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POLICY OPTIONS 2

LAND DEMAND, TARGETING & ACQUISITION IN SOUTH AFRICA'S LAND REFORM

Ruth Hall

Programme for Land and Agrarian Studies
School of Government
University of the Western Cape
Private Bag X17
Bellville 7535
South Africa

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1. INTRODUCTION

The “willing buyer, willing seller” principle places voluntary land transactions at market price at the centre of redistribution policy and leaves key strategic decisions unresolved – which land will be acquired, how, for whom, how it will be allocated and for what purposes. A range of actors – government, social movements, non-governmental organisations (NGOs), activists and policy advisors – are now agreed on the need to expedite the redistribution of land and to search for alternatives to the current reliance on a “willing buyer, willing seller” approach. If the land reform programme is to move beyond reliance on markets, alternatives will need to be found. Already, new approaches are being explored by government and others.. However, there are few concrete proposals that can inform dialogue on policy alternatives.

Radical reform that might transform property relations and restructure the agricultural sector has been severely circumscribed in South Africa by a negotiated transition and broadly neo-liberal economic policy, specifically the deregulation of the agricultural sector that involved the removal of key state functions such as price controls, marketing, and heavily subsidised credit. Moving beyond a market-based approach to land acquisition will need to be located within a wider policy shift.

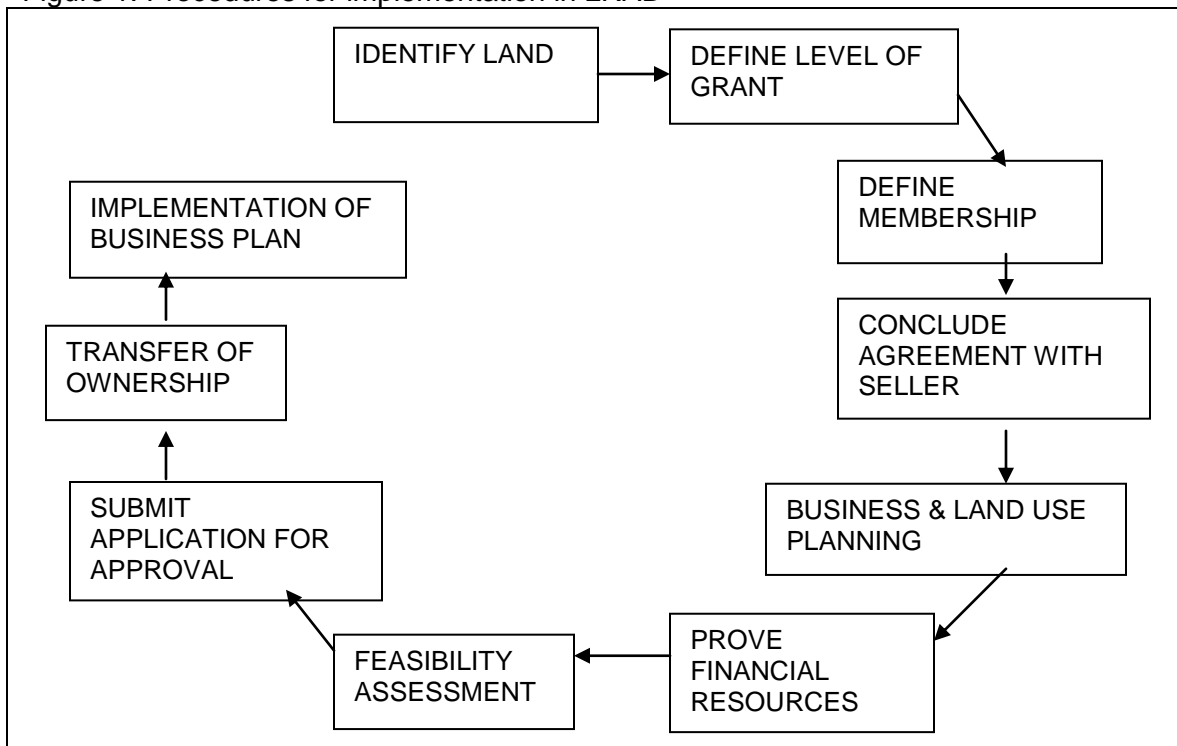
This paper is intended as a discussion document to support the development of alternatives, while recognising that technical fixes cannot substitute for, but will rely on a political force of landless people and their allies mobilising for land reform. It describes existing policy obstacles and variations in practices of implementing land redistribution in South Africa, and identifies innovations that may be considered to be examples of “best practice” which, if scaled up, could contribute towards policy solutions. In conclusion, it sets out a schematic description of how a “proactive needs-based” approach to land reform might address a number of the problems encountered to date.

2. HOW LAND IS CURRENTLY IDENTIFIED AND ACQUIRED

“Willing buyer, willing seller” (WBWS) loosely describes how land is identified and acquired for redistribution, and how land prices are determined, within the current South African market-based land reform (Lahiff 2005). Its core elements are non-interference with land markets and unwillingness by the state to expropriate land for land reform purposes or, until recently, to enter the market as a market-player; reliance on landowners to make available land for sale; self-selection of beneficiaries; and the purchase of land at market price. Related features of the market-based approach are the preference for commercial forms of production and a prominent role for the private sector in services such as credit and extension to beneficiaries (Lahiff 2007). In short, WBWS has led to the state not taking responsibility for making a success of land reform.

The project cycle, as described in the main programme of redistribution, Land Redistribution for Agricultural Development (LRAD) policy, defines the responsibilities of applicants in “procedures for implementation” (see diagram 1 below). This shows how the onus to identify land that is for sale and that could meet their needs falls on applicants – though it is envisaged that they may receive help from government officials and from estate agents. Although commonage and Extension of Security of Tenure Act (ESTA) projects may have different phases, in different sequence, this can be considered the dominant official vision of how redistribution is to be implemented.

Figure 1: Procedures for implementation in LRAD



Source: MALA 2001

This policy approach makes redistribution contingent on the willingness of landowners to sell, and limits the choice available to applicants to that which is currently offered on the market, which may not be appropriate in terms of size, location and quality. Where landowners are willing to make suitable land available for sale, the main problem with the willing buyer, willing seller approach is the contradiction between three main elements:

- ❑ The grant structure
- ❑ The cost of the land
- ❑ The limits on group sizes.

The problem could be stated like this: where people are too poor to access LRAD grants above the entry level of R20,000 per person, the need to amass enough money to buy a farm offered for sale still prompts a 'rent-a-crowd' phenomenon, which was also witnessed under, and blamed for the poor performance of, the previous Settlement / Land Acquisition Grant (SLAG) programme. The failure to increase the grants over time while land prices have risen has only aggravated the problem. Further, there is simply no means of making available small areas of land. The absence of a proactive mechanism to subdivide land means that, in most instances, farms must be bought in their entirety, thereby forcing people who might have wanted a small amount of land for themselves to take on a whole farm with a group of co-applicants with whom they may have little in common, leading to problems of defining rights and of cooperation in use. Recognition of this led to the imposition of limits on group size – as low as 5 to 10 members per project in some provinces (Jacobs et al 2003). This has meant that increasing the number of people is no longer allowed, effectively putting much land out of reach of would-be applicants who do not have their own capital, and mitigating against the poor being able to get access to land through land reform.

So two factors – the grant structure and reliance on land being offered for sale – have led to a widely recognised mismatch between applicants' needs and the available land. This can lead either to projects not going ahead or applicants opting for land or group sizes inappropriate to their needs. Surplus People Project (SPP), for instance, has worked with a particular community that has repeatedly tried, and failed, to acquire land. In its most recent attempt, the community tried to buy a farm near Aurora in the Western Cape, but could not gather together sufficient applicants to make up the asking price of the whole farm and, although they did not want the whole farm, there was no mechanism to subdivide it into portions suited to their needs and capabilities (Millford 2006: pers. comm.). As a result, they remain landless.

While WBWS is widely understood as a non-coercive and non-disruptive means of acquiring land and compensating landowners, it also imposes the logic of the market on would-be beneficiaries, who have to fit their expectations to what the market offers. **Two key lessons are the need to end the reliance on land being offered for sale, and the need for a mechanism to promote subdivision on a regular basis.**

But changing the way that land is acquired does not by itself lay the basis for a new approach to land reform. While much attention in the plethora of policy initiatives since the Land Summit in 2005 has been focused on how land is acquired – WBWS, negotiation, expropriation – little has been focused on who is to benefit and therefore how land will be identified for redistribution.

Who is to benefit?

Policy names specific categories of people as priority groups to be targeted, namely the four “marginalised groups” of women, farm workers, the disabled and the youth (35 years and below). These are apparently a proxy for the “poor”, introduced after the removal of the criterion that limited eligibility on the basis of a means-test. Whether they predominate among beneficiaries is far from clear. These groups may get preference in evaluation of project proposals. However, there is no differentiated strategy to seek out these groups and then give them priority. Further, the focus on “marginalised groups” is in tension with the “own contribution” required by LRAD which, according to policy, is intended both to demonstrate and to result in commitment by beneficiaries to dedicate themselves to farming, which in turn is supposed to lead to project success (MALA 2001). These arguments, however, are more moral than empirical; they also imply that the better-off are more committed, since this is recognised in the form of own contributions of capital, assets and loans.

The requirement to submit business plans also generates exclusions. Income targets have been used in the past, which required applicants to demonstrate their anticipated profit in the first year of operation – effectively making the majority of poorer applicants ineligible (Jacobs et al 2003). The criteria being applied in Provincial Grants Approval Committees (PGACs) might not only result in applications being rejected, but may also lead consultants and planners to encourage applicants to take out large loans as one way to make the figures work on paper.

Which land is to be redistributed?

Privately owned land must be targeted. A common perception that there is lots of state land that could be redistributed is fallacious. A total of 80.4% of all land in South Africa is in private hands and, of 24 million hectares of state land, 18.5 million is communal areas in former homelands, national parks, provincial parks and other protected areas. Of the remaining 5.5 million hectares of state land, the largest category is ex-SADT land outside of the former homelands (ie. acquired for homeland consolidation) and land acquired for land reform purposes (DLA 2002). Other smaller categories of state land, in descending order, are public works land, provincial land, land controlled by government departments of Water Affairs and Forestry, Defence, Correctional Services (DLA 2002:1).

However, with regards to private land, there is no spatial targeting of land directed from the national level. District and provincial offices have made decisions about where resources should be prioritised. The choice of land will depend on a range of factors, such as concentrations of population. A priority now is to determine how a programme of land reform should target people and land – and match these. There is therefore a need to identify differentiated land need. Such questions will be even more crucial in any future policy based in “need”.

Box 1: Western Cape LRAD Study

In a Western Cape study, some of the main factors influencing failure in agricultural land reform projects were a shortfall of cash, inadequate land and infrastructure, inappropriate group size and mismatched expectations. This study, commissioned by the Provincial Department of Agriculture (PDOA), recommended a more hands-on approach by the state to specifying the size, location and acceptability of land for redistribution. To avoid the collapse of projects due to indebtedness, it proposed that the state buy land for the use of beneficiaries, rather than relying wholly on applicant purchases of land. The scattered pattern of land redistribution projects also meant that support was dispersed and ad hoc. The report proposed that geographical clustering of projects could enable participants to share movable assets and equipment, to network with and support one another, to collaborate in marketing, buying and bargaining, and would create opportunities for more cost-effective state support, such as training and extension. It found that business plans are typically based on unrealistic assumptions and that there is both pressure and incentive for consultants to make unrealistically optimistic projections of profit.

Source: Agri Africa 2005

A further result of the market-based approach is the dispersed pattern of redistribution, in which individual properties are acquired one-by-one, requiring separate planning in each case. This precludes economic of scale in planning for whole areas where land could be redistributed, as well as the provision of infrastructure appropriate to new land users and uses. This may be characterised as a “mosaic” pattern of redistribution which proceeds in an ad hoc manner. In contrast, acquiring and allocating land at scale will require moving to acquire whole blocks of properties in areas of high demand, in a “partition” model. A combination of these may be needed, but partition approaches will be important in particular in the areas surrounding rural towns and around the edges of the communal areas. Planning for blocks of properties, as in Zimbabwe’s resettlement programme of the 1980s, would reduce planning costs including those of land surveyors and conveyancers involved with subdivision and transfer (if land is to be transferred in private title).

3. RECOGNISING AND RESPONDING TO DEMAND

"If land reform is to be driven by demand, and the people who most need land have low organisational capacity, it is doubtful whether their needs will be heard or met" (Marcus et al 1996).

Land reform in South Africa is described in policy as a "demand-led" programme. However, demand for land is not self-evident. Demand or need or desire for land is expressed in a variety of ways, many of which do not elicit effective responses from the state. This suggests that our conception of the demand for land must be problematised. How is demand expressed? How can policy respond to demand? In what way is it, or could it be, or should be, 'demand-led'? "Demand" is understood in the narrow, economic sense, as those who are capable of articulating their demand and steering it through the market and bureaucratic hurdles. This can be contrasted with a "needs-based" approach where the state would play a proactive role in identifying needs and translating these into specific proposals.

Evidence on access to information about land reform shows that articulated "demand" is limited at least in part due to lack of awareness. A study published by the Human Sciences Research Council (HSRC) shows that awareness is highly determined by location and class position. Awareness was strongly correlated to levels of formal education and household income: only about 3% of its respondents who were farm workers, living in communal areas, or in urban formal or informal settlements were found to be well aware of what the land reform programme is about, compared to 75% of commercial farmers (HSRC 2005).

Even where "demand" is expressed by would-be applicants approaching an office of the Department of Land Affairs (DLA) or Department of Agriculture, there are few options for the state to respond to this demand and many who get as far as articulating demand in this way have been unsuccessful. There appear to be a range of falling-off points that prevent people from applying, or applying successfully. The causes of fall-off between application and approval are widely known, but have not been documented – nor do records exist to show who falls out of the system because they cannot identify suitable land to meet their needs, because they cannot sustain the costs – financial and time – involved in applications, because they lose faith in the process, or because land available for sale cannot be found to meet their needs. Early studies of the pilot programme showed that the process tended to privilege those with education, resources, transport and social networks (Murray 1997).

Not only does "demand" not necessarily lead to the supply of land to would-be beneficiaries. In many respects, redistribution in South Africa is not led by demand. In some instances, the land is first identified and only then is an effort made to identify appropriate people to benefit from it, in sufficient numbers to make up the asking price of the land. Projects initiated by the state or landowners or private sectors are prevalent in some areas, as has been seen with introduction of the Proactive Land Acquisition Strategy (PLAS) in 2006. Far from being driven by demand, most equity schemes are initiated by landowners, and in some cases the "applicants" (usually farm workers) have even been unaware of the proposed project at the time the application was submitted to

the PGAC for approval. One such example was the Buffelsjag Project in the Overberg (Kleinbooi 2006: pers. comm.).

Contrary to policy pronouncements, then, not all projects are “demand-led”. Instead, there appear to be a wide variety of ways in which land reform projects are initiated, including:

- ❑ Landowners approaching the state
- ❑ Landowners approaching applicants
- ❑ State approaching landowners, and
- ❑ Applicants approaching the state.

What is missing from all this is a serious effort to match land to the real needs of applicants.

4. WHAT DO WE KNOW ABOUT LAND NEEDS?

Who wants land, how much, where and for what? There is little agreement on these core questions, which must lay the foundation for policy. The variety of land required, in what proportions and in what regions of the country is unknown. Instead, debates rest on assumptions, fuelled by contradictory evidence, partly because different studies have adopted different conceptions of what constitutes land demand and employed varying methodologies to test this. Attitudinal surveys have attempted to quantify the extent and nature of the demand for land, as well as providing a profile of who wants land for what. They have different ways of framing the issue, and have surveyed different target groups.

4.1. Attitudinal surveys

In 1996, the Land and Agriculture Policy Centre (LAPC) conducted a national survey which found that 67% of respondents wanted land they could live on and use for production, but nearly half (48%) wanted one hectare or less (Marcus et al 1996). As the book observes, "These are extremely modest demands. But cumulatively, on a national scale, they are significant" (Marcus et al 1996). To indicate the potential scale: providing just one hectare for 48% of the black rural population today could be in the order of 3 million hectares, quite apart from dealing with larger land needs. The study emphasised the importance of access to land as a safety net as well as a productive asset and concluded that the demand for land cannot be reduced to those wanting to farm, or those wanting to farm commercially (Marcus et al 1996).

In stark contrast, some years later the Centre for Development and Enterprise (CDE) conducted a survey which found that only 9% of black South Africans have "clear farming aspirations" and that this figure was higher among farm workers, 15% of whom expressed a clear desire to produce on their own land (CDE 2005:14). It also found that employment and housing are higher priorities than land. However, this study framed the question very narrowly, asking whether people would be prepared to farm even if this entailed great difficulty. And the study did not include people who are already farming in the sample – for instance the estimated 1.3 million small-scale farmers in the former Bantustans (NDA 2004:6).

A third survey by the Institute for Justice and Reconciliation (IJR) found that among black South Africans that 57% of respondents rated the land issue as 'very important', behind unemployment at 89% and poverty at 86%. It also found that the demand for land is a widespread political demand, with 85% of black respondents agreeing that "land must be returned to blacks in South Africa, no matter what the consequences are for the current owners and for political stability in the country" (Gibson 2001). This suggests that there is strong support for land reform, even from among those who do not personally aim to benefit – in other words, a societal rather than an individual demand.

The HSRC survey of 2005 found a high demand for land (over 55%) among farm dwellers and residents of urban informal settlements, and slightly lower demand among people living in urban formal settlements and in communal areas. Contrary to common perception, the demand for land was high among young people and highest in the 25-34

year age range. The reason most cited for wanting land was to grow food, with well over half of respondents in all the surveyed areas saying this was their priority. A much smaller proportion of respondents (ranging from 13% to 21%) said they wanted land to increase their incomes, while a similar number (ranging from 15% to 34%) said they wanted land because this would provide them with a secure place to stay. Less than 1% said they wanted land as a source of collateral for credit. Land for food and security were higher priorities for women, with men more likely to say that they would use land to increase their incomes. However, this margin of difference between women and men was small. The majority of respondents said they wanted one hectare or less, and three-quarters cited less than 5 hectares – figures similar to the LAPC study a decade earlier (HSRC 2005).

Three key issues emerge from these surveys. First is the need to understand that demand, or need, is differentiated and geographically distinct – people need different types of land in different sized parcels, for different purposes, in different areas. Second, land need does not exist in isolation from demand for other assets and social goods and services, though the phrasing of survey questions can make it seem so. While some in South Africa argue that what most poor people want is jobs, rather than land, securing access to land and rights to remain on that land may be a route to addressing other needs, such as getting access to schools, clinics and jobs. Third, land need does not exist in isolation from opportunities for that demand to be met. In other words, people are more likely to frame their demands in terms of land if it seems likely that this demand might be met. Present articulated demand for land therefore may also be constrained by the very evidently limited opportunities to acquire and use land effectively within the existing agrarian structure.

While the focus of recent debate has tended to fall on how to get the land (the supply of land and the mode of acquisition), a new policy approach should take the land need and the intended nature of land use as a useful starting point. To understand need, it is not enough to ask people: do you want land? This is a useful starting point. But we should look at the conditions in which people are living and actions they take to get access to land.

4.2. Actions that demonstrate need

People show they need land in a range of ways other than approaching a DLA office. They might take action to gain access to land, legally or illegally. Occupation of land, in rural or peri-urban areas, demonstrates need expressed by people voting with their feet. Sporadic occupations of agricultural land or unsanctioned use of grazing, and widespread encroachment on public and private agricultural land, for instance in KwaZulu-Natal, also denotes a demand for land for productive as well as residential purposes. Unmet demands for land can and do lead to conflict, such as land disputes in formal and informal courts. Evidence that might imply latent demand includes the level of violence in rural areas, including murders of landowners, which suggest widespread resentment (Human Rights Watch 2001).

4.3. Objective need

Where no application is made, and even where people do not demonstrate their need by occupying land, this does not mean that there are no land needs, and this will have to be the subject of investigation in a proactive strategy to drive forward land reform. Certain categories of people who are living without secure access or rights to land might be considered to have “objective need” for land, whether they articulate this demand or not. In other words, they need land because of the situations in which they find themselves. Categories of people with “objective need” include (i) evictees from farms and from other settlements, (ii) farm dwellers whose tenure is under threat, (iii) labour tenants, (iv) landless livestock owners, (v) commonage users on overstocked commonage land, (vi) residents of informal settlements and backyard shacks, and (vii) people occupying or encroaching on public or private land. Land need is obvious, for instance, where access to land has been withdrawn, as in the case of farm worker evictions, which often lead not only to the loss of a home but also to a loss of land-based livelihoods, including access to small parcels of arable land, as well as the loss of livestock (Wegerif, Russell & Grundling 2005). In addition, there exists widespread agreement that there is heightened land need among the landless or near landless in the overcrowded former Bantustans for access to land in their vicinity and along the borders and that this must be a priority area to target for proactive land reform (CDE 2005, Cousins 2006).

4.4. Society's needs

Demand has been conceived in policy as being the demand of individuals or households but, if the aim of land reform is to lift people out of poverty, then there may be “demand” for land reform at a societal and macroeconomic level. The state, and society as a whole, has an interest in land reform. Yet national policy contains no clear mechanisms for prioritisation – of which people should get land, which land should be redistributed, or of the type of land use to be promoted – and therefore what role land reform plays in broader restructuring of the economy and of society. Except for reserving land reform for black South Africans, current state policy is agnostic on these centrally important questions.

5. INNOVATIVE WAYS OF WORKING WITH NEEDS / DEMAND

Whether, or how, the state works with people's land needs and facilitates their expression may elicit different kinds of and different levels of demand. If real demand for land, in other words land need, is to inform a planned and proactive approach to land reform, the state, NGOs and other agencies will need to explore more effective ways of understanding needs and eliciting demand. There have been some innovations in this direction.

The most direct way of supporting landless people to access land would be to insert a **social obligations clause** in the Constitution, as has been done in Brazil, that affirms that right of landless people who openly occupy unused land for basic livelihood purposes. This would provide legal protection to occupiers, instead of criminalizing such actions (Wegerif 2005). Although this was a resolution of the Land Summit, this proposal has not been taken further by government. The clause in the Constitution of Brazil reads as follows:

The individual who, not being the owner of rural or urban property, holds as his own, for five uninterrupted years, without opposition, an area of land in the rural zone, not exceeding fifty hectares, making it productive with his labour or that of his family, and having his dwelling thereon, shall acquire ownership of the land. (Article 191, Constitution of Brazil).

Alongside, or pending, a social obligations clause, a range of ways of recognising and responding to land need, or "demand", will be needed, and some positive examples of how this might be done are already evident. The introduction of area-based planning (ABP) in early 2007

Working with Nkuzi Development Association and the Land Claims Commission, Makhado Local Municipality in Limpopo has **mapped restitution claims** in its jurisdiction, using geographical information systems (GIS) technology (Aliber 2006, Wegerif 2006). This provides an overall picture of where people have expressed demand for land by submitting land restitution claims or labour tenant applications. Motheo District Municipality in the Free State has similarly started to map out claims in its area, as a starting point for negotiating with claimant communities about long-term development needs (Chakache 2006: pers. comm.).

In the case of the Karoo-Hoogland District, the municipality would not deal with individuals expressing their land needs, and so prompted people to form **small-scale farmer associations** consisting mostly of people who have neither land nor livestock – but use the term "farmer" as an aspirational category as a basis on which to organise themselves. Membership of such an association was recognised as demand for land, and Phuhlisani Solutions was employed to work with the members to assess the land need and report on the range of land needs and ways in which these needs could be met. GIS was also used to **map priority areas of need**. A participatory forerunner to area-based planning, this involved identifying the farms required to meet identified needs of poor people wanting land for small-scale cultivation and grazing through to large-scale commercial farming. This is now to be used by the municipality to negotiate with

landowners to sell their land, and particularly to approach absentee landowners to negotiate lease and land-sharing agreements with small-scale livestock owners (Mayson 2006: pers. comm.). The result was a strategy to acquire further commonage land for the use of those wanted land for small-scale livestock grazing and cultivation, but also provided for people to scale up their production over time and move from commonage onto privately owned land – which has already been identified and is to be purchased. This is an unusual, and positive, example of really exploring needs as a basis for planning, laying the basis for a variety of land acquisition methods. However, the municipality has limited scope to act on its plan, since land acquisition budgets and the delegated authority to acquire land is held by provincial offices of DLA. Institutional cooperation, or restructuring, will be needed if the plan is to be implemented.

BOX 2: Local government

There is a widely recognised mismatch between land reform, under a national government department, and decentralised processes of local economic development (LED). While municipalities are required to address issues of land reform, settlement and agriculture in their Integrated Development Plans (IDPs), it is clear that this seldom happens. Land gets filtered out in favour of higher priorities, and land for urban settlement development is usually prioritised over rural and agricultural land – where municipalities have been hesitant to use their jurisdiction. Municipalities have been largely absent as players in land reform, other than in making available commonage land. Some municipalities have taken proactive steps both to cancel leases with commercial farmers and make their commonage land available to disadvantaged land users, particularly livestock owners. Some municipalities have gone further and extended their commonage to address land needs of their residents. However, some municipalities have taken a proactive approach to meeting identified land needs. For instance, in Siyancuma Local Municipality in the Northern Cape and the Cedaberg Local Municipality in the Western Cape, municipal managers have initiated processes to acquire additional land for livestock owners on the overstocked commonage.

Land needs assessments have been widely discussed, but methodologies for conducting such assessments are not well developed. The ABP process currently underway shows that, while it is agreed this is necessary, both government and its service providers have not found such a methodology, and that this requirement has been waived in some of the ABP processes. Public meetings, sometimes held as part of IDP consultations, have been considered to assess need. There is therefore a need for new methodologies to assess desires and needs for land. As one NGO worker said, “You can’t just have a questionnaire or have one meeting; we need to be developing a methodology for assessing demand. It is not quick and easy. And it will be difficult to disentangle the demands for lands from demands for water, and so on.” Some of the ways in which “land need assessment” might be pursued at a local level could be the calculation of categories of people with objective land need (as described above); participatory planning with identified groups of people needing land (eg. small-scale farmer associations, commonage users, farm dwellers under threat of eviction); public meetings; attitudinal surveys; and permanent Land Boards to assess needs and integrate acquisition of land with allocation and provision of relevant agricultural (and non-agricultural) development services. Whatever the merits of assessing need, though, these methods may not capture the extent of demand, and the process is likely to remain messy and imperfect – and subject to ongoing contestation.

BOX 3: Efforts at local needs-based options

One example of an emerging proactive needs-based approach is the grazing forum in Eden District Municipality in the Southern Cape, which includes small livestock owners, municipalities, DLA, and the Southern Cape Land Committee (SCLC). In response to the problem of livestock being impounded because their owners do not have access to grazing land, this forum is exploring opportunities to provide access to existing commonage, and proactively acquire additional commonage to meet the needs of this group. No land has been acquired as yet.

Source: Conway pers. comm.

The option of inviting people to submit their names for **land needs lists**, indicating what they need land for, and where, would be another way to clarify what land should be acquired. These needs could then be matched with land as it becomes available. Reflecting on the experience of land restitution claims, labour tenant claims, and the social housing lists, however, it is unlikely that a government would pursue this option, as it could well solicit expectations that could not be met and would inevitably lead to a problem of “opening the floodgates”. However, this could be tested in a pilot, and a coherent and well-communicated policy for prioritising land needs could make this approach much more manageable. Land reform planning will ultimately need to be refined using maps. Lists (eg. land needs lists) tend to only indicate what, and who. Maps have the advantage of saying where redistribution is to happen and how land use is to be changed.

BOX 4: NGOs develop land needs lists

An attempt by an NGO to develop a list of land needs shows both that it is feasible and also that the inability of the state to respond is symptomatic of the policy blockage. As the director of SPP says, “We are setting up databases of what are the current needs, and thinking of a 5 year timeframe. Let’s put the information that is there, the statistics of all the small farmer groups that we work with, and note the current land that they access, and the land that they need, because they are landless farmers. Small kraals prevent expansion of livestock herds – this prevents economic development. It is a ceiling on development. So we need to find out: what is the current land use, and livestock numbers? If we need x-amount of land for this type of land use, can commonage address it or do we need other state or private land?”

Source: Millford pers. comm.

In all the above processes to identify needs, participatory processes will be needed. These are not quick, easy or cheap, but hold the promise of a clear and solid basis on which to drive forward with land reform that is appropriate and targets priority groups.

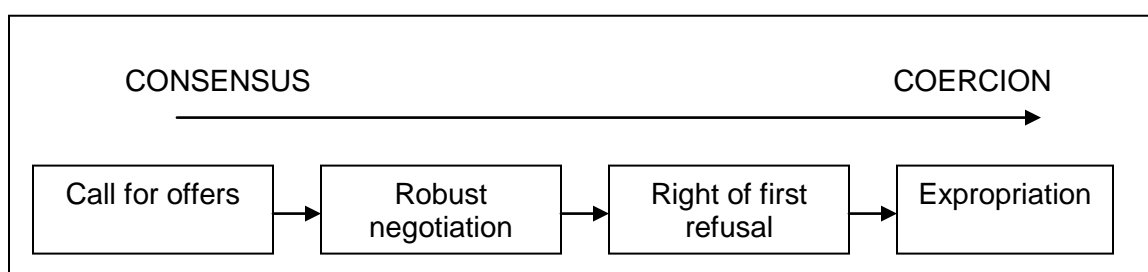
6. INNOVATIVE WAYS OF WORKING WITH SUPPLY

Working with land needs should result not only in an abstract list of needs, but the mapping of these needs against the existing physical resource, taking into account what land is good for, topography, soil, water, infrastructure, proximity to towns and infrastructure. This map of needs constitutes an area designated as a priority for land reform. Two approaches have been used elsewhere, either of which could be the outcome of area-based planning:

- either land meeting certain criteria in an areas are prioritised, or
- specific properties are designated and owners informed that the state wishes to acquire their land (ie. more similar to the restitution process).

Once either specific properties or a certain category of properties are identified as needed, a number of options exist to improve the supply of land. Some are confrontational methods, which could include both occupation of land (by the landless) and expropriation (by the state). These should be used where needed, but should be complemented by consensual options. To meet identified needs in a given area, an important strategy will be to explore what consensual methods can deliver and, where these do not produce results in a given timeframe, move to more coercive measures. There is a variety of ways, beyond WBWS, in which the state use the market and negotiate with particular landowners to address land needs – as well as non-consensual methods which are not confrontational, such as land taxes, which squeeze landowners as a whole. An approach based on compulsion would involve the foreclosure on indebted commercial farmers, expropriation and possible payment in government bonds, as was done in Latin America.

Figure 2: Consensus to coercion in land acquisition: a continuum of options



However, a cascading approach to acquisition which moves from consensual to coercive methods makes no sense unless there is a difference in price. This is the leverage that the state can use to engage seriously with owners. Consideration then will have to be given to offering at or near market prices when issuing a call on landowners to offer their land or instituting a right of first refusal, and offering compensation well below market price when expropriating.

Where planning has identified which land is needed for redistribution, the state is in a position to make a **public call for land** to be made available, indicating what land is needed, and to invite offers from landowners. Following a general call, the state would

need to enter into **robust negotiations** with landowners for the release of land identified for redistribution. This is the basis on which to see whether any workable deal can be made between landowners (preferably organised as a group) and the state – essentially a form of social pacting. Backed with a credible threat of expropriation, focused negotiation with all landowners in an area designated for redistribution may yield substantial results, including agreements to below-market compensation or a combination of up-front payment and deferred compensation.

A **right of first refusal** for the state is a further option that has not been used in South Africa, and would ensure that all land offered for sale could, hypothetically, be acquired for the purposes of redistribution. While this has merit, it may pose an unwanted and unmanageable burden on the state. To avoid this, government would need to be able to routinely waive this right in areas where land is not needed and could issue “certificates of no present interest”, as in Zimbabwe from the 1980s. Such a right could not be acted upon, except where there are existing claims, until a thorough needs assessment process is complete. A right of first refusal only makes sense if it is known which land is needed – and therefore there will be a need to designate the priority areas in which land *is* needed (and these would be expanded over time, as clarity emerges over land needs). The introduction of such a mechanism need not, therefore, be too cumbersome or place unfair burdens on either the state or landowners, and would only start to be acted upon as the outcome of planning become clear.

The state has the ultimate power to make land available to meet demand, by using its power of ‘*eminent domain*’ and **expropriating** land. The state can seek to drive down levels of compensation instead of offering market prices. A common reason put forward for this is to save money; this is unlikely to be a major factor in reducing the cost to the state. However, a disincentive to hold onto land that may be expropriated is more important as a mechanism to induce owners to offer property for sale and to negotiate reasonable terms. Much of the benefit of expropriation is in its demonstration effect. This means that some land must be expropriated and compensation must be below-market price – otherwise there is no credible threat. This will be strengthened if there are clearly established conditions under which the state will move to expropriation, for example where farm dwellers or labour tenants have been illegally evicted, or where land is unused or underutilized, or where refusal to sell has made a local plan for land reform unimplementable. A possible “unintended consequence” of designating land for sale, and of expropriating land, is the decay of fixed infrastructure on farms. To address the ‘transfer gap’, the state could impose personal fines (subtracted from compensation) on owners for asset stripping or non-maintenance of fixed infrastructure. It may be difficult, but not impossible, to take this account in determining the price (compensation) to be paid.

Confiscation (compulsorily acquiring land without compensation) would be possible only with a constitutional amendment which is not likely in the current political environment. The constitution requires compensation that is “just and equitable” taking into account various factors in Section 25(3) – namely the current use of the property; the history of the acquisition and use of the property; the market value of the property; the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and the purpose of the expropriation (RSA 1996). Determining compensation for expropriated property still provides the space for the state to bring down the cost of doing land reform in a variety of ways, including:

- ❑ Pay below-market compensation for expropriated properties, but also use the constitutional criteria to drive down prices in *negotiated* sales of land;
- ❑ Use deferred payments, so that landowners will be paid out compensation over a period of time; and
- ❑ Pay in government bonds, which also defers to a future date the cost to the state of paying compensation.

Information about who owns what property is a precondition for these proactive ways of dealing with supply. Many municipalities have now conducted **land audits** to identify, in the first instance, what land they own and to clarify who is using this land on what terms – for instance so that they can review long-term leases of municipal commonage to commercial farmers. Some other categories of state land have also been audited – for instance land owned by the provinces and by national line departments, but at a national level very little is known about parastatal land. There has been a silence, though, on the issue of private land. Private land must also be audited to clarify who owns what, how it is being used, and to identify unused and underutilised land which could be prioritised for acquisition, where it is of adequate quality. Knowing what land is owned by whom is a crucial first step towards a proactive approach. This information needs to be made publicly available at a local level, to communities who may have land needs, and to municipalities.

Another option is for **lists of land** available for sale to be compiled so that it can be referred to when needs are identified. There have also been attempts in the Eastern Cape to maintain lists of farms offered for sale, to be able to match supply and demand, for instance by the Agri Link project funded by USAID in Cradock. In Limpopo, DLA invited farmers who wanted to sell their land to put their names and farm details in a database, but it seems this has not been used – which illustrates the limitations of planned approaches. Farmers in the Gariiep District in the Free State have also reportedly offered to compile such a list. Such lists offering farms for sale were also compiled by the Commercial Farmers Union (CFU) of Zimbabwe during the 1980s. This model can obviously only work if the state is to offer market prices.

To identify land being offered for sale, and to take advantages of opportunities where they do exist, in some provinces DLA and NGOs have attempted to build relations with **farmers associations** and with **estate agents**, to assist in identifying farms that could be bought and providing specifications of the quality, size and general location of land required. In Limpopo, Nkuzi managed to establish a relationship with an estate agent who was able to approach farmers to find out whether they would be willing to sell certain portions of their farms – and therefore did not rely on land being offered for sale, but could in fact negotiate with owners to make land available for sale, though these still relied on the LRAD grant formula. Using the market in this way is essentially the approach taken by the Proactive Land Acquisition Strategy (PLAS), which demonstrates the problems of using the market without having an overall assessment of needs, prioritising these, and placing acquisition in a wider strategy for restructuring. Government is now challenging with trying to fit people to the land acquired. So while ‘using the market’ may yield results, and could be tried before more coercive measures, it needs to be done on the basis of an existing plan.

At least one provincial director has also established agreements with auctioneers to allow the DLA to bid at **farm auctions** on behalf of beneficiaries who, by definition, could not have received land grants yet, as these grants can only be disbursed once a

provisional agreement of sale is concluded. Another untapped opportunity is to secure agreements with banks to make available **repossessed properties**, in the first instance, to potential land reform applicants.

A variety of opportunities also exist not only to use the land market, but to shape it – as well as overriding it. The potential benefit of a **land tax** on farmland is the disincentive it creates for speculation. Further, the conventional neo-classical economic argument for levying taxes on agricultural land is to improve efficiency by introducing a cost to retaining ownership of un- or under-utilised land. If taxes are to be used in conjunction with proactive measures, to promote the release of land, however, the Property Rates Act will need to be amended or regulations added to it, to guide municipalities in a more prescriptive manner. At present its aim is to raise revenue, rather than to release land. The current approach does not serve to leverage land for land reform. If land taxes were to serve this purpose, then the calculation of rates levied on agricultural land would need to be changes. Two options are to make these progressive (favouring small over large landowners), and/or to base rates on land utilisation (in order to punish underutilisers). The World Bank is perhaps the most vocal advocate in South Africa of the use of land taxes to regulate markets, preferring these indirect methods of increasing the supply and reducing the price of land.

Those opposing taxes on agricultural land argue that municipalities do not deliver services on agricultural land and that, to be a disincentive for speculation, the land tax would need to be set too high – thus endangering the profitability of productive uses of agricultural land. AgriSA argues that land taxes are a ‘blunt’ instrument to bring about redistribution in access to land (Pienaar 2004) and that, because they reduce net income, they also affect the market values of properties – which may reduce the cost of land reform, though this will not be substantial. However, a less discussed challenge is the impact land taxes may have in the future on land reform beneficiaries, who are exempted in terms of the Property Rates Act for ten years, after which they would be affected as any other private property owner. A progressive land tax that exempted small properties from paying property rates would help smallholder farmers, but would favour all smallholdings, which are typically more expensive per hectare than larger properties. At the same time, beneficiaries who obtain large properties and hold and operate these collectively will be liable for substantial taxes (MALA and World Bank 2006). Instead, it would appear that the issue of how the land is used would be an important element of regulations for land taxes. Overall, it seems clear that a land tax is likely to have beneficial effects, but that by itself it will not address the problems of a market-reliant approach to acquisition, nor achieve the restructuring required in agriculture. It can only be considered as one small counterpart to more interventionist measures.

In conclusion, then, a strategic way to deal with supply of land clearly identified for redistribution is to open up opportunities for landowners to come to the table and to engage with their offers, while having a clear sequence of strategies to pursue where this fails. Although expropriation is widely referred to as a mechanism of “last resort” in South Africa’s land reform, in practice it has never been invoked in the interests of redistribution, and no mechanisms currently exist that would indicate which property should be expropriated, where and why and for whom. This paper proposes a clear sequenced approach to acquiring land that both uses and overrides the market. Without a demonstrated willingness to act on a right of first refusal or to move to expropriation, however, other more consensual elements are unlikely to yield results.

7. LAND PRICES

One of the main objections to the willing buyer, willing seller approach is that it is too expensive. This is true in the sense that much farmland is overvalued, in that its market price far exceeds its productive value. But one must also clarify: too expensive for whom? If it is too expensive for applicants, which it clearly is, it is a sign of an inappropriate grant structure, which provides small subsidies compared to the cost of land and investing in land. If it is too expensive for government, however, then ways of bringing down the cost and paying in forms other than upfront cash must be found.

Land prices have risen rapidly from 1999, due to declining interest rates, and increased non-agricultural interests in land (eg. for tourism purposes). On the other hand, volatile and declining commodity prices in some sectors have had the opposite effect, pushing prices downwards. When adjusted for inflation, the rise in average land prices between 1994 and 2003 was an average of 14% per year, though this obscures much more stark price rises in certain regions of the country. For instance, by 2003, farmland reached R28,000 per hectare in some registration divisions in the Western Cape, and some equity schemes involved prices of up to R150,000 and even R165,000 per hectare (though these factor in the value of the operating enterprise as well as the land). About 4.6 million hectares (5.5%) of land was transacted each year through all channels, well over the total land redistributed through land reform during this entire period (DLA and HSRC 2005:6).

The table below shows the 2003 average price per hectare across all farm sizes.

TABLE 1: Average price per hectare as at 2003 (by province)

Province	Rands
Eastern Cape	1,100
Free State	1,388
Gauteng	4,532
KwaZulu-Natal	2,473
Limpopo	2,329
Mpumalanga	2,784
Northern Cape	335
North West	1,925
Western Cape	1,964

Source: DLA & HSRC 2005

This breakdown is not entirely helpful, since most variation in land prices is within, rather than between provinces – between different sectors, different regions, and different sized properties (even within these categories). Nevertheless, it illustrates the stark variation in land prices. Underlying the variation is not only difference in the quality and productive potential of land, but also other factors, including non-agricultural interests in land. While the LRAD grant is “flexible” in providing different levels of funding depending on what people can contribute, it is entirely inflexible in responding to different land prices across the country, effectively excluding the landless from the programme in

zones that have particularly high prices. Land prices are a major obstacle in terms of the existing grant approach, and, unless brought down, will have major budget implications for a proactive approach in which the state purchases land for beneficiaries.

Is it worthwhile and feasible for the state to bring down land prices? If it is too expensive for the state, then the state will need to consider the trade-off between fiscal cost of making major budget adjustments, and the political cost of either allowing the slow pace to continue or of taking steps to reduce the cost to the state (for instance by paying below-market price compensation). It is to be expected that, as well as wanting to bring down prices in order to implement land reforms, the state has an overriding interest to maintain price levels and to see growth in land prices, both because this is a measure of economic growth, and also because of the interests of two powerful constituencies: landowners and banks. A political economy perspective should make one skeptical about the desire of the state to put in place measures that will lead to falling land prices.

The land purchase subsidy is a defining characteristic of the WBWS approach in South Africa. A proactive approach that takes “needs” as its starting point cannot, logically, rely on a grant formula. Grants put an arbitrary ceiling on which needs can be met. In practice the South African land reform programme has already accepted an approach of *not* rationing resources, in the restitution programme, which is not grant-based. Another method of rationing public resources may need to be identified, and there are no obvious alternatives to grants, other than limiting the area of land. For instance, in Zimbabwe in the 1980s, uniform-sized farm plots were made available on the basis of “permits to use”, which extended to designated commonage for grazing.

The Accelerated Shared Growth Initiative of SA (ASGISA) now presents a framework within which land reform costs will need to be justified. This means demonstrating the contribution of land reform to a 6% growth rate, and showing how it will contribute to the aim of one million jobs for the “poorest of the poor” in 5 years – a new commitment made by the Ministry of Agriculture and Land Affairs on 6 April 2006. The World Bank’s estimate in the early 1990s was that land reform would cost R35,000 per livelihood, which was considered to be the equivalent of full-time farm job, and that this could be provided for 600,000 households, at a cost of between R1.5 and R1.7 billion per year. Over a longer timeframe, to 2014, this works out to between R22 and R26 billion (van den Brink et al 2006). This should be compared with a total of about R9 billion spent on all aspects land reform up to the financial year 2006/2007 (National Treasury 2006). However, the non-capital cost has been severely under-estimated.

8. TOWARDS ALTERNATIVES

There are many alternatives to the current version of the ‘willing buyer, willing seller’ approach pursued in South Africa and any attempt to compile an alternative set of options for land policy must be informed by the policy options proposed at the Land Summit in July 2005, which revolved around three key principles:

- ❑ opportunities for landless people to shape the direction of land reform as part of local participatory processes to prioritise land needs and to inform proactive strategies by the state – perhaps alongside occupation of land by landless people (*ie. people driven*)
- ❑ a developmental state, informed by local needs assessments and a partnership with the landless, to plan and implement land reforms, to regulate land markets and where needed to override them to make land available (*ie. state-supported*)
- ❑ changes in land use management, prioritization of small-scale farming and provision of appropriate extension support, training, credit, infrastructure and market conditions (*ie. agrarian reform*).

A key challenge is to increase the extent of state involvement in acquiring land and supporting land use – there are calls for more state intervention and for a ‘developmental state’ – but also to reconsider the nature of state involvement not only in acquisition but in the economy in general and in agriculture in particular. An urgent need is to specify a strategic and appropriate state role which is both proactive and responsive. State-driven planning by itself may be inappropriate. Instead, what is needed is a people-driven approach that is actively supported by the state. This suggests the need to find a new balance between agency from the side of the state and by the landless, and new ways to link mobilisation with planning. This depends upon the political possibilities of a “developmental state”, which must be debated.

BOX 5: Policy Buffet – or A La Carte?

In the emerging debate on alternatives to ‘willing buyer, willing seller’, a wide range of policy options have been proposed. At the Land Summit, a long list of policy options were compiled. This has contributed to the view that implementation can be pursued in an ad hoc way, drawing from different mixes of these approaches, as if it were a buffet. However, the options may be in tension with one another – for instance the Summit called for land taxes as well as expropriation with below-market level compensation. It also called for establishment of a class of non-evictable farm occupiers, as well as a blanket moratorium on all farm evictions. No matter how many policy instruments are proposed, they need an overarching framework. Specifically, this framework would need to link the issue of land acquisition with land use.

Source: van den Brink et al 2006.

The dominant approach to date could be described as a reactive, demand-led approach. The state would respond to demand only when it presented itself (*ie. it has not been responsive to needs or actively sought out needs*); demand could only be met if supply became available (*ie. it has been dependent on market opportunities*) and there was no capacity to exploit opportunities as they arose (*ie. it was not opportunistic*). Two variants of proactive land reform – one of which is being explored currently in some parts of the country – are described below.

8.1. Supply-Led: Land First, People Later

A number of interpretations of “proactive land acquisition” have now emerged, with DLA in the Free State, Mpumalanga and KwaZulu-Natal, in particular, pursuing supply-led approaches in which the state will purchase land upfront from private landowners (willing sellers) and later identify beneficiaries to whom this land can be either leased or transferred in private ownership (Williams, Chakache, Motswege, Shabane, Williams, 2006: pers comm.). This is part of a Proactive Land Acquisition Strategy (PLAS), a national programme by the DLA, and provincial offices have been instructed to develop their own plan of how they will do this.

In KwaZulu-Natal, the DLA is in the process of purchasing a sugar cane farm with 300 hectares under irrigation, using LRAD funds, which will then be leased out, probably for five years (with an option to purchase) to a legal entity consisting of the 73 farm workers already employed there. The rental will probably be at concessionary rates, calculated on the basis of their anticipated profit from the standing crop – though the details of the nominal rent have not been decided. The terms on which the state would sell the land have also not been decided – whether the state will sell at market price (realizing an increase in its market value) or fix the price at the level at which the state purchased it, and whether a grant system will be relevant or not. This first “proactive” purchase is part of a wider agreement between DLA and the sugar industry for the latter to help identify both land and “qualified and successful” small-scale producers in communal areas. The focus of the proactive initiative is to enable “people who have farmed for the past 15-20 years to become medium and large-scale farmers” (Shabane 2006: pers. comm.).

In the Free State, a committee established by DLA in 2005 to oversee a pilot proactive land acquisition initiative includes representatives from Agriculture, commercial farmers, NGOs, the Land Bank and private banks. In the first year, DLA bought one farm, after the owner approached them. DLA bought directly, and now holds it in trust until applicants can be identified and the land allocation. Participants in the committee are unclear whether this will involve a lease arrangement or transfer of title (in which case the applicants will need to apply to DLA for grants, with which to pay it, as the current owner) (Chakache 2006: pers. comm.).

In Mpumalanga, PLAS has focused acquiring land for labour tenants, as an alternative approach to using the process outlined in the Land Reform (Labour Tenants) Act 3 of 1996. From September 2005 the DLA met with landowners and called for land to be offered for sale, and by 2007 had bought 18 farms in Gert Sibande district alone. These have become state property. Although DLA has not yet defined the criteria for how beneficiaries will be identified, it indicates that it will give preference to those labour tenants who are considered to be “real farmers”, like people who have more than 60 head of cattle – again confusing wealth with commitment to farming. DLA now plans to engage with Agriculture, municipalities, farmer associations and banks to decide how to proceed. It is still to decide *who* will get the land; whether it will simply be transferred to them (as in restitution) or whether they will have to apply for grants with which to buy it; whether farms will be subdivided into smaller portions, or whether to establish agrivillages for residential purposes and keep grazing land separate – but it does seem clear that the land will be transferred in private ownership to individuals or groups, rather than opting for leasehold (Motswege, Williams 2006: pers. comm.).

These examples of a ‘supply led’ approach constitute a break from past practices, as the state is now actively using market opportunities where they arise and in some instances is approaching landowners to sell. These initiatives are in their early stages and could hold some promise. However, they may negatively affect the rights of farm dwellers and labour tenants, as they are substituting for the (stalled) rights-based programmes for labour tenants and other farm dwellers. To avoid the predictable problems of relying on a supply-led approach (inappropriate acquisitions, delays and a failure to prioritise), it will also be important to provide a clear framework within which decisions will be made about where land will be bought, and for whom. In other words, supply-led remains an ad-hoc approach that does not take needs as a starting point.

BOX 6: Proactive & Planned, but also Responsive & Opportunistic?

A key decision to be made on an alternative approach is whether redistribution should be opportunistic or planned – there are costs and benefits to each. At present, it is often neither. Alternatives to the WBWS approach could be proactive and planned, but also responsive and opportunistic. The danger is to take proactive and opportunistic steps – for instance by adopting supply-led approaches – without having a framework of planning or being responsive to existing needs. Before confronting the problem of how to get the land, there must be a clear strategy to work out *which land* is to be redistributed, *for whom*, and how it is to be *used*. Once this is clear, a wide range of options can be used to get the land that is needed.

Proactive Need-Led: Finding Land to meet People’s Needs

In considering alternative policy options, it is not enough to draw lessons from existing experiments. This requires a leap of imagination and thinking outside of the box. Taking the theme of needs as a starting point, the features of one kind of proactive land redistribution programme might include:

- ❑ Participatory needs assessment at district level
- ❑ Prioritisation of women and the poor
- ❑ Mass driven land audits to identify land to meet this demand
- ❑ Designation of priority areas for redistribution for a range of land uses
- ❑ A right of first refusal for the state in designated areas
- ❑ Integration into local economic development and spatial planning
- ❑ Negotiated sales and expropriation as methods of land acquisition
- ❑ Substantially increased institutional capacity and coordination

It would differ from the version of willing buyer, willing seller implemented to date in South Africa in the following ways.

TABLE 2: Needs-based Proactive Land Acquisition versus Willing Buyer, Willing Seller

Aspect of land reform	WBWS	Proactive
Project initiation	Participants initiate (or sometimes landowners do) if aware of opportunities.	Participants initiate, but are assisted to formulate their demands within a wider district-based development strategy.
Land identification	Participants and DLA, on basis of publicly available information on land for sale.	Participants and various state agencies, on the basis of identified needs.

Aspect of land reform	WBWS	Proactive
Acquisition	Contingent on willingness of owners to sell at prices offered; often delayed due to bureaucratic delays, sometimes leading to withdrawal of sellers.	Determined by planned priorities, targets and identified needs, and supported by a right of first refusal on land sales within designated areas. Not contingent on owners but negotiated where possible, with the option of expropriation being clearly communicated.
Transfer of title	Directly from seller to beneficiary	Could either be directly from owner to beneficiary, or a state or parastatal institution may hold title in a transitional period.
Size of landholdings	No incentives or mechanisms to promote subdivision of land; size distribution unchanged.	Proactive subdivision to make appropriate parcels available to match needs.
Land use and business planning	Outsourced business planning of individual projects, based in inappropriate assumptions of large-scale farming as the model.	Based on participatory needs assessment and aspirations, supportive of small-scale farming and facilitated through revamped state agricultural institutions.
Pricing	Based on market valuations but negotiated with sellers.	Coordinated and aggressive negotiating in order to meet identified and agreed targets.
Spatial impact	Ad hoc and spatially scattered pattern of redistribution.	Large-scale redistribution in designated areas. Spatially coherent.
Post-transfer support	No consolidated approach possible; limited resources and ad hoc interventions by a range of agencies, leading to inadequate but also uneven levels of support and isolation from local development planning.	Integrated pre- and post-transfer support planning initiated from time of designation, allowing timeous. Improved resourcing for agricultural and settlement support, including subsidies for production, and coordination of agencies through a one-stop shop at district level.

Demarcation of priority areas, like zoning, would allow long-term forward planning without the necessity of acquiring all the land initially, and can be expected to impact on land prices. Planned redistribution of contiguous land parcels could also have the benefit of bringing about economies of scale not in primary production but in planning, provision of agricultural support, marketing and infrastructure, as well as making possible equipment sharing and mutual support among neighbours.

Local spatially-based plans for redistribution of land will need to set out a vision of an endpoint, by answering the question: what would the outcome of transformation of land use in a particular region look like? This would involve making decisions about a pattern of alternative land use, reconfiguring boundaries and putting in place new infrastructure. Crucially, these plans would need to consider, on the basis of the new intended uses

and users of land, whether farming units should be kept intact or whether subdivision should be used to create fairly uniform small or medium sized plots, or retain the core of farming operations and create small plots adjacent to these. Such plans would need to take into account need for, and the potential of, the resource (land and water in particular). Some areas may have little scope for structural transformation under current conditions, such as the wine industry; smallholdings in this sector would need a new institutional environment that would make small-scale production of high-value crops feasible – as is done in other parts of the world. Estate agriculture might lend itself to contract farming, while mixed farming areas might be more suited to subdivision into cultivated smallholdings and commonage for livestock.

On the basis of such a plan, a range of methods could be employed to acquire the land: the state could institute a right of first refusal and purchase properties offered for sale, systematically approach landowners to negotiate transfers, and where these do not yield results, expropriate. A credible threat of expropriation would enable the state to set new norms around pricing, using the scope provided in Section 25(3) of the Constitution to pay compensation based on criteria other than market value. Even the World Bank, while arguing against widespread use of expropriation, has proposed negotiated transfers, which would involve mediation, non-binding arbitration and binding arbitration in various forums from the local to the national level (van den Brink et al 2006).

Institutional implications

Such a shift in policy means that land reform must be driven locally, but not left up to municipalities, which are already overburdened and have not incorporated land reform or agrarian restructuring into their IDPs. A decision will be needed on whether or not a new dedicated institution is needed at a local level to drive land reform. It would need to work with landless people, and “stakeholders”, to make, and see through, a district-based land reform plan. The proactive approach outlined above may require an agrarian agency, perhaps at district level and housed within the municipality, that works with citizens to assess and specify land needs, conducts public and private land audits, designates land required for redistribution, negotiates with landowners, identifies land for expropriation, oversees transfers, manages leases and contracts on state (including commonage) land, engages in land use planning and coordinates agricultural extension and infrastructural support. It would need to be serviced by provincial and national bodies providing training, research and evaluation.

While government is now supporting the vision of “agricultural one stop shops” (AOSS) within municipalities, current proposals are use these only to align different sources of funding at local level (LRAD, CASP and AgriBEE) rather than drive a proactive strategy, and it emphasises that there should be no new institution and that this service should consist of staff from relevant line departments and spheres of government. However, what would a one-stop shop mean, if not a dedicated agency? More thought will be needed on the potential merits and pitfalls of having such an institution, how it would be financed, and its lines of accountability to local, provincial and national government. One central question, for instance, is whether such an agency would be able to acquire title to land, at least in a transitional period (see box 8). Whether a single department or

ministry at national level is needed, could also be considered, but is a somewhat different issue.

BOX 7: Double Transfer?

Should the state acquire land and then allocate it? This would involve a “double transfer” of land: from the current owner to the state, and then from the state to the identified beneficiaries. The state, as the owner, would be in a position to determine the nature of the second transfer. One option would be to donate the land (a complete subsidy), as in restitution, where the state subsidy is not rationed; it merely pays for the land that is then directly transferred to the claimants. A second option would be to sell it at a reduced price (a partial subsidy), which could be defined in terms of a grant. A third option would be to sell it at market price. A fourth option would be for the state to retain ultimate title and simply issue “permits to occupy” or “permits to use”, as in Zimbabwe, which obviated the need for a further transfer of title, but led to insecure tenure. For each of these options, the rights transferred could be private ownership or leasehold.

Although there is a widespread aversion to landownership by the state, this is very likely to be needed and attention should focus on how the state might become more effective in managing and allocating land, and how delays in settlement on the land can be minimised.

Following the shelving of the Special Purpose Vehicle (SPV), the Presidency has announced that Project Management Units (PMUs) which are to be established in each province may be well suited to acquiring land at scale and then planning for its use and allocation, but unless there are clear plans of how to use this, the impetus towards ambitious targets (far beyond what has been achieved thus far) will render government reliant on ready-packaged projects. In other words, the private sector would be the lead implementing agent. Given the limited capacity of rural people to develop plans in the formats required by government, what it is likely is that commodity sector organisations and other private entities will take the lead, packaging major plans and large projects involving strategic partnerships.

9. CONCLUSION

Based on recent experience, it is highly unlikely that we will meet the 30% target by 2014. With a view to ensure these targets are met, there is a need for a detailed strategy re-formulation, major institutional reform and significant budget adjustments (ANC 2007:4). However, there is no need to apply the 30% target evenly to each district of the country, as is being done in the area-based planning process. The target is quite arbitrary in itself and was only intended as an interim target for the first five years of a longer programme. It was a minimum rather than a maximum. Further, the demand for land may well not correlate with this – it certainly seems higher in some areas around the communal areas and where there have been many evictions, and needs may be lower in other areas. And of course it depends on whose needs are being recognised.

So the 30% (or more) must be targeted. Over the past 12 years of land reform, we have seen that the province with the largest area of land transferred is the Northern Cape. This is a problem, as it would be easy to increase the total hectareage transferred by focusing on the most arid areas. Instead, targeted land reform that aims to meet a variety of needs, prioritise areas of high land demand and transform the ownership and use patterns of high-value land will need to concentrate on the high rainfall areas of the KwaZulu-Natal coastal region, the Mpumalanga highveld, the Western Cape's fynbos floral kingdom, and the subtropical regions of Limpopo province (where most farmland is under claim anyway).

So which should come first: identified needs or identified land? While many land reform programmes internationally have involved acquisition of land ahead of allocation, the South African programme has relied on a "demand-led" approach through self-selection, but is hamstrung to meet these needs and has ignored needs that are not expressed in the ways required. While proactive measures have been undertaken through PLAS, this paper argues that we have misunderstood the meaning of "demand-led", and need to reconceptualise "demand", focus instead on "needs, work with landless and nearly landless people to clarify land needs, and find effective ways of making land available through methods like negotiation and expropriation. This will require mapping needs and identifying land. This proactive needs-based approach requires engagement between landless people and the state at a local level as well as strategic priorities for the low, medium and high quality land to be acquired. Instead of the highly discretionary policy guiding redistribution to date, this will require clear political priorities concerning which needs and land uses are to be prioritised.

10. RECOMMENDATIONS

On the basis of the above discussion of a 'proactive needs-based' land reform strategy, a number of recommendations for policy are indicated. These address how targeting of people and land should take place, how land identified for redistribution should be acquired, how compensation is to be determined, what sharing of information will need to happen, reserving available state land for land reform purposes. Finally, there is some initial consideration of legal, institutional and financial implications of these recommendations.

10.1. Targeting people and land

Identifying land needs: the Department of Land Affairs must work with civil society organisations and local government to roll out a methodology for participatory land needs assessment, as part of the prerequisite for area-based plans in each district. This will require the extension of the current process which has been outsourced to service providers, many of whom have no method for engaging with the varied needs for land.

Clarify national targets: Beyond the racial eligibility criterion in place in the redistribution programme, who is to be targeted is not clear. Nor is it clear what mechanisms will give effect to the commitment to prioritise 'marginalised groups' (women, farm dwellers, disabled and youth). It is proposed that the following targets and mechanisms be adopted:

- 50% of (the value of) benefits should accrue to women, and at least 50% of beneficiaries should be women.
- Some income-based criterion should be used in the rationing of resources.

Prioritising land needs: Area-based planning should result in a typology of different land needs for identified categories of people, as well as a prioritisation of these land needs, in this order, which can be expected to reflect the range of land needs from the poorest to the less-poor:

- Land for part-time cultivation of food for consumption and for livestock grazing
- Land for full-time production primarily for consumption
- Land for full-time production primarily for sale.

Identifying land for redistribution: Area-based planning should result in maps designating land to be acquired for redistribution, based on identified land needs. Priority attention should be given to the following categories of land

- Land surrounding rural towns
- Land adjacent to transport networks (road and rail)
- Land adjacent to communal areas (former 'homelands')
- Get others from Ben's presentations

Priority focus on land needs of farm dwellers: not instead of employment but, for those who have jobs, as a part-time activity to augment the meager income that farm workers typically receive. Based on identified land needs, the state should negotiate with landowners to release portions of their farms for farm dwellers' own use and, if this

cannot be secured, expropriate subdivided portions of larger farms for use by farm dwellers.

Accept new restitution claims: since many potential claimants, quite possibly the majority, who were eligible in terms of the Restitution of Land Rights Act were unaware of or for other reasons did not lodge claims prior to the end of 1998, the Commission should re-open the claims process and embark on a second phase of land restitution. These need not be dealt with in the same way, but could be dealt with within wider area-based planning approaches, enabling those with historical claims to be prioritised. However, this should not jeopardize existing lodged claims. Claims submitted before the end of 1998 should be processed first before those submitted in this second phase.

10.2. Acquiring land

Move away from the one-by-one approach: When acting on designated land, acquire in bulk rather than in a phased approach, allowing for planning, subdivision, settlement and related start-up costs to happen at the same time.

Abolish grant system: A rationing mechanism is required to ensure fairness. However, this should be achieved through placing a ceiling on the amount of land the state will acquire per household, rather than requiring people to apply for grants (which have declined in real terms over time and which bear no relation to the market price of land, infrastructure or operating costs).

Preparing to acquire land: Designate land required for redistribution by placing public notices and by informing owners by letter.

Ceiling on land ownership: instead of the popular call for “one-farmer, one farm”, which focuses on the number of farming units owned, a ceiling on the total *area* or hectareage owned by a single person or corporate entity must be put in place, and the size of land allowed should differentiate between different agro-ecological conditions. This should be the subject of a commissioned study, but should take as a starting point approximately ?? hectares of high-value agricultural land in high-rainfall areas. A land ceiling, even without enforcement, may lead to deconcentration and use of expropriation in designated areas of identified priority land need. Combined with a highly progressive land tax that is punitive to very large landowners, this could contribute to stopping or reversing the trend evident over the past 15 years towards consolidation of land ownership.

Using land markets: Impose a right of first refusal on designated land with a guaranteed offer of market price.

Negotiate to acquire land: Approach owners of designated land and offer market price for a limited period, after which government will move to expropriate.

Expropriate land: Where owners of designated land refuse government’s offer to buy at market price, the state should immediately institute expropriation proceedings and

offer below-market compensation that is deemed “just and equitable” as described by the Constitution.

Foreclose on bad debt to state institutions: state institutions should foreclose on bad debt among established commercial farmers who own land already identified as needed for land reform. The state effectively owns this land already.

Promote donations: Promote and deal effectively with land donations – priority response by provincial offices of DLA. Enable landowners donating land to use this towards their AgriBEE score.

Link water reform to land reform: Use reallocation of water rights to leverage land rights for the poor, reducing allocations to commercial farmers and increasing allocations to land reform beneficiaries and other small and poor users. Explore the allocation of water rights to farm dwellers as a basis to leverage concessions from commercial farming enterprises for farm workers and farm dwellers in the form of (a) equity sharing and (b) access to land for own use.

10.3. Determination of compensation

Use constitutional criteria: Compensation for expropriated land should be based on the five criteria listed in Section 25(3) of the Constitution, namely:

- (a) the current use of the property;
- (b) the history of the acquisition and use of the property;
- (c) the market value of the property;
- (d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
- (e) the purpose of the expropriation.

Defer payment for expropriated land: If capital budgets for land acquisition cannot keep up with the pace of land acquisition, options other than payment in full in cash should be explored. Payment in government bonds over a period of 5 to 10 years should be explored, particularly where large landowners with other enterprises are involved. The constitutional test of whether the manner and timing of payment is ‘just and equitable’ applies.

Amend the Expropriation Act of 1975: Amend this Act to bring it in line with the Constitutional criteria, as it stipulates payment of market price.

10.4. Share information and clarify partnerships

Monitor the concentration of land ownership: Monitor on an annual basis the trends in concentration of land ownership – a Gini co-efficient for the distribution of agricultural land.

Publication of land audits: Audits of ownership of both public and private land, and the identification of small parcels close to towns, are now essential. These should be made available for public scrutiny, and to assist in area-based land reform planning initiatives.

Division of labour between state and private sector: the state should remove itself from establishing equity schemes and large commercial enterprise projects, except where its involvement is strategically targeted to leverage resources from private sector actors. These are all areas in which the private sector has better expertise and its contributions to these types of projects should be leveraged through AgriBEE, allowing state institutions – the DLA, DOA, Land Bank and municipalities – to focus exclusively on interventions that directly target the poor.

10.5. Making public land available

Moratorium on sale of state land: No state land should be disposed of other than for land reform purposes, unless it can be established that there is no interest in this land from black South Africans, particularly those who are poor. This should apply to all categories of state land outside the communal areas (where a separate process is to be followed), including forestry land, coastal areas, municipal land, military land, and land owned or controlled by parastatals, such as Transnet land. In many instances, people already residing on this land have a strong interest and, arguably, rights that should be prioritised over other potential users or owners. State land earmarked for disposal should be publicly advertised through local radio stations and through community meetings to would-be beneficiaries, with a call for expressions of interest in access to this land.

Cancel leases on commonage: the leasing of commonage land to private commercial farmers should be stopped and existing leases cancelled. Municipalities will require information from audits as well as legal support to achieve this. Resource-strapped municipalities dependent on revenue from leased-out commonage should be compensated by DLA for this loss, for a defined transitional period. Commonage should be promoted, and DLA should approach municipalities to identify land that could be acquired for commonage, rather than treating them as it has other applicants.

10.6. Legal implications

Right of first refusal: this will be required to give the state the right of first refusal on all sales of agricultural land, and will need to stipulate a reasonable time period within which the state must either buy land offered for sale or waive its right to do so. In practice, this right should only be invoked in cases where land has been designated as required for redistribution, through area-based planning, where it is subject to a restitution claim or a labour tenant application, or where farm dwellers are residing on that land.

Social obligations clause: A clause affirming the right of landless people to public or private land they have openly occupied for 5 years, and which they are living on and using for their own livelihoods, without hired labour, would protect

them from dispossession and amount to upgrading insecure tenure rights, and confirm society's interest in the social utility of land. It is unclear whether this requires constitutional amendment or could be accommodated under an amendment to existing legislation.

10.7. Financial implications

No detailed financial projections are provided as yet. However, it may be expected that a very substantial increase in public funding will be needed. This may not be simply a mathematical increase from existing capital costs, since new approaches may bring down the cost of acquiring land, if compensation is determined below market price and if land markets are affected by this. However, it is certain that a proactive and needs-based approach to land reform will cost more than the current approach, in terms of staffing and operating budgets for implementing institutions. For now, it is necessary to identify the areas in which further funds will be needed, and to provide estimates only for capital budgets.

Land Affairs capital budget

Substantially increased capital budget to expand the ability of the Department of Land Affairs to acquire land, whether through negotiation or expropriation. If acquired at current market prices the cost of 30% of land with fixed improvements only would be R22.9 billion at 2004 prices (DOA 2006). However, the cost of 30% of land with improvements, implements, vehicles and livestock would be R38.8 billion – more than 29 times the current capital budget for land reform (excluding restitution). In other words, a fivefold increase in the budget would be required over six years. But all of this is contingent on whether the state choose to drive down prices to minimise these costs, by paying below-market level compensation as suggested in the Constitution, or by choosing not to pay compensation in cash and upfront.

Land Affairs current budget

Proactive land acquisition will involve a substantial increase in staffing of the DLA (or other implementing agency/ies), at provincial and district level, plus the creation of a highly skilled and resourced Land Acquisition Negotiations Team. This will require a massive injection of state resources.

10.8. Institutional implications

The above recommendations may require a specialist land needs and land acquisition team for each province, which would work with local communities, municipalities, landowners and other government departments to identify needs and plan for reform, and would move across the districts regularly to take forward this work.

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