

## **LAND REFORM AND POVERTY ALLEVIATION IN SOUTH AFRICA**

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### **1. Introduction**

The world's attention turned to land reform issues in Southern Africa last year when the hunger for land intersected with the struggle for political power in Zimbabwe. When the African "war veterans" occupied primarily white owned commercial farms in Zimbabwe, the South African press, land academics and land activists focussed on South Africa's land reform programme, asking whether the slow delivery (real or perceived) of land reform here might someday lead to similar land occupations. Land has emotive overtones everywhere in Africa where there have been extensive colonial dispossessions of the indigenous peoples land. In South Africa too, land and land reform, are unquestionably emotive issues, and matters related hereto need to be handled with circumspection and sensitivity by Government. At the same time, Government has taken firm control of the matter, to discourage and prevent a "tinderbox" situation similar to that now prevailing in Zimbabwe, occurring in South Africa. In this regard, the South African Government has since 1994 been involved in designing and developing a land reform programme that aims to bring about a fair and equitable land dispensation in South Africa in an orderly and planned way. Throughout this process all concerned parties have been involved in the process, and policy and legislation has been, and still is, developed in a transparent and participative manner.

In the Zimbabwean situation, in accordance with the 1979 Lancaster House Agreement, there was an understanding that a large portion of the land reform programme would be financed through international resources. The achievement of independence in 1980 did not bring about any radical changes in Zimbabwe regarding the inequitable distribution of land between the white farmers and the Africans/peasants. During 1981, Zimbabwe argued that the

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provision of adequate foreign funds for land purchases was not forthcoming as promised in 1979 by the United Kingdom and the United States of America. Twenty years later, this lack of funds for the purchase and redistribution of white farmland and the absence of a planned strategy for an orderly land reform process, has resulted in the chaotic land invasions and the breakdown of the rule of law in Zimbabwe. Hence the "tinderbox". This is in complete contrast to the South African situation. In South Africa, the financial resources for the delivery of both public and private land for land reform purposes are obtained through internal budgetary processes. South Africa is looking up to itself to pay for the purchase of land and the related compensation if the land was acquired through expropriation.

The amendment to the Zimbabwean Constitution and the 1992 *Land Acquisition Act* aimed at strengthening the Zimbabwean Government's hand in acquiring land for redistribution from the white farming sector. This Act provides for a number of non-market related solutions: for example, government land valuation procedures to determine the purchase price, limits on the number of farms owned by an individual, limits on farm size, conditions regarding absentee landlords and foreign ownership, and the designation of areas for land acquisition and resettlement.

In comparison, the *Constitution of the Republic of South Africa* protects property rights as well as provides for comparable redress or compensation should the Government consider the expropriation of land. Market -related solutions regarding land valuation procedures are also provided for in the South African Constitution and land legislation. Our legislation furthermore does not limit the number of farms owned by an individual or place limitation on the size of a farm. Absentee landlords and foreigners are also not prevented from owning property in South Africa. On the latter points Government is in the process of coming up with a policy that will regulate foreign ownership of land in the country.

There have nevertheless recently been some instances in the land reform process in South Africa, where problems have been encountered. These have been reported on in the press, *viz* the burning of cane-sugar fields in Kwazulu-Natal where a land claim has been lodged and still needs to be resolved and threatened land invasions in the Wakkerstroom district of Mpumalanga. These and a few other cases are however sporadic incidents and are not large-scale orchestrated "tinderbox" events. In all such instances, the rule of law prevails

and perpetrators of illegal actions are brought to book. Land invasions and other related illegal acts are not tolerated by Government.

## **2 The Three Legs of the South African Land Reform Programme**

Prior to the elections in 1994, the African National Congress stated in the Reconstruction and Development Programme that land reform was to redress the injustices of forced removals and the historical denial of access to land. It was to ensure security of tenure for rural dwellers, eliminate overcrowding and to supply residential and productive land to the poorest section of the rural population. As set out in the 1997 White Paper on Land Policy, government's land reform programme has had three legs, all of which are provided for in the Constitution. The three legs of the programme are as follows: land restitution, land redistribution and land tenure reform.

### **2.1 Land Restitution Programme**

This programme deals with claims lodged in terms of the *Restitution of Land Rights Act, 22 of 1994*, under which a person or community dispossessed of property after 19 June 1913 (the date of the Natives Land Act), as a result of racially discriminatory laws or practice, is entitled to lodge a claim for restitution of that property or comparable redress. It thus tackles the injustices of apartheid most directly. By the cut-off date in March 1999, 67,531 claims by groups and individuals had been lodged, of which about 80% are urban.<sup>2</sup>

### **2.2 Land Redistribution Programme**

During 1994-99 land redistribution aimed to provide the disadvantaged and the poor with land for residential and productive purposes. A single, yet flexible, grant mechanism to a maximum of R16 000 per household was used to purchase land from willing sellers. Land redistribution took several forms (e.g. group settlement with some production; group production; commonage schemes; on-farm settlement of farm workers and farm worker equity). A range of additional financial resources supported the basic grant such as the

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<sup>2</sup> All land reform delivery figures quoted in this paper are based on information released by the DLA at their 2000 end-of-year media briefing.

planning grant, facilitation and dispute resolution services. The approach was application based and did not involve the prior acquisition of land by the state for subsequent resettlement (i.e. it was demand rather than supply driven). Because land was both relatively costly and unavailable in small grant-sized parcels, people wishing to acquire land with the grant had to form themselves into groups to acquire land.

### 2.3 Land Tenure Reform Programme

This programme aims to provide people with secure tenure where they live, to prevent arbitrary evictions and fulfil the constitutional requirement that all South Africans have access to land legally secure tenure in land. *The Land Reform (Labour Tenants) Act, 1996 (Act No.3 of 1996)* provides for the protection of the rights of labour tenants and gives them the right to claim land. *The Interim Protection of Informal Land Rights Act, 1996 (Act No. 31 of 1996)* was passed as an interim measure to protect people in the former “homelands” against abuses of their land rights by corrupt chiefs, administrative measures or property developers who fail to consult the occupiers of affected land, while a new more comprehensive law was being prepared. *The Extension of Security of Tenure Act (ESTA), of 1997*, aims to protect people who live on land with the consent of the owner or person in charge against unfair eviction and create long term tenure security through on-or-off-site settlement assisted by a government grant and the landowner.

Another important responsibility of the Department of Land Affairs (DLA) is the **management of state** land. The extent of state land in SA is 25 509 004 hectares, of which 13 332 577 ha is the responsibility of the DLA, the bulk of which is in the former homelands. Of the state land for which DLA is responsible, about 700 000 ha are potentially available for land reform and development purposes. Much of it is leased, informally occupied and/ or the subject of restitution claims. Rights to most of the land are disputed which makes it difficult for the DLA to legally dispose of it. Nonetheless, in her Land Affairs Budget Vote Speech on 15 May 2001, the Minister announced that the Department will dispose of 669 000 ha of state agricultural land.

### 2.4 New Policy Directives

When the Minister assumed office in June 2000, she initiated a review of land redistribution programme, placed a moratorium on redistribution projects and requested a review of the draft Land Rights Bill that aimed to deal with tenure

issues in communal areas. In February 2000 she made a policy statement that sketched her vision for land reform and lifted the moratorium on redistribution projects. She gave priority to speeding up Land Restitution by resolving claims through an administrative process, a strategy first introduced in late 1998. With regard to tenure reform, the Minister said that legislation to rationalise and consolidate tenure reform had been commissioned and would be finalised by the third quarter of 2000. She announced that the developmental aspects of the Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997) (ESTA) would receive priority. As of April 2001, the Land Rights Bill is being re-examined by the DLA with a view to releasing it for public comment in July 2001. In her budget speech, the Minister announced that there would be a National Conference on Land Tenure Reform in Communal Areas and Land Rights to be held in Durban during the third quarter of this year.

The most significant change made to the Land Redistribution Programme. is the introduction of a new sub-programme, the Land Redistribution for Agricultural Development (LRAD) (See Appendix 1). Two other sub-programmes of the redistribution programme are land for residential settlement, and land for non-agricultural enterprises such as eco-tourism. There are two parts to the LRAD sub-programme. One deals with the transfer of agricultural land to specific individuals or groups and the second with commonage projects, which aim to improve people's access to municipal and traditional land primarily for grazing purposes. The LRAD policy document does not address the traditional commonage issues in communal areas per se. The Department is currently developing a separate policy on this issue.

### **3 The orderly Implementation of Land Reform Programmes in South Africa**

#### **3.1 Land Restitution Programme**

Delivery under the land restitution programme has increased significantly since April 1999, largely due to the adoption of simpler administrative processes for the resolution of cases. About 80% of the total claims registered are urban. Yet rural claims involve a far larger number of people. Each rural claim can embrace from 50 to 10 000 people, while each urban claim represents an individual. The bulk of claims settled to date (about 12% of the total lodged) fall into the urban category. Well known cases cover Group Areas removals such as the District Six, which involves 1698 tenant

claimants, who will receive a total of R29.7 million in compensation. A feature of urban settlements is that they usually involve financial compensation and are proving quicker to resolve. However, as they often do not involve the transfer of land to black people, they do not address the core land issue facing South Africa - that of dealing with racial dispossession and the skewed nature of ownership. They are nonetheless highly emotive cases and their resolution contributes to national reconciliation.

### **3.2 Land Tenure Reform Programme**

**Land tenure reform** has been the slowest and most difficult aspect of the land reform programme to date. Although there are no accurate statistics available, the DLA believes that there is an increase in illegal evictions and a decrease in legal evictions. The DLA does not have the personnel or resources to ensure that the ESTA is effectively communicated and enforced. Neither does the justice and policing system. The problem is exacerbated by the financial constraints on state-funded legal aid. Organised agriculture remains firmly opposed to the ESTA calling for its repeal or amendment, while NGOs representing farm dwellers call for the passage of radical legislation to give all farm dwellers ownership rights. A related problem is the large number of labour tenant claims to farmland and their slow resolution.

### **3.3 The Land Redistribution Programme**

The programme (April 1994 - November 2000) has delivered the most land to the most people as shown in table 1, although when compared to the demand and expectations it falls hopelessly short. It experienced many difficulties in the early years, but picked up significantly during 1998/9. *The Quality of Life Survey*, 1999, an independent monitoring of the affects of the programme, concluded in 2000 that the performance and impact of the programme had both improved since the previous survey in 1998.

### **3.4 Resources and constraints**

Capital expenditure to the end of 2000/01 for land acquisition, development and financial compensation is approximately R1.1 billion. By comparison, the Housing programme has spent about R18 billion to date on almost 1 million houses. Ironically, the DLA has under-spent its annual land reform capital allocation, largely because of inadequate administrative capacity. The Medium Term Expenditure Framework capital budget for the next two years

for land reform is approximately R1 billion. The DLA's budget has always been small compared to other programmes, being less than 1% of the national budget. Compared to the task needed the budget is inadequate.

The key constraints to delivery are the inadequate government capacity for land reform:

- scarcity of human resources at government level;
- lack of coordination and integration with other spheres of government and departments;
- lack of effective organizational, technical and managerial support to new farmers and land reform beneficiaries beyond the point of land acquisition.

#### **4 Land reform and poverty alleviation in South Africa**

In the first five years of the programme, emphasis was placed on land redistribution to the poor. In order to qualify for the settlement and land acquisition grant, applicants (i.e. households) had to receive an income of less than R1500 per month. In 1999, the Quality of Life report<sup>3</sup> concluded that the programme had succeeded in embracing the rural poor and placing productive assets in their hands. Productive agricultural as well as non-agricultural activities were taking place. Beneficiaries had better access to services than the rural population as a whole. However, poverty levels remained high. On the basis of the programme, Deininger and May<sup>4</sup> concluded the programme was contributing to both equity and efficiency and fostering sustainable growth.

An external review of the Land Reform Support Programme (supported by external donors) commented that the programme in the period 1994-99:

*has been one of the few national programmes which has highlighted the rights and needs of the rural poor. As the largest and the most marginal grouping in the country, the policies and programmes of the*

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<sup>3</sup> 'Monitoring and Evaluating the Quality of Life of Land Reform Beneficiaries: by J. May, B. Roberts, J. Govender and P. Gayadeen for the Department of Land Affairs, March 2000.

<sup>4</sup> *Is their Scope for Growth with Equity? The Case for Land Reform in South Africa.* By K. Deininger and J. May, World Bank, Washington.

*department have generated more debates in the media and the public discourse than any other programme or national department.*<sup>5</sup>

It has to be admitted, however, that although the impact of the programme on intended beneficiaries has generally been positive, the number benefiting has remained small. Under the second ANC government, the scope of land reform policy has broadened to include assistance to black commercial farmers. Assurances have been given by the Minister in her budget speech that this will not be to detriment of the rural poor.

## **5. Scope for further land reform in South Africa**

Given that the purpose of land reform in South Africa, namely

- to redress the injustices of apartheid
- to foster national reconciliation and stability
- to underpin economic growth and
- to improve household welfare and alleviate poverty,

given the very great disparities in wealth and access to land the scope for further land reform

and given the slow pace of delivery so far, the scope for further land reform is very great indeed. There is no end in sight.

Various attempts have been made to estimate the demand for land in South Africa, but they must be treated with caution. The most commonly quoted target for **redistribution** of white-owned land to blacks is that of 30% of the area in five years, which was first set in the RDP 1994. In the LRAD document, the time frame is extended to an additional 15 years. To date, the land reform programme has delivered some one million hectares of land, that is 1.3% of land over six years. If delivery continues at this rate, only 4.6% of the land will have been redistributed by 2015. At this planning stage, it is not known if the LRAD programme will increase or decrease the current rate of delivery.

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<sup>5</sup> 'Review of the Land Reform Support Programme', by A. MacIntosh, J. Barnard, G. Wellman, A. Vaughan, S. Sejake, L. Cliffe and R. Palmer, November 1999, for the DLA, The EU, DFID and Danida.

Despite the recent speeding up of the **restitution** process, the number of outstanding claims is massive. There are reported to be some 64,000 registered claims. About 20 per cent have been settled so far. However, many claims are on behalf of an entire community. The number of people represented is far greater than 64,000. It is probably in the order of three million – much more than was originally anticipated.

Finally, as has become apparent over the last six years, **tenure reform** in the communal areas is proving an extremely complex and uncertain undertaking. Work on the required legislation continues in consultation with the various stakeholders, in particular the traditional leaders.

## **6 Role of other stakeholders**

### **6.1 The Non-governmental organisations (NGOs)**

**NGOs** are very often the foot soldiers of land reform. The National Land Committee (NLC) is an active land NGO with a network of seven provincial affiliates and a head office in Johannesburg. It grew out of the National Committee Against Removals that assisted communities fight the apartheid government's policy of forced removals and Bantustan consolidation. NLC affiliates are independent NGOs and their size, strength, opinions and strategies vary across the country. They fulfil both a development role acting in partnership with government on specific projects and a lobbying/watchdog function.

The South African land reform programme is, to a significant degree, rights based. This is a matter of constitutional obligation. However rights do not have meaning unless the holders of the rights are able to enforce them consistently and effectively. In practice the enforcement mechanisms remain weak. Part of the solution rests with **legal assistance organisations** with the ability to use the law in defence of the poor and vulnerable. The Legal Resources Centre (LRC) is one such organisation. It is the oldest public interest law firm in South Africa and has developed a credible track record in land reform issues. Other organisations are the Centre for Applied Legal Studies at Wits and the Centre for Rural Legal Studies based in Stellenbosch.

### **6.2 Farmers' organisations**

These organisations constitute important pressure groups in the land reform sector. These include the National African Farmers Union, which, like the

NLC, has autonomous affiliates in three provinces. Agri-SA has been an active role player in all land reform policies, laws and programmes. They have provincial unions and represent the land-owning-farming sector. Most of the affiliates have predominately white members, with the exception of Kwanalu (the KwaZulu/Natal affiliate). The Agricultural Employers' Organisation is also an organisation representing white farming interest.

A recent survey of both long- and short-term technical assistance providing services to the land reform programme reveals a large number of highly motivated and competent **business firms as well as individual consultants** on whom the Department draws. There are certain categories of service providers, for which there will never be quite enough - different types of **lawyers, valuers, physical planners, land economists, agricultural specialists**. The development of effective and efficient ways of tapping this resource, using both government and donor funds, will be of great importance for achieving the ambitious land reform targets that government has set.

Despite the original intention of the redistribution pilot programme, that state funds should leverage the involvement of the **financial services sector**, this has been largely absent. Although there is a range of institutions providing some level of financial services, two key national role players can be identified.

### **6.3 The Land Bank**

The Bank was established in 1912 to assist in implementing government agricultural policy and promote white commercial farming. More than eighty years later, it is being radically transformed to support the development of the agricultural economy in the new South Africa and to serve a whole new set of clients. The Land Bank has been capitalised with grants of state funds and provides low-interest mortgages for farm purchase as well as unsecured production credit for clients with no security or formal financial track record. Its Step up Programme has assisted 36 000 clients, not considered bankable by the commercial sector. Commercial banks are critical of parastatals offering lower rates than the private banks can afford. At the same time, they have criticised the Land Bank for expanding its commercial book (mainly white farmers) instead of lending exclusively to black land-reform farmers - a

criticism dismissed by the Land Bank on the grounds that it needs commercial accounts to remain solvent.

#### **6.4 The Land Reform Credit Facility (LRCF)**

The Land Reform Credit Facility (LRCF) is a deferred repayment loan fund established in 1999 to finance high value, joint venture partnerships between commercial landowners and historically excluded South Africans. It has been capitalised initially at R63 million, using funding from the Department of Land Affairs and the European Union. Khula Enterprise Finance Ltd is administering the Facility. The key feature of the LRCF is that it offers loans, at 2-3 % below the Banker's Acceptance rate, with deferred repayments to banks or investors who wish to finance, on similar terms, land-based enterprises (or the acquisition of shares in these enterprises) by previously disadvantaged workers or neighbouring households. The emphasis is on encouraging commercial landowners to restructure the ownership of their assets to include landless households (typically workers), and to induce commercial banks and investors to become involved in the financing of commercial land reform.

In June 2000 a review was commissioned which found that the LRCF is a well-conceived initiative, of high potential and a good policy fit with the new Land Redistribution for Agricultural Development. Importantly it was noted that the facility has a limited focus, which is part of its strength, and that it should not be seen as the solution to all aspects of the land reform program. Amongst others, the review recommended that the facility should be expanded with more emphasis placed on empowerment of beneficiaries. The DLA has recently decided to recapitalise the facility.

It is abundantly clear that the route chosen by South Africa to reverse the legacy of land dispossession is through orderly processes of land restitution, land redistribution and land tenure reform. The land reform programmes are being implemented in accordance with plans that involve the national and provincial spheres of government, with both the Departments of Land Affairs and Agriculture playing central roles in the processes. These processes will go a long way towards changing the currently skewed land ownership pattern in South Africa by providing the opportunity for previously disadvantaged persons and groups to enter and participate in the farming sector meaningfully. In terms of the redistribution programme, opportunities have been created to improve economic livelihoods of people through land

allocation, while on the other hand dealing with tenure security issues and giving the landless the right to own land. I would like to conclude this discussion of the land issue in South Africa by saying that the land question in South Africa is certainly not a "tinderbox". A "tinderbox" situation has indeed been pre-empted by well-planned and resourced programmes of land reform.

**Table 1****Land Redistribution (April 1994 to November 2000)**

	<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>Total</b>
<b>Projects approved<sup>6</sup></b>	8	24	228	524	2836	1212	774	<b>5606</b>
<b>Projects transferred</b>	10	6	117	427	1015	1065	89	<b>2729</b>
<b>Hectares approved</b>	66828	3305	63955	141223	260513	141525	143785	<b>821134</b>
<b>Hectares transferred</b>	7385	1170	41970	119908	118477	233720	95216	<b>684914</b>
<b>H'holds approved</b>	1096	620	5462	10944	12893	17243	5692	<b>53950</b>
<b>H'holds transferred</b>	1131	262	3430	9831	6979	14250	1513	<b>37396</b>
<b>Budget allocated (millions of rand)</b>	16.4 m	9.3 m	82 m	164.2 m	193 m	276 m	91 m	<b>832 m</b>

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<sup>6</sup> A distinction is made between approved and transferred as actual land transfer takes place some time after approval. Approved are committed funds, while 'transferred' indicates spent funds.

