

An Examination of Market-assisted Agrarian Reform in South Africa

**Commissioned by the International Union of Foodworkers (IUF)
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for the International Labour Resource and Information Group (ILRIG)**

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Map of South Africa showing the various provinces and ex-homeland areas

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1. Introduction

The attainment of a hard-won democracy in South Africa after the 1994 general elections was accompanied by high expectations of the ANC-led government to transform property rights dramatically and to reverse the history of land dispossession. The expectation was that this would establish the basis for an improvement in the lives of the poor and dispossessed. These aspirations were recorded in the Reconstruction and Development Programme (RDP) developed in the early 1990s. The RDP contained a commitment to redistribute 30 % of agricultural land within five years.

The new government undertook the challenge of redressing the daunting historical legacy inherited by its administration - 87% of the land was owned by the white minority, while the black majority were expected to survive on 13% of the land. In response, the government devised a land reform policy in terms of three broad areas – restitution, tenure reform and redistribution. The key focus points were poverty reduction and the redistribution of land to the dispossessed poor, farm workers, women, labour tenants, and emerging farmers.

However, nearly eight years of the transition period have passed and only 1% of the land has been redistributed. While a blizzard of legislation and policies have been produced, land hunger is still widespread and the living and working conditions of the majority have not witnessed many

improvements. Approximately 14 million people, or about one third of the South African population, still live in the former Bantustans¹ where rights to land remain unclear or are contested. The system of communal land administration is in a state of disarray. On private farms, millions of farm dwellers and their families confront tenure insecurity and lack access to basic necessities such as water, sanitation and electricity. In the urban areas, informal settlements continue to mushroom and lack basic services.

One may well ask why this is the case. Essentially, attempts to activate and realise the aspirations of the landless and to honour the promises of the RDP have been quashed by the government's neo-liberal macro-economic policy – the Growth, Employment and Redistribution policy (GEAR). This macro-economic framework respects the protection of private property rights, advocates reliance on market forces, and promotes fiscal restraint through tightly controlled public spending. Overall, GEAR aimed to reduce state intervention in the economy.

The initial redistributive focus of land reform has been re-shaped and constrained by the GEAR strategy and the World Bank-promoted “market-assisted” approach to development and social transformation. The emphasis has shifted away from poverty reduction and redistribution to the support and creation of a layer of black commercial farmers,

thereby discarding the initial intentions of the land reform programme.

The purpose of this paper

This examination of market-assisted agrarian reform in South Africa was commissioned by the International Union of Foodworkers (IUF). The intention of the paper is to offer an overview of market-assisted agrarian reform in South Africa that can serve as the basis for a discussion on the development of the IUF affiliates' position on agrarian reform in South Africa. It is hoped that it will also act as a tool to assist with the drafting of a charter for a campaign on land reform in South Africa.

The Structure of this paper

The paper has six key focus areas. The first section of the paper presents a discussion of agrarian reform and of "market-assisted agrarian reform" (MAAR). Consideration is given to the origins of the market-assisted approach within the international context of globalisation and neo-liberalism. The specific approach of MAAR in South Africa and the three arms of land reform in the country are highlighted.

The second section of the paper focuses on a brief history of land tenure and agriculture in South Africa. It begins with the present day nature of the South African rural landscape and then provides a brief historical background to the present situation.

The third section goes on to consider the broader framework that determined the character and features of land and agricultural policy programmes. This section is followed by a treatment of the actual land reform strategies, their implementation and a critique of these in terms of the implications of the market-assisted approach. It also offers pointers for consideration.

The fifth area of the paper focuses on the nature and extent of the monitoring and evaluation of the land reform programme.

The final section considers comments on the land reform programme, the obstacles in the way of the programmes being actualised, pointers towards what is necessary to overcome these obstacles, and the extent to which it is possible for market-assisted land reform to contribute towards social transformation.

Questions for discussion are included at the end of the paper in a bid to assist the IUF in its deliberations regarding a position on land reform in South Africa. Each question has indexed references to sections in the text which are of relevance to the focus area of that question.

The appendices are included so as to give the reader more detailed information on the issues under discussion.

The endnotes serve as a reference list so as to provide readers with suggestions for further reading and enquiry.

2. What is meant by Market-assisted Agrarian Reform?

The origins and character of “Market-Assisted Agrarian Reform”

Before analysing in detail the emergent issues, it is necessary to clarify the term “agrarian reform”, and what is generally understood to be the character and approach of “Market-Assisted Agrarian Reform” (MAAR) and to consider its origins.

Agrarian reform

“Agrarian reform” is generally understood to mean an all-encompassing change in the scope of institutional and technological infrastructure in rural areas, and includes elements such as water and sanitation delivery, housing, electricity supply, transport infrastructure, markets, credit facilities, policy programmes and land reform. In turn, these changes in the institutional and technological infrastructure affect the social relations in the society. Land reform is a key element of any agrarian reform programme and will be the central focus of the discussion of “market-assisted agrarian reform” in this paper.

Market-Assisted Agrarian Reform

During the 1980s and 1990s, economic globalisation precipitated profound changes that informed the integration of the world economy more explicitly; emphasised reliance on market forces; and liberalised international trade and cross border capital flows. This process is a manifestation of neo-liberalism which argues that sustainable growth is achievable through increasing trade and investment. Under the neo-liberal model, incentives to the private sector are supposed to combine with an export-led growth strategy to reap the benefits of the global market. The role of the state is to facilitate this process through a reduction in its intervention in

the management of the economy and in cutting back on its responsibility for the provision of services.²

The rise of neo-liberalism flowed from the defeats suffered by the working class and progressive movements around the world from the mid-1970s onwards. Its consolidation was reinforced by the collapse of socialist countries in the late 1980s. Neo-liberalism is also a manifestation of the ever-spiralling world economic crisis and the desperate quest for international markets to rescue ailing economies. The effect of these defeats and crises are not only manifested on an ideological level, but also in terms of policy formulation and implementation – as a result, policies such as MAAR came to the fore and gained currency.

In the 1990s an official shift of focus in agrarian and land reform took place internationally, as promoted in particular by the World Bank. In *Land Reform and Peasant Livelihoods*, Ghimire suggests that during this period, redistributive land reform programmes began to be replaced by ‘Market-Assisted Agrarian Reform’ initiatives. He understands the rationale of this programme as being that of private investment ownership providing the investment security necessary for agricultural production, and the use of the market as the best way of providing the landless with land, developing equity and efficiency, and preventing environmental degradation.³

The neo-liberalism of the 1990s militates against the redistributive land reform policies that were common internationally in the 1960s and 1970s, in which governments intervened directly in the expropriation of land and its redistribution from rich to poor. In a context of liberalised markets and increasingly privatised agricultural services, redistributive policies were seen as politically undesirable given

their economically destabilising effect not only on property markets but also on the investment strategies of landowners.

The MAAR approach, linked with Structural Adjustment Programmes, strives to avoid more radical land reform possibilities by promoting the transfer of land, by means of the 'willing-seller, willing-buyer' principle at market prices. In this way MAAR attempts to minimise confrontations between landowners and the state.

MAAR as an international project of neo-liberalism

The World Bank through its promotion of Structural Adjustment Programmes (SAPs) (and thereby the deregulation of the economy, the privatisation of State enterprises, the liberalisation of prices and of restrictions on foreign aid direct investment, the reduction of subsidies on basic items and cuts in welfare services) has sponsored market-assisted land reforms during the 1990s, in countries such as Brazil, Colombia, Kenya, the Philippines, South Africa and Indonesia. Market-based land transfers are being used in land transactions and titling in many other developing countries such as Bolivia, Honduras, El Salvador, Ecuador, Guatemala, Zimbabwe, Mozambique, Kenya and Uganda, and in many parts of Asia, including Bangladesh, Nepal and Thailand.⁴

MAAR and South Africa

In line with the international project of neo-liberalism and its linked Structural Adjustment Programmes, and despite progressive sounding rhetoric and substantial legislation dealing with upliftment, social equity and redress, South African land and agrarian reform is firmly rooted in market-driven principles with the core of the approach being epitomised in the Growth Employment and Redistribution (GEAR) strategy. One outcome of GEAR was a

massive deregulation of the previously heavily protected and subsidised agricultural sector. These market-oriented shifts have been so extensive that South African agriculture is now one of the least state-protected agricultural sectors in the world and is struggling to adjust to global market conditions.⁵

Restitution and redistribution were taken on board as land reform programmes but were dressed up in the clothes of a market-led arrangement based on the "willing seller/willing buyer" principle according to the World Bank's MAAR approach, and the protection of existing property rights. Within the ANC there has been an increasing move away from the "growth through redistribution" of the 1994 election manifesto towards a range of neo-liberal policy prescriptions and an inversion of the earlier held position to that of "redistribution through growth". This strategy would appear to stand in stark contrast to the originally stated aims of the ANC-led government and the aspirations of its mass base on the eve of the transition to democracy.

Three aspects of market-assisted land reform in South Africa

The market-assisted land reform programme in South Africa involves three key programmes - land redistribution, restitution and tenure rights. Technically these changes helped make farmworkers and labour tenants eligible to access land for the first time in history. However, the actual benefits to farmworkers and labour tenants (even within the framework of the MAAR objectives) have been limited. This is not only because of the inherent problems within the MAAR approach and the lack of implementing capacity on the part of the Department of Land Affairs, but also because the more contentious aspects of the land reform programme - such as securing tenure rights and restitution - have prompted fierce resistance from those

white farmers who are unwilling to sell their land on request. In fact, many farmers have put up the price of land to make it too expensive for black small farmers to purchase. Under MAAR, "willing buyers" have to negotiate with landowners, who are not necessarily willing to sell. If they do sell, they often retain the best land and allocate the poor quality land to the new owners. Market forces determine the compensation paid to white farmers. Not only do the landless have to look for willing sellers with whom to negotiate the price of land, but they also have to compete with speculators and rich landowners to secure credit. This situation makes the commercial agricultural sector the real beneficiary of land reform, while the land hungry and the poor become further marginalized and impoverished.⁶

3. A History of Land Tenure and Agriculture in South Africa

In order to understand the present day nature of the South African rural landscape and the demands that are being made of any proposed agrarian reform programme, it is necessary to develop a picture of the history that shaped the development of the rural physiognomy of this country. An overview of the current situation will be outlined, followed by a brief history of the factors that shaped this rural landscape.

3.1 The current situation ***A highly unequal society***

South Africa is one of the world's most unequal societies. The country is characterised by high levels of poverty, especially in rural areas where approximately 70% of the country's poor live. In the late 1990s, the wealthiest 2,4

million South Africans accounted for more than 40% of all consumption, while the poorest 21 million accounted for under 10 %. The poorest 20% of the population earns only 3% of the national income, while the income share of the top 20 % of the population exceeds 60%.⁷

As a result of these factors, there is very limited or non-existent access to infrastructure, land, education, health care and socio-economic opportunities for the majority of people, and even less so for rural women who remain on the margins of poverty and destitution. The way in which the South African economy is structured makes for a rural economy that is not able to provide sufficient employment or livelihood opportunities.

Reasons for this state of affairs

There are many reasons for this unequal state of affairs in South Africa. The critical reasons for the current situation in rural areas are rooted in the policies of the past that underpinned the development of apartheid capitalism and large-scale commercial agriculture. This state of affairs is not however being adequately arrested or addressed and in many instances is being exacerbated and reinforced by current neo-liberal and market-driven approaches to development. Besides the market-driven approach to land reform, the government's broader rural development programmes such as the rural water and sanitation programme are based on a cost-recovery system whereby water supply and maintenance has to be paid for by the user, irrespective of affordability. With the increase in the privatisation of water delivery and the principles of cost recovery and "the user pays", a number of communities have had their water supplies cut off because they cannot afford the charges, thereby leaving them no alternative but to resort to unhealthy water supplies such as rivers and

stagnant pools and the danger of water-borne diseases such as diarrhoea and cholera.⁸

The importance of land

Even though peasant farming in the ex-homelands has been dramatically reduced in the last century, access to land remains very important in the daily struggles of people to muster a living through a variety of livelihood strategies. The 240 000 small farmers in South Africa provide a livelihood to more than 1 million of their family members and occasional employment to another 500 000 people. These small farmers also supply local and regional markets where informal traders earn a basic living. Furthermore, there are an estimated 3 million farmers, mostly in the communal areas of the former homelands who produce food on a subsistence basis primarily to meet their family's needs.⁹

According to May et al,¹⁰ agricultural production is the third most important "livelihood tactic" in rural areas, after wage labour and state pensions. Land holds value for people not only in terms of growing food and market crops but also for "the non-commoditised resources it offers poor people" – such as grazing, firewood, building and craft materials and medicinal herbs. Land remains transfused with cultural meanings that extend beyond its purely utilitarian use and include significance in terms of a sense of community, and attachment bonds with previous generations.

Is land reform a priority?

Despite the varied significance of land to people, land reform has not been a priority focus of the ANC government. This is evidenced by the allocation of the National budget to the Department of Land Affairs – in 2001 it was

approximately 0,38% of the national budget and was on a par with the Department of Arts Culture, Science and Technology and was well below the 0,9% granted to the Department of Trade and Industry and the 1,4% allocated to the Department of Housing.¹¹

The declining budget allocations to agriculture may be related to the sector's relatively small contribution to the GDP. Commercial and small-scale farming contributed less than 4% to South Africa's Gross Domestic Product in 2000¹². Farming in South Africa plays a much smaller role in the economy than in many other sub-Saharan countries. This may also explain why land reform may be a lower priority in South Africa than in other places in the continent.

The main preoccupations of the ANC government, both politically and economically, have an urban and industrial focus – fashioning an investor-friendly macro-economic strategy, promoting black empowerment strategies in business, addressing the huge backlog in low-cost housing, and managing its tenuous alliance with the trade unions. Throughout the 1990s, government policy makers have tended to regard rural development for those living outside the urban areas as pre-eminently a welfare problem.¹³

3.2 Understanding the past so as to understand the present

What follows is a brief summary of historical developments and changes in the rural landscape and economy of South Africa up until the eve of the transition to democracy in the early 1990s. (For a more detailed analysis, the reader is referred to Appendix 1.)

The current situation pertaining to land and agriculture in South Africa was

shaped by a number of critical factors, and include:

- Colonisation
- The mining revolution of the late 19th century
- The passing of key land legislation such as the 1913 and 1936 Land Acts
- The state's intervention – credit, support and market protection
- Increased mechanisation and the dominance of commercial farming and agri-business
- Popular resistance
- Apartheid land reform and a racial demarcation of land

Colonisation

Early colonisation was driven by the trading needs of 17th century Holland. By the nineteenth century, colonisation by the Dutch and the British became a matter of territorial consolidation. The various colonial wars and contests over land led to the dispossession of many indigenous people, thereby also reducing the number of peasant farmers.

The mining revolution

The discovery of diamonds in 1867 and gold in 1886 led to a dramatic change in the socio-economic and political landscape of South Africa and created the conditions for the development of capitalist production in agriculture as a result of the need for food supplies in the towns and cities that were springing up around the mining centres. Initially, African farmers supplied the mining centres with agricultural produce. This soon came to be viewed as competition by white farmers. As a result the white farmers then urged the state to intervene to protect their interests as producers and to regulate labour supplies for their farms. The mining industry also required that the state play a role in regulating the supply of contract labour to the mines.

The passing of key land legislation - the 1913 and 1936 Land Acts

The colonial state stepped in once again on the side of the landlords and enacted a critical piece of legislation - the 1913 Natives' Land Act - which was to annihilate the little remaining economic independence of the African peasantry and intensify the transformation of peasants into landless wage labourers or labour tenants. The 1913 Land Act permitted African ownership in only 8% of the total land area of South Africa. In 1936, this allocation was increased to 13%. This miniscule reform was partly a response to the pressure brought to bear by black rural and urban people organised in the Industrial and Commercial Union (ICU).

The state's intervention – credit, support and market protection

Over the years, the state attempted to create profit stability for capitalist agriculture. It did this through mechanisms such as the Agricultural Marketing Act of 1937. This law provided for a single channel marketing system with prices determined by control boards dominated by white commercial farmers. State subsidies granted to commercial farmers were paid for by an increase in taxation of the mining sector. This caused tensions between the two sectors. In the process, small Boer landlords and farmers lost their land and were driven to the cities. By the end of the 1930s, divisions between the interests of agriculture and those of mining ultimately led to the victory of the National Party in 1948 and the entrenchment of the Apartheid state.

Increased mechanisation and the dominance of commercial farming and agri-business

During the boom period from 1963 to 1973, a process of increased agricultural mechanisation took place and this led to massive reductions in the

number of labour tenants on farms and a process of increased proletarianisation. A further consequence of mechanisation was a growing differentiation amongst commercial farmers. A minority grouping of highly mechanised and profitable agri-business enterprises with strong links to the major industrial monopolies came to dominate the agricultural landscape.

Popular resistance

The period covered thus far witnessed bitter class struggles and resistance to dispossession and proletarianisation. Several petitions were sent by representatives of the African peasantry and the clergy to the British government in response to the exclusion of blacks in the Cape from voting after the Union of South Africa was declared in 1910, and in response to their dispossession of the land.ⁱ Their petitions met with little response and with the introduction of the 1913 Land Act, the struggle on the part of the dispossessed and disenfranchised was intensified. Political and social movements emerged in a bid to mobilise around the struggle for political and land rights. The African Native National Congress (later named the African National Congress) was formed with the aim of challenging the imminent 1913 Land Act. In 1919, the Industrial and Commercial Workers Union (ICU), was formed in urban and rural areas to struggle around issues of living conditions and land rights, and enjoyed a large following among rural peasants.

Land invasions and squatting became a weapon of resistance both in rural and urban areas as a way of demonstrating the situation of the landless. Demands and programmes were developed around land rights. These included the

ⁱ Prior to 1910, blacks in the Cape could vote if they had property.

Ten Point Programmeⁱⁱ of the Unity Movement that was adopted in 1943 and the Freedom Charterⁱⁱⁱ of the ANC-led Congress Alliance adopted in 1955.

Apartheid land reform and a racial demarcation of land

With the coming to power of the National Party in 1948, a series of laws was introduced to control the movement of people and their rights to land. These included the Group Areas Act, the Population Registration Act and a string of influx control laws. This legislation built upon a number of other pieces of legislation that, together with the 1913 and 1936 Land Acts, controlled access to land and determined economic relations.

By the time the National Party came to power in 1948, urban and rural land in South Africa was firmly defined along racial grounds. The policy of separate development led to the creation of

ⁱⁱ The Ten Point Programme outlined the following:

“Full equality of rights for all citizens without distinction of race, colour or sex... Revision of serfdom at present existing on the land must go, together with the Land Acts, together with the restrictions upon acquiring land. A new division of the land in conformity with the existing rural population, living and working on the land, is the first task of the democratic state and government and parliament.”ⁱⁱ

ⁱⁱⁱ And the Freedom Charter stated:

“The land shall be shared amongst those who work it! Restrictions of land ownership on a racial basis shall be ended, and all land re-divided amongst those who work it, to banish famine and land hunger; The state shall help the peasants with implements, seed, tractors and dams to save the soil and assist the tillers; Freedom of movement shall be guaranteed to all those who work the land; All shall have the right to occupy land wherever they choose; People shall not be robbed of their cattle, and forced labour and farm prisons shall be abolished.”

Bantustans or homelands, as separate political and administrative blocks. The government even tried to declare some of these areas to be “independent” states, although these declarations were generally not recognised in the international arena. The implementation of the Bantustan policy led to a violent programme of forced removals, particularly in the 1970s and 80s.

4. The post-1990 framework for Agrarian Reform

4.1. Introduction

The situation on the eve of transition

By the time of the transition in South Africa in the early 1990s, the rural landscape had changed dramatically and had emerged from a semi-feudal system to one that was incontrovertibly capitalist in nature. While some black small scale farming remained, the key features of the rural areas were a largely dispossessed rural proletariat on the one hand and large-scale commercial farmers and agri-business on the other.

With the unbanning of political organisations in 1990, the dispossessed majority of the country expressed heightened expectations for an improvement in land tenure and living and working conditions. Organisations of civil society came to the fore in placing the issue of land reform on the agenda and bringing pressure to bear on the negotiations process. In response to this intensified pressure and activism, many white farmers and landowners conducted wide-spread evictions of farm dwellers. Big landowners were adamant to secure their property rights and made their mark on the negotiations process in this regard.

4.2 Key determining frameworks

The election of the ANC-led government opened up an opportunity for the sad

history of land dispossession to be arrested and remedied, if not reversed. As noted earlier, the *Reconstruction and Development Programme* (RDP) contained within it all the ingredients for a more socially just society and the new government had a range of political, legal and administrative options at its disposal.^{iv} However, these options were constrained by the framework that was established by the compromises entered into during the negotiations in the early 1990s. The negotiations process accommodated the interests of both the established landowners and the landless – landowners were able to secure the inclusion of property rights within the Constitution, while the landless had their interests accommodated in the promise of a speedy redistribution of land, restitution and improvements in land tenure.

These conflicting interests and contradictory elements within the negotiated settlement and the resultant *Interim Constitution (1993)* and *Final Constitution (1996)* placed the ANC-led government in an invidious position – whose interests would they ultimately serve and how would they manage the

^{iv} A number of clauses from the RDP document are of interest here:

Clause 2.4.1: “...*The abolition of the Land Acts cannot redress inequities in land distribution.*

Only a tiny minority of black people can afford land on the free market.”

Clause 2.4.3: “*The RDP must implement a fundamental land reform programme. This programme must be demand-driven and must aim to supply residential and productive land to the poorest section of the rural population and aspirant farmers...*”

Clause 2.4.14: *The land reform programme, including costing, implementing mechanisms, and a training programme, must be in place within one year after the elections. The programme must aim to redistribute 30% of agricultural land within the first five years of the programme. The land restitution programme must aim to complete its task of adjudication in five years.*”

expectations being brought to bear from all sides? Not surprisingly, this situation had a major impact on the nature of the legislation and the various policies on land reform that the government developed. The ANC moved away from its long-held position of the nationalisation of the land and adopted a neo-liberal position which included the protection of private property in Section 25 of the *Bill of Rights*, as included in the Constitution of the Republic of South Africa, number 108 of 1996. This expressed commitment to a neo-liberal path bound the government to a market-friendly land reform programme and was an explicit victory for existing landowners.

The World Bank had also shown interest in shaping the nature of reform programmes in South Africa. In 1993 World Bank officials held discussions with the government around a "market-assisted" approach to land reform. (These proposals were not adopted in totality at this stage but did have a significant bearing on the nature and form of land policy, and became more visible in the changes in policy adopted in 1999, as reflected in the Land Redistribution for Agricultural Development Programme.)¹⁴

Just as policy-formulators were beginning to grapple with and develop various White Papers on land and agricultural policy and their respective implementation frameworks, in the 1994-96 period, the post of the Minister Without Portfolio who had been responsible for overseeing the RDP was abolished. Not long after, in March 1996, the RDP office was closed. According to Wildschut and Hulpert¹⁵, this was widely interpreted as "a retreat from a transformative agenda to a new emphasis on private sector, investment-driven strategies to create employment and wealth, and an attempt to redress social inequalities in this way."

However, the *Green Paper on Land Policy* was published before the closure of the RDP office, and reflected more of the philosophy of the RDP principles. The RDP document identified land reform as the central driving force of rural development, but the later *White Paper on Land Policy* on the other hand, links land reform to the promotion of:

*"... both equity and efficiency through a combined agrarian and industrial strategy in which land reform is a spark to the engine of growth."*¹⁶

With the closure of the RDP office, the spectre of the *Growth, Employment and Redistribution* (GEAR) strategy raised its head and gained prominence in mid-1996, thereby scuttling the chances of designing and implementing more far-reaching and genuine reform programmes. While the Constitution's mandate and the intention of the *White Paper on Land Policy* published in 1997 was to address the dispossession of land through its three programmes - land restitution, tenure reform and land redistribution - each of these reflect an increasing adherence to the principles of GEAR and the market-driven approach.

The GEAR strategy permeated and determined all government policy. The strategy viewed the private sector as the leading force for the economic and social development of the country and the eradication of poverty. Consequently, the state's land reform programme was designed within the parameters of a market-friendly approach which did not challenge the interests of business and landowners.

The Association for Rural Advancement (AFRA), an NGO involved in land reform and rural development had this to say about GEAR in 1997:

GEAR poses a threat to poverty-driven, rights-based programmes like land reform. The cuts in the

*land reform budget are of concern and further pressure on government to reduce social spending and to effect staff cuts may impact on the implementation of land reform.*¹⁷

Market forces have come to be viewed as the driving impetus for land reform and development. As if as a foreboding of things to come, clause 2.4.1 of the RDP had specifically noted that "only a tiny minority of black people can afford land on the free market."¹⁸ The proponents of the market-driven approach to land reform would seem to have ignored the obvious truth of this statement.

4.3 The development of policies within the adopted framework

The three key frameworks mentioned above (the RDP, the Constitution and GEAR) all had a direct influence on the various policies which dealt with land and agrarian issues.

While some policies attempted to maximize the available scope for a more redistributive approach within a constrained environment, others adopted the neo-liberal, market-assisted, GEAR paradigm unquestioningly.

The *White Paper on South African Land Policy* (1997) (to be discussed in more detail in section 5) had been painted with the brush of GEAR and the World Bank's "market-assisted" orientation, but had its roots in the RDP era. However, the *White Paper on Agriculture* (1998) and the Department of Land Affairs' 1999 *Land Redistribution for Agricultural Development* (LRAD) reflect a more explicit departure from the policies of the RDP and exemplify the thrust of neo-liberal market-assisted principles. With the change in the Minister of the Department of Land Affairs from Minister Derek Hanekom to Minister

Thoko Didiza in 1999, a moratorium was called on all existing projects pending a policy review. During this time it appears as if the LRAD programme was gestated and consolidated. The LRAD was then launched onto the policy terrain in 2000 as a key land-mark in the shift in government policy.

4.3.1 The Land Reform Gender Policy

The *Land Reform Gender Policy* of 1997, although appearing at the same time as the White Paper, appears to take a more progressive stance and is fairly specific in its objectives. The Policy "aimed at creating an enabling environment for women to access, own, control, use and manage land; as well as access credit for productive use of the land".¹⁹ The Policy further committed the Ministry and Department of Land Affairs to an extensive set of guiding principles to actively promote the principle of gender equity in land reform.

Despite these commitments, Cheryl Walker, a land activist and ex-commissioner of the Land Claims Commission, argues that there was a weakness in the DLA's gender strategy. In her view this stems largely from limitations within the land reform programme itself, compounded by the DLA's inadequate conceptualization of the task and an absence of political accountability by senior managers around women's land rights.^v The low

^vThree years after the adoption of this policy and a number of other policy frameworks promoting gender equity, it would seem that DLA officials had not themselves adopted and internalized the gender policy. DLA officials participating in a *Gender Best Practices* workshop in KwaZulu Natal in 2000 complained and said, "gender was not their core business". A Deputy Director in a DLA provincial office described the gender policy as not being on the agenda of the Provincial Management Committee at all – "They left it to the Programme Managers how

political priority accorded gender policy is itself a reflection of weak levels of organization among rural women. She suggests that these problems are unlikely to be addressed in the current phase of land reform which emphasizes agricultural productivity and the promotion of a black farming class above land reform as part of a broader, pro-poor development strategy.²⁰

4.3.2 Post-1998 policy documents

The *White Paper on Agriculture* of 1998, the *Integrated Sustainable Rural Development Strategy* of February 2000 and the *Strategic Plan for South African Agriculture 2001* all reflect a more insistent approach to adhering to market-assisted reform and offer insights into the shift in the government's perspective. Each will be dealt with in turn below.

4.3.2.1 The White Paper on Agriculture

The stated aims of the White Paper on Agriculture include the following:

- To build an efficient and internationally competitive agricultural sector
- To contribute to the objectives of the GEAR - economic growth, reducing income inequalities and eliminating poverty
- To support the emergence of small and medium-sized farms side by side with large scale commercial farms
- To conserve agricultural natural resources and to develop policies and institutions to maintain them.

Areas of key policy reform include those of land ownership, marketing and finance. Other subsidiary policy proposals were also advocated and include the managing of risk, supporting

agricultural research, the restructuring of agricultural parastatals, and conservation.

Agriculture and land ownership: In terms of land ownership, the White Paper on Agriculture, in addition to supporting and echoing the land reform programmes of restitution, tenure reform and redistribution, and the forging of stronger links with the Department of Land Affairs, advocated an additional programme in 2000 which was initially known as the Commercial Farmers' Programme. This later came to be called the Land Redistribution for Agricultural Development (LRAD) programme.^{vi}

Agriculture and marketing: The marketing aspect of the White Paper on Agriculture focuses on reforming domestic markets and on stimulating international trade. Regarding domestic markets, the revision of agricultural marketing policy aimed at increasing efficiency and productivity and increasing access to markets. The Marketing of Agricultural Products Act number 47 of 1996 came into effect in January 1997 and had its origins in the Agricultural Marketing Act of 1937 which had been amended in the 1950s by the National Party government.

A central tenet of this Act is that state intervention in agricultural markets must be kept to a minimum and should only focus on technical activities. The Act created the South African Agricultural Marketing Council, commonly known as the National Agricultural Marketing Council (NAMC), which assumes all the important functions previously undertaken by government in relation to the marketing aspects of agriculture. The government's role was reduced to administrative functions such as registration and information gathering.

they do it. I don't think there is common commitment to it."^v

^{vi} The LRAD is discussed in more detail in Section 5 of this paper.

Any other state intervention would be subject to consultation with the National Agricultural Marketing Council which is made up of all the unions representing big commercial farmers and agri-business. The voices of small and emerging farmers are not heard on this council and they are excluded from decision-making processes. The power of this council represents the growing and elevated status of the private sector and capital in the economy and signifies a reduced level of intervention on the part of the state. The Act also made provision for the abolition of all product Control Boards. By 1998, the Control Boards ceased to operate and all their assets were transferred to industry trusts. With the disappearance of the Boards, single-channel markets and price controls were also eliminated. These deregulatory measures mean that the quality and prices of numerous agricultural products are to be determined by the markets.

Deregulation and the abolition of control boards: In line with the Marketing Act, the White Paper on Agriculture made provision for the deregulation of the market for agricultural products and the abolition of control boards. By the beginning of 1998, the control boards dealing with maize, sorghum, oilseeds, meat, wheat, wool, mohair, cotton, citrus, lucerne, deciduous fruit, canned fruit, dried milk and milk had all been shut down, and single-channel markets disappeared. With the termination of these state structures, input and output prices were then left to the vagaries of market forces.

Agriculture and international trade: In terms of stimulating international trade, the White Paper on Agriculture spells out the government's intentions as follows:

- To increase market access for South Africa's products
- To use the World Trade

Organisation to eliminate market barriers

- Include South Africa in the General System of Preferences (GSP) of the United States and European Union
- To strengthen markets in Southern Africa through the Southern African Development Committee (SADC) and the South African Customs Union (SACU).
- To request to be included in the trade chapter of the Lome Convention (This was later rejected by the European Union.)
- To join the Cairns Group. (This was done in 1998)
- To address tariff policy.

Agriculture and finance: The finance component of the White Paper on Agriculture calls for the reworking of rural and agricultural finance arrangements. The Strauss Commission on Rural Finance Services which had already been established in 1997 therefore advocated a number of principles from which flowed a set of recommendations.

The principles included the following:

- The ability to repay a loan is the key criterion for the granting of credit
- Government departments are not best placed or the most efficient as delivery agents for financial services. This role should rather be carried out by the private sector
- Finance strategies must allow for regional and local variation as prototype solutions imposed from the top had not proved to be successful
- There was a need for the co-ordination of the different development finance institutions.

The recommendations which flowed from these principles included the following:

- In line with GEAR, subsidies on interest rates were to be removed

- There was to be a new and changed role for the Land Bank. It was to now play a major role in the provision of finance to small businesses.
- The Agricultural Credit Board was to cease operation. (The Board had previously provided low cost credit to large farming operations and other support such as roll-overs of loans to indebted farmers.)
- Tax treatment for agriculture was to be amended by means of allowing capital purchases to be written off over three years rather than the previous one year time frame. Funds for subsidies for activities such as fencing, on-farm infrastructure and the installation of irrigation facilities were to be stopped by the National Department of Agriculture and Land Affairs. (This recommendation has not been adopted in full. While specific subsidies have not been set aside for the listed activities, there is still the possibility that the remainder of the land grant, if any, can be utilized for on-farm development.)

The Land Bank was forced to transform in response to a number of factors which included the recognition by the Strauss Commission on Rural Finance that the Bank had not given sufficient attention to strategic plans on agricultural financing for the emerging farm sector. There was also a recognition that the Bank needs to play a rural development role by providing finance to land reform beneficiaries and new black farming entrepreneurs.^{vii} The

^{vii} In response, the Land Bank developed a range of new “products”:

- The Gold Range of products consist of low-risk wholesale funds for on-lending to low-risk retail lenders such as commercial farmers’ co-operatives, as well as low risk and medium term loans to experienced farmers with sufficient security to cover the full loan amount.
- The Silver Range of products applies to farmers with experience and proven

withdrawal of government farmer subsidies and relief grant funding also created a new mandate for the Bank to support new and emerging farmers.²¹ According to Helena Dolny, the previous Managing Director of the Land Bank, white commercial farmers were set to remain as the Land Bank’s important client base. This is because the Bank can make some money from them in order to support its new clients – the new and emerging black farmers.²²

abilities, but without stable assets to cover the full loan amount. Farmers with larger areas of communal land or “Permission to Occupy” will fall into this category. Medium term loans will be available at an interest rate of 22 – 25 %, long term loans at 17 %, while short term loans at 21,25 – 24,25 %.

- The Bronze Range carries a higher risk fund levy. This allows the Bank to lend to new entrants to the formal market, who have no track record. Land Reform beneficiary groups will fall into this category. The interest rates range from 24 – 25 %.
- Two products are set up to meet the needs of the “rural poor”.
 - The “Set Up” scheme targets rural people, in particular, women trying to improve their seasonal production input. The scheme is expected to provide small sums of money without the need for proof of collateral or the checking procedure of a loan officer’s field visit. The pay-back record will be the only criterion and if this is met, a bigger loan can be granted at the following application. The interest rate for this scheme is 24,25%.
 - The “Agri-Save” scheme has been set up in order for the Bank to boost the number of rural savers who may become future clients. Negotiations with the Post Office to act as an agent are underway. An interest rate of about 10 % will be available.

Agriculture and managing risk: The White Paper on Agriculture states that government will no longer provide drought relief and will in turn encourage farmers to take risk insurance to protect them against natural disasters. The government's role in this regard would focus on providing timely information on climate and market trends which could assist farmers in avoiding risk.

In line with neo-liberal principles, the state is decreasing its level of intervention and is advocating the heightened role of the private sector, in this instance as a provider of risk insurance. The so-called benefits of risk insurance and timely information automatically exclude small farmers. The cost of risk insurance is prohibitive and not a priority expenditure for small emerging and subsistence farmers. Investigations into how farmers and rural workers cope with disaster show that credit finances only a tiny fraction of their consumption in disaster years. Access to formal commercial bank credit, therefore gives large commercial farmers a considerable advantage in risk diffusion over smaller farmers without access.²³

Timely information on climate and market trends would not be that useful or accessible to small farmers who do not have access to technical infrastructure or an agricultural repertoire able to respond to such information in the short term, by which time the damage of natural disasters and climate changes have usually done their worst. This denial of drought relief in a country that experiences dramatic climatic changes and natural disasters leaves no safety net for small and emerging farmers, and only serves to allow the farmers with available capital to purchase insurance, and with access to technology and information to diversify in response to climate changes, thereby increasing the divide

between rich and poor farmers.

Supporting Agricultural Research: The state undertakes to re-orientate applied research to an increased degree towards the requirements of small farmers and will provide incentives for the private sector to engage and invest in agricultural research. Mechanisms are to be established so that information can be shared amongst all the components of the research system, both public and private.

The Restructuring of Agricultural Parastatals: By the mid-1990s more than 400 agricultural service parastatals existed at a national and provincial level in South Africa and provided agricultural services. In line with the government's objective of withdrawing from direct involvement in agricultural production, the government aims to transfer to the private sector those activities which they believe should no longer remain under public control, and close those which they believe are unviable. The idea is that local communities will be encouraged to assume responsibility for projects currently managed by the state. Issues regarding the supply of resources and infrastructure for assuming this task remain unclear.

Conserving Agricultural Natural Resources: In a bid to conserve agricultural resources and to provide employment for rural people, the Department of Agriculture introduced the Land Care Programme. Three principles govern policy on the agricultural use of natural resources:

- The government must ensure that resources are used within their capacity for renewal
- The resource user must assume responsibility for the conservation, sustainability and maintenance of bio-diversity

- Those responsible for all forms of environmental damage should pay the cost of remedial measures.

While all of the above may seem to be commendable principles, they neglect to consider the historical reasons for the existent environmental degradation and the likelihood of environmental degradation in areas where poverty is endemic and where there are few if any resources which allow people to renew natural resources, conserve or pay the cost of remedial measures. It is critical that the cycle of environmental degradation and poverty be acknowledged. In the absence of addressing poverty levels and providing people with adequate land on which to live and sustain their multiple livelihoods, the environment will continue to be degraded and inappropriately utilized.

4.3.2.2 The Integrated Sustainable Rural Development Strategy (ISRDS)

The government produced the Integrated Sustainable Rural Development Strategy in a bid to coordinate existing departmental initiatives and programmes to achieve greater impact. The introduction states that it "presents the official strategy for rural development in South Africa".²⁴

The vision of the Strategy is to:

*"Attain socially cohesive and stable rural communities with viable institutions, sustainable economies and universal access to social amenities, able to attract and retain skilled and knowledgeable people, who are equipped to contribute to growth and development."*²⁵

Regrettably, this strategy tends to over-emphasise abstracted reform wish lists, and while it places a great deal of

emphasis on the role of local government in service delivery, fails to integrate land and agricultural reform in any real way with other areas of policy and programming.

4.3.2.3 The Strategic Plan for South African Agriculture

The Department of Agriculture undertook to develop a strategic plan for South African agriculture as a presidential assignment in 2001. The task team for this project was made up of members of Agri-SA and the National African Farmers' Union (NAFU) as well as members of the Department of Agriculture and an academic from the University of Pretoria. There was no apparent inclusion of small and subsistence farmers, non-governmental organisations or community-based structures.

The thrust of the Strategy is in accordance with market-directed principles, while it pays lip service to the needs of the poor and small-scale farmers. The Strategy document's statement of intent includes the following vision statement for the agricultural sector:

A united and prosperous agricultural sector: This vision implies sustained profitable participation in the South African agricultural economy by all stakeholders, recognising the need to maintain and increase commercial production, to build international competitiveness and to address the historical legacies and biases that resulted in skewed access and representation.

In support of the vision for agriculture, the core focus for the strategy will be on the following strategic goal: "To generate equitable access and

participation in a globally competitive, profitable and sustainable agricultural sector contributing to a better life for all."²⁶

The *Strategic Plan for South African Agriculture* is shot through with a number of inherent contradictions. The "historical legacies and biases that resulted in skewed access and representation" cannot be addressed through a programme that is promoting the "building of international competitiveness". Access and participation cannot be *equitable* within the context of a strategy which reveres a "globally competitive" and "profitable" sector. The two aspects are mutually exclusive and negating.

5. Land Reform Strategies

Introduction

Land dispossession gave rise to several different kinds of specified land areas and different ways in which people lived on or used the land. These in turn have had implications for the nature of the land reform strategies that attempt to respond to these differences and range of requirements. Reform strategies therefore need to deal with privately owned farm land; the land of the ex-homelands and black townships generally falling under the category of state land or the South African Development Trust; communal land under traditional leaders; and church owned land.

The Abolition of Racially Based Land Measures Act of 1991 began the legal process of retarding and addressing land dispossession. The election of the ANC-led government in 1994 gave millions of ordinary people hope that their land needs would be met. In a bid to address land needs, the backbone of the government's land reform

programme was made up of three strategies – **restitution** for those who had lost their land rights as a result of racially discriminatory policies in 1913; **tenure reform** for people with insecure rights in land, primarily labour tenants and their families living on white-owned farms and rural occupiers who have insecure tenure in relation to communal land; and **redistribution** for poor and land-hungry rural people. The Land Redistribution for Agricultural Development option is a sub-programme of the redistribution programme. Each of the three land reform strategies will be considered in turn below. (For an organogram of the Department of Land Affairs, please see Appendix 2.)

5.1 The Land Restitution Programme

The aim of the programme

The aim of this programme is the restoration of land or the payment of compensation to people who were previously dispossessed of their land as a result of discriminatory legislation and apartheid policies. The scope of this programme only includes people who were dispossessed of their land as from 19 June 1913. Those who lost their land before 1913 through wars of conquest, colonisation or other forms of dispossession are excluded. The legislation governing this programme is the Restitution of Land Rights Act 22 of 1994.

The institutions involved in the restitution programme

The White Paper on Land Policy identifies two key institutions besides the Department of Land Affairs for the implementation of the Restitution Programme:

- *The Commission for Restitution of Land Rights (CRLR)* under a Chief Land Claims Commissioner and four (later five) Regional Commissioners

was established as a mandate of the *Restitution of Land Rights Act*. While the CLRL was originally envisaged as an independent body, it now falls under the control of the DLA, on which it depends for funds, administrative support, research expertise and policy direction.²⁷ This curtailment of the independence of the Commission would seem to indicate that while the State intends to relinquish control, it remains wary of a body which could contradict or challenge the government's policy positions. If the Commission was to remain outside of the government's sphere of influence it would lose its political control of the institution. The function of the Commission is to receive the claims lodged by claimants, to inform the claimants about the progress of their claims and to inform the public about their rights to claim land. The Commission is required to investigate the validity of claims and

facilitate negotiations between the claimant and the present landowner. If no settlement is reached, the Commission takes the matter to the Land Claims Court.

- *The Land Claims Court* has the status of a High Court. Appeals against the Land Claims Court are heard in the Constitutional Court or in the Supreme Court of Appeal. The role of the Court is to deliver judgment on matters related to the Restitution process after they have been sent to the Court by the Commission as outlined above. However, the government appears determined to close down the Land Claims Court and transfer its functions to the High Court. This could seriously limit access to justice for restitution claimants, evicted farm workers and labour tenants.²⁸

Restitution statistics

The total number of restitution claims received as at 10 January 2002²⁹:

REGION	NUMBER OF CLAIMS RECEIVED
KwaZulu Natal	14 808
Western Cape	11 938
Eastern Cape	9 292
Free State and Northern Cape	4 715
Gauteng and North West	15 843
Mpumalanga	6 473
Northern Province	5 809
	68 878

National statistics for Settled Restitution Claims as at 10 January 2002³⁰:

Land Restoration	
Households awarded land	24 431
Land cost	R243, 766, 740.00
Hectares of land restored (Land Claims Court	173 805
Hectares of land restored (Ministerial Approval)	192 436
Total beneficiaries receiving land	146 586
Financial Compensation	
Households awarded compensation	16 754
Financial compensation awarded (Land Claims Court)	R21, 860, 330.00
Financial compensation awarded (Ministerial Approval)	R334, 309, 959.77
RESTITUTION TOTAL	
Claims settled	13 315
Total households	40 983
Total restitution beneficiaries	226 922
Total restitution award cost	R599,937,029.77

Of the 68 878 land claims received, only 13 315, or 19%, have been resolved. The vast majority of the settled claims are in urban areas. The bulk of the urban claims derive from forced removals under the Group Areas Act. In many of the cases, land restitution took the form of monetary compensation, as opposed to the original land or similar land being provided as restitution. In most urban claims, restoration of the claimant's original land is not feasible as the land has invariably been developed in some way. In the majority of rural claims, people express a desire to return to their original land, or if that is not possible, to be granted alternative land. Recent estimates of the typical cost of a rural claim range between R1.5 million and R3 million per claim.³¹ It is therefore not surprising that, in the absence of an expropriation programme and within the budget constraints of GEAR, the DLA is reticent to engage in rural restitution cases.

In her speech to the National Assembly on 15 May 2001, the Minister of Land Affairs indicated that of the total amount spent on Restitution in the period since 1995, only 39% of it was spent on restoring land. The remaining 61 % was therefore spent on financial compensation³². This begs the question

as to whether the focus is in fact on *restoring land* back to people or juggling limited possibilities within the restrictive framework of GEAR.

5.2 The Land Tenure Programme

The aim of tenure reform

Tenure reform is taken to mean the protection or strengthening of the rights of residents on privately owned farms and state land, together with the reform of the system of communal tenure prevailing in the former Bantustans. It has the potential to impact on more people than all the other land reform programmes combined.

Apart from those who were removed from their land, many black South Africans remained on private white farms as farm workers, occupiers and labour tenants. Labour tenants are those people who live on private farms and are provided with a small piece of land in exchange for the labour they and their families provide to the farmer. These people usually live and work under the most inhumane conditions. Legislation has been introduced to improve their situation. Yet, due to the lack of enforcement of the legislation, weak levels of worker organization and

the low levels of penetration by trade unions^{viii}, these rural dwellers have gained little protection, particularly when compared to the industrial relation regimens which protect many urban industrial workers.

Tenure reform legislation

Steps were taken to strengthen the land rights of occupants on commercial farms and land tenure rights in general through a number of pieces of legislation. Here we will provide a brief summary of the contents of each of these laws, then discuss the most important measures in some detail.

^{viii} According to the Centre for Rural Legal Studies, the available statistics indicate that less than 6 % of farm and agricultural workers are unionised even though they make up 10 % of the national workforce. (*Agriculture Labourforce Survey*. Department of Land Affairs and Statistics South Africa.) Organising farm dwellers is very difficult. Farmers are often hostile and do not allow union organisers on their property. Unlike organising industrial factory workers, farm dwellers live in isolated places and usually have to be organised individually or in small farm groups. The SAAPAWU trade union which was launched in 1995 and which is affiliated to COSATU, organises workers in agriculture and plantation farming. (South African Labour Bulletin Vol. 23. No. 1 February 1999. p. 43.)

The National African Farmers' Union (NAFU) was established in 1991 with the aim of creating a "home" for thousands of black farmers who had previously been excluded from the mainstream of agriculture. It was formed with the help of the National African Federated Chamber of Commerce and Industries (NAFCOC). NAFU draws its members from a broad base which includes farmers, agri-businesses, farmers' organisations, corporations and individuals.

Summary of the Laws:

- *The Development Facilitation Act 67 of 1995* introduces measures to speed up land development, especially the provision of serviced land for low income housing.
- *The Land Reform (Labour Tenants) Act 3 of 1996* protects the land rights of labour tenants on privately owned farms and provides a process whereby such tenants can acquire full ownership of the land they occupy. Labour tenants are largely concentrated in the provinces of Mpumalanga and KwaZulu Natal.
- *The Communal Property Association Act 28 of 1996* was introduced as a mechanism through which groups of people can acquire and hold land in common, with all the rights of full private ownership. Communal Property Associations (CPAs) have been established by groups receiving land under both the restitution and redistribution programmes. By August 2000, a total of 239 CPAs had been registered.
- *The Interim Protection of Informal Land Rights Act 31 of 1996* (commonly known as IPILRA) was intended as a temporary measure to secure the rights of people occupying land without formal documentary rights, pending the introduction of more comprehensive reform in the form of the proposed Land Rights Bill which is still to be finalised. In the absence of this comprehensive legislation, the Act has been extended on an annual basis and remains in force.
- *The Upgrading of Land Tenure Rights Amendment Act 34 of 1996* (commonly known as ULTRA) amended the Upgrading of Land Rights Tenure Act 112 of 1991 and sets out procedures and mechanisms for the conversion of land tenure rights into ownership rights especially in townships. It also sets out the process for the transfer of tribal land to “tribes” and the legal capacity of “tribes” to obtain property.
- *The Extension of Security of Tenure Act 62 of 1997* (commonly known as ESTA) was enacted as required in Section 25(6) of the Constitution and protects occupants of privately owned land from arbitrary eviction and provides mechanisms for the acquisition of long-term tenure security. While illegal evictions continue, the cases of the evictees do not always come before the courts and few permanent settlements have been approved.
- *The Transformation of Certain Rural Areas Act 9 of 1998* provides for the repeal of the Rural Areas Act 9 of 1987 that applied to the 23 so-called Coloured reserves in the Western Cape, Northern Cape, Eastern Cape and Free State. This Act deals primarily with the control of commonage land but also provides for the transfer of township land to a municipality.
- *The Prevention of Illegal Evictions and Unlawful Occupation of Land Act 19 of 1998* provides procedures for the eviction of unlawful occupants. It also prohibits unlawful occupation of land.

The Extension of Security of Tenure

One of the most important of these pieces of legislation is the Extension of Security of Tenure Act (ESTA). The aim of ESTA was to secure the tenure rights of farm workers, by recognizing their tenure rights, putting in place legal requirements before an eviction can take place (protective rights) and requiring the DLA to make available secure long-term tenure options to evicted occupiers (developmental

rights). ESTA has the potential to impact positively on millions of farm dwellers' lives.

Concerns about the implementation of ESTA

According to the National Land Committee (NLC), a non-governmental network of organizations that addresses the plight of the landless and is involved in land reform lobbying and advocacy work, the protective aspects of ESTA have been poorly implemented.

Research undertaken by the NLC suggests that those responsible for enforcement through the justice system – namely the police and the magistrates – have generally been ill-informed about ESTA and have not taken it seriously as a piece of legislation.³³ Edward Lahiff of the Programme for Land and Agrarian Studies (PLAAS) concurs and suggests that the police, magistrates and public prosecutors often fail to protect the rights of farm dwellers. In some instances there have been allegations of collusion with landowners. Lahiff states that the DLA itself has also come in for criticism from land reform activists and NGOs for failing to provide adequate resources for enforcement of the law and improving the lives of farm residents. Judicial discrimination against women's independent tenure rights has also been evident. Legal representation, largely because of the crisis in the Legal Aid Board^{ix}, has not been made available to ESTA occupiers who face eviction. As a result, there has been an increased rate of "procedural evictions" and the continuation and increase of illegal evictions.³⁴

The NLC and its affiliates also argue that the developmental aspects of ESTA barely exist. The failure by the DLA or the land owner to co-ordinate the provision of alternative accommodation is their primary concern. There is a lack of capacity at district council level and local municipalities have generally failed to integrate farm dwellers' needs into their Integrated Development Plans (IDPs)^x. The result is that settlements

^{ix} A dramatic reduction by the government in legal aid fees paid to legal aid lawyers meant that fewer lawyers were able to take on land rights cases and the legal aid services all but collapsed, leaving very little scope for legal representation and protection for those in most need. The reduction was in line with the general budget cuts encouraged by GEAR.

^x Integrated Development Plans are plans that all municipalities are required to develop in terms of

are not planned and bulk services, such as water, are not provided. The division of responsibilities between the national and provincial DLA and the Department of Housing also remains unclear in relation to ESTA occupiers who face eviction.³⁵

The Congress of South African Trade Unions (COSATU) and its affiliate, SAAPAWU support the calls made by the NLC and believe that the ESTA legislation is tilted in favour of the facilitation of evictions as opposed to the security of tenure. It sees a major weakness in the legislation in the absence of an effective complementary programme of land reform and redistribution, thus giving evictees little chance of securing access to land.³⁶

Evictions continue

The NLC goes on to say that despite the introduction of legislation, farm workers and dwellers continue to face evictions and have seen little improvement in their living conditions. Many farm dwellers are evicted without knowing their rights, without having their rights defended, and without the provision of viable alternatives^{xi}. According to the NLC

the Municipal Systems Act. They detail the development plans for a particular area and are supposed to consider settlement and related infrastructural needs. They are supposed to create integration at a local level. Certain provincial offices of the Department of Land Affairs have adopted the principle that all ESTA applications for land reform projects need to meet certain criteria in their alignment to Integrated Development Plan (IDP) principles. Applicants considering the option of an ESTA route for their proposed land reform projects need to consider and integrate regional and local IDP objectives into their project proposals.

^{xi} Where alternative arrangements have been made for evictees, they have, with a few notable exceptions, meant occupiers leaving the commercial farms where many have lived for generations and moving to housing settlements in poorly serviced townships far from their places of employment.^{xi}

document, many are left homeless and destitute as a result of poor and unclear policy design and the generally reactive approach by the state. The NLC argues that this constitutes a failure of the state to implement or enforce the rights enshrined in the Constitution and argues that this reflects a lack of political will on the part of government.

A link between global competition and evictions

The Centre for Rural Legal Studies (CRLS) in the Western Cape indicated that they have recorded an increase in evictions in the deciduous fruit sector in the Western Cape in the last few years. They explain this as a direct result of the European Union's agricultural agreements and the lack of protection and subsidies offered to South African deciduous fruit farmers. South African fruit farmers are unable to compete with European growers. Their seasonal niche market has now been taken over by Greece which has preferential treatment from the EU. As a result of the virtual collapse of the deciduous fruit sector, farmers are retrenching and evicting farm workers and their families.³⁷

Farm workers are increasingly facing casualisation and retrenchment. Outsourced, contract and seasonal labour are becoming characteristic of the sector. Approaches to poverty reduction for farm workers can no longer focus exclusively on permanent workers living on farms but need to look to rural informal settlements, rural towns and the urban periphery.³⁸

Monitoring and evaluation of ESTA

While the DLA has an obligation to monitor the enforcement and impact of its legislation, it has not done so because it does not have the necessary implementation, enforcement or monitoring systems in place.³⁹

Even obtaining accurate figures for the

number of evictions is not easy. The eviction statistics produced by the DLA reflect only the number of "legal" evictions and the number of proposed evictions. The illegal evictions are not recorded in their data. A researcher at the Centre for Rural Legal Studies (CRLS) suggests that the DLA figures can be doubled in order to obtain a rough estimate of the total number of evictions.⁴⁰

A national coalition of NGOs and socially concerned lawyers – the Evictions Monitoring Project - has been formed to support evictees and to monitor the status of evictions.

Call for a moratorium

The NLC proposed that solutions to address the situation on commercial farms, requires that the existing laws should be strengthened through amendments and that a moratorium on farm evictions be instituted until effective protection for the rights of farm workers and labour tenants is in place.

The NLC network proposed that a national task team comprised of the

DLA and civil society representatives be established to address the following:

- *To ensure that the justice system becomes responsive to ESTA:* To achieve this, the Task Team must work with the departments of Justice, Public Prosecutions, the Commissioner of Police and the Legal Aid Board.
- *To establish mechanisms to ensure the provision of economically viable and secure long-term tenure options* that promote rural livelihoods through proactive use of the land market and integration with the IDP processes. The Task Team must work with the departments of Housing, Provincial and Local Government, Agriculture and the Land Bank.
- *To ensure that the distinction between labour and tenure rights is upheld:* the Task Team must work with the Department of Labour and the Council for Conciliation, Mediation and Arbitration (CCMA).
- *To oversee the establishment of a monitoring and evaluation system* for ESTA and ensure that all role-players who need to feed into or use this system are included.
- *To oversee the creation of an alternative dispute resolution system for ESTA.*

Land tenure and dilemmas around communal land

The issue of communal land falls under both the tenure reform programme and the redistribution programme. Those aspects of communal land which pertain to securing the tenure rights of existing occupiers fall under the tenure reform programme. The aspects that consider the redistribution of land in the communal land areas are part of the redistribution programme. For ease of purpose, the issue of communal land will be discussed under tenure reform.

Administration of communal land in disarray: The system of land administration and allocation in communal areas is unsustainable in the long run. This situation is exacerbated by the ANC's ambivalence about their relationship with the traditional leaders and tribal authorities and has a critical bearing on the nature of the reform programme as it affects communal land. In 2000, Minister Thoko Didiza indicated that in disposing of state land in the communal areas, the state should build on "existing local institutions and structures", both to reduce costs and to ensure "local commitment and popular support".⁴¹

Most communal land is administered on the basis of one version or another of the old R188 Regulations drawn up by the Apartheid Government in 1969. The main mechanism used to access communal land is known as the Permission To Occupy (PTO) system. The introduction of individual tenure systems and a form of freehold title to landholders in the nineteenth century set the basis for the PTO system. However, this system is now in disarray – with the scrapping of the Bantustans and the gradual breakdown of structures and procedures, some areas of the country are not covered by any legal framework with regard to land administration. The government has repealed the R188 legislation but has yet to put anything in its place. The result is that actual PTO certificates can no longer be legally issued, even though this remains the only way in which to allocate land in the absence of effective new tenure legislation. In some areas, PTO applications continue to be processed at a local level by officials and forwarded to a central office where they do not receive any further attention.⁴²

The following example illustrates the kinds of obstacles that need to be overcome in the initial stages of

applying to occupy land in communal areas:

“To have a plot of land allocated to you in the Maluti District of the old Transkei takes time and money. The procedure begins with a visit to the responsible officer employed in the Department of Agriculture in Maluti, at a cost of a return fare from outlying villages of about R30. Applicants are instructed to write 5 separate letters of application for the site. This has to be approved and stamped by the local headman or *Induna*, at a cost of R5 per page. Next the application must be presented to the Chief or *Inkosi*, and be approved and stamped at a cost of R20 per page. This often involves a trip of two or more days because of the distance and poor transport services. A second trip to Maluti is required so as to see the agricultural officer responsible for land allocations. When the time comes to mark out the site, further payments are required, usually a chicken and a bottle of spirits. If these are not paid they are counted as debt. There is in addition, a payment of a tax of R20 for the allocation of the site.”⁴³

Systems such as this have grown in the vacuum left by the scrapping of the homeland administration system and the absence of proper legislation regarding communal land tenure. This situation leaves innocent applicants exposed to bribery and corruption and should they not comply, or should they not be of an “acceptable” political persuasion to the powers that be, their request for land will not be favourably met.

The questionable validity of the PTO certificates leads to uncertainty about who may be considered the real owners of the land – the rural people who use and occupy the land, the traditional leaders who allocate land, the elected local councils who oversee the development or the Minister of Land Affairs who holds the title deeds? This has created widespread confusion and seemingly insurmountable obstacles to both local people and outsiders wishing to invest in communal land. In some instances ordinary occupiers are further victimized by unscrupulous traditional leaders.⁴⁴ Ben Cousins of the Programme for Land and Agrarian Studies has highlighted the situation by posing the question: “Will tenure reform create a democratic and rights-based

system in communal areas, or will it recreate the “neo-feudalism” and fiefdoms of the apartheid era?⁴⁵

Tenure security and socio-economic rights of farm workers

Farm workers and many other agricultural workers still do not enjoy the minimum socio-economic rights guaranteed by the Constitution and a range of other industrial laws. They are formally covered by laws such as the Labour Relations Act, Basic Conditions of Employment Act, Employment Equity Act, Occupational Health and Safety Act, and Skills Development Act.^{xii} There is little or no enforcement by the Department of Labour, and levels of unionization remain low^{xiii}. Alongside domestic workers, farm workers are the worst paid. In addition, cases of abuse of farmworkers by employers are still frequent.

^{xii} See Appendix 3 for details of legislation which covers farm and agricultural workers.

^{xiii} Estimates of the Department of Labour and Statistics South Africa indicate that less than 6 % of farm and agricultural workers are unionised.

Extent of progress in tenure reform

The NLC argues that although it is almost eight years since South Africa became a democracy, tenure reform in communal areas in the former Bantustans has yet to begin. The *Communal Land Rights Bill* has yet to be finalised and currently leaves many questions unanswered. According to the NLC, the Bill undermines established occupation rights, and opens up opportunities for the transfer of state land to “communities” controlled by powerful and sometimes unaccountable traditional leaders. With the NLC as its mouthpiece, many development activists suggest that the draft Land Rights Bill should be scrapped and that a truly consultative process of drafting be initiated by the DLA so as to ensure that the land rights of South Africans living on communal land are adequately secured.⁴⁶

5.3 The Land Redistribution Programme

The aim of the programme

The original aim of this programme was, according to the 1997 White Paper on Land Policy, “the redistribution of land to the landless poor, labour tenants, farm workers, women, emerging farmers for residential and productive use, to improve their livelihoods and quality of life.” Lahiff has argued that the original aim of this programme has been lost. In his view, redistribution and land reform have come to focus on technical criteria for access to the programme and the type of land use that should be supported.⁴⁷

Redistribution legislation

The key piece of legislation governing redistribution is the Provision Of Certain Land For Settlement Act 126 of 1993. The intention of this legislation is to provide for the designation of certain land; to regulate the subdivision of this land and the settlement of people on the

land; and to provide for matters connected with this arrangement. This Act empowers the Administrator of a Province to designate certain land for settlement purposes. This land includes State land and land made available by a landowner. Laws governing the subdivision of agricultural land and the establishment of townships do not apply to land designated in accordance with this legislation. Land designated for settlement may be subdivided by the developer into pieces of land for small-scale farming, residential, public, community, business or similar activities.

Institutions involved in the implementation of Land Redistribution

In addition to the national and provincial Departments of Land Affairs, the White Paper on Land Policy also identified the private sector and non-governmental organizations as important institutions in the redistribution process.

Original target group and available grants

The redistribution programme was initially introduced as a pilot programme in each province. It was aimed at poor black communities who lacked any or sufficient land. Through the use of a state grant package, the Settlement/Land Acquisition Grant (SLAG), (previously set at R15 000 but currently at R16 000), eligible households could buy land on the market, and with the balance of the funds, if any, attempt to develop the land. A Settlement Planning Grant was also made available to enlist the services of planners and other professionals who would assist beneficiaries in preparing project proposals and settlement plans.⁴⁸

The acquisition of municipal commonage

A separate grant, the Grant for the Acquisition of Municipal Commonage, has also been made available to municipalities wanting to provide communal land for use (typically for livestock grazing) by the urban or rural poor. By the end of 1999, a total of 77 municipal commonage projects had been implemented and 75 more were in a preparatory phase.

The price of land in relation to the grants

Bonti-Ankomah⁴⁹ suggests that land acquired through the reform programme may be commanding relatively higher prices than would otherwise have been the case, since “willing-sellers can easily determine how much they want to sell their land for by simply multiplying the number of potential beneficiaries by the R16 000 grant”. The Surplus People Project indicates that this has certainly been the case in Namaqualand in the Northern Cape, where, in an extreme instance, the asking price for (low carrying capacity) grazing land increased by 350% within a matter of months in response to the availability of grants to willing buyers.⁵⁰ Government appointed valuers would however probably not concur with such inflated prices and would invariably motivate a decrease in the starting price. However, the attitude shown by such farmers creates a blockage in the process and undermines the confidence and buying power of “willing-buyers”. However, in the absence of available state land, residents of former homelands, as well as rural people in some non-homeland areas like Namaqualand are in many cases unable to acquire land with reasonable agricultural potential in their immediate area unless it is purchased from private sellers. In the absence of any threat of expropriation, the present owners can, and appears do, name their own price for land, including land that is

sometimes of questionable productive quality.^{xiv 51}

In many cases, a single household cannot generally afford a viable piece of land with their grant, never mind having any of the grant left over to develop the land and establish infrastructure. Because of the generally high cost of buying land and the smallness of the grant, there are many instances of a number of households clubbing together to jointly buy land. In some cases there is a high degree of social cohesion evident in these joint ventures. In other cases, tensions emerge due to a lack of cohesion as a result of the hasty construction of a group in order to accrue sufficient sums of money and to fulfill the application requirements.

Pooling together implies the formation of a legal entity. This process also takes time. Since individuals have their own differences and expectations, decision-making by the established Communal Property Association (CPA), although democratic, does not necessarily address every member's needs. Furthermore, beneficiaries do not have anything to prove that they own the land. Title to the land is vested in the legal entity. If a beneficiary decides to leave the Trust or the Communal Property Association, the possibility exists that they may lose their rights to the land if they are not aware of all the various legal procedures that need to be followed. They also have no second opportunity to access the Settlement/Land Acquisition Grant. The legislation that comes to bear regarding the joint ownership of land is that of the Communal Property Association Act 28 of 1996.

^{xiv} The same would also be true for restitution cases, where the “willing-seller” willing-buyer” principle also applies.

Equity Share Schemes

Besides the pooling of grants to buy formerly white-owned farms for commercial agricultural purposes, a few groups of farm workers have used the grant to purchase equity shares in existing farming enterprises. It is debatable whether equity share schemes can really be classified as a type of land reform as the farmworkers do not get to own the land directly due to the fact that the shares are normally in the operating enterprise rather than in the land itself.⁵²

Another critical question is whether participation in such schemes does in fact result in the redistribution of power and resource bases. Participation in such a scheme can also serve to create competition and tensions amongst farmworkers and thereby work in the interests of the owner of the operation who can co-opt and exploit workers more readily in the interests of so-called "mutual" interest and benefit.

Extent of Progress with the redistribution programme

Progress in the first few years of the redistribution programme was very slow but the pace began to quicken in 1998/99. By December 1999 a total of 667,825 hectares of land (representing less than 1% of the country's commercial farmland) had been redistributed and about 60 000 households were allocated grants. By the end of 1999 the redistribution and restitution programmes combined had only transferred 1,13% of the promised 30% of agricultural land back to black ownership since 1994, while the most significant piece of land reform legislation, the Land Rights Bill, which was intended to give statutory protection to people's land rights in the former Bantustans, has yet to be properly circulated for comment by the public before it can be put before Cabinet.

In the process of implementing the redistribution programme, a range of problems began to surface. Many of these were the result of the over-emphasis on market-driven processes. In addition, the inexperience of officials in conducting land transactions led to lengthy delays and a loss of interest on the part of "willing sellers" - There are cases of a number of willing sellers who have begun to engage with the DLA regarding transactions over their land but who have given up in frustration as a result of what they experience as "the ineptness of DLA officials, bureaucratic systems, the time-consuming and legalistic procedures that have to be followed, and lengthy delays in finalising financial settlements within the budget constraints of the Department".⁵³

These difficulties are compounded by:

- reliance on current market trends to determine when, where and at what price land was to be made available;
- poor co-ordination between the DLA, provincial departments of agriculture and local government, leading to poorly designed projects and lack of post-settlement support;
- unwieldy group schemes;
- cumbersome approval mechanisms that required ministerial approval for every project;
- the imposition of inappropriate "business plans" on poor and frequently illiterate rural communities.⁵⁴

While on the one hand the state, in line with its neo-liberal macro-economic policy of GEAR, is supposed to be reducing the extent of its intervention, on the other hand it is insisting on micro-managing the redistribution programme through the granting of approval for each project.

The number of “willing-sellers”

Although there are some farmers in South Africa who are unwilling to sell their land for a range of reasons, a number of farmers have put their land on the market and have approached the DLA as willing sellers. The relatively high number of willing sellers may well act as a barometer of the extent of the crisis in the agricultural sector in the country. The increased levels of competition and the reduction in subsidies and tariff protection have meant that a number of borderline farmers have not been able to remain in the sector and are therefore willing to put their land on the market. However, the land they are offering to sell may not necessarily be in geographic areas of demand and may not have the requisite features or quality sought by willing buyers.

5.3.1 The Land Redistribution for Agricultural Development policy A shift in perspective

Since mid-1999 when President Thabo Mbeki came into office, there have been a number of shifts in the perspective on land reform in response to changes in the national policy framework. Land reform has become more closely linked to agricultural policy and a more obliging attitude to traditional leaders has become evident. Given that South African agriculture had been opened up to international competition and to market forces, government began to align the land reform programme with developments in agriculture.⁵⁵

The bulk of 2000 was spent in re-formulating policy and the linking of approaches and programmes between the Departments of Land Affairs and of Agriculture. This internal process resulted in the publication of the *Land Redistribution for Agricultural Development* policy (LRAD) in November 2000. Linked to this are two other sub-programmes dealing with

settlement and non-agricultural enterprises but these have received scant attention. LRAD aims at an intensification of the market-assisted approach. Ultimately this is a move in government land reform policy away from focusing on poverty-reduction, with the poor, landless, and women as major beneficiaries, to the boosting of a small nucleus of black commercial farmers.

The aims and objectives of the LRAD programme

Overall objective: To transfer of 30% of agricultural land in fifteen years

The LRAD policy undertakes to transfer 30% of agricultural land from white to black ownership over a fifteen year period and the overhaul of the previous grant system to support “specifically” agricultural purposes. The target of 30% for land redistribution amounts to about 24,6 million hectares, or an average of 1,64 million hectares every year over 15 years. At six times the amount of land transferred in 1998 (the most successful year for land redistribution to date, when 273 416 hectares were involved in project approvals and transfer) the annual average requires an extraordinary escalation in the rate of delivery. If the Ministry is serious about meeting this target, the programme should be accompanied by a related increase in state budgets, staffing, capacity and general support across all tiers of government. This would not seem to be evident. Instead, while the national budget of the DLA is set to increase over the next three years, the specified allocation to the redistribution and tenure reform programmes shows a budgeted decrease from R421,9 million in 200/02 to R195,5 million in 2003/4.⁵⁶ This is substantially lower than the R360,8 million spent on transfer payments by the redistribution/tenure reform programme in the 1998/99 financial year.

Aims of the LRAD programme

The aims of the programme include:

- Providing grants to the previously disadvantaged to access government funds for purchasing land for subsistence or commercial farming.
- Facilitating and promoting the creation of a class of black commercial farmers.
- Creating employment and economic growth via more intensive land use by emerging black commercial farmers.
- Assisting labour tenants and farm workers to buy their land and work on it so that they can become independent from the constraints of their present position, for example their lack of land rights to the land on which they live and work.

Ways in which the LRAD programme can be used

Beneficiaries of the programme can use the programme in a number of different ways:

- *Food safety net:* Many people may access the programme in order to acquire land for food production so as to improve household food security. This can be done on an individual or group basis.

- *Commonage:* People may wish to acquire tracts of land for communal grazing. Rather than going the route of accessing commonage land through municipal commonage projects, groups or individuals can purchase land directly.
- *Equity Schemes:* People can buy shares (equity) in a farming enterprise by using grants from this programme.
- *Production for markets:* People can use the grant to buy a farm or to start a farm on their own. To do this, they need to prove that they have farming experience and expertise.

LRAD grants

In furtherance of the LRAD programme, grants are awarded to eligible individuals (no longer only households as was the case in the past) on a sliding scale from R20 000 to a maximum of R100 000. The means test no longer applies. All members of formerly disadvantaged groups are eligible regardless of income, provided they can offer an “own contribution” and use the grant for agricultural purposes. The minimum own contribution of R5 000 (in cash, labour or existing assets) allows one to access the minimum grant which is set at R20 000.

The table⁵⁷ below shows how the sliding-scale of grants works:

Own contribution (in Rands)	Government Grant (in Rands)	Total project cost per project	Proportion of total cost %	
			Own contribution	Government contribution
5 000	20 000	25 000	20	80
35 000	40 871	75 871	46	54
145 000	68 888	213 888	68	32
400 000	100 000	500 000	80	20

Steps to be followed:

The following steps must be taken in order to access the programme⁵⁸:

- Select the chosen amount for the grant in relation to ones own contribution amount

- Engage a “design agent” if required
 - Identify available land
 - Enter into an informal contract with the seller
 - Apply for a normal bank loan through standard procedures
 - Engage a transfer agent and prepare a farm business plan
 - Submit all documentation to the local agricultural officer for an opinion
 - Assemble the complete proposal package and submit to the Provincial Grant Approval Committee
 - Ensure that the title is taken over within three months.
- DLA co-ordinates policy issues and inter-departmental activities.
 - DLA monitors the flow of funds to the provincial level
 - DLA monitors and evaluates the outcomes of LRAD

The outlined steps indicate a lengthy and technically detailed process which requires a high degree of expertise and literacy, as well as a great deal of time and energy. Many rural people would feel daunted by such a process and may never even consider accessing the programme for this reason. Hence, the nature and requirements of LRAD enforce a self-selecting process, through which the marginalised remain marginalised. Essentially, only those who already have access to information, support agencies and the requisite skills will access this programme.

Institutions involved in LRAD implementation

- *The role of government at a national level:*
 - Department of Agriculture and Land Affairs is responsible for the overall design of the programme and monitoring of its impact.
 - The DLA provides a budget for LRAD
 - DLA provides training for beneficiaries, agents and local land and agricultural officers
- *The role of the Provincial Executive Council:* At the level of the provinces, the Provincial Executive Council takes overall responsibility for the programme. Its main task is to establish and monitor the work of the Provincial Land Reform Co-ordination Committee.
- *The Provincial Land Reform Co-ordination Committee* is made up of key stakeholders (representatives from the National African Farmers’ Union; Agri-SA; labour unions, relevant government officials; beneficiaries) and should meet quarterly to review the performance of the Provincial Grant Committee.
- *The Provincial Grant Committee* consists of provincial officers of Land Affairs and Agriculture. The Committee is supposed to decide on proposals within a period of two weeks after receipt of beneficiaries’ applications.
- *Agricultural Land Officers* provide technical support regarding the proposed farm plan, land use, and environmental assessment. They assist in identifying potential land and assist with identifying the seller’s title, land price and in negotiations.

5.3.2 Considerations regarding the implementation of LRAD

Whose aspirations are being met?

According to Cheryl Walker, the more recent policy directions (such as those that produced LRAD) are

“consistent with the general thrust of ANC policy under GEAR. Driven in part by the policy imperatives of the National Department of Agriculture and its technical advisors for commercial agriculture, but informed also by the aspirations of the growing black elite, the major task for land reform has been redefined to support black access to land and to commercial agriculture, on the grounds of “race” and historical deprivation rather than poverty and current need. The emphasis on race and agricultural productivity ensures that the policy commitments of the 1997 White Paper to poor, rural women, while not formally disavowed, remain in the background.”⁵⁹

The ANC government and DLA more conservative than the World Bank?

Interestingly, in determining their targets, the DLA and the National Department of Agriculture (NDA) appear to have only partially adopted the proposals put forward by the World Bank in 1993. These proposals outlined a market-assisted programme to transfer 30% of commercial farm land to black households for productive use.⁶⁰ The aspects of the proposals they excluded largely dealt with poverty reduction. Amongst those omitted were welfare proposals regarding an outright base grant and a “safety net” programme for families who are too poor to generate their “own contribution” in order to qualify for the small farmer

option.⁶¹ It would seem that the position taken by the DLA and National Department of Agriculture is in fact more conservative and more concerned with adhering to fiscal restraint than that held by the epicentre of neo-liberalism, the World Bank itself.

Highly bureaucratic procedures

The LRAD programme upholds the same narrow definition of “demand-led” or market-driven” that had already been shown to retard the progress and efforts of existing redistribution programmes. Despite the descriptors that are used, the programme is neither “demand-led” nor “supply-led”, and in fact serves to undermine the very “market-based” principles it claims to advocate. According to PLAAS’ Edward Lahiff:

“Rather than exploiting the many opportunities presented by the land market in order to achieve clear policy directives, the DLA once again proposes highly bureaucratic procedures that serve the needs of neither buyers nor sellers, and make it impossible to implement land reform in a planned and coherent manner. Rather than taking clearly expressed demands for land in specific areas as a signal to acquire land and provide services in a comprehensive and integrated fashion, the role of the state is limited to offering financial assistance and information to suitably qualified applicants wishing to participate in the market for land, services and credit.”⁶²

Global competition

In addition, those who wish to enter commercial farming will also find it difficult to cope in the context of the government’s withdrawal from subsidizing the agricultural industry. This situation is worsened by the massive trade liberalisation which resulted from government’s affiliation to

the World Trade Organisation. Under the Uruguay Round Agreement of the General Agreement on Tariffs and Trade (GATT) in December 1994, an Agreement on Agriculture was signed. At this session the international economic barriers to trade were lowered in favour of deregulated markets and greater flows in commodities. Export oriented agriculture (such as flowers and fruit) are being prioritised at the expense of the production of staple foods and other products for the domestic market. This means South African agricultural producers will have to compete with other producers from Europe who are highly subsidized by their own governments.

In line with the outcome of the Uruguay round of trade talks, the European Union's Common Agricultural Policy (CAP) is undergoing a number of changes. Many of the industrialised countries provide large subsidies and support services to their agricultural producers, and that, together with their technological advantages, places the producers in the South at a disadvantage. The Organisation for Economic Co-operation and Development's 1997 estimates of Producer Subsidy Equivalents (PSEs) which give an indication of the proportion of total farm revenue originating from various kinds of support, states that 42% of the European farmers income was due to various kinds of support and subsidies. German Farmers Union's agricultural economists place the figure at about 60%. In stark contrast, the South African Agricultural Union (SAAU) places South Africa's PSE at 10%. SAAU's director of macro-economics and trade, Andries Pienaar, says that given the advantage that Northern farmers have, it is difficult for South Africa's agricultural sector to compete on an equal footing.⁶³ If it is difficult for existing fully-fledged commercial farmers to compete on the

global market, how much more difficult for small and emerging farmers!

New technologies, production systems and product standardisation

The restructuring of agriculture has also resulted in the development of new processes of product standardisation whereby "just-in-time"(JIT) products such as fresh flowers, fruits and vegetables are produced under sophisticated laboratory-type conditions and delivered rapidly in order to satisfy the needs of rich international markets. This will ultimately serve to drive small farmers, farm workers and the marginalized people off the land as they have no bargaining power and do not have the necessary technology or rapid access to transport and markets, and are therefore unable to compete. Over time, a number of agricultural sectors in South Africa will find it increasingly difficult to compete in international markets. This will also lead to closures and retrenchments. The example of the deciduous fruit farmers in the Western Cape as discussed earlier is a case in point.

Women and the LRAD programme

Data, quotas, representation and participation: Women were formally included in the early stages of the redistribution programme, but Walker⁶⁴ suggests that the official data needs to be treated with caution. Women accounted for 47% of the 78,758 beneficiaries listed on the national redistribution programme database in June 2000. However, this total includes many joint husband/wife listings and says nothing about actual participation. A DLA study conducted in May 1999⁶⁵ found that women were relatively well represented on project committees – on average, 5 out of 12 committee members were women. However, it is important to ascertain the extent to which these women are there by virtue of a "quota requirement" and the extent

to which they actively participate and play a role in decision-making.

While women-headed households are fairly well represented in the land reform programme, it has become evident “that male-headed households have access to larger plots on average and female-headed households were even less likely than male-headed households to use their land for agricultural purposes.”⁶⁶ This has implications for the extent to which women will subscribe and qualify for the LRAD programme. If agricultural pursuits are not necessarily a priority for a number of women, it begs the question as to which redistribution programme will then meet the needs of these women.

From household to individual grants: In theory, the shift from household to individual grants in the new LRAD grant system should create possibilities for women to access land rights that are independent of family and male control.⁶⁷ However, given the weak economic and social standing of most rural women, only a very small minority of better-off and more formally-educated women are likely to benefit from the LRAD possibilities. The R5 000 “own contribution” (the minimum amount to required to access the minimum LRAD grant) is equivalent to one year’s cash wages for many farm workers^{xv} and represents a substantial amount of money or labour for most rural people. Even for those who can afford the “own contribution”, the potential outcomes are undermined by the obstacles facing the agricultural sector given the level of international competition and the drastic reduction in state support.⁶⁸

In the instances where women are recognised as heads of households and

where they have secured land, the patriarchal customary system still leaves them vulnerable should their marriage relationship fall apart or should they wish to pass on their land to the next generation of women in the family. Patriarchal inheritance systems still favour sons over daughters.⁶⁹

Class bias

While, the LRAD programme is seen to extend some possibilities for women, there remain concerns about its class bias since only men and women with enough personal capital or assets are able to access the grant system. Those who have no assets or funds remain marginalized. The programme could therefore serve to create and deepen class divisions among rural people in general, and more specifically among rural women, thereby further weakening fragile levels of organisation and solidarity amongst women in rural areas.

Class differences are also evident in the differentiation in the size of land allotments. Studies in Latin America have documented the segmentation (by social class and size of the holdings) of current land markets in Bolivia, Brazil, Colombia, Ecuador, Honduras, Mexico and Paraguay. On the one hand, large holdings are being sold to people from the same wealthier social class; on the other, there is a dynamic market of smallholdings purchased by families in lower socio-economic groups.⁷⁰ This situation seems to be replicated in South Africa, thereby entrenching the existing class divisions in society.

Credit and financing for LRAD and land reform in general:

The current debts and financing arrangements with existing white commercial farmers place a number of obstacles in the way of market-assisted programmes such as LRAD taking off. At present the government and specifically the Department of

^{xv} In 1996, the average annual cash wage for African farm workers in South Africa was R4 800. (Statistics South Africa 1996 11-14.)

Agriculture, through the Agriculture Credit Board (ACB), directly controls an “agriculture credit book” of well over R1 billion. The ACB serves more than one third of the approximately 60 000 commercial farmers in South Africa. The large majority of these farmers are seen as high-risk clients by the private commercial banking sector and are thereby excluded from gaining credit through these institutions. The credit provided by the ACB costs South African taxpayers in excess of R200 million every year and crowds out the much vaunted private sector involvement. This credit also breeds inefficiency by using state subsidies to keep non-viable farmers on the land. It inhibits the working of the land market and sustains land prices at relatively high levels. This makes it difficult for new entrants to start farming through open market purchases of land. Credit provided by the Land Bank suffers from similar shortcomings, although to a lesser degree.⁷¹

LRAD, farm size, efficiency and viability:

In terms of the LRAD programme, farm size is invariably related to the amount of the grant obtained and the extent of the “own contribution”. In general, farm sizes will therefore be fairly small, but larger farms can be purchased if a group of buyers pool their grants and resources.

In assessing the farm size-efficiency relationship, researchers such as Johan van Zyl⁷² state that international evidence indicates that a large-scale mechanised farm sector is generally inefficient, especially when compared to small-scale family type farm models. Efficiency however, says nothing about the power relations involved in the choices and resources that people have at their disposal when embarking on a farming activity. Given the skewed land ownership in South Africa and the way

in which these land rights were derived, the question, “Efficiency for whom?” becomes very important when comparing efficiency of different land sizes and land distributions. The efficiency calculations cannot be the only criteria for deciding on land reform when the very basis of these rights is in question. Lipton et al⁷³ echo van Zyl’s position in arguing that:

International evidence suggests that smaller farms...usually have much higher labour use, as well as higher output and slightly higher overall productivity per hectare of land of similar quality, than larger farms... (Small farmers) make different crop choices. They tend to allocate more land to staple foods, vegetables and drought resistant crops that are less risky and also more labour-intensive than the mono-crop agriculture favoured on large farms. They use their land productively for larger parts of the year than big farmers ... and make more year-round use of available irrigation water and fill the agricultural calendar with different and more continuous sequential rotations of crops than farmers who obtain a single crop harvest per annual cycle.

In addition, rural non-farm activities are stimulated by small-scale farming ... non-farm growth in South Africa will, as elsewhere in the developing world, be mainly concentrated on trade, transport, services and construction rather than manufacturing. Such activity depends mainly on local demand growth, which is most abundantly generated by small-labour intensive farming. Larger farmers and richer rural people tend to spend extra income on products produced in urban centres.

In attempting to draw conclusions about the farm size-productivity relationship, it is important to bear a number of variables in mind. For example, differences such as land quality, labour productivity, capital productivity, the nature of crops being grown and their relative yields and price on the market, all have an effect on productivity. In addition, access to services and supplies such as credit, agricultural extension services, and water supplies have productivity implications as well. Van Zyl cites numerous studies which provide empirical evidence at the micro-level of the existence of an inverse relationship between farm size and the efficiency of resource use – as farm size increases, efficiency declines. This relationship is basically due to the higher efficiency of family labour^{xvi} as compared to hired labour, in combination with commonly observed imperfections in credit and land rental markets. It would seem that family farms are generally more efficient and superior to other types of farming because of the way in which labour relations are organized. Family farms by definition, are farms where the owner is the operator and where his/her family provides the bulk of the regular labour force throughout the year.⁷⁴

In South Africa, from the beginning of the century until the 1950s, the number of farms and the total area cultivated increased, but the average farm size declined. After the 1950s this trend was reversed. Farm size grew consistently, accelerating in the 1970s before leveling off in the late 1980s. Because the cultivated area remained the same, the number of farms declined – from 116 848 units in 1950 to 62 084 units in

^{xvi} This would of necessity raise concerns about the exploitation of family labour and the potential for children to be exploited as child labour.

1990.^{xvii} The pattern seems to continue until the late 1980s, although there is some evidence of an increasing differentiation in farm sizes below the 100 hectare minimum which (in some areas) defines a farm in our official statistics as well as in World Bank literature. Overall, large-scale farms dominate South African agriculture. Moreover, the average size of these farms is extraordinary by international standards.⁷⁵

More recently, and in line with globalisation, there have been cases in South Africa of companies which have sub-divided large commercial tracts of land and sold the land off to potential small farmers. These companies have then relocated their production operations to Mozambique or other Industrial Free Zones or Export Processing Zones where land and labour are cheaper. Farm workers who lost their jobs are being re-employed under labour contracts if they are lucky enough to find employment at all.⁷⁶

The views of organized commercial farmers

Organised agriculture, through the mouthpiece of the South African Agriculture Union (SAAU), has in the main been fairly vocal in its opposition to land reform policy and legislation. In general, the interests of white commercial farmers and landless black people are poles apart.⁷⁷

The SAAU acknowledges that its primary concern is to protect the capital investment of its members who are overwhelmingly white farmers but is also concerned to preserve the productive potential of South Africa's limited amount of medium to high-potential agricultural land. This latter concern, the Agricultural Union says, underpins

^{xvii} This trend would seem to parallel the growth of large corporate farms and agri-business.

SAAU's opposition to projects in which hundreds of households are settled on a few hundred hectares of agricultural land which previously provided no more than a modest living to a single family. The SAAU believes that such projects amount to little more than "buying poverty" through the establishment of informal residential settlements. They also argue that this approach guarantees the rapid depletion through over-use, of the productive potential of the land not occupied by housing. The SAAU remains concerned that "transfer is the issue" for the DLA, and virtually no infrastructure support is being provided for beneficiaries.⁷⁸

The SAAU does not necessarily disagree with the proposition that small-scale farming may be as productive as larger-scale commercial farming, but they argue that *any* productive farming in the South African context requires serious investment in physical, economic and social infrastructure as well as in extension support. The SAAU is deeply sceptical of what it regards as the romantic notion that an agrarian revival requires little more than the provision of "a piece of land, a hoe and a bag of seeds" per person. Since it believes that neither the R16 000 Settlement/Land Acquisition Grant nor the minimum grants from other programmes can adequately finance both land acquisition and the necessary investment, the SAAU remains concerned about the impact of such programmes. The SAAU argues that it would rather see 100 000 families settled with the necessary investment than a million families inhabiting "pockets of poverty". Critics of the SAAU argue that while larger per farm investment would be more likely to result in greater numbers of commercially successful black farmers, such a policy is unlikely to impact significantly on rural poverty in the shorter term. The SAAU's response is to

concede that rural areas will continue to provide a minimal safety net to the rural poor. They also say that reformers have seriously over-estimated agriculture's possible contribution to poverty alleviation and job creation. The SAAU further argues that neither agriculture nor land acquisition are necessarily the appropriate answers for many rural people. While some people do wish to become farmers, others may be engaging in the land reform programme simply because it appears to offer "a tool to improve their economic position", or a means to secure residential tenure. Ultimately for the SAAU, the only real solution lies in general economic growth.⁷⁹

The potential impact of HIV/AIDS on land reform

In a country that has a frighteningly high incidence of HIV/AIDS, it is surprising that much of the state policy, legislation and literature on agrarian reform does not acknowledge this situation or highlight the potential impact on land, livelihoods and production. South Africa can draw lessons from developments in the rest of Africa and should build these into their land reform programmes. OXFAM points to the following patterns that are beginning to emerge in Africa (and are relevant for South Africa as well) as a consequence of the impact of HIV/AIDS⁸⁰:

- At a household level, people who fall sick with HIV/AIDS are less and less able to work productively
- As a result, family members begin to devote more time to caring for them
- So they devote less time to vital seasonal agricultural activities
- When people become sick, vital physical and social assets such as cattle or tools are depleted or sold off as they or their families draw on their savings to pay for expensive medical care and then

- funerals, and for the hire of replacement labour.
- Once such productive assets are sold (often at artificially low prices), people's future range of activities is reduced
 - With fewer options, people become increasingly vulnerable
 - Productivity declines in those activities that are still being undertaken
 - The quality of assets may also decline (e.g. labour intensive work to protect against environmental degradation and erosion may stop as the shortage of labour increases.)
 - People in the most productive age group die off before they can pass on their experience and specialist skills to the next generation
 - Hence, the skills knowledge base within communities declines
 - In the process, women are particularly vulnerable:
 - To infection by their partners
 - As widows, to landlessness and near destitution following property appropriation by her partner's relatives – a custom which is still prevalent in many rural areas
 - Those left to farm and earn an income are disproportionately the elderly and children.

As a consequence, subsistence and small farming activities may gradually become less and less productive. In terms of land reform, there is a real danger that where the opportunity and temptation exist, people might sell their land, (together with other assets) to pay for health care, funerals and hired labour.

Journalist, Mercedes Sayagues in writing about HIV/AIDS in Zimbabwe makes comments that could also ring true for South Africa:

*African peasant agriculture will never be the same after AIDS, but it is taking too long for ministries of agriculture, donors and NGOs to adapt to the grim reality.*⁸¹

6. Monitoring and evaluation of land reform

DLA monitoring mechanisms:

In attempting to evaluate each of these programmes it is difficult to assess whether the programmes are effectively meeting the needs of the target groups. A further consideration is whether the approach and implementation strategies have been appropriate. While the DLA has a Monitoring and Development Directorate, and while mechanisms are in place to monitor the LRAD process, information from the respective units is difficult to access. A great deal of the monitoring mechanisms seemingly focus on whether DLA and related structures are carrying out their required functions and whether quantity targets are being met. This places emphasis on a "policing" approach rather than a developmental process of evaluation.

While there are broad targets for each of the three land reform programmes and the Department sets objectives in the annual budget speeches, few, if any, performance indicators and criteria have been set. The focus seems to be on number-crunching and technical *outcomes* as opposed to a qualitative evaluative activity that also analyses *process and impact*.

Furthermore, whatever assessment processes are in place, they are not carried out in a public or transparent manner. Any formative or summative

monitoring and evaluation appears to be a process internal to the Department. Organizations of civil society such as trade unions and other target groups do not apparently take part in any such processes.

Public comment and resistance as a barometer of performance indicators:

Mass formations

Besides the DLA internal mechanisms for monitoring the progress of land reform in South Africa, registering feedback from support agencies and the target groups of land reform is also a critical barometer of progress. One form of feedback is mobilisation around such issues. In fact, rural mobilisation has a long history in South Africa. From as early as the 1800s, peasant struggles were waged against dispossession and the introduction of legislation that accelerated the forces of capital accumulation and later its associated apartheid structure. The 1980s saw the resurgence of peasant struggles.^{xviii} Over time, a number of formations emerged out of these struggles and included organizations such as the National Land Committee (NLC), the Land Access Movement of South Africa (LAMOSA), the Association for Rural Advancement (AFRA), the Rural Development Services Network (RDSN), and the Surplus People Project (SPP). These organizations have

^{xviii} Examples of these struggles are those of peasants in Bosplaas in the Winterveld against the eviction of an estimated 1 500 000 non-Tswana residents from the Bophutatswana homeland; in Mapulaneng in Lebowa, peasants fought their removal from their land to give way to commercial agriculture; in Driefontein and KwaNgema in the Eastern Transvaal people successfully resisted forced removals in the so-called black spots; and in KwaNdelbele between 1984 and 1986 against the declaring of independence of the homeland combined with a struggle against removals.

supported the struggles for land and agrarian reform through engaging in policy advocacy, lobbying and capacity building. Some of these formations also campaigned to place agrarian reform on the agenda for the CODESA discussions and the constitutional negotiations between 1990 and 1993 and have continued to lobby for reforms to date.

In light of the needs of the dispossessed not being met by neo-liberal policies such as MAAR, a number of rural social movements have begun to emerge. These include formations such as the Northern Province Land Rights Coalition (LRC), the Northern Province Movement for Delivery (MFD) and the Landless People's Movement (LPM). In 2001, over 3 000 landless South Africans converged in Durban for the International Landless People's Assembly called by the Landless People's Movement. One of their activities was to develop and launch the Landless People's Charter. A leader of the LPM, Ntate Mojapelo addressed the Assembly and said, "South Africa is in its seventh year of democracy and freedom, but the people who voted in the ANC-led government still do not have the land." He blamed the government's dismally slow pace of land reform on the "neo-liberal" policies that force the landless to pay for land. "Government is not moving. We do not want to invade the land, but our government is forcing us to do so. Land reform must not be an endless song for the decade. It will be enough for us to simply gain entrance to our ancestral land to produce food and make a living."⁸²

The calls made by mass formations include a broad spectrum of positions. There are calls for integrated agrarian reform which, while considering land rights, include the provision of technical rural infrastructure (roads, water,

electricity), and social infrastructure (health and education). In many cases these demands and challenges are articulated and directed at GEAR. Other calls reflect a more narrowly defined demand for the direct transfer of land. These movements are all responding to the effects of the neo-liberal principles underpinning the land reform and rural development programmes of the government.

7. Conclusions and comments - the conditions under which land reform could contribute towards social transformation

Land reform as a vehicle for social transformation

An inherent element and the initial impetus for South African land reform has been the expressed need for social transformation. This transformation process was to address the patterns of land ownership and usage inherited from the colonial and apartheid eras, and was to consider the multiplier effects that the accessing of land would have on the livelihoods and developmental needs of the rural and urban poor. For issues of such magnitude to be addressed and for the transformation of the nation to be effectively realised, the state's role and contribution is of paramount importance. The envisaged overhaul of the very existence and modus operandi of a nation cannot be left to the vagaries and capricious nature of market forces. There is too much at stake and if the needs of the majority of people are to be taken seriously, the politicians, policy makers and programme designers should not be allowed to gamble the lives and livelihoods of the nation on the trading floors of local and international markets.

The paper chase and legalistic approach to land reform

The MAAR and LRAD-type programmes invite us to subscribe to analyses which suggest that the material inequalities between rich and poor, between big commercial farmers or agri-business and small emerging or subsistence farmers can simply be overcome through the promulgation of a range of domestic laws and policies. Somehow, miraculously, we are led to believe that if we combine a degree of paper access to land reform with neo-liberal economics we will create a social order that is equitable and just and that will obliterate centuries of capital accumulation and class division.

“There is no alternative”^{xix}

It would seem that the proponents of MAAR and of current neo-liberal agrarian reform programmes such as LRAD, wish to argue that there really is no alternative to neo-liberal policy, and that the only response is to seek to optimise our position in a desperate drive for increased competitiveness in the "new" world order. The results of such a policy can only be the decimation of the small and emerging farmers and their related communities and the creation of an even larger and permanent pool of unemployed, landless and destitute people.

The neo-liberal policies of the ANC-led government as expressed in the GEAR strategy, their various White Papers, legislation and policy documents have not only failed to change the class structures and social relations of the apartheid capitalist order, but are in fact perpetuating and reinforcing these social relations. Researchers at Khanya College suggest that by allocating the

^{xix} This term was initially used by Margaret Thatcher but has come to be used as a generic explanation by those who subscribe to the neo-liberal perspective.

critical responsibility of socio-economic transformation to the capitalist class and its market forces, the state has abdicated the mandate given to it to transform apartheid social relations.⁸³

Is land reform actually about land?

The Land Reform programme conceptualised “demand” essentially in terms of the market – of matching potential buyers with potential sellers - without the state playing an active part in acquiring land through expropriation or purchase. The state’s support for this market-assisted approach has been translated and camouflaged (with the help of the World Bank). Hence we see the use of terms like “empowering people to govern their own lives”, “market-friendly land reform” and “community-based reform”. These are presented as a moving away from paternalistic top-down approaches. What this demand-driven or market-assisted approach accommodates and advocates is that the government departments are simply playing a technical role as intermediaries and facilitators between willing-sellers and willing-buyers. Their role is simply providing and determining grant allocations, ensuring that the legal requirements are met, and directing buyers and sellers to sources of design advice. It would seem that the core business of the DLA is no longer the issue of the *land* itself. Land reform is reduced to the *transfer* of land and the legal and financial transactions associated with this activity. The state has abrogated responsibility for accessing, providing and ensuring the development of land in response to the needs of the population.

Is land simply a commodity?

Agrarian reform still needs to be conceived of as a broad and humanising task and not a technical intervention driven by unregulated market forces which are out of our control. Many land

activists and development workers oppose the World Bank's MAAR policy organised through Land Banks. They specifically object to MAAR's fundamental premise that land is a commodity subject to market conditions. Land cannot be treated as a commodity as it has a social function in providing the rural poor and the landless with a reliable mechanism through which to improve their livelihood.

The dangers of fast-tracking land reform

While it is commendable that the government strives to become more efficient, there is the real danger that a more thorough-going and developmental approach to land reform will be sacrificed at the altar of “efficiency”. Fast-track programmes are generally doomed to failure as the time and resources available for genuine participation to take place are minimised. The DLA has attempted to standardise the land reform project cycle with specified steps that each project must undergo. The problem is that many staff and officials use the project cycle in a formulaic manner, with little creativity evident. Budget constraints and the pressure to be seen to deliver, reinforce this approach. This mode of operation fails to acknowledge that social process and development work is not only complex and time-consuming, it is also expensive. The fast-tracked, “efficient” delivery is being equated with “good” land reform.⁸⁴ Ironically, even within the DLA’s own systems and project cycles which are aimed at striving for efficiency and fast-tracking, the pace of delivery has remained painstakingly slow and frustrating.

The true nature of rural socio-political and economic dynamics are side-stepped and ignored by this approach – rural dynamics are by their very nature uneven and cannot be straight-jacketed

into rigid project cycles and timeframes. Government policies do not necessarily coincide neatly with existent dynamics on the ground. The pressure on government to “deliver” land reform has resulted in a technicist response which is at best a short-term solution but one that is doomed to failure if the people who have “benefited” from the process do not have the social and economic resources to manage or develop their land. A balance needs to be reached between the degree of attention and resources that are dedicated to the *outcomes* compared to those dedicated to the *process*. Land reform and rural development work more broadly, can only be effective if development is viewed as being an interactive and iterative process.

Whose demands are being heard?

The strictly market-assisted and demand-driven approach overlooks the way in which power relations and tensions within communities determine the way in which the “demand” is expressed and by whom. Essentially, it is those who are already in positions of power in communities who will be heard and who will have the wherewithal to exercise their rights, while those who are currently voiceless and marginalized will be shunted further onto the peripheries of access and development. When asked which programme would cater for the needs of people who were excluded from the LRAD programme, either through self-selection or lack of resources, an official of the Department of Agriculture said, “As the Bible says, “The poor are always with us”. Land cannot be the panacea for poverty. You can only do so much for people and then they have to help themselves and pull themselves up by their own bootstraps.”⁸⁵ While this is not official policy, this perspective does reflect a mind-set that is pervasive in many government departments and on various levels informs the way in which policy

programmes are designed and implemented.

What is necessary?

Back to basics

Land reform activists in South Africa argue that a number of requirements need to be met to work towards genuine transformation. Many suggest that if the land reform programme is to be resuscitated and given full life, it will first be necessary to revisit the fundamentals. There is a need to answer the basic question: What kind of land reform does the country need?

“Is it to be a piecemeal process that caters for the lucky few, while leaving the legacy of apartheid geography largely in tact, or is it to be truly transformative?”⁸⁶

The overarching goals of policy and the mechanisms and related institutions needed to realise the policy need to be scrutinised. The following would need to be addressed:

- The development of a clear vision and perspective;
- The development and guarantee of political support for the policies at national, provincial and local government levels;
- The provision and development of appropriate and integrated mechanisms for implementation;
- The provision of adequate resources and funding;
- The integration with other linked policy areas;
- The involvement of all relevant government departments and civil society sectors – including community-based organisations, non-governmental organisations, relevant trade unions, and current and potential landholder groups.

Land reform is about more than farming

Current land policy emphasises farmer settlement and land access. While there is a place for the development of the commercial and emerging farmers' sector, this should not be at the expense of the majority of poor households who would like to develop their household production in a bid to improve their survivalist existence. Land reform cannot therefore be defined in narrow terms of farming and needs to include a recognition of multiple livelihoods, a range of different land use patterns, and an acknowledgement of the different kinds of relationships people have to the land in terms of identity, community, and religious and cultural beliefs.

Urban land for settlement in both rural and urban settings is also a critical area of need as evidenced by the numerous land occupations in Bredell, Diepkloof and in the Cape Metropolitan area. It would seem however, that the DLA no longer includes land for settlement as being within the ambit of its responsibilities. This aspect of land reform appears to be a homeless orphan that is buffeted between the DLA, the Department of Housing and the various municipalities or metropolitan jurisdictions, with no department assuming responsibility. Provision of land for settlement remains an important consideration for the land reform agenda.

Integration of different aspects of land reform

Any revised land reform programme will require an integration of the restitution, redistribution and tenure reform programmes so that a multi-pronged approach is developed that can reconfigure the rural landscape, address landlessness and foster sustainable livelihoods. This must be done through an integrated and developmental

approach with the involvement of all the necessary participants.

Increasing the involvement of the state

Ben Cousins, of the Programme for Land and Agrarian Studies at the University of the Western Cape, suggests that one area where a new paradigm is urgently required is the respective role of the state and the market. Experience since 1994 suggests that the dichotomy between demand-led (or market-based) and supply-led (or state-based) land reform is not particularly useful. He argues that it is becoming increasingly clear that a piece-meal approach which obliges the poor and landless to take their chances in the land market is not going to deliver land on the scale, at the prices and in the places required. Rather, a proactive state can make use of market mechanisms, *among other strategies*, to drive land reform in areas of high opportunity where need (and demand) are also found.⁸⁷

In a discussion paper presented at the National Land Tenure Conference held in 2001⁸⁸, Lahiff suggests that besides the need to address the broader principles of land reform, the implementation of a workable and effective national programme of land tenure reform will require the development of a wide range of support systems at local, district, provincial and national level. While certain activities can be carried out by landholders themselves, and by existing community-based structures, there will undoubtedly be a need for substantial and ongoing support from the state. Existing state institutions are unlikely to be in a position to provide the range of new services required, although structures such as local government and the title deeds office will have an important role. Four areas stand out as requiring particular attention by the state:

- The creation of a cadre of full-time land rights officials, deployed at local level
- The establishment of land rights authorities in all affected areas
- The establishment of a judicial process for the investigation and settlement of legal matters
- The development of new systems of surveying, registration and certification of land rights in communal areas.⁸⁹

Conclusion

Whether on commercial farms or in the communal areas of the former Bantustans, the insecure land rights bequeathed by apartheid capitalism are in desperate need of reform. This will require robust political leadership that can take on the vested interests of global agribusiness, South African commercial farmers, and traditional leaders alike. Real rights cannot exist on

paper alone. Securing the rights of the rural landless and poor requires the allocation of substantial resources for the implementation and enforcement of a redistributive policy. If tenure reform is to lead to real improvements in the livelihoods of the rural poor it must be integrated with local economic development and the provision of services in previously neglected areas. Securing land rights where people currently reside is a good start, but granting real rights to all those in need will also require substantial redistribution of land currently in the hands of the privileged minority. There is a need for the opening up of debates around land reform and for a process of thorough-going public consultation leading to concrete measures to safeguard the rights of some of the poorest and most marginalized people in the country.⁹⁰

8. Questions for discussion

A number of questions are posed with related page references indicating where the text deals with the issues under discussion:

1. Are there any elements in the land reform legislation which ensure an equal access to quality land to farm workers and poor families?
Pages: 1, 4, 10, 11, 12, 13, 14, 16, 20, 21, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 39, 40.
2. Does the ongoing land reform programme provide access to rural infrastructure, inputs and credits to new small farmers?
Pages: 5, 6, 10, 11, 12, 13, 14, 24, 25, 27, 28, 30, 32, 35.
3. Does the land reform programme provide land and resources to effectively cultivate the land and be self-sufficient?
Pages: 5, 6, 10, 12, 17, 19, 24, 25, 28, 31, 33, 34.
4. Does land reform implementation have any monitoring and evaluation mechanisms and established performance indicators? If so, are the unions involved in monitoring?
Pages: 12, 15, 16, 17, 18, 21, 24, 26, 27, 29, 36, 37, 39.
5. Is there any measure to be taken if there are not enough willing-sellers and if the estimated 30% of land is not offered to be sold?
Pages: 4, 26, 27.
6. Under which conditions will the ongoing land reform programme achieve a transformation in land tenure in South Africa?
Pages: 37, 38, 39, 40, 41.

9. Acknowledgements:

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10. Appendices

Appendix 1.

A brief history of land and agriculture up until the eve of the transition to democracy:

Colonisation

As a result of the arrival in the Cape of the Dutch colonists (who were in search of raw materials as well as land and sea routes to the East) in the early 1650s and then the British colonists from about 1806 (who were looking for markets for their newly developed products of the industrial revolution), the majority of San and Khoi were forced off the land as subsistence farmers and into slave labour for the new settlers. Having oppressed the San and Khoi, the Dutch and later the British proceeded to occupy land being used by the Xhosa speaking people in the Southern and Eastern Cape and conquered it through a number of bitter wars. The Dutch and British then fought between themselves over the occupied land and this caused the Dutch to move into what was the Orange Free State and Transvaal and led to further battles with people already living there when they tried to occupy this land. While many indigenous people were dispossessed of their land, there were still a number of people who remained on the land as viable subsistence farmers.⁹¹

The mining revolution

The mining revolution of the 1867 to 1886 period fostered the conditions for the emergence of capitalist production in agriculture and manufacturing in South Africa. With the growth of new towns and cities around the mining areas, a large market for food was created. With the discovery of diamonds and the intensification of mining, it was in fact African peasants more than the white landlords who first began to supply their surplus produce to the markets created around mining centres. This situation created enormous tension between the white landlords and the peasants. The unwanted competition from the peasant farmers drove the white farmers to urge the state to respond. This they did through the Glen Grey Act of 1896 which shifted communal land ownership to individual ownership and introduced taxes such as the poll and hut tax which had to be paid in cash, which in turn could only be obtained through working on the mines; thereby decreasing the competition with white farmers and increasing the available labour for the mines.

The 1913 Land Act

The colonial state stepped in once again on the side of the landlords and enacted a critical piece of legislation - the 1913 Natives' Land Act - which was to annihilate the little remaining economic independence of the African peasantry and intensify the transformation of peasants into landless wage labourers or labour tenants. The 1913 Land Act allocated 8% of the total land area of South Africa as the only areas in which Africans were allowed to own land.

The 1926 Land Amendment Bill proposed to demarcate further released areas of land for African occupation and contained a number of clauses governing the nature of squatting and labour tenancy. This Bill generated debates amongst farmers as to which or how much land should be released for African use. The debate caused a great deal of controversy and for example, the Natal Agricultural Union held a special conference in 1927 to resolve the issue. One of the arguments put forward was in response to farmers experiencing a shortage of labour and was proposed by a Mr Colenbrander of Natal who complained:

“A Zulu will not work. He is too wealthy. These natives are well off and they will not turn out of the location to work. The amount of land available for natives should therefore be restricted so as to tighten up the whole question of labour”⁹²

In 1936, partly in response to the pressure brought to bear by black rural and urban people organised in the Industrial and Commercial Union (ICU), the land allocation was extended to 13% of the total land through the Native Trust and Land Act. The remaining land was reserved for whites. This Land Act of 1936 also stipulated the number of African families eligible to live on a white farm and thereby destroyed the kernel of the surplus-producing peasants. African peasants were now forced to either become labour tenants who were obliged to supply labour for the newly emerging capitalist farmers, or to sell their labour to the growing mining industry. The state and mining industry viewed the subsistence farming of peasants on the land as the obstacle to them obtaining labour for the mines.

Provision of credit and market protection

The State's intervention in other areas also played a critical role in the development of capitalism in agriculture. One aspect of this was the provision of large-scale credit being made available to farmers. This was done through a range of mechanisms but central to this was the establishment of the Land Bank in 1912.^{xx} Other aspects included the state's role in regulating the conditions in the market for agricultural produce. Initially these measures introduced by the state were fairly *ad hoc* until such time that the capitalist class was reorganised into the United Party in 1934. This heightened degree of cohesion allowed for the promulgation of the Agricultural Marketing Act of 1937 which provided for a single-channel marketing system with prices being determined by control boards on which white farmers dominated. These boards guaranteed commercial farmers prices for their produce. The producer monopoly on the control boards enabled South Africa to stabilise the prices of agricultural goods internally at a level above the world price, while exporting "surpluses" at a loss. One

^{xx} At the end of 1958, farmers owed the Land Bank R55 million and at the end of 1963 this amount had been increased to R134,554,736 in loans secured by property bonds. (*Rand Daily Mail* 9 June 1964 as quoted in Bunting, B. *The Rise of the South African Reich* p.372 IDAF 1986.) By 1968, farmers debts had rocketed to R1,200 million (*Star*, 3 July 1968 as quoted in Bunting, B. *The Rise of the South African Reich* p.372 IDAF 1986.)

consequence of this was that millions of South Africans endured malnutrition because they could not afford to buy food at the prevailing prices on the South African market. As a consequence of this policy of maintaining prices, maize, fruit, milk and other products were occasionally dumped.

The intention behind the Agricultural Marketing Act was to create an environment of stable profitability for capitalist agriculture.⁹³ Alongside this, the state granted subsidies and infrastructure to white farmers in the form of the provision of water, electricity, roads, transport networks to access markets, fencing, and health and education services.

State intervention

The state's interventions took various forms in order to create suitable conditions of accumulation for agriculture and were the outcome of ongoing political struggles within the ruling class itself during the first half of the 1900s. In particular, the mining industry opposed the introduction of state subsidies to farmers and the protective marketing mechanisms offered to them as these in turn increased the tax burden and costs of the mining industry.

Examples of the way in which the state intervened and supported commercial farmers can be seen in the state's role in the provision of water and transport infrastructure - capitalist agriculture has always been given preferential treatment in relation to the country's water supply and use patterns. Big farmers had unlimited access to and controlled rivers that passed through their land and the National Party government built supply dams and irrigation systems to meet the needs of big commercial farmers. The agricultural sector came to use 50% of the available water in South Africa.

With the development of capitalist agriculture and the initial shift away from the colonial transport infrastructure that was geared towards export markets and therefore ports and harbours, the government began to develop transport infrastructure that now focused on industrial centres in the hinterland and their links with commercial farming areas.

The proletarianisation of small farmers

One of the effects of the particular path of the development of capitalist agriculture was that huge numbers of small Boer landowners lost their land and were forced into living in poverty conditions in the urban areas. This proletarianisation of small white farmers led to the emergence of what was described as the "poor white problem". By 1933, conservative estimates indicated that one-sixth of the white population of 1,8 million had been made "very poor" by the development of capitalist agriculture, whilst a further 30% were "poor" enough not to be able to "adequately feed or house their children".⁹⁴ The development of capitalist agriculture thus proletarianised both black and white producers, but did so unevenly. White, predominantly Afrikaans-speaking proletarians could move freely to the urban areas whilst blacks were subject to

forms of influx control and the despised pass system. By the end of the 1930s, the vast majority of rural Africans were rapidly being proletarianised and the urban African population almost doubled from 1921 to 1939. Subsistence farming in the rural areas on which the migrant system rested and which literally fed the accumulation of capital in South Africa was rapidly being eroded. The beginning of the 1930s saw the establishment of a series of government commission reports which spoke of "acute landlessness, overcrowding, serious soil erosion, the creation of desert conditions and the spectre of mass starvation" in the reserve areas.⁹⁵

Resistance

The period covered thus far witnessed bitter class struggles and resistance to dispossession and proletarianisation. Several petitions were sent by representatives of the African peasantry and the clergy to the British government in response to the exclusion of blacks in the Cape from voting after the Union of South Africa was declared in 1910, and in response to their dispossession of the land.^{xxi} Their petitions met with little response and with the introduction of the 1913 Land Act, the struggle on the part of the dispossessed and disenfranchised was intensified. Political and social movements emerged in a bid to mobilise around the struggle for political and land rights. The African Native National Congress (later named the African National Congress) was formed with the aim of challenging the imminent 1913 Land Act. In 1919, the Industrial and Commercial Workers Union (ICU), was formed in urban and rural areas to struggle around issues of living conditions and land rights, and enjoyed a large following among rural peasants.

Land invasions and squatting become a weapon of resistance both in rural and urban areas as a way of demonstrating the situation of the landless. Demands and programmes were developed around land rights. These included the Ten Point Programme^{xxii} of the Unity Movement that was adopted in 1943 and the Freedom Charter^{xxiii} of the ANC-led Congress Alliance adopted in 1955.

Apartheid land reform and control

With the coming to power of the National Party in 1948 a series of laws were introduced to control the movement of people and their rights to land. These

^{xxi} Prior to 1910, blacks in the Cape could vote if they had property.

^{xxii} The Ten Point Programme outlined the following:

"Full equality of rights for all citizens without distinction of race, colour or sex... Revision of serfdom at present existing on the land must go, together with the Land Acts, together with the restrictions upon acquiring land. A new division of the land in conformity with the existing rural population, living and working on the land, is the first task of the democratic state and government and parliament."^{xxii}

^{xxiii} And the Freedom Charter stated:

"The land shall be shared amongst those who work it! Restrictions of land ownership on a racial basis shall be ended, and all land re-divided amongst those who work it, to banish famine and land hunger; The state shall help the peasants with implements, seed, tractors and dams to save the soil and assist the tillers; Freedom of movement shall be guaranteed to all those who work the land; All shall have the right to occupy land wherever they choose; People shall not be robbed of their cattle, and forced labour and farm prisons shall be abolished."

included the Group Areas Act, the Population Registration Act and a string of influx control laws. This legislation built upon a number of other pieces of legislation that, together with the 1913 and 1936 Land Acts, controlled access to land and determined economic relations. These include:

- The 1923 Native (Urban Areas) Act which made provision for the accommodation of blacks in segregated urban areas.
- The 1927 Native Administration Act which placed the system of tribal government under white control.
- The 1934 Slums Clearance Act which laid down minimum standards for housing and allowed for evictions and the expropriation of properties deemed to be slums.
- The 1937 Native Laws Amendment Act which prohibited blacks from buying land in urban areas.
- The 1945 Black (Urban Areas) Consolidation Act which consolidated the laws relating to the control of blacks in urban areas and the provision of residence for blacks in these areas.⁹⁶

Racial land demarcation

By the time the National Party came to power in 1948, urban and rural land in South Africa was firmly defined along racial grounds. Freehold communities living outside the areas scheduled as "native" areas were viewed as "black spots" and were in constant threat of removal. However, security of tenure was not even guaranteed to those who lived within the scheduled areas. The Land Acts had affected the security of tenure of labour tenants and evictions from farms continued. Some of the evicted tenants sought work in urban areas while others went to black freehold areas in the reserves. By the 1940s the influx into the reserves and black freehold areas resulted in overcrowding and sustainable agriculture in these areas became very difficult, if not impossible. Many men turned to migrant labour as a source of income, and had no choice but to leave their families, women, children and the elderly and less physically able people in the rural communities to eke out an existence on the land.⁹⁷

The policy of separate development led to the creation of Bantustans in accordance with the Promotion of Bantu Self-Government Act Number 46 of 1959, which served to formalise the reserves into administrative blocks in a bid to control black people. The implementation of this policy led to a violent programme of forced removals.

Labour tenancy and increased mechanisation

The system of labour tenancy - people working and living on white farms and getting accommodation and a piece of land to farm in return - increased as land dispossession intensified. Labour tenancy initially suited the agricultural sector in that:

- labour tenants seldom get paid wages and poor white farmers who could not afford wage labour could then exploit the labour of the tenants and their families

- labour tenants and their families lived on the property and this solved the white farmer's problem of the availability of labour
- labour tenancy responded to the labour-intensive needs of the early period of the development of capitalist agriculture in South Africa.

However, with the introduction of more capital intensive commercial farming on the part of the wealthier white farmers, labour tenancy became less desirable to the agricultural sector. With the advent of access to credit from institutions such as the Land Bank (as a benefit resulting from the support offered by white farmers to the National Party in the 1948 election), farmers could engage in more capital-intensive methods of farming that included increased mechanisation in the form of tractors, irrigation schemes and harvesting equipment, thus becoming less dependent on labour tenants. This situation led to an increase in forced removals and evictions sanctioned by the state.

At the same time however, poor farmers with less access to credit still relied on labour tenancy and this, even though the practice was outlawed by the state in 1979, served to retard the erosion of the labour tenancy system to a degree. In the decade from 1963, the process of mechanisation was intensified and the labour tenant system was increasingly replaced with the contract labour system whereby individual workers came from the Bantustans for a contracted period of service.

With the increased levels of mechanisation came a growing differentiation amongst capitalist farmers. A small grouping was made up of highly mechanised, capital intensive commercial farmers with growing links to the major monopolies.^{xxiv} This minority grouping came to dominate the organisations in the agricultural sector and by the late 1970s it began to see marketing control measures as a hindrance on its ability to generate profit. This approach caused tensions between them and the less mechanised smaller farmers who still required protection and support from the state.

The situation at the end of the 1980s

Forced removals

Excluding the many people who had been dispossessed of their land due to colonial conquest and wars of resistance or who had "chosen" to move because of the prevailing conditions on the white farms, in the period between 1960 and the early 1980s, over 3,5 million people had been forcibly removed from where they had been living and the state had earmarked a further 2 million removals in terms of its policy of separate development.⁹⁸ Of those who were forcibly removed, the majority were farm workers and labour tenants.

^{xxiv} At the time these consisted of Anglo American Corporation; SANLAM; Barlow Rand; Rembrandt; Volkskas; South African Mutual; Anglovaal and South African Breweries.

The beginnings of economic decline

By the early 1970s the economic boom that had sustained South Africa in the post war period had reached the limit of its potential. After 1973 the growth rate of the South African economy began to shrink, as evidenced by the declining growth rate figures for the following periods: Between 1962 and 1972 the economy grew by 5,5%, between 1972 – 1981 it grew by 3%, and from 1981 to 1986 it grew by 1,1%⁹⁹. As with the economy in general, agriculture declined steadily from 1975.

Foothold gained by commercial farmers and agri-business

In 1986 farmers' debt stood at over R13 billion.¹⁰⁰ This situation caused many farmers to sell and move off the land, thus creating a vacuum and causing a change in the concentration of land-ownership by means of the increasing penetration of the agricultural sector by large conglomerates and agri-business. The penetration of big commercial agriculture in the Bantustan areas made a huge impact and was accompanied by widespread land dispossession, poor living and working conditions, and low wages. The development of rural areas and agrarian reform became increasingly directed and controlled by hi-tech capitalist farming linked to agro-industry and local and international capital. The following cases illustrate the extent of the foothold gained by big business in this sector during this period.

Through its Soetvelde farms, Anglo American Corporation established megafarms in the Eastern and Northern Transvaal, Northern Free State and Northern Natal. It also established Rhodes Fruit Farms in the Western Cape. Anglo went into sugar estates via CG Smith Foods, in which it acquired a stake through its subsidiary, Barlows. Through Mondi, Anglo also entered the forestry sector. Through another forestry company, Sappi, Sanlam, the large insurance and finance house too entered the sector. Gencor engaged in cattle and maize farming through its subsidiary, Kanhym Estates.¹⁰¹

APPENDIX 2.

Department of Land Affairs Organizational structure ¹⁰²



Minister of Land Affairs								
Deputy Minister of Land affairs								
Director General						Chief Land Claims Commissioner		
<u>Policy Unit</u>	<u>Internal Audit</u>		<u>Communication Unit</u>		<u>Monitoring and evaluation</u>		<u>Transformation Unit</u>	Parliamentary Office
DDG: Financial Officer				DDG: Land Planning and Information			DDG: Land & Tenure Reform	
Chief Directorate: Financial Management		Chief Directorate: Corporate Services	Chief Directorate: Deeds Registration	Chief Directorate: Cadastral Surveys	Chief Directorate: Surveys & Mapping	Chief Directorate: Spatial Planning and Information	Chief Directorate: Land Reform	Chief Directorate: Land Tenure Reform
Directorate: Financial Administration	Directorate: Financial & Support Services	Directorate: Human Resources And Development	Directorate: Financial and technical Support	Directorate: Cadastral Spatial Information & Professional Support Services	Directorate: Spatial Info & Prof. Supp. Services	Directorate: National Spatial Info. Framework Services	Directorate: Land Reform Implementation Systems	Directorate: State Land Support Services
Directorate: Legal Services	Directorate: Legal & Admin Support	Directorate: Information Services	Deeds Offices: JHB,CT.BFN, KMB,PTA,PMB. UMTATA, VRYBURG	Surveyor General Offices: CT,BFN,PMB, PTA	Directorate: Survey Services	Directorate: Land Development Facilitation	9 DLA Provincial Offices	Directorate: Land Tenure Reform Implementation Systems
					Directorate: Cartographic Services	Directorate: Spatial Planning Policy		Directorate: Redistribution Implementation System

Appendix 3.

Legislation which technically covers farm workers and agricultural labour:

- *The Labour Relations Act No. 66 of 1995* regulates the relationship between employee and employer in the workplace and includes the following aspects:
 - The employer may not discriminate against an employee
 - The employer may not dismiss an employee without fair reason and without following a fair procedure
 - Freedom of association – employees may belong to any organization, political party or trade union.
 - Wages and conditions of employment are to be negotiated.
 - *The Basic Conditions of Employment Act No. 75 of 1997* sets out the minimum standards and conditions to be adhered to by employers and employees.
 - It covers issues such as hours of work, wages, tasks, and leave arrangements.
 - A family member of a farm worker cannot be forced into a service contract – if a family member who lives on the farm chooses to work elsewhere they are protected. The farm owner may not dismiss their partner, husband, wife, or parent if the farm dweller related to a farm worker chooses to work elsewhere.
 - The service contract must specify the length of service period. The owner is not allowed to dismiss an employee if one of the employee's relatives stops working on the farm.
 - If the contract is broken, either party can be taken to court.
 - *The Unemployment Insurance Act* covers registered workers should they have been working for the owner for more than 13 weeks and become unemployed, ill for more than 2 weeks or require maternity leave for up to four months. The Unemployment Insurance Fund (UIF) pays 45% of an employee's last wage. If an employee loses their job, they can claim one week's UIF for every six weeks that they have worked, up to a maximum of six months.
 - *The Employment Equity Act No. 55 of 1998* forbids unfair gender discrimination and serves to protect the rights of women farm workers in the interests of gender equity.
 - *The Skills Development Act No. 97 of 1998* forms part of a strategy to improve the skills of the South African workforce. Certain categories of farmers are required to comply and pay a skills levy under certain conditions. Some of these conditions are that their workforce is made up of more than fifty employees; that their annual payroll is more than R250 000; that they pay PAYE tax for their employees. In theory, while this Act covers agricultural workers the set conditions or exclusions and the lack of enforcement invariably mean that this does not have a positive impact on farm and agricultural workers.
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