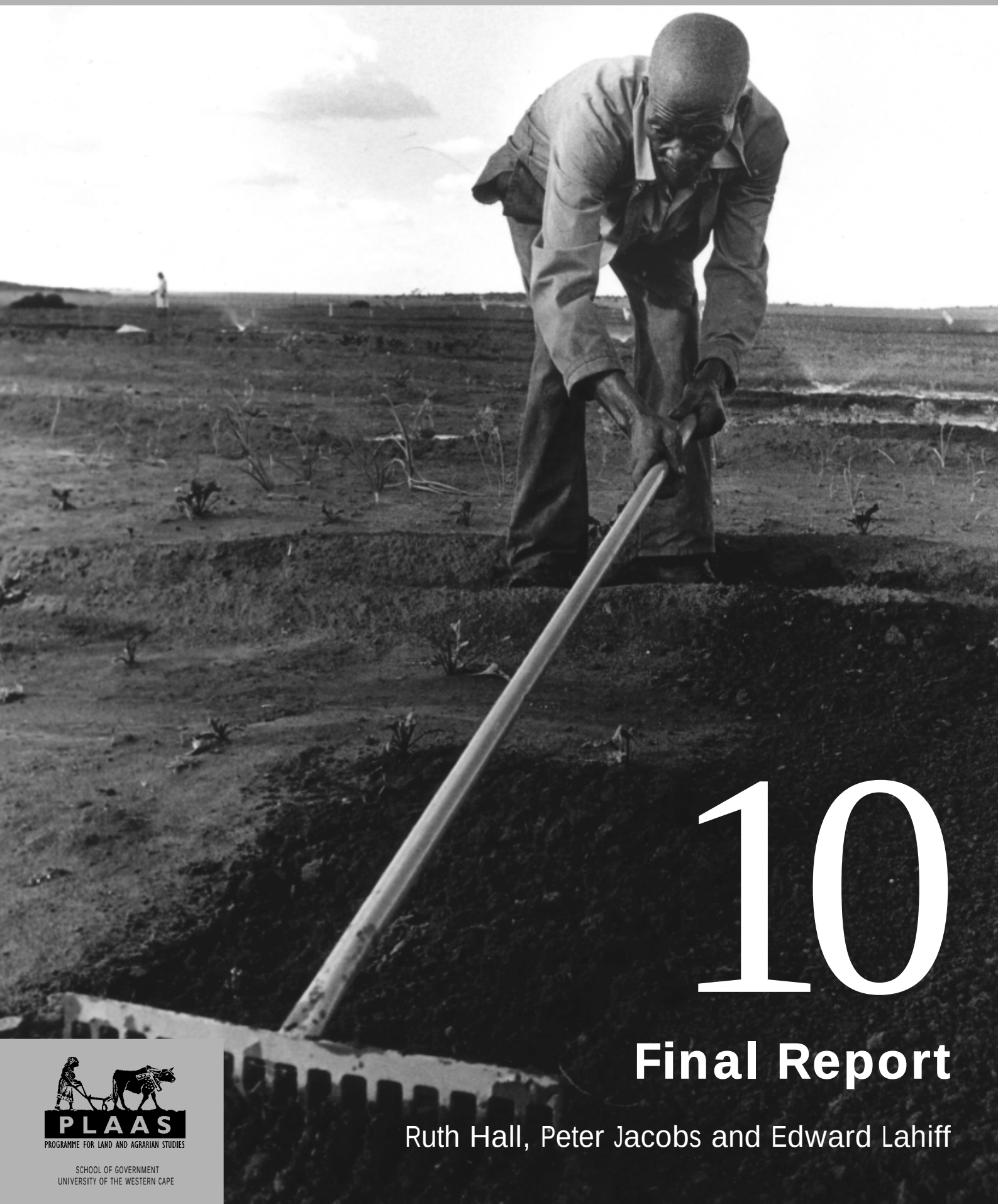
Evaluating land and agrarian reform in South Africa

An occasional paper series



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Final Report

Ruth Hall, Peter Jacobs and Edward Lahiff

PLAAS
PROGRAMME FOR LAND AND AGRARIAN STUDIES

SCHOOL OF GOVERNMENT
UNIVERSITY OF THE WESTERN CAPE

Evaluating land and agrarian reform in South Africa is a project undertaken by the Programme for Land and Agrarian Studies (PLAAS) to respond to the need expressed by civil society organisations for independent research to evaluate progress in, and inform debates on the future of, land and agrarian reform. The reports in this series are:

Land redistribution

■

Rural restitution

■

Farm tenure

■

Support for agricultural development

■

Municipal commonage

■

Rural settlement

■

Joint ventures

■

Land use and livelihoods

■

Communal tenure

■

Final report

Foundation for Human Rights in South Africa

This report was prepared with financial assistance from the Foundation for Human Rights in South Africa (FHR). The views expressed herein do not necessarily represent the official view of the FHR. The FHR is funded by the European Union under the European Programme for Reconstruction and Development.

Final report

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Programme for Land and Agrarian Studies
School of Government
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September 2003

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Evaluating land and agrarian reform in South Africa occasional paper series; no. 10
Series editor: Ruth Hall

ISBN: 1-86808-588-0

First published: September 2003
Layout: Designs for Development
Copy-editing: Stephen Heyns
Cover illustration: Anne Westoby
Reproduction: Castle Graphics
Printing: Hansa Reproprint

Contents

List of acronyms and abbreviations

Act 126	Provision of Land and Assistance Act 126 of 1993
Act 9	Rural Areas Act 9 of 1987
ANC	African National Congress
ARC	Agricultural Research Council
CFSP	Comprehensive Farmer Support Programme
CLRB	Communal Land Rights Bill
CPA	communal property association
CRLR	Commission on the Restitution of Land Rights
DLA	Department of Land Affairs
ESTA	Extension of Security of Tenure Act 62 of 1997
FEDIC	Farmer Entrepreneur and Incubation Centre
IDP	integrated development plan
IPILRA	Interim Protection of Informal Land Rights Act 31 of 1996
ISRDP	Integrated Sustainable Rural Development Programme
LCC	Land Claims Court
LRAD	Land Redistribution for Agricultural Development programme
LRCF	Land Reform Credit Facility
LRSG	Land Redistribution for Settlement Grant
LTA	Land Reform (Labour Tenants) Act 3 of 1996
M&E	monitoring and evaluation
MTEF	Medium Term Expenditure Framework
NGO	non-governmental organisation
PLAAS	Programme for Land and Agrarian Studies
PLRO	Provincial Land Reform Office (of DLA)
PTO	'Permission to occupy' certificate
RDP	Reconstruction and Development Programme
RLCC	Regional Land Claims Commission
SLAG	Settlement/ Land Acquisition Grant
SSDP	Settlement Support and Development Planning unit (of CRLR)
TRAC	The Rural Action Committee
ULTRA	Upgrading of Land Tenure Rights Act 112 of 1991

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Preface

This report presents a summary and discussion of the research findings of investigations undertaken as part of the 'Evaluating Land and Agrarian Reform in South Africa' research programme. It is the last of ten reports in the 'Evaluating land and agrarian reform in South Africa' series. Please see the other nine reports for more detail and references:

No. 1. Peter Jacobs, Edward Lahiff and Ruth Hall. 2003. *Land redistribution*.
No. 2. Ruth Hall. 2003. *Rural restitution*.
No. 3. Ruth Hall. 2003. *Farm tenure*.
No. 4. Peter Jacobs. 2003. *Support for agricultural development*.
No. 5. Megan Anderson and Kobus Pienaar. 2003. *Municipal commonage*.
No. 6. Sue Bannister. 2003. *Rural settlement*.
No. 7. David Mayson. 2003. *Joint ventures*.
No. 8. Maura Andrew, Andrew Ainslie and Charlie Shackleton. 2003. *Land use and livelihoods*.
No. 9. Ruth Hall and Ben Cousins. 2003. *Communal tenure*.

1. Introduction

Land dispossession was a key feature of racism under colonial rule and apartheid in South Africa. More than 3.5 million people were forcibly removed in the period 1960 to 1983 alone, through homeland consolidation, removals from 'black spots' and the Group Areas Act. One result of massive dispossession is the concentration of poverty in South Africa's rural areas, where about 70% of the population lives below the poverty line (May 1998).

The prospect of democracy in the 1990s raised expectations that the dispossessed would be able to return to their land, but the terms on which political transition was negotiated constrained how this could happen. Despite calls for a radical restructuring of social relations in the countryside, the constitutional negotiations on the protection of property rights, and on the economy more broadly, ensured that land reform would be pursued within the framework of a market-led land reform model, as advocated by the World Bank and implemented in countries such as Brazil, Colombia and Zimbabwe.

These negotiations resulted in agreement on a constitutionally-mandated process of land reform that would, among other things, seek to redistribute land to black South Africans. As a result, the 1996 Constitution sets out the following framework for land reform:

> *The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis* (Section 25(5)).
>
> *A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress* (Section 25(6)).
>
> *A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress* (Section 25(7)).

The African National Congress (ANC) confirmed its commitment to substantial land reform in its manifesto for the first democratic elections, the Reconstruction and Development Programme (RDP), which adopted the World Bank's target of redistributing 30% of agricultural land within five years.

In line with the Constitution, South Africa's land policy has three distinct components. A *land redistribution* programme was created to broaden access to land among the country's black majority. This was to address the racially-skewed pattern of land ownership while laying the ground for broad-based development. A *land restitution* programme was adopted to restore land or provide alternative compensation to those dispossessed as a result of racially discriminatory laws and practices since 1913. Alongside these two initiatives to transfer land, a *tenure reform* programme was designed to secure the rights of people living under insecure arrangements on land owned by others, including the state and private landowners.

The state's land reform programme focuses on past injustice and on current problems of poverty, inequality and underdevelopment. According to the *White Paper on South African Land Policy* (DLA 1997), the objectives of the land reform programme are to address:

- the injustices of racially-based land dispossession of the past
- the need for a more equitable distribution of land ownership
- the need for land reform to reduce poverty and contribute to economic growth
- security of tenure for all
- the creation of a system of land management which will support sustainable land use patterns and rapid land release for development.

The Department of Land Affairs (DLA) holds primary responsibility for the design and implementation of the land reform programme. As a national competency, the DLA is responsible not only for policy making, but also for managing and monitoring the implementation of its policies through its provincial and district offices. It is a small department with less than 700 staff working on the land reform programme, and depends on productive partnerships with civil society structures and the private sector for support with implementation (DLA 2002:23).

While the state has committed itself to a programme of land reform, the links between land reform and wider processes of rural development remain weak and poorly defined. This in turn relates to the absence of a comprehensive strategy for the development of the rural economy. The current Integrated Sustainable Rural Development Programme (ISRDP) focuses narrowly on delivery of services and infrastructure by the state and makes little reference to either land reform or agricultural development. This lack of integration between land reform and wider processes of rural development and poverty alleviation is found across national, provincial and local spheres of government, greatly reducing the potential impact of government programmes on livelihoods and local economic development.

What land reform can achieve is closely linked to changes in the political economy of the country. Noticeable shifts have taken place in commercial agriculture since the early 1990s, such as its increasing integration into the global economy, the termination of state support for production and marketing, and rising capital intensity, all of which have contributed to steep declines in permanent employment and changing patterns of land use. The state has also adopted a neo-liberal macroeconomic policy, which restricts its participation in the economy. These developments affect both the pace and quality of land delivery and the availability of post-transfer support that is critical for sustainable rural livelihoods and for equity.

Planning for land reform has proceeded without reliable information on the extent, and possibly the changing nature, of the demand for land. Studies in the 1990s indicated that a high proportion of rural people want access to more land, but most want relatively small parcels of land which would provide them with a secure place to live and to engage in small-scale cultivation for own consumption or sale or a combination of both, and increased access to grazing land. Despite this, macroeconomic policy is been premised on the notion that what people really need are jobs and houses, rather than land. The true demand for land remains a matter for debate, especially as migration patterns, urban unemployment and the HIV/Aids pandemic combine to alter rural livelihood systems.

2. Research design and methods

The 'Evaluating Land and Agrarian Reform in South Africa' research programme was undertaken by the Programme for Land and Agrarian Studies (PLAAS) in response to calls from non-

governmental organisations (NGOs) in the land sector. The aim was to conduct an independent evaluation of all areas of the land reform programme, providing data on what has been achieved and reviewing issues emerging in the course of implementation. This would inform debate among NGOs and organisations of the rural poor and landless about current policy and stimulate thinking about alternative approaches. This is intended in turn to stimulate more detailed, constructive and inclusive debate around land and agrarian reform in South African society generally.

The project combined primary and secondary research methods. Desktop research reviewed legislation, policy documents and secondary literature while visits to provinces allowed for the collection and analysis of documents at the programme and project level. Face-to-face interviews provided perspectives from those responsible for making policy, managing, implementing and monitoring the various components of land reform in the Department of Land Affairs and the Commission for the Restitution of Land Rights (CRLR).

Interviews were also held with other stakeholders, including NGOs, the Department of Housing, the Department of Provincial and Local Government, the National Department of Agriculture and provincial departments of agriculture, the Land Bank, other financial institutions, consultants, legal practitioners, farmers' associations, farm worker trade unions, rural social movements and participants in land reform projects.

Gathering and analysing data on the various land reform programmes and sub-programmes presented a number of challenges, since much of the statistical information needed for this evaluation was not available from DLA's Monitoring and Evaluation Directorate. Certain types of information were either unavailable or of poor quality, resulting from weaknesses in data capturing and data management as well as problems in the design of monitoring systems. A variety of methods were employed to work around this problem, including triangulation with provincial project lists backed up by interviews with implementers in government and NGOs. The limitations of existing official data are a factor affecting all areas of land reform and constitute a major finding of this study.

This research has been organised mainly within the categories of the official land reform policy. Detailed information is presented in the first nine reports of this series. This final report presents, in Section 3, summary information on progress with land reform as a whole. Section 4 presents summary findings from each of the nine reports in this series and Section 5 presents a number of cross-cutting themes emerging as priority issues across the land reform programme as a whole. In Section 6, the report reflects on the achievements and shortcomings of land and agrarian reform in South Africa and on challenges for the future, and suggests processes to deepen the analysis of land reform to feed into discussion on alternatives.

3. Progress with land reform

Experience with implementation has been uneven, both across programmes and in different parts of the country. There have been improvements in the pace of the programme, though all three components of the land reform programme have, by and large, fallen short of targets.

The achievements of the programme are reported below. Much of this statistical information is analysed and contextualised in the other reports in this series. For example, where it is

reported that land has been transferred through the restitution programme, this sometimes means that there is *agreement* that the land is to be transferred. In practice, the transfer may take some time to happen. Similarly, where redistribution grants are used to buy shares in equity schemes, land is not actually transferred. For a number of reasons, then, the official statistics presented below may over-represent the amount of land actually transferred through the land reform programme.

Land redistribution

By the end of 2002, a total of 1 480 835ha of land had been transferred through land redistribution to an estimated 130 000 households. Despite significant successes and a steep learning curve for implementers in the DLA and elsewhere, the early years of the programme were subject to much criticism regarding the slow pace of delivery, the small size of grants relative to the cost of land, and the resultant tendency for large groups to pool their grants. The issue of how poor people use land is addressed in the report on land use and livelihoods (Andrew et al. 2003). The report on support for agricultural development (Jacobs 2003) provides detail on what measures the state, private sector and civil society have employed to promote land-based livelihoods.

The discernible trend in the redistribution programme has been an increase in the amount of land being transferred year on year, but a decline in the number of people benefiting (Table 1). This is to be expected, with the change in the grant structure used in most projects which allows households to obtain larger grants.

Table 1: Land redistribution per year 1994–2002

Year	Total hectares	Total beneficiaries
1994	71 656	1 004
1995	11 629	1 819
1996	60 120	5 068
1997	139 849	10 259
1998	229 009	15 995
1999	239 764	24 900
2000	233 426	34 768
2001	263 071	20 920
2002	203 567	12 216
Unspecified	28 743	3 504
Total	**1 480 834**	**130 453**

Source: DLA 2003

In place of the earlier Settlement/ Land Acquisition Grant (SLAG), through which poor people were able to access land largely for 'subsistence' purposes, the Land Redistribution for Agricultural Development (LRAD) policy removed the requirement that applicants must be

poor to be eligible for state support. LRAD makes available larger grants to those able to contribute to the cost of land and investments in production. Ostensibly the LRAD policy provides for a range of commercial and 'subsistence' uses, but in practice the programme has favoured commercial agricultural uses of land by those able to make substantial investments. Other components of the redistribution programme, such as municipal commonage and the provision of land for settlement and other non-agricultural purposes, have been de-emphasised in recent years. Further detail is provided in the reports in this series on land redistribution (Jacobs et al. 2003), municipal commonage (Anderson & Pienaar 2003), rural settlement (Bannister 2003) and joint ventures (Mayson 2003).

Land restitution

The major achievement of the restitution programme has been the settlement of a large number of claims, at a rapidly increased rate, over the past four years. Of the 63 455 claims lodged by the deadline in 1998, 36 279 claims had been settled by the end of 2002. The vast majority of these are urban claims that were settled by means of financial compensation, which explains why the steep rise in claims settled was not matched by similar increases in the numbers of households benefiting and hectares transferred (Table 2).

Table 2: Restitution claims settled per financial year 1996–2003

Financial year	Claims	Households	Beneficiaries	Hectares	Total award cost
1996/97	1	350	2 100	2 420	R5 045 372
1997/98	6	2 589	14 951	31 108	R15 568 746
1998/99	34	569	2 360	79 391	R2 988 577
1999/00	3 875	10 100	61 478	150 949	R155 045 907
2000/01	8 178	13 777	83 772	19 358	R321 526 061
2001/02	17 783	34 860	167 582	144 111	R994 168 313
2002/03	7 031	27 266	117 873	164 384	R518 222 476
TOTAL	36 908	89 511	450 116	591 721	R 2 012 465 451

Source: CRLR 2003a:25

Relatively little land – just over half a million hectares – has been earmarked for restoration through the restitution programme to date, but the majority of the large and complex rural claims remain unresolved. It is these claims that could potentially give rise to major conflict over land but also hold significant potential to contribute to the broader aims of land reform – namely the reduction of rural poverty and racially skewed control of land and rural resources. The report on rural restitution in this series (Hall 2003a) provides more detail and analysis.

Tenure reform

It is exceptionally difficult to quantify achievements in the sphere of tenure reform, since these are least tangible and also because this is the least evolved area of land reform. The main achievements thus far have been a number of laws enacted to create statutory rights. These include the Extension of Security of Tenure Act 62 of 1997 (ESTA) and the Land Reform (Labour Tenants) Act 3 of 1996 (LTA), which protect the tenure rights of people living on farms,

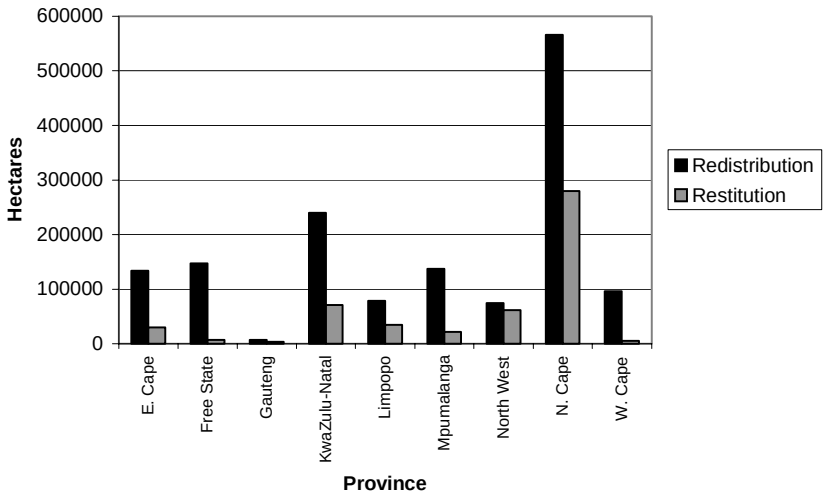
prohibit arbitrary eviction and provide means by which farm dwellers can secure long-term rights to land. It is not known how many farm dwellers have been legally evicted in terms of ESTA and the LTA, nor how many have been illegally evicted in violation of these laws. It is also not possible to say how many labour tenants have, through the prescribed application process, successfully acquired ownership of the land they use. The report on farm tenure (Hall 2003b) provides further discussion of this area of land reform.

Measures to protect people with informal rights to land in communal settings in the former homelands are less developed. This is to be addressed by a proposed Communal Land Rights Bill (CLRB), published for comment in 2002 and still under revision at the time of writing. Reform of communal tenure has, however, progressed in the 23 former coloured reserves, or 'Act 9 areas' (areas designated under the Rural Areas Act 9 of 1987), in the Western Cape, Northern Cape, Free State and Eastern Cape, where the state is in the process of consulting residents on the tenure and institutional arrangements under which they wish to hold their land. This has elicited strong support from residents for community governance of common resources through local institutions, but with state support. The report on communal tenure (Hall & Cousins 2003) explores the debates on, and lessons from, various approaches to securing tenure rights in communal settings.

Provincial differences

There are strong variations in the achievements of land reform across the country (Figure 1).

Figure 1: Land transferred 1994 to 2002



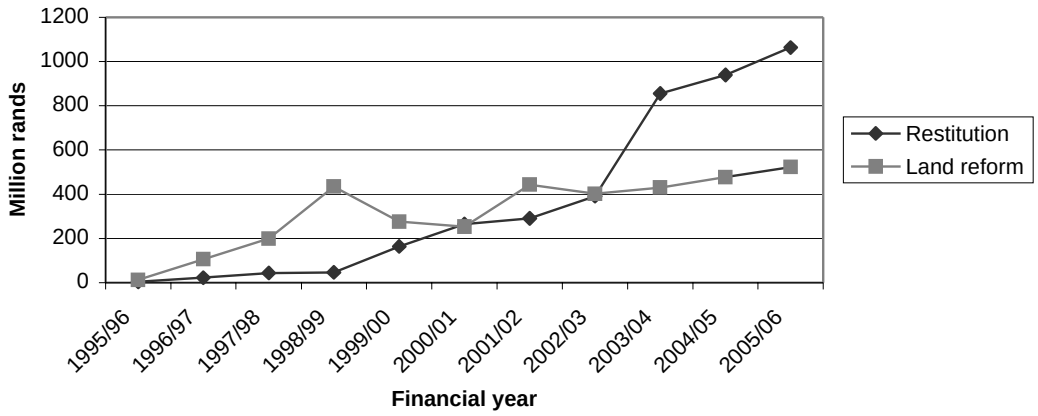
Sources: DLA 2003 and CRLR 2003b

In each province more land has been transferred through redistribution than through restitution. Little land has been transferred in Gauteng, which is a predominantly urban province, and the Western Cape, where agricultural land prices are particularly high and most land claims are urban. However, provinces with large, poor rural populations like the Eastern Cape, Free State, Limpopo, Mpumalanga and North West have not done much better, delivering less than 200 000ha each. More than half of all land transferred has been in the semi-arid areas of the Northern Cape. Performance has been relatively good in KwaZulu-Natal, where more than 300 000ha, including substantial areas of good quality land, have been transferred.

Budgets

In recent years there have been significant increases in the level of funds allocated, but land reform as a whole has never accounted for more than 0.4% of the national budget. Initially, 'land reform' (incorporating land redistribution and tenure reform) was the better-resourced programme. More recently the restitution budget has risen dramatically while the 'land reform' budget has fluctuated substantially and is now set to rise more slowly than restitution.

Figure 2: Budget trends 1995 to 2006[1]



Source: National Treasury 2003

Capital budgets constitute in the region of 75% to 85% of the restitution budget and around 65% to 70% of the 'land reform' budget. It may be expected that both budgets will continue to rise but there is presently no indication of dramatic growth in future allocations. This has severe implications for delivery in redistribution and tenure reform, since a number of provincial offices of DLA have now over-committed their budgets and are at present unable to approve new projects.

Conclusion

The rate at which land has been redistributed has increased in recent years, but is still well below the rate required to meet official targets. By mid 2003, just under 2 million hectares of land had been transferred through land reform as a whole – amounting to 2.3% of all agricultural land. About a quarter of this has been transferred through restitution, with the remainder being largely through the SLAG and LRAD redistribution programmes. The pace of delivery has increased, however, with 0.46% of agricultural land being transferred per year over the past two years, compared to 0.24% on average per year in the period 1996 to 2000.[2] The underperformance of the land reform programme has been attributed to a number of factors, including insufficient funding, weak implementing institutions, reliance on a market-led model of redistribution, and the low political priority accorded to it. Broadly speaking, to reach the government target of transferring 30% of South Africa's commercial agricultural land to black people by 2015, the current rate will need to be increased fivefold.[3]

4. Research findings

This research has compared targets with actual achievements. It has examined the policies, laws and institutions put in place to give effect to land reform, and assessed the outcomes of the programme compared to policy objectives set by government, the socio-economic rights contained in the Bill of Rights, and available information on the varying demands and needs of rural people. In all cases, the focus has been on the effect these reforms have had on the livelihoods of poor and marginalised rural people. The findings of the research are summarised below.

Land redistribution

This paper (Jacobs et al. 2003) argues that changing the unequal ownership of land and agricultural resources is one of the greatest challenges facing land reform. Although there is some evidence that more land has moved from white to black ownership through private market transactions than through government's land reforms, these transactions involved individuals with the ability to access large amounts of credit (Lyne & Darroch 1997). While it could be argued that over time racial imbalances in access to land might be mitigated through the market, this would be restricted to those able to command substantial resources and social capital.

The state's land redistribution programme is taking place in the context of a neo-liberal macroeconomic framework which curtails the role of the state and public sector in the economy and promotes service delivery through the market. Under the Land Redistribution for Agricultural Development programme, state assistance has been largely confined to the provision of grants in order for beneficiaries to acquire land for farming through 'willing buyer-willing seller' transactions.

LRAD grants, for which eligible applicants must make their own contribution, are available from DLA's provincial land reform offices and, under an agency agreement with DLA, from the state-owned Land Bank. Most applicants still obtain their LRAD grant through DLA's provincial land reform offices, although delivery through the Land Bank appears to be accelerating.

Land acquired with LRAD grants has to be used at least in part for agricultural purposes, with a heavy emphasis on commercial production. Restitution and tenure reform beneficiaries, as well as occupants of communal land who want to invest in agricultural production can also, in theory, apply for the LRAD grant.

Although this policy targets privately-owned land for redistribution, properties that come into the possession of the Land Bank in the course of its business are also made available, as is state and parastatal agricultural land that is being sold off as part of the restructuring of state assets. In 2002 the National Department of Agriculture reported that just over half of the targeted state land has been disposed of but, of this, only 11.8% had gone to LRAD beneficiaries.

Trends in private land offered for redistribution vary across provinces. Commercial farming units are usually offered for sale in their entirety, and subdivision is rare due to the high transaction costs involved. Almost invariably, officials assume that LRAD beneficiaries will continue to follow the land-use practices of the former owner.

Since 2001, LRAD has accounted for the bulk of the land transfers within the redistribution programme, having delivered in the order of 267 000ha of land. A considerable gap is now emerging between the per capita amount of land transferred to wealthier beneficiaries and that transferred to poorer beneficiaries. In the Western Cape, for instance, land delivered to well-resourced beneficiaries was in the order of 88ha on average compared to 3ha for those at the bottom of the LRAD scale. The big winners under LRAD appear to be small groups with substantial resources of their own and with access to Land Bank loans.

The access of the very poor to LRAD is increasingly in doubt. In terms of targeting, there has been a discernable shift away from the broad category of 'rural poor' to ill-defined 'marginalised groups', including women, farm workers, youth and the disabled. Between them, these groups are earmarked to receive just 11% of all LRAD resources, but no specific measures are in place in most provinces to give effect to this, and official targets for women's participation are no longer mentioned.

Since the start of the land reform programme, underspending has been a prominent feature in DLA's financial reports, but of late the gap between budgets and actual expenditure has narrowed considerably. Since 2002, DLA offices throughout the country are, for the first time, committing funds to redistribution that exceed their available budgets. Over-commitment of funds in 2002 and 2003 forced the Western Cape land reform office to cease processing new LRAD applicants. Budgets are clearly inadequate to sustain even the current rate of delivery.

Overall, despite some successes, the redistribution programme has not lived up to its promise to transform land-holding, combat poverty and revitalise the rural economy. The policies adopted by government have left the structure of the rural economy largely intact and, in the case of liberalisation of agricultural markets and cuts in agricultural support services, have contributed to a climate that is not conducive for resource-poor farmers. If land reform is to meet its wider objectives, new ways will have to be found to transfer land on a larger scale, and to provide the necessary support services to a much wider class of landowners. For more information, see Jacobs et al. 2003.

Rural restitution

The Restitution of Land Rights Act 22 of 1994 entitled people dispossessed since 1913 to submit claims against the state and created a Commission for the Restitution of Land Rights to investigate claims and to prepare them for settlement. A Land Claims Court (LCC) was established to approve claims, grant restitution orders and adjudicate disputes. Severe delays in settling claims led to amendments to the Act in 1999, allowing the CRLR to settle claims through negotiation. This has now largely replaced the judicial process, though the LCC still deals with claims where the validity of a claim or the form of redress is in dispute.

Claimants are entitled to choose from among various remedies, including financial compensation, land restoration and alternative land. Developmental compensation has been promoted as a fourth option, through which claimants can opt for priority access to state support to develop infrastructure and economic opportunities.

Largely as a result of the shift to an administrative approach to settling claims, and also as the CRLR became more established, the pace of restitution accelerated rapidly from 1999. Of

the 63 455 claims lodged, only 41 were settled by March 1999, but by March 2003 the number of settled claims had risen dramatically to 36 488. However, the vast majority of these have been urban claims, settled by means of financial compensation rather than an award of land.

Among the settled claims, there is substantial dispute as to how many are rural and how many of these have been settled with land awards. In November 2002, CRLR announced that 10 836 rural claims had been settled, but in May 2003 amended this number to 4 715, of which about 80% were settled with land awards. Investigation of each regional office's project list and interviews with commissioners and their staff has produced the names of only 184 rural claims that had been settled with awards of land as of March 2003. One reason for this enormous discrepancy is the commission's practice of splitting claims into multiple claims for the purposes of settlement – something which makes sense in a number of circumstances, but which makes it impossible to determine how many of the claims *as originally lodged* have been settled and therefore how many are outstanding. This explains, for example, why more claims are now reported as settled in the Eastern Cape than were lodged in the first place.

Although government is constitutionally empowered to expropriate land for the purposes of land reform, this route has not been pursued for restitution purposes. In practice, the state has relied on negotiated solutions, with the result that restoration of land is contingent on the willingness of current landowners to sell at the prices offered by the CRLR. Where owners are not willing to sell, the options currently available to the commission are to offer owners a higher price or offer claimants an alternative remedy. Property has, however, been expropriated by means of court order, in respect of just two claims. Proposed amendments to the Act published in May 2003 are aimed at providing the Minister of Land Affairs with powers to expropriate without agreement from the owner and without a court order. This is expected to expedite the process and marks an important departure for the South African land reform programme.

Implementation challenges now facing the restitution programme are to streamline the process of investigating claims, to complete the many partially settled claims, and to reduce the delays between the formal settlement of claims and the implementation of settlement agreements. Post-settlement support has emerged as a priority issue, with units dedicated to this function being established in the regional commissions, but there remains some disagreement as to what the precise role of the CRLR should be. To some extent the commission has been pushed to take on post-settlement functions as a result of the unwillingness or inability of other institutions to do so – of local government to provide services and infrastructure, of provincial departments of agriculture to provide support for agriculture – and the general absence of support for the new collective entities through which groups hold land. Though a limited amount of post-settlement support is being provided, it is not yet happening on a consistent basis or on the scale that is needed.

Restitution was originally set to take 18 years, from 1995 to 2013, but political pressure has been applied to complete the programme ahead of schedule. In his state of the nation speech in February 2002, President Thabo Mbeki set a deadline of three years for the settlement of all outstanding claims. This research, and many people involved with implementing

restitution, question the wisdom of pushing the pace of the programme to this extent, on the basis that this haste is likely to jeopardise the potential developmental impact of restitution. They also question whether meeting the deadline is feasible at all. What is certain is that increased capital and operating budgets will be needed to complete the restitution process, though there is some disagreement as to what it might cost to settle all outstanding claims.

While there have been notable successes in restitution, the contribution to land reform has been limited. Relatively few claims have been settled with land awards and the restitution process has not been used as the basis for wider transformation of spatial apartheid in South Africa's cities or the countryside. Restitution remains a radical idea that challenges the fundamentals of national economic policy in that its success requires a degree of interference with property markets and the vested interests of landowners. While there has been political support for increasing budgets and the minister's power to expropriate, the programme requires further support from across the state and civil society to acquire and, where necessary, to expropriate land, as well as to support the development aspects of restitution. For more information see Hall 2003a.

Farm tenure

Farm dwellers are among the poorest South Africans and they have very limited access to land. Social and economic relations between white landowners and black workers and tenants evolved from a history of dispossession and slavery, and are extremely unequal. One manifestation of this has been the insecure tenure arrangements under which farm dwellers live. Government's response to these conditions has been a programme of tenure reform which seeks to adopt policies to formalise informal rights, upgrade weak rights, and put in place restrictions on the removal of rights to land.

The Extension of Security of Tenure Act protects the rights of farm dwellers to continue to live on and use the land they occupy, stipulates when and how an occupier may be evicted, and creates opportunities for farm dwellers to become owners of land or to secure their tenancy. 'Occupiers' affected by this law are people resident on agricultural land with the consent of the owner or a person in charge. Most importantly, ESTA prohibits the eviction of farm dwellers without a court order, and stipulates procedures to be followed and factors to be considered before someone may be evicted.

Little is known about how many farm dwellers have been evicted either through the legal route or through illegal evictions. A total of 719 ESTA cases were reviewed by the Land Claims Court between 1998 and 2002, but not all of these resulted in evictions. The number of evictions granted by courts under ESTA has increased every year since the Act was passed, but it is not known how many people have been affected. Despite the introduction of ESTA, illegal evictions from farms have continued. There has been only one successful prosecution of a landowner for illegally evicting occupiers protected by ESTA. Monitoring of evictions in KwaZulu-Natal indicates that illegal evictions could outnumber legal evictions by as much as twenty to one. The growth of new informal settlements around small towns and in farming areas also suggests that movement of people from commercial farms continues apace, but how much of this is due to evictions, and how much to 'voluntary' migration, is unknown.

An enduring challenge in implementing ESTA has been to ensure that farm dwellers are aware of their rights and are able to access adequate support to enforce these rights. Low levels of unionisation and the physical isolation of farm dwellers have made this difficult. Access to justice has been a problem where attorneys are unwilling to take on ESTA cases through the Legal Aid Board. Despite the landmark Nkuzi judgement in 2001, in which the Land Claims Court confirmed occupiers' right to legal representation at the state's expense, most occupiers facing eviction since that time have not been represented.

Women living on farms face particular obstacles to securing their rights. Employment has become recognised as the primary basis on which occupiers acquire tenure rights, with the result that most women farm dwellers are not considered occupiers in their own right, but secondary occupiers whose tenure is contingent on the continued employment on the farm of their male partners.

The 'developmental' aspect of ESTA, through which farm dwellers can acquire stronger rights to land, has not been widely used. DLA records show that, since its inception, 32 projects have been approved to provide long-term tenure rights for ESTA occupiers either on the farms where they stayed, or elsewhere. However, these records are incomplete and more may have been done for farm dwellers through land redistribution mechanisms.

The Land Reform (Labour Tenants) Act was enacted specifically to secure the tenure rights of labour tenants – those people living on farms who have access to land in return for their labour. This practice is widespread in KwaZulu-Natal, Mpumalanga and to a lesser extent in Limpopo, where a range of tenancy arrangements have endured despite repeated attempts by colonial and apartheid governments to complete the process of dispossession.

Rather than seeking to eliminate labour tenancy through their conversion into wage labourers, as was attempted in the past, the LTA aims to enable labour tenants to become owners of their own land by lodging applications with DLA. Landowners are entitled to dispute claims by labour tenants in the Land Claims Court, or to negotiate with DLA to sell the land in question. Increasingly, the trend is towards the latter, with very few LTA matters being heard by the court each year since 1999. Only 205 such cases had been heard by the LCC by the end of 2002.

The number of labour tenant applications is not clear from official statistics, due to internal inconsistency arising from problems with data quality and management. Looking at a number of sources, it appears that approximately 19 000 applications were lodged by the extended deadline of 31 March 2001. Labour tenants have registered at least 52 communal property associations (CPAs) with DLA in order to take ownership of a piece of land. In KwaZulu-Natal, not all applications have been captured on a database, and many are incomplete, lacking vital information such the names and contact details of the people in question. To deal with these types of problems, DLA offices around the country are to initiate a process of verifying labour tenants' details through an outsourced project that will involve district-level initiatives to track down applicants and obtain all the information needed for applications to be processed.

Labour tenants are entitled to secure their long-term tenure rights by purchasing the land they use and are eligible for redistribution grants to make this possible. However, the reliance

on fixed grants effectively places a limit on the amount of land a labour tenant can acquire, thereby undermining the rights-based nature of the LTA. Where labour tenants have acquired land, the main challenges have been the lack of support for resolving disputes and clarifying the allocation and management of rights within groups; securing investments by municipalities in infrastructure and services; and production support from provincial departments of agriculture. Overall, securing labour tenants' rights has proved to be more complex, costly and time-consuming than originally anticipated.

The challenges encountered in implementing both ESTA and the LTA have been widely recognised and have informed DLA's decision to revisit these laws with a view to strengthening them and consolidating them into a single Act. This process has been underway since early 2002, but without public debate, accurate information or a clear policy framework to guide legal drafting. Landowners remain hostile to attempts to reform tenure rights on farms, and government has yet to demonstrate that it is willing to confront landowners and invest substantially in enforcing the rights of occupiers. For more information, see Hall 2003b.

Support for agricultural development

Since the launch of the land reform programme, there have been tensions between the objectives of supplying land and providing support services for the productive use of that land. As this paper (Jacobs 2003) and others have shown, post-settlement support to beneficiaries has been one of the weakest areas of land reform, and entirely absent in many projects. The reasons for this lie partly in a narrow conceptualisation of land reform as land transfer, which allocates a low priority to post-transfer issues, but also in a lack of co-ordination between the DLA and other agencies, notably the provincial departments of agriculture.

Within DLA there is an acknowledgement of the need to provide support beyond the land transfer stage, and particularly to play a role in co-ordinating post-transfer development, but it is often beyond the capacity of project officers to perform this function. Provincial departments of agriculture generally do not have adequate budgets or other resources to play the central role envisaged for them under policies such as LRAD and demanded by beneficiaries of other programmes. Parastatal agencies, such as the Land Bank and the National Development Agency, and some private sector companies, are gradually becoming involved with support to land reform beneficiaries, but much still remains to be done in terms of overall availability of resources and co-ordination with DLA. Local government, which should be the most accessible sphere of government for beneficiaries, is still not actively involved in many land reform projects, and land reform remains marginal to most integrated development plans (IDPs).

Two reviews of land reform, in addition to three 'Quality of Life' assessments, identified the lack of agricultural development support as a critical gap in the programme. This has resulted in *ad hoc* post-transfer interventions by different agencies and large-scale under-utilisation of land. The design of the LRAD programme was ostensibly informed by the need to link land acquisition to support for participants to use their land effectively to improve incomes and livelihoods. Responsibility for agricultural development support under LRAD has been assigned

to the national and provincial departments of agriculture, which have created farmer settlement support units to deliver services to land reform beneficiaries.

Towards the end of 2002, the National Department of Agriculture drafted a Comprehensive Farmer Support Programme (CFSP), which proposes two grants: one for capacity building and one for on-farm infrastructure. This once-off support package has been designed for all 'emerging farmers', but excludes restitution and tenure reform beneficiaries. No capital budgets have yet been prepared to fund the CFSP.

The CRLR has also endorsed a framework for post-settlement support to beneficiaries and entered into a co-operation agreement with the Land Bank and the National Development Agency for this purpose. Resources are to be made available to assist restitution claimants to farm, where agricultural land has been restored to them. Settlement Support and Development Planning (SSDP) units in the various offices of the CRLR have been set up to co-ordinate support from various public and private agencies. However, they lack financial resources and capacity, and possess no expertise in the area of agricultural production.

A critical area of post-transfer support is agricultural extension, but capacity varies greatly across provinces, and visits by extension officers to land reform projects are generally far less frequent than is necessary. These services should respond to farming needs at different scales of production and enhance farming skills and knowledge among beneficiaries. The main training model proposed in the CFSP is the Farmer Entrepreneur and Incubation Centre (FEDIC). These training centres are to be set up within agricultural colleges and commercial farms for practical on-farm training. Several agricultural colleges, under the National Department of Agriculture and the Agricultural Research Council (ARC), provide training but these are oriented exclusively toward commercial farming. Capacity building programmes are irregular and rarely tailored to the language and educational background of beneficiaries. To date, the National Department of Agriculture has provided little funding to cover the cost of beneficiary training.

Other skills development initiatives are mentorship and management programmes organised by DLA. Mentors and managers are most likely to be farmers from neighbouring farms, the previous farm owner, or even former agricultural extension officers. The Land Bank offers a 'social discount product' to its clients as an incentive for them to mentor new farmers in exchange for a rebate on interest payments. TRAC-Mpumalanga, a land rights NGO, has developed a three-year mentorship pilot programme for redistribution projects in that province. It is a rare example of NGO involvement in both land reform and agricultural support.

Tensions exist in most land reform projects between the need for funding for production and for fixed capital investment. Redistribution beneficiaries usually exhaust the entire grant funding on land acquisition with little, if any, funding left to cover production costs. Restitution beneficiaries depend on the restitution discretionary grants for farming after land transfer has taken place. Funds from other parastatal agencies, various financial institutions and donors are often insufficient to sustain agricultural development. The Land Bank is the main financial institution to which land reform beneficiaries can turn for credit, but many are not accessing this service due to a combination of factors: being unaware of opportunities to access credit, not meeting lending criteria, and aversion to the risks of getting into debt.

Typically, land reform beneficiaries produce for household consumption with the only sale of output being restricted to local markets. It is rare for land reform projects to get marketing support from provincial departments of agriculture. Where land reform projects form part of a commodity chain, as in the sugar industry, upstream delivery agreements are often concluded. AgriLink II, a donor-funded service provider, assists beneficiaries to secure forward contracts for crop production and livestock in some parts of the country.

The land reform programme is not sustainable if production support after land transfer is lacking. A comprehensive post-transfer support policy is required to ensure that land and agrarian reform contribute to improved rural livelihoods. For more information, see Jacobs 2003.

Municipal commonage

Municipal commonage refers to land granted by the state to towns for the use and benefit of residents. In South Africa commonages were originally granted to municipalities by the state at the time of the formal establishment of towns during the 1800s and were to be used for public use and benefit. For much of the twentieth century, segregated urban development ensured that commonage was a public amenity for white residents to keep animals and for town development. An elaborate system for commonage management, including detailed provision for the allocation and administration of rights to use commonage, was developed and maintained over many decades. From the 1950s, however, municipalities stopped making the land available to inhabitants and began leasing it to commercial farmers.

The DLA's Municipal Commonage Programme was established in 1997, as part of the land reform programme, with the aim of enabling poor residents to access existing ('traditional') commonage lands in order to supplement incomes and enhance food security. The programme also provides a grant for the acquisition, and infrastructural upgrade, of new commonage. The programme promotes a broad range of land uses including food gardens, cultivation, grazing, eco-tourism and the collection of fuelwood and other veld products.

The commonage programme has been a major contributor to land reform to date, accounting for 31% of all land transferred within the redistribution programme up to the end of 2002. Substantial regional variation exists between provinces, however: commonage constitutes 67% of all the land redistributed in the Northern Cape, while no new commonage has been acquired in Limpopo or KwaZulu-Natal. A total of 3 407 households, 4% of all land reform beneficiary households, have benefited from the 420 812ha of new commonage. The DLA has no statistics on the amount of 'traditional' commonage that has been made available for land reform purposes. In the Northern Cape, however, the combined efforts of municipalities and small farmer associations, with NGO support, have resulted in black residents gaining access to 17 393ha of the 26 063ha of traditional commonage.

Despite these achievements, municipal commonage has been de-emphasised since the 2000 ministerial review of land reform took place. The past year has seen a sharp decline in new commonage, which accounted for only 2% of the land redistributed during 2002. The Medium Term Expenditure Framework (MTEF) for 2003 to 2005 only allocates commonage R13 million, which is 3% of the total budget for land reform. This reduced status of the commonage programme

is ascribed by DLA to its non-performance in terms of livelihoods benefits – a highly questionable assumption – and the department's new emphasis on LRAD, with its more commercial, private land-holding focus.

Concern with the delivery of commonage projects has focused on post-transfer (or post-access) land management. Commonage projects have been beset with problems of over-stocking and other abuses, exclusion of women and the poor; non-payment of user-fees; land degradation and severely reduced or minimal benefit to the few who manage to gain access. Such problems are common to a number of land reform programmes, but commonage, with the built-in involvement of the public institution of local government and its regulatory framework, may have a greater chance of success than other forms of land holding. This is supported by evidence from the Namaqualand and Hantam-Karoo districts, where improved commonage rights allocation processes are ensuring sound commonage management and increasingly secure livelihood benefits to users.

Shifts in commonage policy since 2000 have emphasised 'emergent farmers' concerned with commercial production as a target group alongside 'subsistence' farmers. Thus, not only are there fewer resources for the commonage programme, but those resources are now split between the poor and wealthier farmers.

'Subsistence' farming has shown itself to be an entirely separate form of agricultural land use rather than a scaled-down form of commercial agriculture. The needs of commonage users include land for fuel collection, for keeping livestock for weddings, funerals and bride-wealth, for vegetable production, for food security, as well as for income-generating activities. Attempts to 'share' the resource between groups with different aims, and consequently different management approaches, are likely to result in struggles over land which could squeeze out poor users, or frustration by 'emergent' farmers who fear their stock quality will suffer.

There is a widely held perception that land reform initiatives should give rise to transfer of land ownership. However, in most land reform projects, groups of people do not own land themselves, they hold land jointly through a legal entity. With commonage, the municipality holds the land and should ensure that public support is provided for the allocation of rights to users and the administration of rights. Users may be more secure in such a system than within a private land-owning entity where no structures for administration and support are in place. In all systems of group access to land, however, rights will only be secured if appropriate systems are in place for the allocation and administration of such rights.

Whatever the rights administration mechanism, DLA commonage projects are all governed by the principle of co-management by users and the municipality. In terms of DLA policy, commonage management committees must be established in which users are able to participate in setting up rules and regulations and in the management of projects. These structures may be advisory, or be delegated full decision-making powers through the creation of a municipal entity, a legally-established structure outside of the municipality, to which the municipality may delegate certain tasks.

Municipal commonage fills a particular niche in South Africa's land reform, offering as it does a system of land holding, allocation and management, with paid officials and a regulatory

framework that can make land accessible to the very poor. The commonage programme has been effective in redistributing land and accounts for nearly a third of all land transferred within land reform to date. With the right legal arrangements, administration and management systems, effective land use and livelihoods benefits can be achieved. Support of the programme by the DLA and by other government departments needs to be bolstered to reflect the potential of commonage as an economic resource for the poor. For more information, see Anderson and Pienaar 2003.

Rural settlement

In South Africa's rural areas, the responsibility for accommodating the poor in rural areas is divided primarily between DLA and the Department of Housing (DoH). The creation of sustainable settlements is complicated by the fact that this function is split between two departments whose separate responsibilities are not always clear. The fact that government is involved at national, provincial and local level, and that a number of departments are also concerned with rural development, further complicates this picture.

Rural settlement is not a problem of accessing land. Nor is it a problem of constructing shelter. Rather it is a complex problem that involves creating economic benefit, building the capacity of households, and providing financial support. However, the ability of government to provide viable and sustainable settlements in rural areas is constrained by current policies and practices. The key constraints include a lack of sufficient land being provided by DLA for settlement purposes, a lack of sufficient housing being provided by DoH, and a lack of associated settlement-related resources from other line departments or local government.

State investment in rural areas has been overshadowed by a focus on urban development. No formal government policy on this has ever been stated, but the reality seems clear: urban areas receive a greater share of the development budget than rural areas, even though the rural-urban split in South Africa's population is fairly even.

The key policy instrument available to provide land for settlement remains the Settlement/ Land Acquisition Grant, which provides funds for land reform beneficiaries to buy or improve land. Since 1994 SLAG has been the only tool at DLA's disposal for facilitating rural settlement, but it was designed to deal with redistribution of land in general rather than being specifically directed towards settlement. SLAG has technically remained a grant option within the land reform process, but is no longer actively promoted by DLA.

The provision of low-income housing in South Africa is the responsibility of DoH, which provides housing subsidies to eligible households. However, the ability of South Africa's rural dwellers to access housing from DoH is constrained for a number of reasons, including problems with land title, a history of DoH having an urban focus, and a lack of institutional and private sector capacity in rural areas to undertake housing projects.

The housing subsidy is only available to households which hold individual title to the land on which they wish to build their houses. This puts people living on communally- and tribally-owned land at a disadvantage. This problem has been partially addressed by the introduction of a rural housing subsidy, which recognises 'functional' security of tenure as sufficient to access the housing subsidy. However, a large number of people in rural areas do not have

access to functional security of tenure, or are unable to show officials that their land rights are uncontested, so the take-up of the rural housing subsidy has been extremely low: it has been used in only two of the nine provinces.

Emerging policy trends appear to signal a move away from DoH being focused on urban areas and DLA on rural areas – DoH will focus on housing and DLA on land. A new draft policy – Land Redistribution for Settlement – provides an alternative to SLAG. The draft policy proposes a narrower role for DLA in rural settlement, confining it to tasks related to providing or securing land. It is proposed that SLAG be reworked into a new Land Redistribution for Settlement Grant (LRSG). The remainder of settlement-related costs are to be borne by DoH, relevant line departments and local government.

DLA's new settlement policy calls for greater levels of co-ordination between the various line departments and local government. The role it envisages for local government begins to approximate the vision outlined in the 1998 White Paper on Local Government, in which local government was to be the driving force and co-ordinating body behind rural settlements, ensuring that these are socially and economically viable. However, for many years local government has struggled to implement effective rural settlement development, largely due to extreme resource constraints and shortages of skills.

Successful rural settlement involves accessing a wide range of development resources, co-ordinating the planning and implementation efforts of various agents, and responding to the needs and wishes of the households that will benefit from the settlement interventions. It has been a neglected area of land reform up to now, and it requires urgent policy reform. For more information, see Bannister 2003.

Joint ventures

Joint ventures, or partnerships between small-scale farmers and larger enterprises, are becoming widespread in land reform. These schemes predate the land reform programme, and have become an important vehicle for mobilising private sector and government resources for land reform initiatives. Commercial actors usually initiate such partnerships, with government assuming the limited role of helping poor people to overcome the barriers of entry into commercial agriculture.

The prevalence of joint ventures is a result of the state's market-assisted approach to land reform. Commercial farmers and corporations are faced with changed circumstances: they need to recapitalise to enter global markets, and they have to show their commitment to transformation when marketing their goods. Commercial farmers and corporations are using joint ventures as a way of addressing these changed circumstances. There are five popular types of joint venture: contract farming, share equity schemes, municipal schemes, sharecropping schemes and company-supported schemes.

Since the early 1970s, small-scale farmers in the communal areas have entered into contracts with processors or marketing firms to deliver a specific quantity of a commodity. Contracts are normally very prescriptive about how the commodity is produced and its quality. Companies initiate these joint ventures primarily to reduce their direct responsibility over particular stages of less profitable production. Small-scale farmers engaging in these schemes

gain access to a definite market, credit and extension services, yet have little power to determine the terms of the contract. Contract farming remains common in former homelands where processors and marketers have tried to make use of land that is held under communal tenure. More recently, it has expanded to freehold areas, particularly where land redistribution beneficiaries seek agricultural support and secure access to markets.

Share equity schemes are the type of joint venture around which government has developed most policy and to which land reform subsidies have been most often applied. These are arrangements where farm workers, small-scale farmers or other disadvantaged people buy shares in an agricultural enterprise. In theory the focus is on securing the tenure of farm workers, but in practice participation in the scheme is often more directly tied to employment. Equity schemes are most common in the capital-intensive fruit and wine sectors in the Western Cape.

In post-apartheid South Africa, sharecropper arrangements have been redeveloped and are being used in such a way that the balance of power between the two partners is not as unequal as in the past. On one grape farm in the Western Cape, for example, workers entered into an agreement to work the land of a neighbouring farmer in exchange for half the crop of grapes.

Municipal schemes are formed when municipalities create, fund and support initiatives with small-scale farmers and draw in other actors – specifically white commercial farmers. This is distinct from DLA's municipal commonage policy because the municipality actively creates an enabling environment for the development of farmers. The growth of this type of joint venture, however, is hampered by the low tax base and limited capacity of most municipalities.

Some joint ventures emerge as a result of a commitment by a large company to engage in upliftment as part of a social responsibility programme. Similar partnerships take place with churches and other religious bodies which own land. Company schemes can be extremely complex because the concerns of the company appear to dominate the relationship.

The balance of power between the landowner and small-scale farmer is the fundamental factor in any joint venture. Many joint ventures, including government-supported projects, proceed with the power of the commercial partners being unchecked by any other body. In most schemes, the black participants are essentially the subordinate partners of a scheme in which they have very little power. Building the capacity of small-scale farmers, farm workers and other landless people involved in joint ventures should be a key long-term objective for government.

Enhancing women's participation in joint ventures is a further important area. Gender relations in the different contexts described here have meant that women are often excluded from joint ventures or are exploited in their participation. Facilitators of such projects need to understand women's interests and to actively seek ways in which women can influence, effectively participate in, and benefit from, joint ventures.

Joint ventures do not always provide black participants with greater control over land. In share equity schemes, for instance, the DLA grant buys beneficiaries shares in an agriculture-related company, but these may have to be sold upon leaving the company. Independent access to land is often not a component, which raises the question of just how such schemes contribute

to the objectives of land reform, and whether DLA funds should be used for this purpose. Where the land is all allocated to farming a commercial product, participants have no other options and become entirely dependent on the scheme. Having access to land and livelihood options outside of the scheme makes participants less dependent and gives them additional power.

DLA, as the principal department dealing with land reform, appears to have no mechanism in place to monitor the joint ventures it funds, whether in terms of their progress, whether policy requirements have been adhered to, whether business plans are implemented, and what impact they have on the livelihoods of grant beneficiaries. Government should as a matter of urgency allocate resources for such monitoring and evaluation and ensure close scrutiny of all joint venture business plans that make use of land reform funds. For more information, see Mayson 2003.

Land use and livelihoods

It is often assumed that transferring land to rural households will provide people with valuable assets that can be used productively to enhance their livelihoods. Unfortunately, many rural people, including many land reform beneficiaries, are perceived to be using land unproductively because they do not engage in significant commercial production for the market. Transferring land to 'subsistence' users is commonly seen as a waste of resources. Such views inform recent land reform policy shifts that are aimed at enhancing 'commercial' agricultural production for the market rather than 'subsistence' production, and emphasise 'full-time' farming on larger portions of land.

However, an examination of land use in communal areas and amongst land reform beneficiaries indicates that resource-poor rural people use land productively and resourcefully, but they encounter considerable constraints to production and participation in agricultural markets that limit their livelihoods to a survivalist mode. The majority of residents of communal areas derive their livelihoods from a variety of on-farm and off-farm sources that include crop and livestock production and the harvesting and processing of natural resources. Land-based livelihoods are critical to the survival and health of rural households, particularly the very poor, and play a vital role in reducing vulnerability.

Levels of crop production in communal areas are generally not sufficient to meet the subsistence needs of households, thus necessitating the purchase of basic foods. Production for the market is generally low, but with considerable regional variations. The size of arable holdings available to rural households has declined over time, and there is evidence that the total area of land under cultivation has been declining in many areas. A wide variety of contributing factors have been identified, including shortages of labour, draught animals and capital, and difficulties in obtaining access to production inputs and markets.

Rural people keep a wide variety of livestock, for a wide variety of reasons. Records show that, although absolute numbers of livestock in the communal areas have remained relatively stable, the per capita numbers of cattle, sheep and goats have fallen dramatically over the twentieth century, even as the human population has grown. The economic contribution of livestock in the communal areas has been estimated at R1 200 per household per annum and the aggregate value of this sector at R2.88 billion per annum. This is 'invisible capital' that makes a significant contribution to people's livelihoods.

Most rural households in South Africa's communal areas regularly use, buy or sell natural resources harvested in communal areas for a wide range of purposes. The poor are particularly dependent upon these natural resources, both in terms of direct use and as a source of cash income. The value of the consumption and sale of natural resources to poor people's livelihoods is often ignored or underestimated, perpetuating the notion that communal areas are economically unproductive. However, recent calculations of the annual gross values of natural resource products consumed in the homelands shows that this averaged R3 154 per household. These values equate to approximately R950 per hectare in communal areas, which compares favourably with financial returns from commercial farming land use in adjacent areas, but contributes to the welfare of a far greater number of households. Thus, access to natural resources is pivotal for rural livelihoods, in terms of the supply of resources for everyday needs, a safety net in times of hardship, and maintenance of cultural ties with ancestors and the environment, all of which bring a cost saving to the state.

The use of newly-acquired or restored land by resource-poor land reform beneficiaries tends to follow the practices of people in communal areas. The land acquired through land reform, however, is often insufficient to meet the needs of beneficiaries, particularly with regard to grazing and cultivation. It is not clear that land reform has enhanced livelihoods much beyond the survival level. The lack of sufficient land and post-transfer support have been cited as reasons for the limited benefits accruing to land reform beneficiaries to date.

The use of land to produce for the market appears to feature prominently only in land reform projects in which NGOs or government agencies have provided support, or where partnerships with the private sector have been developed. This highlights the potential for the expansion and growth in agricultural production for self-provisioning and the market amongst land reform beneficiaries, but only if substantial investments are made to provide farmers with the support services and access to markets that they need.

Rather than building on existing practices and institutions, land reform projects often impose unfamiliar proposals and new responsibilities and institutions on groups of beneficiaries with diverse interests and meagre resources. It is not surprising, therefore, that even the most cohesive and well-organised groups encounter significant difficulties and conflicts that often result in the group avoiding unpopular or potentially conflictual decisions or in adopting risk-minimising decisions and strategies. The process of settling on newly-acquired land is long and difficult, and beneficiaries continue to depend on the availability of housing, infrastructure and basic services where they already live.

Rural people face severe obstacles to production in the communal areas and, with the possible exception of land area, will face more or less the same constraints in any new settlement. Action is therefore required to address all the constraints to production and the context of risks and opportunities that structure the 'subsistence' economy. More land will not guarantee that rural livelihoods are enhanced beyond a survivalist mode. Land reform must provide opportunities for rural households to improve and diversify their livelihood options and, in particular, enhance the contribution that land-based activities and resources make to household incomes. For more information, see Andrew et al. 2003.

Communal tenure

By the time of the transition to democracy, systems of land administration and management in the communal areas of the former homelands had become dysfunctional and had collapsed entirely in some areas. The previous system of control through native commissioners presiding over 'second-class' rights like permits had fallen away and, with local government unwilling to take on this role, resulted in widespread uncertainty among residents about the status of their rights. Women have particularly precarious rights to land and there is evidence that, as HIV/Aids disrupts local economies and social networks, people face deepening poverty and vulnerability. It is widely agreed that the situation contributes to contestation over both land and authority which, if not addressed, could lead to widespread conflict.

Communal tenure combines both group and individual rights. For example, in most communal areas in South Africa, people have strong individual rights to residential land and to arable fields – which can be leased, lent out and inherited – while rights to access grazing land is used jointly by members of the landholding community. Communal tenure provides the benefits of free, or relatively cheap, access to land and provides a social safety net for some of the poorest South Africans. Whereas in the past communal tenure systems were often misinterpreted as economically inefficient, this understanding has been widely criticised and replaced with an appreciation of the practical uses of this system.

As part of the outgoing apartheid government's reforms in the early 1990s, the Upgrading of Land Tenure Rights Act 112 of 1991 (ULTRA) created opportunities for communal land to be transferred through individual title to people with quitrent, permission to occupy (PTO) or other registered tenure rights. Communal land could also be transferred to 'tribes', on the basis of tribal resolutions, but there is evidence that some of these transfers took place without the knowledge or support of residents, and effectively dispossessed some people as rural elites captured and privatised common resources. In response to the limitations of this approach, the new democratic government committed itself to securing communal land rights by recognising informal rights and creating tenure options from which people can choose, according to their circumstances. The Interim Protection of Informal Land Rights Act 31 of 1996 (IPILRA) was passed as a holding mechanism to protect residents of the communal areas from being dispossessed, pending a more far-reaching process of reconfiguring tenure rights and land management but, since this has yet to be done, IPILRA has been renewed each year since 1996.

In August 2002 a draft Communal Land Rights Bill (CRLB) was published, which proposed to transfer title of communal land to residents, either as groups or individually. The nature of the tenure rights to be held by members of the community was not specified. The community concerned would be recognised as a juristic person and would take responsibility for land administration and management through a specially-created legal entity. The Bill envisages that a local committee should take on the role usually performed by the state through its deeds registry, cadastral and surveying functions, without public support and without remuneration. This draft has since been replaced by a revised version, not yet published but expected to be tabled in Parliament before the end of 2003.

Responses to the CLRB have been varied. Residents of communal areas are yet to be consulted by government and have had little opportunity to learn about or debate the Bill and its likely impact. In a series of consultations run by civil society organisations, they have expressed their interest in not merely securing existing land rights, but ensuring access to additional land, and to the services and infrastructure provided by municipalities on public land and in urban areas. Some residents have raised concerns that the process of transfer would open up conflicts around competing claims and boundary disputes, and create opportunities for elites to privatise communal resources. Many women have argued that it would not undo existing customary laws and practices that discriminate against their access to land and involvement in community governance; instead it could entrench these. (A more detailed account of the responses can be found in Claassens 2003.)

Traditional leaders have objected to the Bill's attempts to restrict their powers to allocate land rights and to limit their representation on the administrative structures to be established at community level. Local government representatives have also objected to the Bill, saying they would be unwilling to provide services on land that, after transfer, would be designated 'private', as it would be unfeasible to collect service charges from large and amorphous groups of poor people. A range of groups has argued that the complex process to be followed prior to transfer, in a series of 'administrative steps', cannot be implemented. In this view, the statutory protection of land rights where transfer had *not* happened would be of paramount importance.

What is to be done about reforming communal tenure systems and supporting residents' land rights remains contested and it appears that, no matter what one's perspective is, there can be no simple, rapid or cheap solution. Lessons about how to support communal tenure systems need to be learnt from experiences with communal property associations established in other land reform projects, and the consultations on tenure reform in the Act 9 areas, but these lessons are still to be applied to the thinking around communal land rights.

Government's proposals for reform of communal tenure have tended to overlook the needs expressed by people living in communal areas for additional land and for support for land rights and for production, as well as services, infrastructure and income-earning opportunities. The emphasis on ownership has been almost to the exclusion of considerations of how changed ownership may be expected to have developmental benefits. While the South African context differs from communal areas elsewhere in Africa – for example the exceptionally high population densities and the extent to which traditional authorities were previously co-opted by colonial and apartheid authorities – there are opportunities to learn from innovative responses to these kinds of challenges from the continent. Increasingly, experience indicates that the emphasis on rights must be balanced with the provision of access to more land, public support for institutions responsible for land management, and expanded opportunities for development in the communal areas. For more information, see Hall and Cousins 2003.

5. Critical issues in South Africa's land reform

This review has highlighted a number of cross-cutting issues that are applicable to the land reform programme as a whole. Among these are how land is acquired, who has benefited,

whether livelihoods have been supported, what forms of tenure have been created, what budgets have been allocated and spent, and what monitoring and evaluation can tell us about the land reform programme. These critical issues are discussed in further detail below.

Land acquisition

Land reform in South Africa has been premised on the protection of existing property rights. None of the programmes – restitution, redistribution and tenure reform – have involved the state forcibly acquiring land to transfer to beneficiaries. Instead, a willing buyer-willing seller policy has been adopted, in which the state will assist beneficiaries to purchase land or upgrade their rights to land. A narrow interpretation of 'demand-led' reform has deterred the state from actively pursuing market opportunities through a proactive land acquisition strategy, or from using its constitutional powers to expropriate land.

Although South Africa has a fairly active land market, with many farms being bought and sold each year, opportunities to redistribute this land have been missed, for a number of reasons. Firstly, the size, shape and infrastructure of existing commercial farms is often inappropriate to the needs of poor people who may want to farm on a small scale. Subdivision is necessary to make available suitable parcels of land for land reform, but this is costly and time-consuming. Despite the removal of legal impediments to subdivision, landowners have not proactively subdivided their land for sale to land reform beneficiaries, as expected by policy makers, and the state has thus far not been willing to intervene by subdividing land. Secondly, the design of the redistribution programme requires applicants to have concluded a provisional agreement of sale with a landowner before DLA will approve funds. This means that redistribution applicants cannot access land through land auctions – a major route through which land ownership is transferred. Third, land markets are 'segmented'. Information about properties for sale tends to remain within the social networks of landowners. Racism is part of this: in some parts of the country white landowners have withdrawn their property from the market after expressions of interest from land reform applicants, though it is not known how widespread this pattern is.

The willing buyer-willing seller approach has made land reform contingent on the willingness of current owners to sell at the prices that grant applicants can afford or, in the case of restitution, at the prices the CRLR is prepared to offer. While the law recognises the tenure rights of farm dwellers and labour tenants, they are only able to upgrade or formalise these rights with the assistance of redistribution grants set at a certain level per participant. The result is that some projects may not be feasible unless additional members can be found in order to increase the grant amount available. This highlights the contradictions between the rights-based land reform programmes and the use of a willing buyer-willing seller approach to acquiring land.

Legally, the state is not tied to a willing buyer-willing seller approach. The Constitution specifically mandates the state to expropriate property in the public interest, including for land reform purposes, and requires that compensation be paid. Expropriation for purposes other than land reform is commonplace in South Africa, with many properties being expropriated each year in terms of the Expropriation Act 63 of 1975. The Minister of Agriculture and Land

Affairs is empowered to expropriate for the purposes of securing farm dwellers' tenure rights (in terms of ESTA) or making land available for redistribution (in terms of Act 126). These powers have not yet been used. In the case of restoring land to restitution claimants, the Minister can at present expropriate only with the consent of the owner or with a court order, but proposed legal amendments published in 2003 would remove these requirements and give the Minister the same powers to expropriate as those held by the Minister of Public Works. Parliamentary hearings into this amendment were scheduled to take place at the end of August 2003.

The state has responded to problems with land acquisition by providing publicly-owned land for redistribution to eligible applicants but also sometimes to current residents through tenure upgrades since most state land is heavily populated. State land disposal has been a route pursued since 2000, when 669 000ha were earmarked for disposal. The Department of Public Works, provincial departments of agriculture and municipalities control much state land and, though there is a register of state land, this information is not open for public scrutiny.

Obstacles to the acquisition of land and obstacles to entering into commercial agriculture have led to joint ventures being prioritised in some parts of the country and some sectors. In addition, some municipalities have made use of existing commonage to provide black people with access to land. This presents a prime opportunity to broaden access to land, particularly for the poor, and some municipalities have pursued this route with success.

While designed as a market-led programme, land reform in South Africa has combined aspects of a state-led land reform (characterised by bureaucratic control) and a market-led land reform (requiring that land be bought from willing sellers at market prices). The unwillingness of sellers to sell and of the state to expropriate has led to stalemates in some parts of the country and some spheres of land reform. Increasingly, practitioners inside and outside of government are calling for more holistic interventions driven from the local level, which would acquire and transfer land in response to the scale and nature of local needs. Such a strategy has been mooted by DLA to acquire land for settlement purposes, but there remain untapped opportunities for the state to intervene more directly to make agricultural land available for land reform.

Profile of beneficiaries

Land reform was conceived as a positive measure to reverse the racially-skewed patterns of land ownership, but also as an intervention to promote social justice and socio-economic equity. Careful targeting of priority groups is an essential feature of such a programme. An exclusive focus on altering the racially-skewed access to land and economic opportunities could result in the exacerbation of inequalities *within* previously disadvantaged communities.

In practice, land reform policy pays very limited attention to wealth, gender and age disparities among intended beneficiaries. Even where policy makes reference to particular subgroups, few if any practical measures have been put in place to ensure that the interests of such subgroups are promoted. Monitoring is hampered by a lack of detail in data recorded during the process of project approval. Detailed external monitoring of land reform is impossible as disaggregated data on the gender, age and wealth of beneficiaries are not publicly reported. Where data are available, they are usually only at the level of 'the household'.

The total number of households which benefited from land reform thus far is in the order of 220 000, but this is spread unevenly across and within the three sub-programmes. Under the restitution programme, which accounts for 40% of all households benefiting from land reform, most resources were distributed to urban beneficiaries, mainly in the form of financial compensation. This is unlikely to enable urban claimants, large numbers of whom are poor and unemployed, to improve their lives in ways that are sustainable. Monitoring and evaluating of the differential class and gender impacts remain absent from the restitution process.

Internationally, land redistribution is seen as an important strategy to enhance the livelihoods of the rural poor. In South Africa, the land redistribution programme, which accounts for 60% of households benefiting from land reform to date, has abandoned its pro-poor approach of the 1990s. The removal of an income ceiling of R1 500 for households applying for grants and the heavy emphasis on commercial production have created barriers to the participation of the poor and vulnerable in the programme. While a proportion of funding is supposed to be reserved for poor and middle-income households under LRAD, provincial project lists show that this is not happening in practice. Overall, applicants with substantial resources of their own and with access to loans are acquiring the bulk of funding and larger farming units.

DLA has recently created a category of 'marginalised' beneficiaries – comprising women, youth, disabled and farm workers – which replaces the previous focus on 'the rural poor'. According to DLA's 2002–2006 strategic plan, marginalised groups have been allocated about 11% of the total redistribution budget and are expected to receive around 7% of land redistributed over this period.

Overall, smaller groups with more resources and with access to loans are acquiring more land. If land reform is to help foster new social relations in rural areas, it matters *who* gets priority. Performance of land reform in terms of wealth, gender and age profiles of beneficiaries should be guided by clear policy, and it should be accurately reported.

Livelihoods

A key objective of the land reform programme is the improvement of the livelihoods of the rural poor, through direct access to land for production and through development of the rural economy. Critical questions for land reform, therefore, are the extent to which land reform actively promotes sustainable livelihoods, and whether it attempts to build upon, or replace, the existing livelihoods of beneficiaries.

LRAD, the flagship redistribution policy of the DLA, specifically promotes commercial agriculture. While this does not explicitly exclude the very poor, the application requirements and grant assessment procedures certainly militate against those whose primary interest is production of basic foodstuffs for household consumption. The trend towards higher per capita grants and a greater credit component in LRAD projects, as has been identified by this research, not only makes it more difficult for the poor to become involved, but also exposes them to new forms of risk.

Alternative programmes that specifically address the livelihood needs of the poor have effectively been marginalised within land reform. The old SLAG grant is generally unavailable other than for settlement (housing) purposes, and the food safety-net programme – long promised

as a component of LRAD – has not materialised. The programme that showed greatest potential for addressing the livelihood needs of very poor people in rural area and small towns, the municipal commonage programme, has been allocated only a fraction of the resources it received in previous years, and is simply not being implemented in a number of provinces. Even in the area of tenure reform, the few ESTA settlements that have been approved for farm dwellers have mostly provided only residential sites, with little or no provision of land for productive purposes or other consideration of long-term livelihood needs.

A general weakness of many land reform projects, both under redistribution and restitution, has been the lack of attention to continuities between pre- and post-transfer livelihood activities. As shown by this research, many land reform beneficiaries, in common with much of the rural population, combine a number of on-farm and off-farm activities in order to secure a livelihood. These may include involvement in the formal sector, such as wage employment, along with informal trading, production of goods for household consumption, and gathering of wild foods, firewood and medicinal plants. This diversity of activities is, however, virtually entirely absent from land reform planning processes. With few exceptions, project plans assume that beneficiaries are available to work full-time and (despite the small size of many grants) will generate a return equivalent to a full-time salary. Non-monetised activities tend to be excluded entirely from business plans, creating a gap between projects as planned and the actual activities of beneficiaries.

Similarly, the skills and assets that beneficiaries bring with them to projects are frequently not accommodated in project plans. There is little place within land reform projects for the types of production with which many beneficiaries are most familiar, such as low-input, rain-fed production of staple crops and the keeping of stock such as goats and Nguni cattle. Many business plans promote a single, specialised form of production, usually requiring high levels of inputs and skills, effectively ignoring the range of skills, experience and assets that beneficiaries may bring to projects.

Overall, land reform has tended to prioritise land transfer and commercially-oriented forms of land use, rather than the creation of sustainable livelihoods. If land reform is to impact positively on the livelihoods of the rural poor, it must build on the existing capabilities of beneficiaries, reducing rather than increasing vulnerability, and enhancing rather than replacing current livelihood strategies.

Tenure

Land tenure refers to the terms and conditions on which land is held, used and transacted (Adams et al. 1999:1). Tenure in South Africa has been divided along racial lines, with extensive public support afforded to freehold rights while the rights of people living on land owned by others (both public and private land) have either not been recognised, or have been granted second-class status. Insecure tenure is a source of vulnerability and conflict. Uncertainty around rights also inhibits the development of viable livelihoods, access to credit, services and infrastructure, and investment.

Tenure reform is intended to address the inequalities between freehold ownership and the range of other ways in which people hold land. Reforming tenure can potentially involve the radical step of challenging the predominance of freehold property rights by recognising and supporting other types of tenure.

The implementation of the redistribution and restitution programmes has seen groups take ownership of land through trusts and communal property associations. Membership of a CPA is a new form of tenure created through the land reform programme. CPAs were envisaged as being more appropriate than existing legal entities such as trusts, family trusts and close corporations. The expected benefits were certain democratic safeguards and public support and oversight that would assist CPAs to function effectively.

In practice, many CPAs have become dysfunctional as a result of internal conflicts and a lack of external support. The CPA Register, for which the DLA has statutory obligations, appears to be in a state of disarray. From the information it contains, it seems that approximately 550 CPAs have been established and an undisclosed number have, since taking transfer of land, been liquidated. Where CPAs or other nominally 'private' institutions take ownership, land reform runs the risk of privatising land administration functions and excluding poor people in rural areas from receiving municipal services.

The ambitious idea of accommodating and supporting diverse forms of tenure has not been vigorously pursued. Experience in South Africa's land reform to date has shown that, while new rights have been recognised and new forms of tenure created, tenure reform has not been backed up by reforms to the justice system or institutional support for new forms of landholding. It remains to be seen whether adequate resources will be made available to support and enforce tenure rights on both public and private land.

Budgets

DLA has made a rapid transition from being an underspending department to one which overspends. The inability of DLA, for a number of years, to spend its allocation is one reason for significant fluctuations in its budgets. More recently, the achievements of the DLA in accelerating land transfers has resulted in some provinces exhausting their budgets, approving projects for which funds are not available, and being unable to proceed with new projects. In both the Western Cape and Mpumalanga, for example, provincial offices of DLA have refused new grant applications because the backlog of existing commitments will consume all funds for at least the next two years. A similar situation exists in respect of DLA's agency agreement with the Land Bank. A R50 million initial disbursement to the Land Bank is exhausted and it has now approved more than R365 million worth of LRAD grants.

This trend towards over-commitment means that, in some situations, landowners, land reform applicants and design agents are all ready to implement projects but are unable to proceed due to lack of funds. Some 'design agents' involved in establishing projects and drawing up business plans for beneficiaries have gone unpaid and are unwilling to continue working in this sector. Landowners, too, have found that, when selling to land reform beneficiaries, waiting for grant approval creates considerable delays. There is evidence of market opportunities being missed where willing sellers and willing buyers are unable to proceed because of institutional and budgetary blockages. This means that budgetary constraints have now become a real limitation on land reform.

However, changes in budget allocations have also been influenced by the priority placed on certain programmes and sub-programmes both by DLA and by government more broadly.

Projections over the Medium Term Expenditure Framework indicate that the budget for restitution is due to continue its rise substantially while 'land reform' (redistribution and tenure) is to increase more slowly, though this is subject to change. Within DLA's own medium-term plan, most land reform funds are to be allocated to LRAD, with a small proportion being shared between other redistribution sub-programmes – commonage, settlement and Act 126 projects.

The operating budgets of DLA and the CRLR have grown substantially over the years in absolute terms but this evaluation has identified institutional weaknesses, including low staffing levels and staff capacity, as constraints on delivery. Analysis of the rate at which land has been transferred, and what is needed to reach the transfer target of 30% of the land by 2015, indicates that substantial increases in capital budgets may be needed – as much as five times the current allocation. Restitution, in particular, may become a major route through which rural land will be transferred, as the emphasis shifts to rural claims. The CRLR requested a capital budget of R1.4 billion over the MTEF while, according to its own aggregate data, the outstanding claims are likely to cost as in the order of R3.9 billion. Project lists of rural claims settled with land so far indicate that the cost could be far higher. Based on average cost per rural claim, if even half of the outstanding rural claims are to be settled with an award of land, this could cost in excess of R10 billion. To this must be added the cost of the rest of the rural claims, the restitution discretionary grants and settlement planning grants, and possibly in the region of R1 billion to settle the estimated 25 000 outstanding urban claims.

Although the National Department of Agriculture has established policy that commits it to supporting land reform beneficiaries by providing them with agricultural extension services and finance, it has not yet committed any budgets for this purpose. Provincial departments of agriculture rely on budget allocations from their provincial legislatures and are required to fit within provincial policy frameworks. In provinces that inherited the agricultural departments of the former homelands, agricultural budgets are dominated by the salary costs of a large staff component and often lack operating budgets to enable staff to do their work in the rural areas, or capital budgets to fund support for production.

Budgeting for land reform has responded to improvements in expenditure and the pace of delivery, but has also been determined by other factors. The recent increase in the restitution budget, for instance, is driven both by increased expenditure and by the political support for finalising the programme within the deadline set by the President. The increasing expenditure, and now over-commitment, by provincial offices of DLA, however, has not led to a similar increase in funds. Instead, it seems that, in weighing up competing fiscal demands, government has not ranked land reform as a high priority. Improvements in policy, in delivery and in the demonstrated impact of the programme are probably preconditions for significant extra allocations, although the state's macroeconomic policy orientation and its attitude to public spending will also impact on the prospects for land and agrarian reform in the longer term.

Monitoring and evaluation

The need for ongoing monitoring and evaluation (M&E) of a major national programme such as land reform has been widely recognised from the outset. As the scale and complexity of the land reform programme has developed, however, the official M&E functions within government

have not kept pace, with the result that major information gaps now exist across all aspects of the programme. The problems around official M&E activities are exacerbated by a lack of systematic study or analysis from outside government, although a range of academics, NGOs and private-sector organisations have contributed to the field. This raises serious concerns around the ability of DLA to effectively manage its programmes, the reliability of statistical information coming into the public domain, and the prospects for determining the impact of reforms on intended beneficiaries.

Since 1994, M&E within DLA has concentrated on two main activities – the creation and management of a system for monitoring the performance of land reform programmes in terms of quantitative indicators such as cost, size and number of projects, and the assessment of the impact of land reform on intended beneficiaries using a combination of quantitative and qualitative measures. Although some progress has been made in each of these areas, both suffer from major deficiencies. The M&E function within DLA has continued to be hampered by inadequate staffing and high staff turnover at the national level, exacerbated by poor communication with staff tasked with M&E duties in provincial offices.

The routine collection, processing and reporting of statistical information regarding the various aspects of the land reform programme continues to be beset by difficulties. At the most basic level, for many years no reliable or standardised systems were in place for recording data in provincial offices, or for reporting such data to the national office. Within the national DLA office repeated, but largely unsuccessful, attempts have been made to create a computer-based system to capture key information on all land reform projects and to allow for monitoring of implementation against objectives. M&E data collection focuses on land transfers rather than post-transfer monitoring.

Fundamental problems with the collection, analysis and reporting of statistics run across all aspects of the land reform programme. A typical example is the uncertainty and confusion surrounding the number of labour tenant applications. In May 2002 the Minister of Land Affairs stated that 5 000 labour tenants in KwaZulu-Natal and Mpumalanga had received land. Yet DLA officials in KwaZulu-Natal knew of only 76 claims that had been approved to receive land (but had not necessarily received it yet), while officials in Mpumalanga could identify only ten such cases. Similar discrepancies are found with restitution claims, as noted earlier in this report. The net result is that the number of claims described as ‘settled’ over-represents the number of lodged claims that have actually been completed. To illustrate, the Doornkop claim in the North West was originally lodged as two claims but, following investigation, each of the 300 households involved is now reported as a separate claim. Neither the CRLR nor the M&E directorate of DLA are able to report on the details of rural claims lodged, nationally and provincially, the number settled in each province, and the number outstanding.

Since 1997, the M&E directorate has conducted or commissioned a series of surveys of the impact of land reform, known as the Quality of Life surveys. The first of these was conducted by DLA itself, with some external input, in 1997–98. This report was widely criticised for its limited scope, its questionable theoretical assumptions and its methodology. Subsequently, the Quality of Life process was redesigned, in a collaboration between DLA and a technical advisory group of international land reform specialists. This led to a further and more elaborate

study, the results of which were published in 2000. This was the most significant study of its kind up to that point, but it was seen by its authors as a very tentative step which had many weaknesses.

It was envisaged that the Quality of Life survey would be repeated (and refined) every two to three years, and a third survey was commissioned in 2001. While this report was completed at the end of 2002, it does not appear to have been officially released by DLA. Once again, major problems have been reported with sampling, with the redesign of the research instruments and with the analysis of the data, of which the most worrying was the inability to locate any of the respondents in the sample provided by DLA.

Outside of DLA, little systematic monitoring or evaluation of the land reform programme has taken place. No independent body has been in a position to verify the statistical claims made by government for the land reform programme and none have attempted a systematic evaluation of the impact of land reform. Most critically, perhaps, no systematic evaluation of the land reform programme as a whole has been carried out to date, from within or from outside government. This 'Evaluating Land and Agrarian Reform in South Africa' project is one step in that direction.

Overall, the land reform programme has been implemented to date without a credible M&E function operating within the programme. There have been few external attempts to provide this, but their scope has been limited. The quantity and the quality of information on all aspects of the land reform programme available to decision makers, beneficiaries and the general public alike is highly questionable, and is not conducive to an efficient and effective programme or to an informed public debate.

6. Conclusions

A major achievement of the South African state and society during the first decade of democracy has been the creation of a land reform programme that is constitutionally protected. This creates a means of addressing historical injustices, as well as promoting social justice, equity and broad-based development through the redistribution of productive assets and economic opportunities to the poor and disadvantaged. In this manner, land and agrarian reform can make an important contribution to the ongoing struggle to overcome the deep-rooted legacies of the past: racism, poverty and inequality.

The progress of land and agrarian reform to date has, for many, been disappointing, but important advances have been made. New laws have been introduced to give effect to the rights and obligations contained in the Constitution; new institutions, such as provincial land reform offices, the Commission on the Restitution of Land Rights and the Land Claims Court have been established; and a sizeable number of beneficiaries have gained access to land and other resources. Notable achievements in recent years have included:

- an increased rate of land transfer under the redistribution programme
- an increased rate of settling restitution claims
- larger budgetary allocations to land reform
- an improvement in the ability of DLA to spend its land reform budget
- the creation of implementing partnerships with statutory and non-statutory agencies.

Although these achievements are significant, and there is evidence of steady improvement in certain areas of delivery, major problems persist across many areas of land reform. Broad areas for concern include the failure to meet targets in terms of land transfer, the ineffective protection of tenure rights on commercial farms and in communal areas, the lack of attention to livelihoods issues, and the continued neglect of poor and marginalised groups, particularly women. Among the specific problems revealed by this research are:

- the limited contribution of restitution to redistributing land
- difficulties faced by would-be beneficiaries in acquiring suitable land on the open market
- failure to integrate land reform into processes of local development planning
- disagreement among key players on roles in providing and funding post-transfer support
- inappropriate project planning that bears little relevance to the needs of beneficiaries
- poor implementation of farm dweller and labour tenant programmes
- inadequate support for new landholding entities
- the absence of systematic monitoring and evaluation of implementation and the impact on livelihoods.

Land reform policy has evolved considerably over the period under review, and certain broad tendencies, whether intended or otherwise, have emerged that now define the South African land reform programme.

First and foremost is the very limited scope of the programme, in terms of objectives, budgets and overall impact on the pattern of property rights. It is clear that land reform in the South African context is no longer about a rapid reversal of past dispossession, but rather a gradual and modest redistribution of land through consensual, market-based methods. It is unlikely that the total amount of land transferred to black ownership through all aspects of the land reform programme over the first ten years of democracy will amount to more than 3% of total agricultural land – one-tenth of the official target.

Secondly, there has been a clear shift away from land reform as a programme aimed at the rural poor and landless to one aimed at the creation of a new class of commercial farmers. Programmes specifically aimed at the poor have either been severely curtailed, as in the case of SLAG and municipal commonage, or have failed to materialise, as in the case of the food safety-net programme promised under LRAD. Targets for the inclusion of marginalised groups such as women, the youth and the disabled are being widely ignored. At the same time, support for 'emerging' farmers with their own resources and access to credit has, under LRAD, come to dominate the redistribution programme, and is actively promoted, not only by DLA, but also by the Land Bank and the National Department of Agriculture.

Thirdly, the lack of interference with existing property rights has become a defining feature of the programme, despite the clear constitutional support for transformation. This is most evident in the 'willing seller-willing buyer' approach to land acquisition, which has severely limited the type, location and size of land holdings available to would-be beneficiaries. The principle of non-interference also explains much of the failure to secure and extend the rights of occupiers and labour tenants on commercial farms. It remains to be seen whether the proposed amendment to the Restitution of Land Rights Act regarding expropriation signals a significant shift in the state's approach to private landowners.

Finally, the general neglect of post-transfer support, and the failure to integrate land reform with a wider programme of rural development, has severely limited its contribution to livelihoods and to the revival of the rural economy. Redistributing land and rights in land does not amount to agrarian reform and cannot, by itself, achieve the wider objectives of alleviating poverty, promoting equality and contributing to economic growth.

Experience with land reform in South Africa demonstrates the intrinsically difficult and controversial nature of such a process of transformation. The expectations of many poor and landless people at the moment of political liberation that land reform would significantly alter the racial pattern of landholding have not been met, and are unlikely to be met in the foreseeable future. It now appears that policies aiming at structural change have been reconfigured to greatly limit the scale of land reform and to redefine it largely as a programme of farmer settlement.

The implementation of a comprehensive agrarian reform that transforms the commercial agricultural sector, addresses the dualism of freehold and communal areas *and* provides livelihood opportunities for the mass of the rural poor and landless remains a major challenge for the country. However, the South African government's current neo-liberal outlook is not amenable to the radical action that is required to restructure property relations and the agrarian system. As we near the passing of a decade of democracy, the time is ripe for some fundamental rethinking, and some stark choices, on how the South African state and society propose to respond to the complex problems of rural poverty, underdevelopment and landlessness.

Key challenges for land and agrarian reform

Discussion around the findings of this research project with partners in the land sector has led to the identification of a set of key challenges facing land and agrarian reform. These are set out below as topics for further consideration and debate. They are directed at all stakeholders in the sector, but particularly at civil society structures.

- Land reform in South Africa has not been guided by a clear vision that relates specific land reform programmes to wider processes of agrarian transformation. *There is a need for a clear, comprehensive vision of agrarian transformation that is shared by progressive elements within the state and civil society*. This is required to inform policy making, to mobilise organs of state and civil society around common objectives, and to create effective linkages between the policy areas of land reform, agricultural reform, food security, local economic development and rural development.
- There is a lack of co-ordination between different spheres of government with responsibility for land reform, and between different land reform programmes. The non-alignment of state institutions has inhibited an integrated response. Operational problems have arisen due to inadequate budgets and lack of a clear implementation strategy. *There is therefore a need to develop and effectively manage a clear implementation strategy for land reform, with adequate budgets, that is binding on different spheres of the state.*
- Land reform is being implemented largely as a state-controlled process with little input from poor and landless people. This has a negative impact both for implementation and

for the building of political support for land reform. *There is a need to mobilise and organise the rural poor and landless so that they can articulate their interests, engage with land reform policy and exert more influence on national politics.*

These are long-term challenges that are likely to be highly contentious. Addressing them will require considerable time and effort by a range of stakeholders. Practical activities that should be pursued within the sector are:

- the development of policy positions and debate within civil society structures
- the inclusion of landless people and small farmers in policy debates
- the advancement of arguments for agrarian reform within formal political structures
- ongoing evaluation of the official policy framework and its impact
- further investigation into the demand for land
- revisiting the economic arguments for land reform, in terms of livelihoods and local economic development
- ongoing interaction and debate among land reform practitioners, policy makers, activists and researchers.

Endnotes

1. Budget figures are actual figures for the period up to financial year 2003/04. Figures for 2004/05 and 2005/06 are MTEF projections.

2. Between 1996 and 2000, 752 027 ha were transferred through redistribution and tenure reform and in the financial years 1996/97 to 2000/01, 283 226 ha were transferred through restitution, making a total of 1 035 253 for the approximate period 1996 to 2000. This amounts to 1.2% of commercial agricultural land, or 0.24% per year for the five years.

3. 30% target minus existing delivery of 2.3% = 27.7%, divided by the 12 years remaining to 2015 = 2.308% to be transferred per year, divided by the current rate of 0.46% per year = 5.01 times the current rate is required.

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