The **Programme for Land and Agrarian Studies (PLAAS)** at the University of the Western Cape and the **Interchurch Organisation for Development Co-operation**, of the Netherlands (ICCO) conference on

Another Countryside?

Policy Options for Land and Agrarian Reform in South Africa

24-25 October 2007
Lord Charles Hotel, Somerset West

POLICY OPTIONS 3

TENURE ARRANGEMENTS AND SUPPORT FOR LAND RIGHTS IN SOUTH AFRICA'S LAND REFORM

Edward Lahiff

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

TABLE OF CONTENTS

1. Introduction: The Challenge of Tenure Reform in South Africa

This paper provides an overview of land tenure and tenure reform in South Africa since the transition to democracy in 1994, focussing on rural land. It begins by outlining the main elements and achievements of the land reform programme, of which tenure reform is a part, and the debates surrounding them. Particular emphasis is given to tenure reform in the context of land redistribution – that is, land rights acquired as part of the state's redistribution and farm dwellers' programmes. Given the paucity of information available on the official tenure reform programme, however, this paper does not attempt to provide a detailed account of its performance and achievements.

South Africa's land reform programme is designed to redress the racial imbalance in land holding and secure the land rights of historically disadvantaged people. The *Constitution of the Republic of South Africa* sets out the legal basis for land reform, particularly in the *Bill of Rights,* which places a clear responsibility on the state to carry out land and related reforms, and grant specific rights to victims of past discrimination. The Constitution allows for expropriation of property for a public purpose or in the public interest, subject to just and equitable compensation. The state's land reform programme as a whole aims to achieve objectives of both equity, in terms of land access and ownership, and efficiency, in terms of improved land use and contribution to the rural (and ultimately the national) economy (DLA 1997: 38). In terms of overall achievements, however, land reform has consistently fallen far behind the targets set by the state and behind popular expectations (see Table). In 1994 virtually all commercial farmland in the country was controlled by the white minority and the incoming ANC government set a target for the entire land reform programme (redistribution, tenure reform and restitution) of redistributing 30% of white-owned agricultural land within a five-year period (African National Congress 1994; Williams 1996). The target date was subsequently, and arbitrarily,[1] extended to twenty years (i.e. to 2014), but, at current rates of land transfer, even this target is most unlikely to be met. Government has tended to attribute this slow progress to resistance from landowners and the high prices being demanded for land, but independent studies point to a wider range of factors, including a lack of political direction, bureaucratic inefficiency and a lack of mobilisation among the rural poor and landless themselves. [2]

Table 1: Total Land Transfers Under S.A. Land Reform Programmes, 1994-2006[3]

Programme	***Hectares redistributed***	***Contribution to total (%)***
Redistribution	1,477,956	43.8

[1] Arbitrary because no evidence or arguments were put forward at the time by policy-makers as to why this particular timeframe was appropriate, and the rate of progress up to that point did not suggest a 20-year deadline could be met without dramatic changes in policy, which have not been forthcoming.

[2] Report by Director General of DLA to the parliamentary portfolio committee on agriculture and land affairs, quoted in *Farmers Weekly*, 4 November 2005. See also Hall 2004a.

[3] Source: Department of Land Affairs, 2006.

Restitution	1,007,247	29.9
State land Disposal	761,524	22.6
Tenure Reform	126,519	3.7
Total	**3,373,246**	**100.00**

While tenure reform is generally understood, in the South African context, to refer to policies that seek to strengthen the property rights of those who already occupy land under various relatively insecure forms of tenure – notably in the communal areas and on commercial farms – it also has relevance for those who obtain land under the redistribution and restitution programmes. All land allocated under these programmes, whether state- or privately-owned to begin with, is, as a matter of policy, transferred in freehold title, either to individuals or, more commonly, to corporate structures representing groups of beneficiaries – either Trusts or Communal Property Associations.[4] This 'upgrading' of tenure is itself potentially problematic – assuming, as it does, that freehold is the optimal solution in all cases – but has received little critical attention from either policy makers or land activists to date.

A number of recent studies have identified a general failure to address the tenure needs of individuals within group resettlement projects[5] – that is, the failure to identify clearly the rights and responsibilities of individual members vis-à-vis the group to which they belong, and the failure to establish effective systems for allocation of plots, sharing of costs and benefits, democratic and transparent decision making and holding leaders to account. In effect, the tenure needs of the beneficiaries of redistributive land reform (including restitution) are deemed *a priori* to be secured through the granting of freehold title to the group, whereas the securing of individual rights and the creation of functional and sustainable group systems could be said to require a distinct programme of tenure reform that has barely been contemplated to date.

With its many different aspects, tenure reform in South Africa tends not to be seen, either by policy makers or analysts, as a single, coherent, programme. Policy is informed by broad principles, drawn from the Constitution and the White Paper, but these tend to be modified by the various social, political and economic conditions that prevail across the diverse categories of communal tenure, farm tenure and resettlement. To date, most policy debate has focused on communal tenure, due to factors such as the large areas of land and numbers of people affected, high-profile tensions around the role of traditional leaders in local government, and the inherent difficulties of reconciling long-

[4] Together, these tend to be referred to as communal property institutions (CPIs) or, more colloquially, 'legal entities' (see below).

[5] The term 'resettlement' is used here – in line with international usage - to indicate 'new' land to which people gain access and/or ownership. It is intended to distinguish such land from tenure upgrades or other *in situ* changes to land that people already occupy. The term is somewhat problematic in the South African context, however, for two reasons. First, 'settlement' is often used to indicate residential developments. In many land reform cases, people do not take up residence on the new land, but rather commute their from their existing homes (although the available data do not reveal the extent of this). Second, some land, particularly under restitution, is not used directly by new (or restored) owners, either for agriculture or for residence, because it is leased to a third part, as a commercial farm, forest or nature reserve. Again, the available data does not reveal the extent of this practice, and it is likely to change over time. Thus, 'resettlement' here refers to all land transferred under the official restitution and redistribution programmes, regardless of actual use.

established systems of communal landholding with modern notions of private property and individual rights.[6] Farm tenure has received some attention, largely due to widely reported evictions and violent incidents on farms, and the main focus of debate has been on addressing the impact of evictions rather than on achieving long-term and secure rights to land within the commercial agricultural zone.[7] Least attention has been paid to tenure conditions with resettlement arising from the official redistribution or restitution programmes, where the overwhelming focus of policy and debate has been on the acquisition of land.

In so far as there is a guiding paradigm for tenure reform in South Africa, it is that of private ownership, which is undoubtedly the dominant system within South African law and society:

> *Over most of the national territory, the system of individual private property predominates, supported by an impressive array of state and private-sector services … A central deeds registry and associated cadastral information service provides high-quality, detailed and up-to-date information in a variety of formats to owners, developers, planners and others, serving as the basis for a wide range of commercial and public administration activities.* (Lahiff 2006: 104)

While private property rights were enjoyed mostly by the white population under Apartheid, a variety of 'lesser' forms of tenure were imposed on the majority black population – including various permit systems and trustee arrangements. For van der Walt (1999), these were an integral part of the race-based system of oppression and exploitation, and it is not surprising that they enjoy little support today from either reforming officials or the rural population in general. Van der Walt (1999: 2) argues that, historically, 'the South African system of land rights has always privileged the institution of ownership', and that this has largely continued into the era of land reform. Carey Miller (2000: 48) takes a similar position, arguing that the historic importance of registration has continued in the reform era, which seeks to replace lesser, permit-based rights with rights of ownership and create a single system of land rights that can be contained within a single land registration system.

This emphasis on a unified system of property rights, based on the dominant private ownership model is endorsed by the White Paper on South African Land Policy (DLA 1997):

> *All land which is redistributed, restored or awarded to beneficiaries must be registered in one or other form of ownership (4.19),*
>
> and
>
> *The Department acknowledges the importance of a unitary land registration system (6.15.4).*

Although much of the tenure reform legislation introduced since 1994 has a progressive and pluralistic appearance, in that it seeks to protect a variety of tenure rights without

[6] For discussion of communal tenure and recent policy debates see Cousins 2007; Wisborg and Rohde 2004; Claassens 2003; Ntsebeza 2006.
[7] See Hall 2003a; Nkuzi and Social Surveys 2005; Lewis 2006; SAHRC 2003.

necessarily conferring ownership, this is having little impact in practice, as discussed below. Across the spectrum of land types and land reform programmes, formal ownership receives most attention and tends to prevail when it comes to disputes between different categories of rights holders.[8]

This paper argues that excessive attention is being paid to formal (or nominal) land ownership, and insufficient to the ways in which people actually gain access to, and hold, land. This, as Kingwill (2004) suggests, represents a crude extension of the dominant freehold system to a diverse range of situations. A peculiar feature of the South African land reform, however, given the general emphasis on private property, is the relative neglect of individual rights, in terms of either individualisation of property (i.e. subdivision) or the rights of individuals within group (collective) systems. A pervasive emphasis on the concept of 'community' across South Africa's land reform programme has given rise to a approach that combines elements of a modern (capitalist) private property regime (represented by freehold title) with notions of communalism rooted in (pre-capitalist) African tradition (represented by group occupation).[9] The land parcel that results has to the outsider – be it a neighbouring landowner, a government department or a potential investor – the appearance of private property, with a named (institutional) owner, clearly demarcated boundaries and a title deed recorded in the national deeds registry.

Inside the boundary, however, may be hundreds or even thousands of 'natural persons' whose land tenure may be subject to complex and often ill-defined and contested processes. Such collective solutions have dominated land reform in South Africa to date and there appears to be little support – from policy makers or organisations representing the rural poor and landless – for a more individualised approach. A possible exception to this pattern is the small minority of better-off black farmers and business people wishing to become farmers, including those represented by the National African Farmers Union (NAFU) who certainly favour individual over group ownership of land, but have not been publicly vocal on the issue. Such people are likely to be prime beneficiaries of the trend towards more 'commercially viable' (i.e. larger and better resourced) land reform projects, as exemplified by the shift to LRAD since 2000 (Wegerif 2004a; Hall 2004a). Better-off individual farmers on relatively large holdings are also likely to be the principal targets of AgriBEE when it begins. This has been described as a replacement (or 'deracialising') approach, whereby individual black farmers replace individual white

[8] The excessive concern with ownership applies not only to the systems of landholding imposed as part of the land reform programme, but also to the extreme reluctance of the state to use its constitutional powers of expropriation, even in cases where landowners are blocking valid restitution claims or abusing the rights of farm dwellers. See Lahiff 2007a.

[9] The prevalence of traditional (i.e. collective) values with regard to land in South Africa has been widely discussed in the literature. This alone, however, does not explain the emphasis on collectivist approaches within the land reform programme. I have argued elsewhere (Lahiff 2007a) that land reform policy promotes both collective ownership and collective production, and is particularly antagonistic to subdivision of land (especially 'commercial' farms). This cannot be attributed purely to tradition, especially as virtually all production within existing communal areas is on an individual (or household) basis – that is, there is no 'tradition' of collective agriculture. It is, rather, the desire of a conservative bureaucracy to preserve the semblance of large-scale commercial agriculture, characterised by private ownership of land and centralised production for the market, regardless of its relevance to resource-poor farmers wishing, primarily, to grow food for their own consumption. This approach crudely yolks aspects of African tradition to capitalist private property, with often perverse results.

farmers, with little or no restructuring of the agrarian economy and little or no impact on rural poverty, and although it has not been publicly endorsed by policy makers in these terms, it would appear to be the direction in which redistributive land reform is heading (Lahiff 2007a).

Given the predominance of collective approaches to land reform in South Africa, the tenure challenges facing South Africa are not just about securing the land rights of households (or individuals) within 'vertical' power relations (i.e. with hostile landlords, although this is important in many cases, especially farm dwellers), but also within 'horizontal' relationships between groups of peers where land rights and land administration are shared to a substantial degree. This is the case in most resettlement schemes, in reform of communal tenure (under both the Transformation of Certain Rural Areas Act and the Communal Land Rights Act) and even among resettled farm dwellers under the Extension of Security of Tenure Act and the Land Reform (Labour Tenants) Act (in so far as they gain access to agricultural land).[10]

This paper does not argue for a more individualised approach in the sense of formal subdivision of land or registration of individual titles, but for a more balanced approach to group and individual rights, that would give less attention to formal ownership by the group and more to the means by which individual users and occupiers gain secure access to land – surely the essence of tenure reform. The paper further argues that an uncritical acceptance of the ownership paradigm, and attempts to accommodate land reform largely within the existing legal edifice is inherently problematic, and failing in practice, and that a more flexible approach is required.

Three pressing problems arising from this approach can be highlighted:

- A general failure to conceptualise group resettlement projects as including a tenure dimension, beyond transfer of formal title to the group, leading to widespread conflict and dysfunctionality, compounded by a lack of official support for those grappling with the allocation and enforcement of rights and responsibilities;

- A general failure to equate the rights of long-term occupiers of commercial farms, including labour tenants, with the rights of formal owners, so that conflicts are almost invariably resolved in favour of the formal owner – typically with the eviction, legal or otherwise, of the occupier;

- Current proposals for reform of communal tenure that focus on the transfer of ownership of land to local institutions on behalf of large groups, with relatively little attention paid to how the rights of individual occupiers will be secured and advanced.[11]

[10] Housing policy, run from a separate Department of Housing, is the obvious exception to this pattern, where the dominant norms of South African law and society – individual private property – almost invariably apply.

[11] Such groups differ from groups in the first category in that they are generally established communities with long and complex histories, including internal divisions and hierarchies, and established patterns of land use (usually on a household or individual basis), and lack the sense of (collective) 'agricultural project' associated with recent resettlement schemes.

The sections that follow examine two of these areas - resettlement projects and farm dwellers – in order to identify critical tenure issues that have emerged since 1994 and changes in policy for redistributive land reform that may be required.

2. Tenure Issues in Resettlement: Redistribution and Restitution

Both the official restitution and redistribution programmes aim to transfer land to the previously disadvantaged as a means of redressing specific instances of dispossession and shifting the racial imbalance in land holding more generally.[12] While these programmes are open to both groups and individuals, most land has, in practice, been transferred to groups, many comprising hundreds (or even thousands) of households.[13] As noted above, virtually all land transferred to groups is registered in freehold title in the name of a 'legal entity' created especially for this purposes, usually either a Communal Property Association or a Trust.[14]

Trusts are a long-established institution (governed by the Trust Property Control Act 57 of 1988) and have been set up for many resettlement projects, but they are often considered unsuitable for land reform projects because they vest ownership in non-beneficiaries (the trustees) who are not democratically accountable to the beneficiaries (DLA 1997; CSIR 2005). Trusts can be regulated only by the Master of the Supreme Court, and are therefore not open to interventions by agencies such as the DLA should they experience difficulties.

For this reason, the DLA developed a new model of collective land ownership, the Communal Property Association (CPA), to be governed by the provisions of the Communal Property Associations Act 28 of 1996, specifically aimed at communities obtaining land under the land reform programme. The CPA Act sought 'to enable communities to form juristic persons to be known as communal property associations, in order to acquire, hold and manage property on a basis agreed to by members of a community in terms of a written constitution' (Communal Property Act 1996: Preamble). Section 9 of the Act prescribes principles to be included in every constitution (which echo the principles contained in the Constitution of South Africa). These principles are:

- fair and inclusive decision making
- equity of membership

[12] A small amount of resettlement has arisen from the implementation of the official tenure reform programme of the DLA – including ESTA and the LTA – but this differs little from other forms of resettlement. What differences there may be are considered under Farm Tenure Reform, below. For critical analysis of the restitution and redistribution programmes see Jacobs et al 2003; Hall 2003b; Walker 2005; and Lahiff 2007a.

[13] Most of the estimated 80,000 land claims have, in fact, been settled not through the return of land but by means of cash compensation. Claims that have been settled by means of return of land have mostly been large 'community' claims; smaller individual (or family) claims have been concentrated in urban areas, and have tended to opt for cash compensation. CSIR (2005) estimates that 75% of resettlement projects (restitution and redistribution) have involved the formation of communal property institutions.

[14] Other possible legal entities for groups are companies (regulated under the Companies Act No. 61 of 1973), close corporations (small companies without share capital, regulated by the Close Corporations Act No. 69 of 1984) and so-called 'Section 21' companies (not-for profit companies as defined by Section 21 of the Companies Act), but none of these have been widely used for land ownership under the land reform programme. Land transferred to individuals can, of course, be registered in the name of natural persons.

- democratic processes
- fair access to property
- accountability and transparency
- security of tenure
- sustainability
- compliance to legislation and constitution.

In addition, the schedule of the Act specifies the matters that must be included in any CPA constitution for it to be officially recognised and registered – namely, a definition of membership and of members' rights, a definition of the property concerned and the procedures for decision making (Cousins and Hornby 2002: 3). In practice, most CPAs have failed to live up to this ideal, and Trusts, although governed by different regulations, would appear to suffer many of the same problems. While the promulgation of the CPA Act can be seen as evidence of the state's commitment to addressing tenure issues with resettlement schemes, the prolonged failure to implement the monitoring and regulatory aspects of the Act, along with a general failure to provide support to CPAs or their members, has effectively reduced the CPA to just another form of ownership – collective freehold .

By July 2006, a total of 2.2 million hectares of land had been transferred under the redistribution programme and the disposal of state land, in approximately one thousand projects. A further one million hectares has been transferred under restitution.[15] Much of the land transferred (or 'delivered', to use the official term) under the restitution programme has, however, been transferred in nominal ownership only, as it remains incorporated into nature reserves and state forests and, in terms of the restitution agreements, is not accessible for direct use by the restored owners. As with other areas of the land reform programme, however, detailed statistics on beneficiaries and the quality of land acquired are generally unavailable.

Where land is transferred to a group there is often an expectation that the land will be worked collectively by all the members (or beneficiaries) and the benefits shared equally amongst them. Indeed, this is commonly made a condition of transfer that is enforced by state agencies such as Provincial Land Reform Offices and Regional Land Claims Commissioners. Although Section 2(4) of the Provision of Land and Assistance Act 123 of 1993 waives the applicability of the Subdivision Act 70 of 1970 in the case of land reform project, there appears to be no practical, accessible mechanism whereby groups can formally subdivide their land among their members after transfer to the group, and no example of such subdivision has been reported (see Lahiff 2007a; van den Brink et al 2006).

Some examples of informal (*de facto*) subdivision may be found, but this tends to be associated with the collapse of collective institutions (legal entities) and highly inequitable outcomes – although some examples of a more orderly and egalitarian allocation of individual plots have also been reported (Manenzhe 2007; PLAAS 2006).

[15] In a study conducted in 2005-06, the Community Agency for Social Enquiry (CASE) estimated that a total of 179 rural restitution claims had been settled that involved land restoration (cited in PLAAS 2006). The number has certainly increased during 2007, but is unlikely to exceed three hundred claims.

Collective ownership of land and attempts at collective production - encouraged by state policies, but with little practical guidance or support to make them work - create conditions whereby access to land and related resources, and an equitable share in benefits, may be subject to complex institutional processes. Particularly problematic is the position of women, who are often represented by households 'heads', who tend to be overwhelmingly male, leading to the exclusion of women and other household members from decision-making processes (Cousins and Hornby 2002; Walker 2003).

The available evidence suggests that most, if not all, group projects are confronted by major challenges regarding the use and benefits of resources, which can properly be termed tenure or land administration matters (PLAAS 2006). Most groups appear ill-prepared for the task of land administration, and difficulties are greatly compounded where attempts are made to engage in collective production or, as is increasingly the case, commercial deals with external bodies (see Mayson 2003; Derman et al 2006) Thus, added to tenure issues are questions of group dynamics, organisational development and commercial management, which present major challenges to large groups, dominated by relatively poor and poorly-educated people. Generic CPA constitutions generally provide inadequate guidance on how CPAs might function in practice, and little or no organisational support is provided to such institutions by official agencies after transfer of land.

Information of the performance of CPAs and Trusts is found in a variety of case studies (mostly in the grey literature) and reviews .[16] The general picture that emerges is of a major mis-match between the ideals of the CPA Act (and the constitutions of the various CPAs) and the reality on the ground. Recurring problems include a failure to define clear criteria for membership of the CPA or the rights or responsibilities of members, a lack of capacity for dealing with business and administrative issues, and a lack of democracy in both procedural matters and in terms of access to benefits. These problems tend to be greatly compounded where the CPA is involved in commercial or productive activities on behalf of its members as well as the usual activities of land administration. A general lack of oversight and support from the DLA – which is, in terms of the CPA Act, responsible for monitoring of CPAs, as well as the maintenance of the public register of CPAs – means that problems within CPAs are not easily uncovered and, if they are, few remedies are available.

The multiple problems confronting CPAs and other forms of group landholding (collectively referred to as Communal Property Institutions, or CPIs) are captured in the following extracts from the two most substantial studies of the subject to date:

> *[T]he process for allocation of substantive rights is generally not documented in the constitution and varies from formalised to totally informal or self allocation in practice ... In some CPIs the intention is to farm "communally" as a collective farm i.e. a single entity sharing profit and labour. In this instance labour input and profit sharing was found to be poorly defined. It was found that insecure tenure for individuals (in particular women) is prevalent in cases where membership vests in the household (which is usually represented by the head who is usually male) … The majority of CPIs are partly functional from an institutional perspective but are largely or totally dysfunctional in terms of allocation of*

[16] See Mayson, Barry and Cronwright 1998; Cousins and Hornby 2002; CSIR 2005; PLAAS 2006; Everingham and Jannecke 2006; Maiesela 2007; Manenzhe 2007.

individual resources and the defining of clear usage rights, responsibilities, powers and procedures for members and the decision making body. Transparency and accountability is also often below what is required. (CSIR 2005: Executive Summary)

The present institutional context in which CPIs are established is plagued by a number of problems. Firstly, the DLA does not provide support to CPIs once they have taken transfer of land. This is because it has no legal authority to do so in the case of trusts, and inadequate human resources to undertake its legal obligations in terms of the CPA Act. Secondly, the DLA has not created the institutional support for managing CPI records and/or registration of individual household land holdings and rights, and thus has no basis for intervention in rights disputes …[M]any communities have disregarded their constitutions and have adapted or created local institutional support for themselves. As a result of this, there is concern that multiple allocatory and adjudicatory procedures will create overlapping de facto rights that elude both official and legal resolution, creating fundamental insecurity of tenure. (Cousins and Hornby 2002: 17)

Thus, while specific problems of disorganisation or abuse can be identified in many CPIs, it would appear that these are merely symptoms of wider weaknesses that have their origins in the way that CPIs in general are designed, regulated and supported.

CPAs are required to register with a central Registrar of CPAs, based in the Tenure Directorate in the DLA in Pretoria, where the Constitution of each association is lodged, along with a list of members and details of property owned. In practice, the process for registration has been poorly developed to date and the quality of information available on CPAs is questionable. The CPA Register consists of one-page summary information on each CPA, including beneficiary information, property description, postal and physical addresses, date of adoption of constitution, and the policy programme under which the CPA acquired land. Many recently registered CPAs do not appear on the register and among those that do, there are major gaps in information, as well as inconsistencies in what information is captured. From this partial information it is not possible to determine how many CPAs have been registered nor, for those CPAs appearing on the register, in which districts or provinces they are located, how many hectares they own or how many members they have. There is insufficient information in the CPA register to correlate it with land reform project lists at a national or provincial level, and it seems not to be possible to determine which CPAs were established in which land reform projects (Hall 2003c). The lack of an accurate and accessible CPA register makes it virtually impossible to verify details of a CPA's membership or regulations in the case of a dispute, but also indicates the failure to put in place any effective regulatory framework.

The review of CPIs by the CSIR (2005: 58) made the following observations on the role of DLA:

"DLA has an obligation to monitor and evaluate CPA functions. Section 11 of the Act requires that CPAs furnish prescribed documents. Regulation 8 says that this must be done annually within two months of the AGM. Section 11 also makes provision for the Director-General to access CPA information for inspection purposes. Forcing the CPAs to be accountable to an outside body is also very beneficial to the CPA members as it can help prevent illegal activities of committee members, and ensures that the committee maintains its accountability to its members. DLA also has a

responsibility under section 17 of the Act for the DG [Director-General] to submit an annual report to the minister on the functioning of CPAs in regard to the extent to which the objectives of the Act are being achieved. To meet this obligation the DLA will have to monitor individual CPA performances."

According to the CSIR, however, this responsibility is being neglected by DLA:

"No annual reporting on CPA functioning in general as envisaged under section 17 is currently taking place. No annual monitoring of CPAs as specified under section 11 and regulation 8 is currently taking place … DLA is not requesting, nor are CPAs providing the information as specified in the regulation … the norm is that there is poor internal accountability and transparency."

Dysfunctional CPIs would not, perhaps, be a major cause of concern if the situation was temporary (while the CPI became more established) or if CPIs rapidly shed responsibilities (e.g. if there were a rapid transition to de facto individual landholding and its duties were reduced to the bare bones of nominal land ownership). The reality, however, appears to be that CPIs are not becoming more functional over time and that this is having major negative implications for the tenure security and livelihoods of their members. First, weak or dysfunctional CPIs are often incapable of ensuring equitable access to land and other resources by its members, or of protecting the property from use or damage by non-members. This is leading in some cases to monopolisation of resources by group leaders or other relatively powerful individuals, for example in the settled restitution cases of restitution cases of eMpangisweni, and Klipgat (PLAAS 2006; see also CSIR 2005). Secondly, it is hampering development, as individual members are reluctant to invest their efforts and resources in an uncertain environment and, without effective leadership and procedures, groups are incapable of brokering support from external agencies, including the state agencies specifically tasked with providing such support (PLAAS 2006). Notable examples include the Shimange restitution case in Limpopo province (Manenzhe 2007) and the LRAD projects on the Vaalharts Irrigation Scheme in the Northern Cape (Maisela 2007). The net result in many cases is under-utilisation of resources and minimal benefits for the group members. In a review of the available literature on group projects under restitution, PLAAS (2006) identified widespread problems of inadequate and inappropriate planning of resettlement projects, a chronic lack of support from state agencies and a general failure to make effective use of land for the benefit of group members. With regard to six detailed studies of restitution projects on agricultural land, the PLAAS study highlighted the lack of material benefits to members of community restitution claims:

The most striking finding from the case studies is that the majority of beneficiaries across all the restitution projects have received no material benefit whatsoever from restitution, whether in the form of cash income or access to land. (PLAAS 2006: 16)

The CSIR review, which focused mainly on redistribution projects, found similar problems, and emphasised the inability of CPAs to manage their own affairs without external support:

"…CPIs do not have the capacity to undertake sound land management. A high number of CPI members are not receiving tangible benefits from CPI

> *membership and this has and will lead to disillusionment with CPIs. … A major concern of this study is that DLA seem to have no long term commitment to assist communities in tenure management and consider their job completed once land is transferred to the CPI. DLA's core business cannot be only transferring land, but if it intends to achieve secure tenure rights for individuals within CPIs, then an ongoing departmental function must be about supporting group tenure systems and land administration."* (CSIR 2005: Executive Summary).

Such findings signal a systemic failure to adequately conceptualise tenure within group resettlement schemes. The provision of land in freehold title to a communal property institution is seen by policy makers as sufficient in itself, without regard to the means by which individual members might gain access to such land, safeguard their land rights over time and create functional institutions for the administration of common property. As shown by numerous studies, failure to give meaningful content to the rights and responsibilities of both individuals and the groups to which they belong leads not only to tenure insecurity but also to a loss of opportunities and material benefits that land reform participants anticipate. As Cousins and Hornby (2002: 1-2) argue:

> *"Securing tenure of individual members of CPIs, rests upon the clarity and accessibility of procedures for the assertion and justification of property rights and institutional mechanisms for realising and enforcing these rights".*

Without such procedures there is likely to be little tenure security and, as the studies cited here demonstrate, little or no material benefit either. There is clearly a need to revisit the policy framework for group resettlement, with particular attention to the means by which members gain secure access to land and its benefits, the type of development that is encouraged (be it household, collective or joint ventures with external partners) and the institutional arrangements for the provision of external support in the areas of both land administration and production.

The specific tenure challenges within resettlement schemes must be seen within the wider context of how such schemes are designed and implemented – that is, how resettlement in its entirety is conceptualized. As argued elsewhere (Lahiff 2007b), the ideology of 'willing buyer, willing seller' and 'demand led' reform based on the market not only absolves the state of responsibility for the outcomes of the land reform programmes but also effectively pre-empts key questions about the design of resettlement schemes that ought to have been answered at the outset: notable among them the model of agriculture being promoted – individual versus collective, 'commercial' versus 'subsistence'. At the same time, major implications have flowed from interventions such as the imposition of orthodox but debased models of farm planning, the de facto prohibition on subdivision of land, and the failure to develop a comprehensive system of support to resettled farmers. Within this bewildering mix of state and market, individual and communal, tenure is deemed to have been secured by the granting of freehold title to legal entities representing groups of resettled farmers. The available evidence, however, suggests that the effective elements of tenure security – how individuals access and hold land – remain largely unresolved, whereas additional elements not generally considered as part of tenure reform have been introduced, notably the challenge of collective production and of holding community leaders accountable.

It is unlikely that tenure rights can be adequately secured within the existing quasi-collectivist models that have been established in the form of CPAs and trusts. If the form

of tenure is to follow its intended function, achieving tenure security must begin with a reappraisal of how the beneficiaries of resettlement wish to use and hold land. The formation of groups may well play a useful role in the initial acquisition of land, as collective action can potentially strengthen the hand of the poor in negotiations with land owners and state officials. It also appears that there is considerable popular support for ongoing 'public' or 'community' involvement in the allocation of land and mediation of disputes between neighbours or within families – as demonstrated with the communal areas today. Where there appears to little or no popular support is for collective forms of production. Collective forms of production have effectively been imposed by the implementation model as applied by land reform officials rather than arising as a spontaneous desire by intended beneficiaries themselves. Where collective production has been attempted, it has largely failed or has occurred in situations which do not actually involve collective use of land and can better be seen as joint business ventures.

Thus, resettlement should commence with an assumption that land use will be individualised. Collectivisation of agriculture need not be ruled out, but should emerge only from a clear desire on the part of the beneficiaries rather than being imposed as a norm or as a condition of receiving land or supplementary grants. While groups may have their use in the initial acquisition of land, it has to be asked whether they have an ongoing role once the initial allocation has taken place, especially if collective land use is eliminated. Clearly, CPIs have a potential role in the management of communal resources, such as communal grazing lands, woodlots and the like, as they do in the older communal areas, but this does not necessarily imply collective forms of production. A second question that arises is whether the group that is formed in order to acquire land (and which is typically shaped by the size and cost of the particular farm that is available for purchase, as least under the redistribution programme, and may lack any organic unity) is in the best position to manage such communal resources. Although the concept of community is prevalent across much of South African life, when it comes to the administration of land it coexists with other levels of authority associated with the state. While this had many negative connotations (e.g. 'decentralised despotism' and 'top-down' control), the idea that communities in publicly-funded resettlement schemes should be left entirely to their own devices does not appear reasonable, and does not appear to be what is demanded by most beneficiaries. The challenge, therefore, is to find a suitable balance between three levels – individual (or household), group and state – in a way that secures tenure and promotes sustainable development. This may imply a greater role for the state in the demarcation and allocation of individual plots, and in the administration of resettlement schemes over an extended period. This was the case in Zimbabwe from 1980 at least up to 2000, where the state retained ultimate ownership of land on resettlement schemes, and responsibility for group infrastructure lay with local officials, although agricultural production was in the hands of individual plotholders.

The CPI review carried out by the CSIR contained many useful recommendations, mainly connected with the need to formally specify the rights of members within group schemes and the provision of ongoing support by DLA.:

> *DLA's core business cannot be only transferring land, but if it intends to achieve secure tenure rights for individual within CPIs, then an ongoing departmental function must be about supporting group tenure systems and land administration.* (CSIR 2005: Executive Summary)

The CSIR report also calls for changes to the way resettlement projects are implemented, including changes to the grant size, subdivision of land, smaller groups, and separation of business entities from landholding entities. I would go somewhat further, and suggest the basic principle of acquiring and managing land as a group should be critically re-examined, and treated as one possibility rather than the normal way in which poor people gain access to land. Specific recommendations in this regard are set out below.

3. Tenure Security of Farm Dwellers

Large-scale commercial farms account for approximately 65% of the territory of South Africa and are home to an estimated three million farm dwellers.[17] Farm dwellers here refers to farm workers, ex-workers and other residents on farms of which they are not the owners (or relatives of owners). Landowners in this area are overwhelmingly white, whereas farm dwellers are almost exclusively black. Many farm dwellers are long-term residents, tracing their occupation back through generations and many know no other home. Under Apartheid, farm workers (and farm dwellers more generally) were, by law, tied into a highly subservient relationship with the white landowners, severely restricting their rights to change jobs or move off a farm, or to organise for better working or living conditions. Landowners generally provided rudimentary services for their farm dwellers, often with the help of subsidies from the state, although in many cases farm dwellers built their own houses.

In the early decades of the twentieth century, many farm workers entered into a variety of tenancy arrangements with cash-strapped white landowners, including cash tenancy, share-cropping and labour tenancy. The system of labour tenancy was particularly widespread, under which black tenants on white farms were provided with agricultural land, often on an annual contract, in return for which they (or a member of their family) provided the landowner with three of six months unpaid labour. Over the course of the century, most farm dwellers were deprived of access to agricultural land, leaving them with only basic accommodation and possibly a small garden plot. The Natives' Land Act of 1913 was the first attempt to outlaw labour tenancy in areas such as the Orange Free State and this was intensified and expanded following the introduction of the Native Trust and Land Act of 1936 (Morris 1976: 334). In one region, however, comprising northern KwaZulu-Natal and southern Mpumalanga provinces, substantial numbers of labour tenants managed to survive on farms up to the present day, although their rights to land for cropping and grazing are often contested by landowners.

The tenure rights of farm dwellers are protected under South African law, including the Bill of Rights in the Constitution, which provides for a right to basic services such as water, a right to shelter, a right to a family life, protection from arbitrary eviction and the right to practice one's culture. The Constitution is quite specific in the protection it offers against arbitrary eviction:

> *"No-one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions." (*Constitution of the Republic of South Africa Act of 1996: Section 26(3)

This protection must, however, be seen within the context of the competing rights of landowners and employers. In terms of the *White Paper on South African Land Policy*, farm dwellers are viewed as a vulnerable group whose property rights need to be protected and strengthened.

[17] Hall 2004a: 37. In 2002, the total number of farm workers in South Africa (permanent and seasonal) was calculated to be 940,000, but not all of these lived on, or enjoyed tenure rights, on farms.

> *A major cause of instability in rural areas are the millions of people who live in insecure arrangements on land belonging to other people. They had and have simply no alternative place to live and no alternative means of survival. The evicted have nowhere else to go and suffer terrible hardships. The victims swell the ranks of the absolute landless and the destitute. They find themselves at the mercy of other landowners for refuge.* (DLA 1997:33)

The principal policy measures taken to secure the tenure rights of farm dwellers are the introduction of the Extension of Security of Tenure Act 1997 (ESTA), and the Land Reform (Labour Tenants) Act of 1996 (LTA). ESTA was intended to have two main functions: to regulate relations between landowner and occupiers, including procedures to be followed in the event of an eviction; and provide a means of upgrading the rights of occupiers to full ownership. Stronger protection is, in theory, offered to occupiers over 60 years of age, who have been on the land for ten years or more or who were in occupation prior to the enactment of the Act in 1997. The provisions of ESTA apply to all people who live on rural land with the permission of the owner, regardless of whether they are employed by the owner or not.

In both of its key areas – regulation of evictions and promotion of long-term tenure security – ESTA has been an abject failure. This point has been repeatedly made by land activists and effectively conceded by successive ministers of agriculture and senior officials. Despite these calls for its review or replacement, however, ESTA remains in place.

As early as 1999 (and especially in the Ministerial Directive of 2001) there was talk of 'consolidating' ESTA and the LTA (Turner and Ibsen 2000: 44) Further examples of the largely fruitless rhetoric that surrounds ESTA are contained in the Annual Report of DLA for 2002-2003 (DLA 2003: 53), which spoke of a Consolidated ESTA/Labour Tenants Bill that would be gazetted by the end of 2003. Turner and Ibsen (2000: 44) quote the Minister of Agriculture and Land Affairs and the Director-General of DLA in 2000 resolving to give 'primary focus' to the development (i.e. redistributive) element of ESTA, and threatening landowners with expropriation and with intervention by the security forces to combat illegal evictions. Calls for overhaul of ESTA and the LTA were led by the Minister of Land Affairs at both the National Land Tenure Conference of 2001 and the National Land Summit of July 2005. In July 2006, the new Minister of Land Affairs publicly, and controversially, denounced the eviction and mistreatment of farm workers. In September 2007, the Deputy Minister for Land Affairs went a step further when he threatened farmers who evict farm dwellers illegally with expropriation (quoted in the Mail and Guardian online, 12th September 2007). Despite these calls for its review or replacement, however, ESTA remains in place, with only minor amendments over the years. No substantial review of the impact of ESTA has been carried out to date, and the available information tends to focus mainly on the conditions on farms and on evictions.

The most detailed information on evictions and the general status of farm dwellers is contained in the work of Nkuzi Development Association and Social Surveys Africa, who conducted a major national survey in 2003. The most important finding of the survey was the vast scale of evictions, far greater than had been previously estimated by most sources:

> *It was found that almost 1.7 million people were evicted from farms in the last 21 years and a total of 3.7 million people were displaced from farms. The number of people displaced from farms includes those evicted and others who left out of their own choice. Many of those found in this study to have left of their own choice made this choice due to difficult circumstance on the farm; however these are not counted as evictees. People were only considered evicted if there was some direct action of the owner or person in charge that forced the farm dweller to leave the farm against their will.* (Nkuzi Development Association and Social Surveys Africa 2005: 7).

As shown in Table 2 (below), both the number of evictions and the total number displaced from farms was greater in the period 1994-2004 – the first decade of democracy – than it was in the last decade of apartheid. The introduction of legislation such as ESTA (in 1997) would appear to have brought no respite: indeed, 2003 was the third worst year for evictions over the 20 year period, exceeded only by 1984 and 1992, both years of exceptional drought which impacted severely on the agricultural sector. Two-thirds of evictions were work related with the others arising from disputes between owners and occupiers. Other common problems leading to eviction were death of a primary occupier or the sale of a farm (Nkuzi Development Association and Social Surveys Africa 2005: 14). Worryingly, almost half of all those evicted were children, with a high proportion of women as well: 23% of evictees were found to be men, 28% women and 49% children (Nkuzi Development Association and Social Surveys Africa 2005: 10; see also Lewis 2006: 18)

Table 2: Total number of people displaced and evicted from Farms, 1984-2004

	Displaced from farms	**Evicted from farms**
1984 to end 1993	1,832,341	737,114
1994 to end 2004	2,351,086	942,303
Total	4,183,427	1,679,417
Now on other farms	467,808	93,060
Permanently off farms	3,715,619	1,586,357

(Source: Nkuzi Development Association and Social Surveys Africa 2005: 7)

In terms of the law (both ESTA and the Constitution), no occupier can be evicted without a court order, and a court order cannot be issued without consideration of a range of factors, including the age of the occupier, the length of time they were on the land and the availability of alternative accommodation. The problems identified with ESTA, and the reasons why these provisions are through to have had minimal impact, are twofold.

Firstly, where landowners apply for an eviction order it is almost invariably approved by the court, regardless of the circumstance. It is widely perceived that magistrates courts either do not apply ESTA in all cases where they are legally obliged to do so, or ignore important aspects that are designed to protect the rights of occupiers. An inquiry by the South African Human Rights Commission (SAHRC 2003: 177) found 'widespread non-compliance' with ESTA at all levels of the justice system:

> *There is a lack of compliance with ESTA provisions that regulate eviction proceedings. There is complete lack of compliance with the legislative provisions of ESTA in some court proceedings, resulting in farm dwellers being denied their ESTA rights and being evicted in terms of common law.* (SAHRC 2003: 177)

In the landmark Nkuzi judgement of the Land Claims Court in 2001, the court made a declaratory order saying that people who have a right to security of tenure under ESTA or the Land Reform (Labour Tenants) Act, and whose security of tenure is threatened or has been breached, have a right to legal representation or legal aid at state expense if substantial injustice would otherwise result and if they cannot reasonably afford the cost of legal representation from their own resources.[18] The State is under a duty to provide this legal representation or legal aid through mechanisms selected by it. Despite this ruling, it would appear that most occupiers who come before the courts do not have the benefit of legal representation, which undoubtedly prejudices their case. Nkuzi and Social Surveys (2005: 15) give an example from the Worcester Magistrates Court where seven eviction orders were granted in the first four months of 2005, and confirmed on review by the LCC, of where six were undefended (i.e. default) judgments.

While many eviction orders are being upheld by the LCC, the systematic failure of the lower courts to interpret and apply the law correctly is revealed in the high proportion of cases overturned on review by the higher court, which Nkuzi and Social Surveys (2005: 15) estimated at 25% of cases:

> *"By the end of 2004, the LCC had reviewed 645 magistrates' court eviction orders since it was established. The LCC set aside approximately 25% of the eviction orders and confirmed about 75%."*[19]

Secondly, and much more significantly, it would appear that the vast majority of evictions do not involve a court order – that is, they are carried out illegally. The SAHRC (2003: 179) reported "a high rate of illegal evictions with a lack of law enforcement and prosecution of offenders". The National Evictions Survey estimated that only 1% of evictions involved any sort of legal process (Nkuzi Development Association and Social Surveys Africa 2005: 15; see also Xaba 2004).

ESTA makes it a criminal offence to evict an occupier without a court order (Section 23.3).[20] Yet, few convictions have been secured in this respect to date.[21] This is generally attributed to a widespread refusal of the South African Police Service to open cases on behalf of farm dwellers who report such cases, or the failure to respond to

---

[18] *Nkuzi Development Association v the Government of the Republic of South Africa and the Legal Aid Board (LCC 10/01).*

[19] See also SAHRC 2003: 177.

[20] *23. (1) No person shall evict an occupier except on the authority of an order of a competent court.*
(2) No person shall willfully obstruct or interfere with an official in the employ of the State or a mediator in the performance of his of her duties under this Act.
(3) Any person who contravenes a provision of subsection (1) or (2) shall be guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

[21] There have been reports of one, possibly two convictions since the law was passed, but it has not been possible to obtain details of these.

reports of evictions, the refusal of public prosecutors to refer eviction cases to court, and the failure of magistrates to apply the law as intended to protect the rights of occupiers.

This description of the (non-) implementation of ESTA in Limpopo Province in 1999 would appear to be still relevant in 2007:

> *The constitutional and legal rights of farm dwellers are being violated daily due to their ignorance of the law and their inability to access the legal system. The public institutions ranged against farm workers would appear to include the police, the state prosecution service, magistrates, the Legal Aid Board, the Department of Home Affairs and virtually all practising advocates in the province, not to mention farmers and their extensive support network. Against this formidable opposition, the protection provided by ESTA, as implemented by PDLA [Provincial office of the Department of Land Affairs] is of little benefit.* (Lahiff 2000: 97)[22]

Similar views on the national picture were expressed in 2001 by the Director-General of the DLA:

> *Eviction of farm residents is carried out with alarming regularity, often without a court order and without farm owners following the procedures required by law … Farm residents faced with threatened or real eviction are routinely turned away from certain police stations when they seek assistance or attempt to open criminal charges against owners. The DLA routinely hears of cases from around the country where police, prosecutors and magistrates refuse to acknowledge the existence of the ESTA or to acknowledge that farm dwellers or occupiers (other than the owner) have any real rights to be on the land. Despite hundreds of evictions since the introduction of ESTA, it is still a rare occurrence for a landowner to apply for a court order to carry out an eviction and only one case of unlawful eviction has been successfully prosecuted in the courts.* (Mayende 2004: 49).

According to the SAHRC, the general failure to implement the provision of ESTA amounts to a denial of the human rights of occupiers and contributes to a climate where avoidance of the law is widespread:

> *The failure by the State to adequately train its officials to implement legislation promulgated in terms of the constitution amounts to a disregard of the importance of such legislation. It also indirectly contributes towards the denial of the rights of farm dwellers, as perpetrators know that they can evict farm dwellers with impunity.* (SAHRC 2003: 179)

[22] For a similar account of the failure of police and justice officials to protect farm dwellers in KwaZulu-Natal, see Xaba (2004). Lewis (2006: 18) provides a similar perspective from the same province: "There are examples of transformation of policing management and practice, but at the same time there are also still police stations where station commanders side with land owners, where officers refuse to take statements or open dockets when cases of abuse are reported to them by farm dwellers, and where dockets recording cases of abuse are 'lost' or just not attended to."

In 2001, the Rural Legal Trust (RLT) was established to provide legal services to rural dwellers throughout the country. The RLT aimed to fill the gap in the services provided by the Legal Aid Board (LAB) by identifying organisations that were dealing with land issues in provinces and entering into cooperation agreements with them to establish and support legal teams on the LAB's behalf. The RLT and its partners also work closely with a network of paralegal associations and advice offices throughout the country. Such legal teams have been giving priority to ESTA cases, but it is not know what impact this has had to date. According to the Department of Land Affairs (2007: 62), an interim agreement reached has been reached between the Department, the RLT, the national Department of Justice to conduct evictions monitoring and provide legal assistance to farm dwellers.

3.1 Securing long-term tenure under ESTA

In addition to regulating evictions, ESTA (Section 4) makes provision for farm dwellers to apply for grants for 'on-farm' or 'off-farm' land or development (e.g. housing), and Section 26 specifically allows for expropriation for 'purposes of any development in terms of this Act', but the first of these measures has been applied in few cases and the latter not at all. Wegerif (2004b: 231) argues that while the legal provision exists to implement a programme that gives farm dwellers long term security of tenure, this remains dependent on the willingness of the Minister to use his or her powers to design and implement such a programme and there is effectively no right under the legislation for a farm dweller to claim security of tenure if the state should fail to provide it: "The extent of implementation of section 4 of ESTA reflects either extreme weakness of the Act or a lack of commitment on the part of Government to give farm dwellers long-term tenure security" (Wegerif 2004b: 231).

A total of 126,519 hectares of land have been provided to people under all aspects of the tenure reform programme since 1994. This includes farm dwellers (and especially labour tenants) and residents of communal areas (DLA 2006). Where developmental assistance (i.e. grants) has been provided under ESTA, it has usually involved people moving off farms and being provided with a residential plot and house in a public housing ('RDP') scheme, rather than agricultural land of their own or secure accommodation on farms where they have lived or worked. Little information is provided by the DLA on land transferred – or land rights secured - under ESTA, and the few mentions that are made tend to be aggregated with other information on eviction or LTA cases For example, the Annual Report of DLA for 2002-2003 includes just a single ESTA case in a list of hundreds of land reform projects implemented that year: this was in the Western Cape (Buffeljags housing project) and involved just two beneficiaries on 1,763m^2 of ground (DLA 2003: 62). The same report (DLA 2002: 77), mentioned that 23 'ESTA occupiers' benefited from LRAD in Limpopo Province, but no land area is mentioned and it appears unlikely to be 'on farm'. Other so-called ESTA occupiers may be included in general redistribution projects but this is almost certainly on 'new' land rather than on the land on which they enjoyed ESTA rights. In 2004, Hall (2004a: 42), using unpublished data from DLA, estimated that 56 ESTA projects had been implemented country-wide in the seven years since the Act was introduced, providing 58,751 hectares of land to 5,089 beneficiaries. Again, it is not known how many of these were 'on-farm' or 'off-farm and, Hall argues, it is likely that additional farm dwellers were assisted under the general redistribution programme. In this regard, such beneficiaries

are merely availing of opportunities open to all black South Africans, rather than exercising their specific rights under ESTA (which they effectively forfeit by leaving the farm). In this sense, redistribution tends to substitute for tenure reform, rather than complementing it as might be expected. In the few cases where occupiers have obtained long-term security of tenure 'on-farm' (as on the farm of the Molteno Brother's Trust in Grabouw, in the Western Cape) it tends to be as a result of philanthropic gestures by landowner, rather than of official policy, and again tends to be limited to houses and gardens and to exclude agricultural land (Kleinbooi, Lahiff and Tom 2006).

3.2. Labour Tenants

Labour tenants have, in theory, acquired stronger legal rights than other farm dwellers. The Land Reform (Labour Tenants) Act of 1996 aims to protect labour tenants from eviction and gives them the right to acquire ownership not only of their residential sites but also of the agricultural land they have historically used. Thus, like ESTA, the LTA combines a tenure reform element (securing the land rights of labour tenants and specifying the conditions under which they may legally be evicted) with a land redistribution element (providing for labour tenants to gain title to the land they have used under labour tenancy agreements).

By the extended deadline of March 2001, a total of 19,416 claims had been lodged under the Act, mostly in KwaZulu-Natal and Mpumalanga, and it is not know what proportion of total labour tenants this represents. Processing of these claims has proven to be extremely slow and bureaucratic, with officials seemingly reluctant to inform landowners of the claims on their land or to intervene either to prevent evictions or secure the long-term tenure security of labour tenants (SAHRC 2003: 180; Xaba 2004; AFRA 2006).

> "Labour tenants currently residing on land and awaiting the outcome of their application process to obtain land ownership are in a vulnerable position. With the possibility that the landowner will lose rights in land, albeit compensated therefore, privileges and rights are being withdrawn from labour tenants." (SAHRC 2003: 108)

Hall (2004a: 44) reported that, by 2004, approximately 200 labour tenant projects had been approved by DLA and 80,000 hectares had been transferred, but estimated that this represented only a small proportion of the total claims on file. By 2007, Del Grande (2007: 10) estimated that no more than one-third of claims had been settled.

It would appear that a high proportion of labour tenant claims have been resolved by removing tenants from the farms they occupied and resettling them – often in groups – on land purchased on their behalf by the state. In other cases, labour tenants have had to bring in outsiders in order to raise sufficient grants to purchase land they already occupy and use – thereby reducing their access to land while upgrading their tenure. This arises because of the policy of settling labour tenant applications through the use of redistribution grants, rather than developing specific mechanisms tailored to the needs of labour tenants. Ironically, land acquired on behalf of labour tenants has generally not been formally subdivided, with the result that labour tenants who were individual (or household) tenants on privately owned farms now find themselves as members of a

group that holds – and is expected to use – land collectively. As with other group resettlement schemes described above, this is nominally a tenure 'upgrade', as the group now holds the land – collectively - in freehold title, but the tenure rights of the occupiers remain largely undefined and therefore potentially insecure.

3.3 Farm Tenure: ways forward

A comprehensive farm dweller tenure programme would require stronger legal protection for occupiers as well as the development of policy instruments that would allow occupiers to achieve long-term security of tenure through assistance with purchasing their plots or, more realistically, through intervention by the state using its legally-sanctioned powers of expropriation.[23] In practice, however, no such programme has been implemented, with the result that ESTA has been reduced to a passive mechanism for the regulation of evictions, with the role of officials – in the minority of cases where they become involved - being effectively limited to informing owners and occupiers of their rights and responsibilities. The opportunity offered by the Labour Tenants Act to secure the rights of tenant farmers and convert them into owner-occupiers appears to have been squandered, as officials lack either the legal instruments or the political leadership to confront the entrenched power of white landowners.

Part of the problem is that the content of farm dwellers' rights – how long they have lived on a farm, what terms have been agreed with the land owner, the boundaries of land allocated for their use, and other customs and practices established over time – are typically known only to them and to the landowner. Where written agreements exist between owners and dwellers, these typically relate only to matters of employment, with a general reference to housing or other benefits. Land rights *per se* are almost never recorded in writing. The great inequality between farm owners and farm dwellers - both in terms of the enforceability of their land rights and their wider socio-economic status – determines the views and responses of outsiders, including government agencies. The national DLA, and provincial departments of agriculture, maintain no registers of farm dwellers or their rights, and typically have no information on their living conditions or even the pattern of evictions in their areas of operation. Local government, with responsibility for provision of basic services to all citizens, generally treat private commercial farms as no-go areas and exclude farm dwellers from their planning and services. In this context, the general absence of land tenure data with respect to farm dwellers is both a symptom and a contributing factor to the ongoing marginalisation of this socially vulnerable but numerically large social group.

The failure to provide effective protection for the tenure rights of farm dwellers clearly represents a major policy failure, not to mention a crisis for those directly affected. There are many dimensions to this problem, including the nature of the legislation that has been introduced to give effect to the protection promised in the Constitution, the strategies developed for the implementation of that legislation, and the extreme vulnerability of farm dwellers in the face of determined action by landowners. In theory, ESTA and LTA extend legal protection to land rights established through use and custom, and create possibilities for enhanced tenure security, but this depends heavily

[23] The use of expropriation is recommended not in order to reduce the price of land (although this may also be a factor for consideration) but to overcome landowner resistance: i.e. compulsory purchase at a 'just and equitable' price rather than confiscation.

on the willingness of the state to respond to such demands. Particularly problematic is the requirement for farm occupiers to access the courts in order to protect their rights, as highlighted by the SAHRC:

> *It is of concern that in fulfilling constitutional obligations to ensure tenure security, a system was created that relies on access to justice to enforce ESTA rights and that very little has been done to assist farm dwellers to enjoy the constitutional protections enshrined in the legislation.*
> (SAHRC 2003: 173)

While numerous calls have been made for the overhaul of ESTA and the LTA, few concrete proposals have been put forward, and it is difficult to see what difference changing the law would make when the majority of evictions occur outside the law.

Whatever the strengths and weaknesses of the current legislation, the principal problem appears to lie in system-wide failure to implement it. DLA has put minimal resources into monitoring conditions on farms or responding to reports of evictions while the responsible minister – of Land Affairs – has, up to recently, failed to adequately communicate the importance of this legislation to other ministries, particularly those responsible for the administration of the justice system (Minister of Justice) and the police (national and provincial ministers of safety and security) – although in the past year there has been discussion between Land Affairs and Justice around cooperation in the enforcement of ESTA. Up to now, the police and justice system have clearly failed to deliver on their constitutional mandates with regard to protection of farm dwellers. Over and above any reforms within DLA, it is essential that these organs of state are transformed and begin to play a more positive role in this field.

Such failure can only conceivably occur in the context of a political system that is not entirely comfortable with the sometimes-radical implications of the Constitution and other legislation. This is clearly observable in two key areas – the outright refusal of police in most areas of the country to open, or follow up on, charges of eviction or other abuses by farm owners against farm dwellers; and the refusal of the DLA (or the Minister) to contemplate expropriation in order to safeguard the tenure rights of occupiers.[24]

This suggests that at a fundamental level, government has not yet arrived at a point where it accepts that the rights of owners and occupiers are of equal value, or where it can contemplate a fundamental change in the social and economic order within the commercial farming belt. According to this mindset, commercial farms must not be fragmented or have their commercial operations compromised by granting secure land rights to occupiers on those properties. This systematic refusal to contemplate permanent 'on-farm' settlements for farm occupiers corresponds closely with the refusal to contemplate subdivision within the land reform programme more broadly.[25] Where the rights of the parties conflict – or even where owners simply wish to clear their land of occupiers – the rights of owners must prevail, and the most that can be expected in

[24] Further examples of this system-wide failure can be found in the refusal of many labour inspectors to enter farms without prior arrangement with the owner, the failure of many rural municipalities to include farm dwellers in their development plans and the often-heard claim by officials at all levels of government that what happens on privately-owned farms is a 'private' matter.
[25] See further discussion in Lahiff 2007a.

terms of legal protection is an orderly eviction and the opportunity to compete with millions of other South Africans for access to discretionary redistribution grants or RDP houses. Evidence from the Caledon and Grabouw areas of the Western Cape – with one of the highest incidence of evictions in the country – suggests that farm workers rarely qualify as 'beneficiaries' of redistribution and, once evicted, are most likely to end up living in squatter camps around the nearest town (Kleinbooi, Lahiff and Tom 2006).[26] Criminal cases by occupiers against owners can not, with few exceptions, be entertained, as to do so would be challenge the established hierarchy and constitute an unwarranted interference with the time-honoured 'rights' of owners to assert their authority within the 'private' space of a commercial farm.

> "The failure by the State to adequately train its officials to implement legislation promulgated in terms of the constitution amounts to a disregard of the importance of such legislation. It also indirectly contributes towards the denial of the rights of farm dwellers, as perpetrators know that they can evict farm dwellers with impunity." (SAHRC 2003: 179)

The persistent failure by the state to take decisive action either to implement or amend the current legislation suggests that the right of farm occupiers are even less of a political priority than when ESTA and LTA were introduced a decade ago. Under these conditions, new legislation, as called for at the national land summit of 2005, is unlikely to be much of an improvement – from the farm dweller point of view - and may be considerably worse if, as seems to be the case, the state sees its role as limited to regulating the eviction of farm dwellers, securing the property rights of owners and optimising conditions for commercial agriculture.

Various proposals have been put forward for addressing the crisis of tenure insecurity among farm dwellers. Nkuzi and Social Surveys (2005: 22) proposes a useful strategy that addresses three critical areas:

> • *Tighten up legislation by, amongst other things, creating substantive rights in land for occupiers;*
> • *Implement a well-resourced programme of information dissemination, support to farm dwellers and enforcement of the tenure laws; and*
> • *Proactively create new, sustainable settlements in farming areas.*

Legislative reform has long been proposed but no major campaign for such reform has yet materialised and, in its absence, there appears to be little political support for pursuing such amendments. Moreover, the general reluctance to impinge on the rights of property owners across the broader land reform programme, and official indifference to the flood of farm dwellers into informal settlement across the country over a period that spans the transition to democracy, suggests that the state is resistant to changes that would strengthen the rights of occupiers on commercial farms.

Creation of new settlements – while not as desirable for some as securing existing tenure rights – would certainly be an important part of a revised strategy if it could provide secure accommodation, ideally close to places of employment, and, for those who desire it, access to agricultural land of their own. Such an approach would require

[26] See also Hall et all 2007 for discussion of the general neglect of farm dwellers (and land reform generally) within municipal planning.

developments in two areas that run counter to the broad thrust of land reform policy to date: project planning and land acquisition. The first of these would require a more pro-active strategy for identifying the needs of farm dwellers in particular areas and facilitating a process whereby they can participate fully in planning and implementing solutions to their problems. This implies a break with the 'demand-led' approach that has dominated land reform up to now and a switch, not to a 'supply-led' approach driven by the state in a top-down manner, but to a people-driven process whereby the state uses its unique advantages to identify potential problems and propose solutions.

The second challenge lies in the related area of land acquisition. In redistribution, the combination of 'demand-led' and 'willing buyer, willing seller' policies has meant that would-be beneficiaries of land reform are themselves responsible for identifying land, and depend on the willingness of current owners to transact with them. In the heartland of commercial agricultural, farm dwellers will undoubtedly face severe difficulties in acquiring suitable land for both social and economic reasons: farm dwellers are unlikely to be able to afford to buy land without subdivision of large commercial units (to which current policy, and landowners themselves, are strongly antagonistic), and many owners will undoubtedly be reluctant to sell land for a settlement of workers and former workers adjacent to their property. This makes a strong argument for more forcible intervention by the state, using its power of expropriation, in order to acquire land on behalf of farm dwellers. Thus, the securing of tenure for farm dwellers needs to be seen in the context of the wider context of resettlement, whereby intervention by the state, working closely with intended beneficiaries, is required over an extended period to acquire appropriate land and provide support to beneficiaries in order to achieve sustainable development and alleviate poverty.

It is difficult to see where the momentum for such changes is going to come from, other than from farm dwellers themselves, who remain largely unorganised and marginalized, cut off from state agencies and the services of legal practitioners and NGOs. A number of high-profile protest actions have been carried out with support from the Landless Peoples Movement and NGOs such as AFRA, Nkuzi, Women on Farms Project and TCOE in a number of provinces, but to date this has had little impact on official policy or on the behaviour of landowners. Legal activism, such as the Grootboom or Modderklip cases before the Constitutional Court, or the Nkuzi case before the Land Claims Court, would also appear to have had minimal practical impact to date, largely due to the indifference of state agencies to these judgments. More creative approaches will be required to draw public attention to the plight of farm dwellers and build a campaign for change at the political level. Steps in this direction have been taken by projects funded by Atlantic Philanthropies and by an emerging coalition in the Cape winelands but, as the general lack of momentum in the wake of the National Land Summit demonstrates, these have not really impinged on policy makers. New strategies are required that will bring pressure at the farm level (i.e. on landowners) and on all three spheres of government to minimise evictions and provide long-term tenure security. It seems appropriate that the technical procedures for securing long-term tenure security for farm dwellers be worked out only after the current flood of evictions is abated and farm dwellers themselves are brought centre-state in negotiations around their future.

4. Conclusion and Recommendations

Tenure reform in South Africa, at the time of the transition to democracy, was a response to decades, if not centuries, of dispossession, insecurity and inferior rights for the black majority. It was clear that simply cementing the racialised pattern of land holding inherited from apartheid would not be sufficient, given the vast scale of dispossession and social engineering that continued to the eve of democracy (and in some respects, still continues). In common with other areas of reform, the vision that informed tenure reform was far-reaching and no doubt idealistic, based more on notions of historical redress rather than the political and economic realities of the 1990s. This vision was long in gestation and influenced by various schools of thought, among them what might loosely be referred to as nationalism, socialism, populism and *ubuntu.* With the dawn of democracy, historical process of injustice, it was hoped, would come to a halt and in so far as possible be reversed: farm workers would no longer be mistreated or evicted; they would be able to extend their access to land and upgrade their rights to land they already occupied; tenants would become landowners in the their own right; the racial inequality in landholding would, over time, be eliminated. The communal areas would, according to various versions of the vision, be transformed into bastions of private property or revert to the traditions of an imagined past. The central actor in all of this – at least in the popular mind – would be a new democratic and developmental state, founded on a progressive and transformative constitution.

The period since 1994 has seen the gradual unravelling of that vision in the light of broader political and economic realities, including the power of conservative landowners, the macro policy choices made by the new state and perhaps the contradictions inherent in the vision in the first place. Government's abandonment of socialist ideals, embrace of private property and the free market and acceptance of a very limited role for the state in the economy have greatly limited the possibility of a radical tenure reform. Increasingly, the ideals of the constitution appear to be at odds with the policies adopted by the state, or greatly constrained by them.

Major reform programmes are obviously shaped not only by issues of technical design and effective implementation, but also by the prevailing political and economic environment, and it is to this environment that we must look for the underlying causes of the fundamental failures of tenure reform policy identified in this paper.

One potential explanation that can quickly be disposed of is the direct costs of tenure reform. Land reform budgets have increased dramatically since 1994, and have, at times, been substantially under-spent, although the allocations to tenure reform have also been miserly in the extreme (Hall and Lahiff 2004). Moreover, obvious measures that might reduce cost of land reform – careful targeting of beneficiaries, collective negotiations with landowners, use of powers of expropriation contained in the constitution, and incentives to beneficiaries to mobilise and play a greater role in the design and implementation of their own projects – have been consistently ignored.

The legislative framework also appears not to be the main source of the problem, although the discussion above suggests that it is problematic in some respects – most notably, the need for occupiers to access the courts in order to defend their rights under ESTA and the ease with which landowners can obtain eviction orders. Section 25 of the

Constitution sets out a far-reaching vision of a new land dispensation, based on both equality before the law and redress for historical injustices, with clear responsibility on the state to drive such a process. A raft of progressive legislation between 1994 and 1998 - starting with the Restitution Act of 1994 and including ESTA, LTA and the CPA Act – gave substantial effect to the provisions contained in the constitution, although it might be expected that such innovative legislation would need to evolve and be supplemented over time, as the feasibility of implementation became apparent, priorities shifted and laws were challenged by various interest groups.

While no body of legislation could expect to be perfect, an argument can certainly be made that the current legislation is not the primary cause of the lack-lustre performance of the tenure reform programme. First and most important is the simple refusal by the state to implement many of the provisions of existing legislation. Most notably in this regard is the failure to use the power of expropriation granted by the constitution, but also the failure to implement Section 4 of ESTA, the failure to apply the safeguards against eviction, and the inexplicable delays around the implementation of the LTA. While some minor amendments have been made to this body of legislation, there have been no significant new tenure laws other than CLRA, and the chaotic and obscure processes around its making, and the lack of preparation by the DLA for its implementation, reinforces the impression that the state has little stomach for tenure reform and is retreating from the laws passed in the 1990s. Particularly striking is the failure to introduce any legislation in the critical area of land redistribution, which still effectively operates on the basis of an apartheid-era law that simply grants powers to the minister of land affairs to provide people with land. A substantial law in the area of redistribution could be expected to set out the objectives of redistribution, the rights of people seeking land act and the obligations of the state, as already exists in areas such as housing and water, and make these provisions subject to scrutiny by the legislature rather than the subject of ministerial discretion as they are at present.[27]

4.1 Recommendations on Resettlement

Achieving tenure security on resettlement schemes, whether arising from the redistribution or restitution programmes, requires a thorough re-conceptualization of resettlement, reduced emphasis on ownership, a more active role for the state in the allocation of individual plots (and possibly as nominal owner of land where appropriate), development of a detailed generic template for protection of individual and group rights that can be modified over time, and a comprehensive support programme to resettled farmers. An alternative vision of tenure security within resettlement schemes should address five broad areas:

4.1.1. Land Acquisition

The state should play a central role in the identification and acquisition of land, and the initial allocation of individual plots, working closely with interested groups and individuals and encouraging self-organisation among intended beneficiaries.

[27] See Lahiff and Rugege (2002) for a detailed argument as to the importance of framework legislation for redistribution, and the likely consequences of its absence.

4.1.2. *Land Allocation*

Land acquired should not be limited to individual farm properties, but should be more or less than one farm as appropriate. Similarly, allocation of individual plots should not be overly influenced by existing farm boundaries. In other words, consolidation and subdivision of existing holdings should be facilitated in order to match demand. This should include options for low-cost surveying and support for allocation of rights to households for residential and cropping land, accompanied by registration of these rights, maintenance of land rights registers and support for dispute resolution. Systems must be developed that allow for the entry of new members to group schemes, and the exist of old ones, so that the formal record corresponds as closely as possible to the situation on the ground.

4.1.3. Rights to individual plots

Rights to individual plots should vest in the approved occupiers, but not necessarily in freehold title which places full responsibility for maintenance of title on the plotholder, exposes them to the risk of forfeiture in the case of bad debts secured against the land and complicates the future re-allocation of land. A new form of leasehold may be required that allows nominal ownership to remain with the state for a period while vesting substantive rights in the occupiers. To protect the rights of women and other household members, land should be registered in the name of all adult members. The definition of occupier's rights and responsibilities, and the creating of an institutional framework that will actively support the rights of occupiers, should be the main focus of tenure reform in this area. There is a need for the development of a detailed, generic template as a basis for occupiers' rights under such circumstances, with provision for local adaptation, rather than expecting beneficiaries on every scheme to develop their own rules at the outset. Provision should be made for a transition to individual ownership at some future date, but this should not be seen as a necessary or inevitable outcome. Under this model, occupiers (effectively long-term tenants of the state, along Zimbabwean lines) are effectively independent of the group in so far as occupation and use of individual plots is concerned but are free to engage in collective forms of production should they so decide.[28]

4.1.4. Communal resources

Where it is appropriate to hold resources in common – perhaps in the case of grazing lands – this should be subject to decentralized (local) management, but not necessarily ownership. It might make sense for individual occupiers on a number of adjacent farms to share certain resources, and management should vest in structures representative of all the users, supported by state officials (as in the evolving models in the communal areas of Namaqualand, or as applied on former SADT lands in the past). Again, there is a need for a detailed generic template for

[28] Another occasion where collective structures are typically involved, and which will inevitably arise over time on resettlement schemes, is the re-allocation of land when an occupier dies or otherwise has no further need for their plot, or when a family member requires a new plot of their own. Provision could be made to give the collective a say in the allocation of unused land; but it seems unreasonable to expect existing schemes to take responsibility for meeting future needs (akin to the redistributive dimension in the existing communal areas). This could perhaps be better left to the individual household (e.g. through subdividing existing holdings), or to the state (through the acquisition of additional land for resettlement as the need arises), or even to the individual to take their chances on the open market (especially if the state's commitment to redistribution is reduced over time, as South African society 'normalises').

land administration and land rights in these circumstances to serve as default until local modifications can be introduced by the users. This land could remain the nominal property of the state, as there is no compelling reason for transferring it in title to the group that manages it.[29]

4.1.5. Collective agriculture

Specific provision has to be made for resettlement schemes where there is a clear preference for collective land use, although this is likely to be in a small minority of cases. If the resource is to be used collectively, or leased out for collective gain, then it makes sense that it be held collectively. If no individual use of land is envisaged, and this is accepted by the members of the group, then collective management of the resource *is* appropriate. As with other forms of common property, however, there will remain a need for external support to the group, both in terms of their business affairs and management of the collective resource and benefit stream. Again, it may be appropriate for nominal ownership of the land to remain with the state until the beneficiary group feels ready to take on this responsibility. Overall, however, a collective business venture – which, it must be stressed, is unlikely to be typical of land reform projects in South Africa - presents less of a challenge in terms of tenure reform than resettlement schemes based largely on individual (and possibly non-commercial) production, and may be better suited to outright ownership.

4.2 Recommendations on Farm dwellers

Achieving tenure security for farm dwellers requires urgent action to reduce the threat of eviction and to promote long-term and secure access to land for both residential and productive purposes, either on-farm or on suitable alternative land. As well as changes in policy and provision of additional resources on the part of the state, it will require renewed dialogue among farm dwellers, landowners and the state. Specific recommendations in this area are as follows:

4.2.1 Maximum enforcement of the current provisions of ESTA and LTA, pending new legislation

a. Vigorous enforcement of all the provisions of ESTA and LTA dealing with evictions will require a concerted effort by DLA, SAPS, the Department of Justice (and particularly the prosecution service), the Legal Aid Board, municipalities and NGOs with a view to reducing evictions to a minimum. This will include rapid response by land reform officials to all threats of eviction, provision of legal aid to occupiers, the obtaining of injunctions against abusive landowners, effective contestation of all applications for eviction orders and criminal prosecution of those who break the law.
b. This in turn will require a significant increase in resources for the farm dweller programme within DLA and the deployment of sufficient trained staff to all

[29] Such an approach would inevitably be attacked by conservative elements as 'expanding the homelands' and reproducing the 'problem' (of state ownership of land) that CLRA and TRANCRAA were intended to resolve. Countering this argument would require challenging the foundations of existing policy as regards the reform of communal land, with a reduced emphasis on ownership and more on access to land, and the acceptance of a continuing role for the state in the administration of resettlement schemes.

affected districts. DLA nationally, and the Minister of Land Affairs, will be required to give clear political and strategic leadership for such a campaign, including perhaps a joint ministerial directive from the Ministers of Justice, Safety and Security and Land Affairs.

c. A moratorium on evictions has been repeatedly called for by organs of civil society. This is a far-reaching demand and will certainly face major legal and political obstacles. It is suggested that a campaign to ensure maximum enforcement of existing legal provisions not be neglected by those calling for a moratorium, if only as a short-term measure.

4.2.2 ESTA should be amended

ESTA should be amended to:

a. provide substantive statutory tenure rights to long-term occupiers and confer on them the status of non-evictable occupiers;
b. extend the definition of long-term occupier to include any person who was born on a farm, has lived there his or her whole life, and is above a certain age (e.g. 45 years);
c. offer additional protection to women and children who are dependent on men for their occupier status;
d. protect (and ideally expand) the right of farm dwellers to maintain livestock and to access land for their own use. This could be linked to the AgriBEE scorecard which requires 10% of land on farms to be made available to farm dwellers.
e. specify the process by which farm dwellers can apply to upgrade their tenure *in situ* or to become freehold owners of a portion of the farm on which they live;
f. specify the entitlements to alternative land – and the process whereby it can be obtained – for those evicted from, or voluntarily leaving, farms.
g. In addition, proposals to 'consolidate' ESTA with the LTA should be treated with caution, as for over six years they have been used to rebuff criticism of official inactivity and avoid discussion of substantive issues. Rather, critical attention should be given to the specific needs of labour tenants and farm dwellers generally, which may be addressed through a range of policy changes and legislative amendments.

4.2.3 Promotion of farm dwellers' rights requires a dedicated and well-resourced official programme

a. Promotion of farm dwellers' rights will require recruitment and training of additional staff and significant reallocation of resources within the budget of DLA.
b. This will also require a re-conceptualisation of the objectives and strategies of the official farm dweller programme – aiming to preserve and extend the rights of all farm dwellers and provided sufficient land and other resources for farm dwellers to improve both their tenure security and their livelihoods in a sustainable manner.

4.2.4 Renewed dialogue is required among farm dwellers, landowners and the state

a. At present, the state responds in a largely reactive way to threats of eviction. There is a need to engage proactively with farm dwellers to ascertain their needs and plan suitable and timely interventions.
b. Farm dwellers themselves need to be mobilised if they are to bring effective pressure for reform. In this, they require support from trade unions, NGOs, political parties and others.
c. A combination of radical rhetoric from politicians, the ready availability of court orders permitting evictions and a general neglect of farm dwellers by the state sends conflicting messages to landowners. It is far from clear, from the landowner perspective, whether the state expects them to retain the maximum number of farm dwellers on the land, and will support them financially and otherwise in doing so, or is more interested in resettling farm dwellers in townships and agri-villages where they can be provided with housing and other services. There is a need for a clear and consistent message to be sent to landowners as to what is expected of them under the present circumstances, what assistance they can expect, and what are the sanctions for non-cooperation. Halting evictions and promoting long-term security of tenure on farms may also require the drawing up of agreements between the state and organisations representing farm dwellers and landowners.

5. References

African National Congress 1994. *The Reconstruction and Development Programme: A policy framework.* African National Congress: Johannesburg.

African National Congress. 2007. "Economic Transformation". Chapter 3 in *ANC National Policy Conference Report.* Gallagher Estate. 27-30 June 2007.

AFRA, 2006, *Farm dwellers take action against government lack of delivery: Protest sit-in at the RLCC offices in Pietermaritzburg, KZN*. Association for Rural Advancement, Pietermaritzburg Media Statement, 14 June 2006**.**

Carey Miller, D L, with Anne Pope, 2000, *Land Title in South Africa*. Kenwyn: Juta.

CDE (Centre for Development and Enterprise) 2005. *Land Reform in South Africa. A 21st century perspective.* Johannesburg. CDE Research report no 14.

Claassens, A. 2003. *Community views on the Communal Land Rights Bill*. Cape Town: Programme for Land and Agrarian Studies, University of the Western Cape. Research report; no. 15.

Cousins, Ben, 2007, 'More Than Socially Embedded: The Distinctive Character of "Communal Tenure" Regimes in South Africa and its Implications for Land Policy'. *Journal of Agrarian Change,* 7(3), 281-315.

Cousins, Tessa and Hornby, Donna 2002, *Leaping the fissures: Bridging the gap between paper and real practice in setting up common property institutions in land reform in South Africa.* Cape Town: Programme for Land and Agrarian Studies, University of the Western Cape. Occasional Paper no. 19.

CSIR (Council for Scientific and Industrial Research) 2005. *Review of Communal Property Institutions.* Pretoria: CSIR.

Del Grande, Lisa 2006, *"Farms came to the people" Where have all the farm dwellers gone?* Paper presented to the Living on the Margins Conference, Stellenbosch 26-28 March 2007.

Department of Land Affairs 1997. *White Paper on South African Land Policy*. Pretoria: Department of Land Affairs.

Department of Land Affairs 2003, *Annual Report: 2002-2003.* Pretoria: DLA.

Department of Land Affairs 2005. *Report of the National Land Summit*. Pretoria: Department of Land Affairs and Department of Agriculture.

Department of Land Affairs 2006, *Presentation to Nedlac by Mr Mduduzi Shabane, Deputy Director-General, 24 August 2006.* PowerPoint presentation.

Department of Land Affairs 2007, *Annual Report:1 April 2006-31 March 2007.* Pretoria: DLA.

Derman, B., Lahiff, E. and Sjaastad, E. 2006. *Strategic Questions about Strategic Partners: Challenges and Pitfalls in South Africa's New Model of Land Restitution.* Paper presented to the conference 'Land, Memory, Reconstruction and Justice'. Cape Town 13-15 September 2006.

Didiza, Thoko 2005. "Opening Address by Minister of Agriculture and Land Affairs, Ms Thoko Didiza, MP, at the National Land Summit, Nasrec Johannesburg". 27 July 2005. Government Information Service.

Everingham, Mark and Crystal Jannecke 2006. 'Land Restitution and Democratic Citizenship in South Africa'. *Journal of Southern African Studies,* 32, 545 – 562.

Hall, R. 2003a. *Farm tenure*. Cape Town: Programme for Land and Agrarian Studies, University of the Western Cape. Evaluating land and agrarian reform in South Africa series; no. 3.

Hall, R. 2003b. *Rural restitution.* Cape Town: Programme for Land and Agrarian Studies, University of the Western Cape. Evaluating land and agrarian reform in South Africa series; no. 2.

Hall, R. 2003c. *Notes on the CPA Register, 25 May 2003.* Unpublished Document. Programme for Land and Agrarian Studies, Cape Town.

Hall, R. 2004a. *Land and agrarian reform in South Africa: A status report* 2004. Cape Town: Programme for Land and Agrarian Studies, University of the Western Cape.

Hall, R. 2004b. LRAD *Rapid Systematic Assessment Survey: Nine case studies in the Eastern Cape.* Unpublished paper, Programme for Land and Agrarian Studies, University of the Western Cape.

Hall, Ruth, Isaacs, Moenieba & Saruchera, Munyaradzi 2007. *Land and agrarian reform in integrated development plans.* Cape Town : Programme for Land and Agrarian Studies, University of the Western Cape. Research report no. 23.

Hall, R & Lahiff, E. 2004. *Budgeting for land reform*. Cape Town: Programme for Land and Agrarian Studies, University of the Western Cape. Policy brief; no. 13.

HSRC (Human Sciences Research Council), 2003. *Land redistribution for agricultural Development: Case studies in three provinces*. Unpublished report. Integrated Rural and Regional Development division, HSRC, Pretoria. October 2003.

Jacobs, P, Lahiff, E and Hall, R. 2003. *Land redistribution.* Cape Town: Programme for Land and Agrarian Studies, University of the Western Cape.

Kingwill, R. 2004, 'Square pegs for round holes? Some questions relating to the emerging Land Management Frameworks in South Africa'. Paper presented at the Symposium on: *Aligning development planning with communal tenure arrangements in the context of changing legislation in South Africa*. Durban, 9 Sept.

Kleinbooi, K., Lahiff, E. and Boyce, T. *2006. Land reform, farm employment and livelihoods. Western Cape case study: Theewaterskloof Local Municipality*. Cape Town: Programme for Land and Agrarian Studies, University of the Western Cape and Pretoria: Human Sciences Research Council.

Lahiff, E. 2000. The impact of land reform policy in the Northern Province, in *At the crossroads: Land and agrarian reform in South Africa into the 21st century* edited by Ben Cousins. Cape Town/Johannesburg: Programme for Land and Agrarian Studies, University of the Western Cape/National Land Committee.

Lahiff, E, 2006. "Land tenure data in agriculture and rural development: a critical review of dualism in South Africa. *Land Reform, Land Settlement and Cooperatives*, 2006/1.

Lahiff, E. 2007a, 'Willing Buyer, Willing Seller': South Africa's Failed Experiment in Market-Led Agrarian Reform. *Third World Quarterly,* Vol. 28(2) 2007.

Lahiff, E. 2007b, *State, Market or the worst of both? Experimenting with market-based land reform in South Africa*. University of the Western Cape, Programme for Land and Agrarian Studies, Occasional Paper No. 30.

Lahiff, E & Cousins, B. 2005. Smallholder Agriculture and Land Reform in South Africa. *IDS Bulletin* 36 (2).

Lahiff, E. and Rugege, S. 2002 "A critical assessment of land redistribution policy in the light of the *Grootboom* judgment". *Law, Democracy & Development.* Vol 6 (2) pp.279-319.

Lewis, Domini 2006. 'Land: A contended space', in *AFRA News* No. 60 May 2006.

Maisela, R.J. 2007*. Realizing agricultural potential in land reform: the case of Vaalharts irrigation scheme in the Northern Cape Province*. Unpublished M.Phil thesis, Programme for Land and Agrarian Studies, University of the Western Cape.

Manenzhe, T. 2007. *Post Settlement Challenges For Land Reform Beneficiaries: Three Case Studies From Limpopo Province.* Unpublished M.Phil thesis, Programme for Land and Agrarian Studies, University of the Western Cape.

Mayende, Gilingwe, 2004. 'The challenge of Land Tenure Reform in South Africa: Issues, Problems and Prospects' in M. Roth, S. Sibanda, V. Nxasana and T. Yates (eds.), *Finding Solutions, Securing Rights: Papers and Perspectives from the National Land Tenure Conference, ICC, Durban, South Africa*. Pretoria: Department of Land Affairs; Madison: Land Tenure Centre.

Mayson, D. 2003. *Joint ventures*. Cape Town: Programme for Land and Agrarian Studies, University of the Western Cape.

Mayson, David, Barry, Michael, and Cronwright, Rodney. 1998. "Elandskloof land restitution : establishing membership of a communal property association." *Proceedings of the International Conference on Land Tenure in the Developing World with a Focus on Southern Africa : University of Cape Town, 27-29 January 1998.* p. 444-456).

Morris, M.L. 1976, 'The Development of Capitalism in South African Agriculture: Class Struggle in the Countryside'. *Economy and Society* , Vol.5, No.3.

Ministry of Agriculture and Land Affairs, 2004. *Presentation by Ms A.T. Didiza, Minister of Agriculture and Land Affairs, at the Public Hearings on the Pace of Land Reform in South Africa,* convened by the Parliamentary Portfolio Committee Agriculture and Land, 18th October 2004. Pretoria: Ministry of Agriculture and Land Affairs.

Ministry of Agriculture and Land Affairs, 2005a. *Delivery of Land and Agrarian Reform*. Report to the National Land Summit (July 2005). Pretoria: Ministry of Agriculture and Land Affairs.

National Department of Agriculture, 2004. *Broad-Based Black Economic Empowerment in Agriculture.* AgriBEE Reference Document. July 2004

Nkuzi Development Association and Social Surveys Africa, 2005. *Summary of Key Findings from the National Evictions Survey.* Polokwane: Nkuzi Development Association. (Full reports published as Wegerif, M., Russell, B. & Grundling, I. 2005. *Still Searching for Security: The reality of farm dweller evictions in South Africa.* Polokwane: Nkuzi Development Association.)

Ntsebeza, Lungisile 2006. *Democracy Compromised: Chiefs and the politics of the land in South Africa.* Pretoria: HSRC Press

PLAAS (Programme for Land and Agrarian Studies). 2006*. The impact of land restitution and land reform on livelihoods.* Unpublished paper for the Sustainable Development Consortium. Programme for Land and Agrarian Studies, University of the Western Cape.

SAHRC (South African Human Rights Commission) 2003, *Final Report on the Inquiry into Human Rights Violations in Farming Communities.* Johannesburg: SAHRC.

Turner, S. and Ibsen, H. 2000. *Land and agrarian reform in South Africa: A status report.* Cape Town: Programme for Land and Agrarian Studies, University of the Western Cape. (Research report; no. 6.)

Van den Brink, Rogier, Binswanger, Hans, Bruce, John and Byamugisha, Frank, 2006. *Consensus, Confusion, and Controversy: Selected Land Reform Issues in Sub-Saharan Africa.* World Bank Working Paper 71. World Bank Publications.

Van der Walt, A.J. 1999, 'Property rights and hierarchies of power: a critical evaluation of land reform policy in South Africa'. *Koers*, 2 &3 (64).

Walker, Cherryl, 2003. 'Piety in the Sky? Gender Policy and Land Reform in South Africa'. *Journal of Agrarian Change*, Vol. 3 Nos.1-2.

Walker, C. 2007. 'Redistributive land reform: for what and for whom?', in L. Ntsebeza and R. Hall (eds),*The Land Question in South Africa: The challenge of transformation and redistribution*. Cape Town: HSRC Press.

Wegerif, Marc 2004a. *A critical appraisal of South Africa's market-based land reform policy: The case of the Land Redistribution for Agricultural Development (LRAD)*

programme in Limpopo. Cape Town: Programme for Land and Agrarian Studies, University of the Western Cape. (Research report; no. 19.)

Wegerif, Marc. 2004b. 'Creating Long-Term Tenure Security for Farm Dwellers', in M. Roth, S. Sibanda, V. Nxasana and T. Yates (eds.), *Finding Solutions, Securing Rights: Papers and Perspectives from the National Land Tenure Conference, ICC, Durban, South Africa*. Pretoria: Department of Land Affairs; Madison: Land Tenure Centre.

Williams, G. 1996. 'Setting the Agenda: A Critique of the World Bank's Rural Restructuring Programme for South Africa'. *Journal of Southern African Studies*, Vol 22, No 1.

Wisborg, P & Rohde, R. 2004. *Contested land tenure reform in South Africa: The Namaqualand experience*. Cape Town: Programme for Land and Agrarian Studies, University of the Western Cape. Occasional paper; no. 26.)

Xaba, Zanele, 2004. *Living in the shadow of democracy.* AFRA News No. 57 May 2004. http://www.afra.co.za/default.asp?id=1015

Xingwana, Lulu, 2006, "Speech by the Honourable Minister for Agriculture and Land Affairs, Ms Lulu Xingwana, at the 16 Days of Non-violence against Women and Children campaign: 4 December 2006". Pretoria: South African Government Information Service.

I wish to acknowledge the valuable comments made by Ruth Hall on an earlier draft of this paper. The final product is the responsibility of the author alone.

This paper is part of the Policy Options for Land and Agrarian Reform (POLAR) project, undertaken by PLAAS with the generous support of ICCO.
