribution. However, implementation of this Act has been poor. Furthermore, the Act requires that public land be realised according to its best value rather than the social value that guides land reform (Advisory Panel on Land Reform and Agriculture, 2019).

- Draft Expropriation Bill (2019-present)

In response to the failed attempts at land reform and sustained dissatisfaction by the public for the slow pace of land reform, the government began the exercise of drafting an Expropriation Bill that can further the land reform agenda and provide clearer guidance on how this can be done within the context of our Constitution. There is also the proposed amendment to Section 25 of the Constitution which states that "a court may, where land and any improvements thereon are expropriated for the purposes of land reform, determine that the amount of compensation is nil" (Republic of South Africa, 2019:3). The Bill is still being developed, with key considerations going forward needing to include policy and legislation alignment, practicalities around implementation and coordination within and between different government departments and the private sector.

3.2.2 Strategic, planning and regulatory instruments

➤ *Inappropriate programme design*

Although government has prioritised land reform over the years, the process has struggled to achieve its redistributive, socioeconomic and social redress objectives (Funke & Jacobs, 2010). According to Funke and Jacobs (2010), none of the land reform programmes have succeeded in achieving their objectives. In many instances, the awarded land is located far from the place of residence of beneficiaries, often leading to land being underutilised (Valente, 2009). The SLAG and LRAD programmes offered grants that were too small for beneficiaries to purchase land resulting in many pooling their funds and grants together in order to purchase the land. This created challenges of its own as the groups often suffered from tension, disputes and eventually dissolution (Dawood, 2016).

The land reform programmes also did not necessarily secure land rights and ownership of the beneficiaries, but rather offered temporary ownership and/or occupation. This form of insecure tenure made financial institutions hesitant to issue loans and beneficiaries reluctant to invest in the land. Land beneficiaries in these situations do not meet the requirements of the Land Bank or other lending institutions. Many beneficiaries do not qualify for loan funding and lack access to credit for production loans and on-farm costs (Dawood, 2016). Apart from lack of ownership, beneficiaries lack a satisfactory credit record which also makes financial institutions hesitate to grant loans or insurance (Kane-Berman, 2016)

Furthermore, the RADP programme, despite promoting partnerships with private sector and big agricultural players, did not produce transfer of technical knowledge to the beneficiary (Dawood, 2016). There has also been lack of clarity from government regarding these partnerships with large-scale commercial farmers. During engagements in the pilot study areas, it was revealed that private large-scale commercial farmers have indicated their willingness to collaborate with HDI farmers and land reform beneficiaries as there is limited land and water available within the catchment of the pilot study areas. However, as cited by the irrigation board, the lack of title deeds and property rights means that land reform beneficiaries cannot enter into a financial and legal agreement with private farmers. In addition, the land is often owned by DALRRD, which leases it out to HDIs. Many private farmers are reluctant to invest in these land reform farms due to lack of assurance from government that their investments will be protected in the long-term, particularly for irrigation-intense crops where return on investment is often 8-10 years.

DALRRD also does not implement any form of monitoring on the implementation of land reform programmes and whether they have been successful. (Funke & Jacobs, 2010). This makes it difficult to assess the progress of the various programmes as well as identify where the blockages and success stories are. This is reflected in the lack of actual data on the number of successful projects.

The siloed approach between the different government departments particularly DRDLR and DAFF also hampered implementation of land reform programmes (however the merger of the two departments into DALRRD can be seen as a first step towards integration). The co-existence of a RADP which was administered by DRDLR and CASP by DAFF, both of which offer post-settlement support, highlight this as little integration was done between the two programmes to ensure that the support provided was

comprehensive and appropriate for the beneficiary. In addition, there was no system in place to prevent a beneficiary from 'double-dipping' and applying to both DRDLR and DAFF for funding support (Dawood, 2016). However, as mentioned earlier, DAFF and DRDLR have been merged into DALRRD in 2019 and this can help to reduce some of the challenges listed above.

Although the later land reform programmes made government the driving institution rather than claimants identifying land and validating their claim, the approach also entails certain weaknesses. Where the State purchases and owns the land, the State is required to cover costs of transfer and be responsible for overall decision-making which can take long due to administrative red tape inherent in government. This has the knock-on effect of farmers selling their land privately rather than waiting for government to act. With the State being responsible for the farm, administration and support is centralised and little responsibility is carried by other stakeholders and beneficiaries. In these instances, the State also has to replicate all private institutions necessary for the transfer, administration and support of the farm which incurs high costs for government (Dawood, 2016)

➤ *Policy guidance*

Policy guidance for agrarian reform to guide land reform has been limited (Lahiff & Cousins, 2005; Hall, 2009). The continuous use of the 30% target shows government's inadequate approach to land reform and highlights government's uncertainty on what land reform will achieve. There is no clear understanding of the ultimate goal of land reform and policy is vague on what types of farming are to be promoted (Cliffe, 2007). The new policy framework needs to be developed that provides a clear vision and guidance on which "elements of the existing farming sector should be preserved and which should be transformed, which should be allowed to shrink over time and which should constitute a new engine of growth" (Hall, 2009:246).

➤ *Willing seller-willing buyer*

The South African government adopted a willing seller-willing buyer approach to the acquisition of farms for land reform purposes. The approach was advocated by the World Bank in the 1990s and entails land reform that is both market-assisted and demand-led. This approach places strong reliance on markets to determine the pace of reform as landowners make the final decision on which properties are to be offered for sale and at what price. Government played a predominantly facilitator role and the model depended strongly on the private sector (Cliffe, 2007; Hall, 2009). Prices paid since 1994 have more or less stayed close to market value and compensation for land acquired for restitution follows the same trend (PLAAS, 2016). An Expropriation Bill was drafted in early 2008 but was contested by commercial farmers and big businesses and was subsequently withdrawn (Hall, 2009).

This approach has proved to have a minimal impact on the racial distribution of agricultural land and is regarded as a critical factor hampering implementation of land reform (Cliffe, 2007; Lahiff & Cousins, 2005). The approach shows a strong bias towards new black farmers who wish to enter the commercial farming sector and has neglected smallholder and subsistence farmers (Lahiff & Cousins, 2005). The requirement of a farm or business plan for each land transfer due to properties being acquired on a one-by-one basis

created significant bottle-necks in the process and increased the costs of the process, further alienating smallholder farmers (Cliffe, 2007). The willing seller-willing buyer approach has left the structure of the agrarian economy more or less unchanged with only a small minority of the rural black population actually benefitting from land reform and owning farmland (Funke & Jacobs, 2010).

3.2.3 *Institutional capacity*

➤ *Institutional challenges of the State*

The State has a plethora of challenges that hamper the land reform process. Challenges include lack of capacity; challenges in planning design and implementation thereof; lack of coordination; poor policy alignment and integration; an absence of monitoring and evaluation; paucity in compliance and enforcement; constraining bureaucratic processes; weak implementation; vague and sometimes ambiguous roles and responsibilities; and other institutional challenges (Cousins et al., 2018; Dawood, 2016; Hall, 2009; Lahiff & Cousins, 2005; Cliffe, 2007; Funke & Jacobs, 2010; Satgé & Cousins, 2019; Advisory Panel on Land Reform and Agriculture, 2019).

In effect, the State lacks the necessary capacity to achieve its strategic objectives on land reform and this has negatively impacted implementation. Limited capacity has had the effect of hampering effective monitoring of the overall land reform process as well as farm evictions and whether they are legal and compliant with labour law (Cousins et al., 2018).

There is limited coordination within and between government departments and lack of policy alignment has muddied the waters of land reform (Cousins et al., 2018; Dawood, 2016). Communication between different government departments is sorely lacking and this has resulted in departments undertaking projects without taking cognisance of what other departments have planned. This is also viewed within DRLDLR (now DALRRD) as it has been noted that the various provincial offices follow different land reform processes. Figure 5 highlights the complexity of the land reform process and emphasises the arduous and time-consuming nature of a land claim process. Due to this, and the unique nature of each land claim, it is difficult to align processes within DALRRD as well as across the departments. As such, there is no common approach for land reform within the country.

Furthermore, the top-down nature of land reform within a department means that decisions are made at ministerial level and are not necessarily filtered down to the local spheres of government, thereby affecting cooperation between operational managers in different departments. At the same time, the approvals required for joint activities between departments can be difficult and lengthy to obtain due to bureaucratic processes associated with government's administrative processes (Funke & Jacobs, 2010).

Decision-making for land reform has been largely centralised with primary responsibility falling on DALRRD resulting in loopholes and omissions at local spheres of government (Dawood, 2016). Although attempts at have been made to streamline processes, the State's processes remain highly bureaucratic and slow which delays the overall acquisition of land and disbursement of grants (Hall, 2009). Essentially, the current process for the transfer of land is extremely inefficient and does not prioritise the needs of the poor, the primary

targets of land reform. Acquisition of land by government is undertaken without consideration of the types of beneficiaries and the kind of production system to be used (Cliffe, 2007).

Government has predominantly conducted land reform on a project by project basis and weak planning and coordination of the process underscores this. The disjunct between planning and implementation has resulting in a substantial gap between the Department of Human Settlements and DALRRD at an on-the-ground level. Roles and responsibilities are often unclear between different government departments as well as between national, provincial and local government. At local sphere, municipalities are expected to provide basic services for land reform beneficiaries but many lack the capacity to effectively carry out this function. Despite strong understanding by government of the important role that NGOs and private society play in the land reform process, this has not been sufficiently institutionalised within the current structure. Land reform is a multi-disciplinary activity and effective coordination and planning is key to driving success (Cliffe, 2007; Dawood, 2016).

Traditionally, before the merger of DAFF and DRDLR, DRDLR was a national competency and the main driver of land reform but its duties overlapped with DAFF and DWS. Agriculture is an area of concurrent national and provincial competency which contributed to the misalignment between DAFF and DRDLR. Nationally, DAFF was responsible for overseeing the entire sector and thus legally responsible for managing post-settlement support. However, DRDLR was expected to perform this function with limited finance, technical knowledge and capacity (Dawood, 2016). The disjunct between DAFF and DRDLR resulted in both operating in a silo manner contributing to the fragmented nature of programme design and implementation (Satgé & Cousins, 2019).

Land reform is a legislative national function with strong linkages to rural development. DRDLR (now DALRRD) reflects this linkage in its renaming from the Department of Land Affairs after 2008, but little progress has been made to truly integrate land reform with rural development (Dawood, 2016). Failure to integrate land reform within the broader context of rural development has significantly limited its impact on the livelihoods of the poor (Lahiff & Cousins, 2005). Initially, land reform was undertaken without due consideration to the agricultural aspects of land reform. CRDP perceived land reform as a stand-alone component with little mention of linkages to rural development and agrarian reform. Land reform, rural development and agrarian reform remained separate entities to a certain degree within DRDLR, with rural development and land reform as two separate programmes in DRDLR's organogram. Little alignment was observed between the two at a design and implementation level. Although agrarian reform has been recognised by government as an essential element of land reform, it still occurs in siloed approaches between the different government departments (Dawood, 2016). However, the merger of DAFF and DLRDR in 2019 into DALRRD does attempt to align land reform, rural development and agrarian reform. There is also the lack of integration with water reform, which has been sorely lacking for the majority of the land reform process. Funke and Jacobs (2010) emphasise this as coordination and implementation of land reform occurs separately from water reform despite government encouraging integration through several trans-sectoral instruments, procedures and principles. Many land reform projects have failed due to lack of water on the awarded land with beneficiaries either receiving land without the necessary water rights or inheriting

massive water use debt from the previous owners (Funke & Jacobs, 2010). Access to water remains a challenge on land reform farms and the slow progress in transforming irrigation boards (which are dominated by commercial white farmers) to water user associations further hampers the process and maintains the status quo of water allocation (Dawood, 2016).

➤ *Inadequate budget allocation*

Despite government prioritising land reform over the years, budget allocations to effect land reform have been inadequate to address the scale of the complex nature of land reform. Budget allocations for land reform have been around 0.4% of the annual national budget and approximately 0.1% for land redistribution (Satgé & Cousins, 2019). During the first decade of democracy, land reform, while being emphasised as a key issue to address, was assigned a relatively low political priority and received a relatively low budget (Hall, 2009). Budget has continued to fall year after year while fruitless expenditure and corruption have further strained government's pocket (Satgé & Cousins, 2019). This declining budget and lack of adequate financial support for DALRRD has made it nigh impossible for the department to implement and successfully achieve the redistribution agenda (Advisory Panel on Land Reform and Agriculture, 2019). In addition, much government-owned land remains underutilised and not considered for inclusion in the land reform basket which, if allocated towards land reform, could overcome some of the budget constraints as the land is already owned by government

Furthermore, funding for land reform is not coordinated as it initially lay with both DAFF and DRDLR (now merged to form DALRRD). This is coupled with underfunding for certain programmes and poor awareness amongst emerging farmers on the different grants available to them which has made financing of land reform a challenge for both government and the beneficiary (Funke & Jacobs, 2010).

The price of farms remains high and beyond what the State can afford and, as a result, there are more beneficiaries than farms available for land reform purposes. Another core issue is the absence of funding for planning. Grant funding is available for infrastructure and inputs, but little is available for planning. The few options that provide funding for planning are often difficult to access. This has created a disjunct between planning and implementation (Dawood, 2016).

Development finance institutions can play a bigger role in this space as they fill the gap between commercial banking and state development aid. However, these institutions' support to rural areas is limited and their aid is not felt by beneficiaries of land reform (Dawood, 2016).

➤ *Post-settlement support*

One of the biggest challenges in the land reform process is the inadequate and/or inappropriate post-settlement support provided to beneficiaries once the land has been awarded to them. Under the apartheid government, farmers and the agriculture sector enjoyed significant State support as well as regulation of commodity markets as the State saw agriculture as an important sector for economic growth and development. This included subsidies, grants for fencing, dams, houses, veterinary and horticultural advice; subsidised rail rates, special credit facilities and tax relief, all of which served to ensure that farmers utilised

the land effectively in order to promote commercial farming. Infrastructure was built and strong support services and financial assistance was offered, particularly through the Land Bank for acquisition of land for farming, contributing to the emergence of successful commercial farmers with a steadily increasing output (South African Government, 1998; Lahiff & Cousins, 2005). However, this environment changed significantly post-apartheid and commodity markets were deregulated and State support was significantly reduced. This has resulted in the agricultural climate being particularly hostile to new entrants and existing smallholder farmers who wish to expand their activities (Lahiff & Cousins, 2005). This is doubly so for beneficiaries of land reform with varying levels of experience and knowledge in farming. As such, post-settlement support is crucial to ensure that these beneficiaries make the most of the land awarded to them, be it small-scale or large-scale farming.

However, government has failed over the years to provide sufficient post-settlement support to beneficiaries with past attempts either being inadequate, inappropriate, uncoordinated and/or delayed (Funke & Jacobs, 2010; Cousins et al., 2018; Dawood, 2016; Kane-Berman, 2016). Support for agriculture has significantly waned over recent years as government has reallocated resources from agriculture to other priority areas. Agriculture is often viewed as a declining sector when compared to urban areas which often take priority in government planning. This means that any support related to agriculture will be significantly curtailed by limited budget, affecting the quality of post-settlement support for beneficiaries of land reform (Funke & Jacobs, 2010).

As noted earlier, small-scale farmers face significant challenges when entering the commercial farming sector. High-value export products require large inputs such as herbicide, chemical pest control and fertilisers and the added costs of credit and production risks make it difficult for new entrants in the sector (Dawood, 2016). Although the State can mitigate some of these costs, its track record in post-settlement support has fallen short of actually providing effective support to beneficiaries resulting in many failed land reform projects.

Post-settlement support is also poorly timed in many instances due to non-agriculture officials managing RADP and other land reform programmes. Knowledge on agriculture and farming is crucial when determining the timing of post-settlement support with many government officials lacking the requisite knowledge. As noted by Dawood (2016), the large distance between investors (i.e. government) and the locus of decision-making (i.e. farmers) leads to production and timing inefficiencies that are difficult to overcome (Dawood, 2016).

Another inhibiting factor for emerging beneficiary farmers is the concentrated and integrated nature of the value chains of formal sector food processors and retailers which are difficult to penetrate (Cousins et al., 2018; Kane-Berman, 2016). Access to market is crucial for the success of any farming activity that is looking to sell produce and this element is often missing when land is awarded to beneficiaries. In addition, land that has been successfully awarded to beneficiaries is sometimes of poor quality and located on the border of or close to former homelands, making it problematic to access markets (Lodge, 2018; Ngubane, 2018). The locations of these farms have resulted in limited infrastructure such as roads and access to electricity (Kane-Berman, 2016).

The range of skills required to successfully manage a farm, especially with the aim of expanding, is long and complex. As well as basic farming skills and technology required to carry out agricultural activities; business, technical and financial skills; access to markets; and knowledge on how to build an asset base are all crucial to running a successful commercial farming venture. Commercial farming is a capital-intensive business and securing the necessary support can be difficult. Many beneficiaries struggle due to inadequate post-settlement support that covers all these elements and many rent out or sell their land back to established white farmers, making the land reform process useless (Ngubane, 2018).

Post-settlement support also needs to include access to information. Lonwabo Jiwili, an aspiring young black farmer with a small piece of land, notes that lack of information and the absence of a good extensive service programme makes farming for new entrants difficult (Ngubane, 2018). Although DAFF (now DALRRD) is supposed to provide an extension service programme, he notes that it is either poor or non-existent. The support that was received from DAFF regarding advice on irrigation systems proved to be wrong, emphasising the limited agricultural knowledge present in government officials providing post-settlement support (Ngubane, 2018)

As noted earlier in this review, insecurity over land ownership makes finance institutions reluctant to grant loans to beneficiaries and small-scale farmers. Current post-settlement support lacks any dimension that aids in financial assistance or advice. The Land Bank is supposed to develop small-scale black farmers but is uncaring of the difficulties encountered by beneficiaries to meet their requirements. Part of their requirements is an off-take agreement that ensures that a business will buy the produce from the farming activity. This is almost impossible for beneficiaries of land reform to secure as the market is dominated by commercial mainstream retailers and limited infrastructure and long distances to market further adds to the difficulties of obtaining access to market (Ngubane, 2018).

3.2.4 Knowledge and information management

➤ Business process maps of reform processes

There are no standard operating procedures, process map or guidelines that provide the critical information required for land-water reform. Land reform processes are not consistent across provinces, partly due to the lack of data and information to guide decisions. Mapping of these processes, showing the critical linkages to water reform, will further highlight key interfaces for engagement and decision-making.

➤ Scale and type of agricultural production

As mentioned above, transforming land beneficiaries to successful commercial farmers requires a range of elements including post-settlement support. However, this is based on the assumption that all land beneficiaries wish to be large-scale commercial farmers which is incorrect. There are many types of farmers including subsistence, smallholder and emerging farmers, all of which can apply to be land reform beneficiaries. Current reform programmes rely on this incorrect assumption and are designed according to this, often resulting in the programme being inappropriate for the wants and needs of the beneficiary.

Government is out of touch with the needs of land reform beneficiaries and whether they wish to become commercial or small-scale farmers (Kane-Berman, 2016). Funke and Jacobs (2010) note that land can be transferred to beneficiaries who may not be interested in farming or lack the necessary agricultural experience. Also, government often transfers farms in their entirety rather than as subdivided smaller plots. This model is ill-suited for small-scale purposes and further increases the chances of failure for land beneficiaries (Van Koppen, 2009).

Current policy lacks clarity on the type of farming systems that will be the outcome of land reform. If the outcome of land reform can be specified, then the kind of post-settlement support and programmes to be implemented can be better designed to cater for this new vision (Cliffe, 2007).

Ultimately, land reform needs to define the scale and types of agricultural production it is aiming to support. Cousin et al. (2018) argue that market-oriented smallholder farmers who use mainly family labour can be the primary target of land reform as this can create significant employment opportunities.

Promotion of small-scale and smallholder farming in the land reform process can only be implemented if government and society as a whole begin to change their perception of what is regarded as “successful farming”. As noted earlier in this review, policy and strategy development have been biased towards a reform that maintains and promotes economic efficiency with the view that small-scale farming and water use is inefficient. This is also observed in the land reform and agriculture space where many are sceptical of the value of smallholder farming (Cousins et al., 2018; Lahiff & Cousins, 2005). This has resulted in government driving commercial farming as the only successful form of farming. This subsequently shaped the design of land reform programmes. This view already dooms land beneficiaries from the start as commercial farming is difficult to achieve without long-term effective post-settlement support that covers all aspects of large-scale farming. Many critics argue that small-holder oriented redistributive land reform and small-scale farming have a key role to play in poverty alleviation, and is a valid alternative to the commercial agriculture model (PLAAS, 2016). Smallholder farming can be commercial and include a mix of subsistence and production for markets. Also, the option of smallholder farming is available to a wider range of beneficiaries including the poor (Cliffe, 2007). Small-scale farming sells millions of Rands of produce through informal markets, underscoring the success that small-scale farmers have had without significant help from government (Satgé & Cousins, 2019). There is also a growing formal market appetite for smallholder produce to be taken up in the formal economy, an example being the SPAR Stakeholder Initiative that prioritises local sourcing from emerging smallholder farmers (SPAR, 2014). The promotion of small-scale farming in the land reform process has the potential to significantly improve livelihoods in the region as well as contribute to the economy if given the right support and enabling environment.

4 TOWARDS ALIGNMENT IN LAND-WATER REFORM

In recent years, our understanding of the important interconnectivity between resources has improved. The importance of land and water (together with energy) cannot be underscored in terms of supporting socio-economic development. Within South Africa this nexus is complex due to a range of political, legal, cultural, economic, and environmental dimensions. Gaining effective integration and/or alignment in processes to enable access to land and water is equally complex. Despite over two decades of effort to redress imbalances in access to these resources, South Africa has only made limited progress.

Funke and Jacobs (2010:83) noted the critical need for more integrated approaches to address land and water reform but recognise the complexities of ensuring integration. In this they define integration as being *“the degree to which policies formulated in one government department are harmonised or coordinated with policies developed in other government departments, other sectors, or acknowledge the interconnectedness of various resources and the degree to which inter-departmental coordination and communication take place in the implementation of said policies”*. Achieving the desired integration where policies are developed with awareness of the connectivity and impact on other sectoral policies has proven difficult. Even more so with the rollout of supporting programmes and it is here where improved alignment and coordination is required.

Experience in the implementation of IWRM has shown that efforts to ensure integration do seem to gain better traction at more localised levels, whereas integration at the national scale is often politically complex. This is not to say that efforts to ensure integration and alignment at these macro-scales should not be undertaken, but rather be aware that these can be longer-term processes. This especially so when there is not enough political will.

It is of value to note that from the Funke and Jacobs (2010) reflection on integration three core themes emerged, namely:

- Policy harmonisation;
- Resource interconnectedness; and
- Inter-departmental coordination and communication.

Noting the longer-term effort that is required to address policy harmonisation, there are meaningful opportunities at the more programmatic level to achieve improved alignment and coordination. Through these programmatic interventions policy at the national scale can be effectively influenced.

A Theory of Change (Figure 6) can be put forward that contextualises this approach and provides a structured intervention logic towards aligned land and water reform outcomes. This is structured around three interfaces that align with the themes of Funke and Jacobs (2010), namely, harmonising the governance frameworks, strengthening the enabling environment, and improving operational delivery. Progressive effort in ensuring alignment across these interfaces will result in improved alignment in land and water reform programmes and, in the longer-term, policy.

This Theory of Change then provides the basis for the guidance provided hereunder, noting that there are macro-level issues that really require the engagement of the national government line-function departments and there are more localised interventions that institutions such as the IUCMA and provincial actors can champion. The guidance is provided in such a way as to differentiate between national and catchment-based interventions, but it must be emphasised that there are important engagement linkages between these various scales.

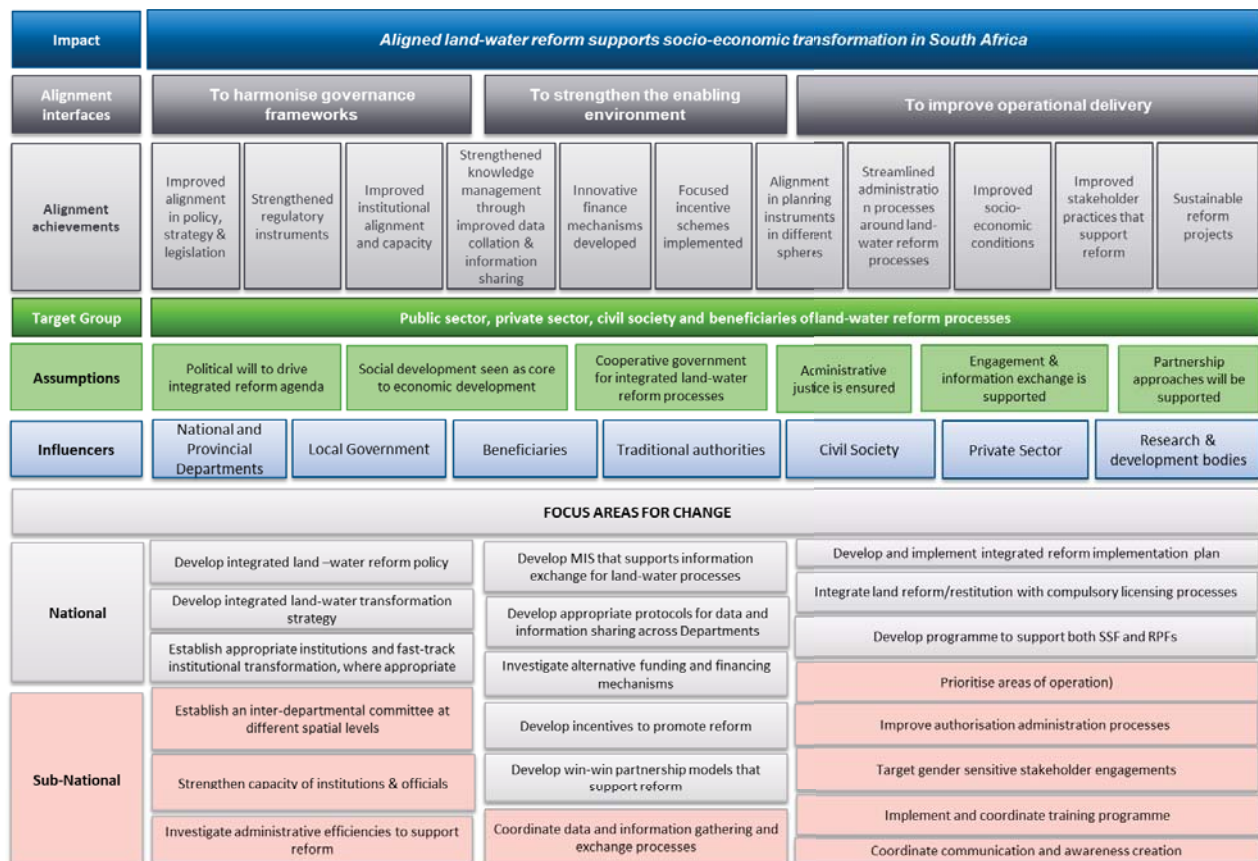


Figure 6: Theory of change for the land-water alignment

It is important to note, that this study has not undertaken the detailed process analysis that is really required to resolve a more rigorous alignment. In essence, this would require an assessment of business processes and where the interfaces lie. In addition, there is also a spatial dimension with different parts of the country at various stages of reform or undertaking different reform routes. The lesson from the IUCMA engagement is that it enables the development of a series of essential strategic interventions that when applied will develop a bespoke approach for the various areas.

4.1 Harmonising Governance Frameworks

There is a significant need to address the various instruments that provide the intent and strategic approach towards land and water reform. Whilst institutions that operate at the provincial, water management area, catchment, and local levels can play a role in creating the conducive and supporting environment to enable

alignment in approaches, this is to a greater extent dependent upon the framing governance arrangements to provide the coordinated strategic intent. Addressing this requires political will and the drive of Ministers supported by departmental senior management and allocated resources. Noting the impact of this on the social and political economy of the country, this would also require the input and support of business sector institutions and civil society. This type of engagement is required to support implementation thereafter.

Clearly, this is not a small task or something that gets completed swiftly but does need to be initiated with a sense of urgency. Once initiated by the senior staff of the key sector departments, there would be a need for some form of thorough workshopping process along the lines of the “Phakisa” that has been used to address significant sectoral redress.

National level and sub-national level actions are provided in Table 3 and Table 4.

Table 3: National interventions to support a harmonised governance framework for land-water reform

National Interventions					
No.	Alignment Achievements	Intervention	Description	Engagement	Timeframe (Yrs)
1.	Improved alignment in policy, strategy & legislation	Develop integrated land-water reform policy	Development of a holistic and integrated policy that pulls together land and water reform. This policy would have to address alignment between policy and legal instruments and include aspects such as customary law and how to address these issues. Additionally, it would need to support other strategic instruments that address agrarian reform and other aspects of socio-economic development.	DWS, DALRRD, Department of Environment, Forestry and Fisheries (DEFF), National Treasury (NT), AgriSA, private sector and civil society	1-2
2.	Improved alignment in policy, strategy & legislation	Develop integrated land-water transformation strategy	The development of an integrated strategy that provides the directional approach to the delivery of sector reform processes is imperative. This will need to articulate the key elements of a structured approach supported by institutions, staffing and financial resources.	DWS, DALRRD, DEFF, NT, private sector, and civil society	2-3
3.	Improved institutional alignment and capacity	Establish appropriate institutions and fast-track institutional transformation,	Primarily focused on water sector institutions such as irrigation boards and water user associations, this process of transformation requires urgent resolution. These local level institutions can provide an important supportive role for reform	DWS, South African Association of Water Users Associations	1-3

National Interventions					
No.	Alignment Achievements	Intervention	Description	Engagement	Timeframe (Yrs)
		where appropriate	processes. Institutional reform will need to be effectively coordinated with the policy and strategy instruments, discussed above. Where these institutions are not supportive or indeed not necessary from a water management perspective, these should be dis-established. Careful consideration of the role of CMAs in this reform process and the delegation of responsibility can be supportive of making progress regarding aligned reform.	(SAAFWUA), AgriSA	

Table 4: Sub-national actions to support a harmonised governance framework for land-water reform

Sub-national Interventions					
No.	Alignment Achievements	Intervention	Description	Engagement	Timeframe (Yrs)
4.	Improved institutional alignment and capacity	Establish an inter-departmental committee at different spatial levels	Efforts to get alignment and effective coordination can be supported through an effective intergovernmental committee or forum. This committee would support and drive the various other initiatives, at this more local level and act as conduit for issues to be raised at the national scale. Importantly the platform provides for the development of a capacitated team that have an aligned vision and understanding, and this would be supported by the development of a business plan. Platforms such as the Coordinating Committees on Agricultural Water (CCAWs) are examples of this and can be leveraged off as an already established platform to drive interdepartmental collaboration within provinces.	CMAs, Provincial DALRRD, Provincial DWS, CCAWs, traditional leaders, local government	1-2

Sub-national Interventions					
No.	Alignment Achievements	Intervention	Description	Engagement	Timeframe (Yrs)
5.	Improved institutional alignment and capacity	Strengthen capacity of institutions & officials	The alignment created at the committee level will provide the basis for rolling-out a programme of building capacity and awareness. This would be supported by departmental experts and materials developed at the national scale by the lead departments. Creating an awareness of the implementation plan that will be developed under the implementation phase is essential.	CMAs, Provincial DALRRD, Provincial DWS, CCAW, traditional leaders, local government, private sector, and civil society	1-2
6.	Strengthened regulatory instruments	Investigate administrative efficiencies to support reform	Developing mechanisms and processes that can support improved efficiencies in process will prove equally important. This may result in the development of a “one stop shop” approach that supports easier engagement for beneficiaries and stakeholders, as well as encourages departments to work more cooperatively.	CMAs, Provincial DALRRD, Provincial DWS, CCAW, traditional leaders, local government	1

4.2 Strengthening the Enabling Environment

Creating the conducive environment to support effective land-water reform is important. Disjunctures in the way that these enabling tools are established and managed have real impact upon the implementation phase. Many reform processes undertaken to date have had challenges in terms of information, finance and incentives that would support an effective reform process.

The important construction and systematisation of these instruments and tools would need to be undertaken at a national level, led by the lead departments. At the sub-national level, the intergovernmental coordinating committee would be a key actor in supporting this enabling environment through driving the exchange of information, developing awareness and capacity, whilst developing trusted relationships with key stakeholders and beneficiaries.

National level and sub-national level actions are provided in Table 5 and Table 6.

Table 5: National interventions to strengthen the enabling environment for land-water reform

National Interventions					
No.	Alignment Achievements	Intervention	Description	Engagement	Timeframe (Yrs)
7.	Strengthened knowledge management through improved data collation & information sharing	Develop MIS that supports information exchange for land-water processes	Development of an integrated management information system (MIS) to support reform processes would be ideal, but likely not realistic noting the various challenges and complexities. However, the first key step would be to strengthen the systems that are in place to enable data integration. On the water side of this business the ongoing strengthening of the Water-use Administration and Regulation Management System (WARMS) would be important.	DWS, DALRRD, DEFF, Deeds Office	2-4
8.	Strengthened knowledge management through improved data collation & information sharing Ensure alignment in planning instruments in different spheres	Develop appropriate protocols for data and information sharing across departments	With the understanding that developing an integrated MIS is lengthy, the current and near-future processes should not be held-up. Hence, it will be important to establish clear protocols for data and information exchange to support reform processes. This should be driven at the national level with some form of MOA developed to support processes at the sub-national levels.	DWS, DALRRD, DEFF, Deeds Office	1-2
9.	Innovative finance mechanisms developed	Investigate alternative funding and financing mechanisms	Current funding and financing instruments are challenged, with many beneficiaries not having the necessary financial resources to ensure business success. Looking to develop a more comprehensive suite of financial instruments is important in providing the resources needed to maintain or jump-start businesses once transformative reform has taken place. Engagement with the private sector would be important and some form of blended financing could provide a more risk averse mechanism	DWS, DALRRD, NT, public and private financial institutions	1-3

National Interventions					
No.	Alignment Achievements	Intervention	Description	Engagement	Timeframe (Yrs)
			that could encourage private sector investment.		
10.	Focused incentive schemes implemented	Develop incentives to promote reform	To date there has been limited success and the “willing seller, willing buyer” approach has faced challenges, not the least because this can take time and is potentially a more reactive approach. Developing an array of other incentives to encourage reform processes is essential.	DWS, DALRRD, NT	1-3
11.	Innovative finance mechanisms developed	Develop win-win partnership models that support reform	Establishing effective partnerships is one way of supporting emergent businesses and developing capacity. Developing effective partnership models will be important to guide the progressive development of these partnerships over time. Consideration of how these partnerships are established and regulated is important to ensure that these are mutually beneficial.	DWS, DALRRD	1-3

Table 6: Sub-national actions to strengthen the enabling environment for land-water reform

Sub-national Interventions					
No.	Alignment Achievements	Intervention	Description	Engagement	Timeframe (Yrs)
12.	Strengthened knowledge management through improved data collation & information sharing	Coordinate data and information gathering processes	Led by the intergovernmental committee a coordinated drive to gather the necessary data and information is important needs to be consolidated. The MIS system, mentioned above, would be an important portal for this data and information, but developing a protocol for access, collection and storage will be necessary. This would include data and information from such interventions as the Verification and Validation process led by DWS	CMAs, Provincial DALRRD, Provincial DWS, traditional leaders, local government, Deeds Office	1-3

4.3 Improving Operational Delivery

Ensuring coordinated implementation of land-water reform requires alignment in planning and process, as well as ensuring that the necessary resources are in place to support. This really requires effective planning as opposed to the more reactive and piecemeal approach that seems to typify processes to date. While there is a suite of interventions that are required at the national level, at the sub-national level there is much to be done to effect alignment and coordination. Once a plan is in place, it will be incumbent on the sub-national institutions to drive the reform process, supported by monitoring and reporting.

National level and sub-national level actions are provided in Table 7 and Table 8.

Table 7: National interventions to strengthen the enabling environment for land-water reform

National Interventions					
No.	Alignment Achievements	Intervention	Description	Engagement	Timeframe (Yrs)
13.	Ensure alignment in planning instruments in different spheres	Develop and implement an integrated reform implementation plan	Translating the integrated reform strategy (Intervention 2) into an area-based implementation plan will prove essential to realising impact. This will require engagement with provincial and water management area-based institutions to develop pragmatic steps and targets, taking into consideration the need for resources as well as progress with enabling environment issues such as information and investment requirements. These plans need to be developed through engaged and integrated planning workshops. The plan must articulate roles and responsibilities, as well as monitoring and reporting requirements. Implementation would be guided by the IUCMA and provincial departments, with oversight at the national level.	DWS, DALRRD, DEFF, Deeds Office, CMAs, Provincial and local government.	2-4
14.	Ensure alignment in planning instruments in different spheres	Integrate land reform/ restitution with compulsory licensing processes	Undertaking a study to determine the interfaces between the reform business processes will be critical in ensuring the alignment needed. This will have impact on the planned implementation (Intervention 13) and will outline the information requirements. This intervention also needs to consider other alternatives to the intensive	DWS, DALRRD, DEFF, Deeds Office	1-2

National Interventions					
No.	Alignment Achievements	Intervention	Description	Engagement	Timeframe (Yrs)
			licensing process and look to other less administrative or regulatory intensive approaches (such as general authorisations).		
15.	Sustainable reform projects Improved socio-economic conditions	Develop programme to support both SSF and RPFs	Small-scale farmers and resource-poor farmers are particularly vulnerable, so there is a need to develop improved support mechanisms. There have been several approaches used over the years to provide this support, but these have had their challenges. There is a need to learn from these and to provide instruments that can assist these emergent business ventures. This would need to include a complete range of support including financing as well as ongoing capacity support and training.	DWS, DALRRD, NT, DEFF, provincial departments, AgriSA, SAAFWUA	1-5

Table 8: Sub-national actions to strengthen the enabling environment for land-water reform

Sub-national Interventions					
No.	Alignment Achievements	Intervention	Description	Engagement	Timeframe (Yrs)
16.	Streamlined administration processes around land-water reform processes	Prioritise areas of operation	The intergovernmental committee will undertake a prioritisation of areas for reform rollout. This would need to be supported by agreed socio-economic, environmental, and financial criteria. This information would provide the basis for the developed implementation plan (Intervention 13).	CMAs, Provincial DALRRD, Provincial DWS, traditional leaders, local government	1-3
17.	Streamlined administration processes around land-water reform processes	Improve authorisation administration processes	There are still significant challenges regarding water use authorisation processes and the various delays associated with the administration of this. IUCMA has an important role to play in the water use allocation process and the	IUCMA, DWS.	1-2

Sub-national Interventions					
No.	Alignment Achievements	Intervention	Description	Engagement	Timeframe (Yrs)
			associated authorisation process. Looking for ways to improve efficiency in these processes is important and IUCMA can drive these improvements to support interventions in the water management area.		
18.	Improved stakeholder practices that support reform	Target gender sensitive stakeholder engagements	Supporting and driving ongoing engagement processes is essential, as is ensuring that these engagements are gender sensitive as well as supportive of marginalised communities. This may require specific interventions to enable marginalised groups to speak up. These sessions could be tagged to existent forums to make use of processes more effectively but ensuring representivity is important as is addressing power imbalances.	CMAs, Provincial DALRRD, Provincial DWS, traditional leaders, local government, private sector, and civil society	1-3
19.	Improved socio-economic conditions	Implement and coordinate training programme	Beyond the more general awareness creation, it will be imperative to host specifically tailored training sessions to assist beneficiaries and marginalised communities. The support of the different sector departments will be essential.	CMAs, Provincial DALRRD, Provincial DWS, traditional leaders, local government, private sector, and civil society	1-3
20.	Improved stakeholder practices that support reform	Coordinate communication and awareness creation	Developing communications materials and ensuring that these are distributed through existent forums and internet-based platforms is important. Whilst, national departments will produce overarching materials, it will be important for more bespoke communications and awareness materials to support sub-national processes. Language requirements are an important consideration in this regard, as is keeping in mind that internet access is not universal.	CMAs, Provincial DALRRD, Provincial DWS	1-3

5 TOWARDS IMPLEMENTATION

In moving towards implementation of integrated land and water reform, it is critical that there is joint responsibility, commitment, coordination and cooperation between the relevant government ministries, agencies and other institutions that play a role in implementing these reform processes. Engagement with the private sector, academia and research institutions and civil society is essential.

The degree to which these reform processes can be integrated is moot and requires a far more detailed policy and process analysis, however, whether integrated or just aligned there is a requirement for a collective approach that is championed at a governmental level, by Ministers as well as by the departments they oversee. In exploring an integrated or aligned policy, there will be a need to review various legal instruments (law and regulation) to ensure that this is consistent and supportive of the policy. It is essential that the policy be translated into a reform strategy that will be implemented by several government departments, and at national, provincial, and local levels. Developing implementation plans will provide the tools to realise delivery of strategy and provide guidance on impact and timelines. Again, this is imperative and senior government support is required to drive this.



Equally important is that the institutional arrangements and issues of capacity be resolved. There has been two decades of uncertainty as to these arrangements, their delegated powers, and duties, and thus the supporting capacity and systems required to enable delivery on their mandate. This has had impact on the rollout of these reform processes. The inability to establish CMAs has resulted in a dearth of Catchment Management Strategies which would outline approaches to water allocation and reform. These institutions would have also championed the transformation of irrigation boards; an issue that is still to be fully resolved. Strengthening the information systems and information exchange protocols is important and underpins these reform processes. In addition, there must be a more detailed development study focused upon the financial requirements to support these reform processes and the incentives that can be put forward to trigger more effective implementation.

Whilst, there is a considerable amount of governance, structural and systemic work that requires the national departments to lead, there is much in terms of coordination, information exchange and engagement that the IUCMA and other CMAs can undertake that will support implemented land-water reform. Of course, it is essential that their experience and practical insights are reflected in the national processes, however, their approach to the realisation of these reform policies can in effect “make or break” the delivery of the policy and as such it is essential that these institutions are established and effectively resourced and capacitated to drive this important process.



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