

Research Report 38

Land Reform in South Africa: A Status Report 2008

Edward Lahiff



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Acronyms and abbreviations

AgriBEE	agricultural broad-based black economic empowerment
CASP	Comprehensive Agricultural Support Programme
CPA	communal property association
CPI	communal property institution
CRLR	Commission on Restitution of Land Rights
DLA	Department of Land Affairs
LARP	Land and Agrarian Reform Project
LRAD	Land Reform for Agricultural Development
MAFISA	Micro-Agricultural Finance Initiative of South Africa
MoA	Ministry of Agriculture and Land Affairs
PLAS	Proactive Land Acquisition Strategy
PMU	Project Management Unit
SIS	Settlement and Implementation Support
SLAG	Settlement/Land Acquisition Grant

Chapter 1: Introduction and overview

Introduction

After 14 years of democracy in South Africa, there is agreement across the political and social spectrum that the state's programme of land reform is in severe difficulties. Almost since its inception, the programme has been criticised for failing to reach its targets or deliver on its multiple objectives of historical redress, redistribution of wealth and opportunities, and economic growth. Particular weaknesses – highlighted by its political supporters and opponents alike – include the slow pace of land redistribution, the failure to impact significantly on the land tenure systems prevailing on commercial farms and in the communal areas, and the widespread perception that what redistribution of land has taken place has not been translated into improvements in agricultural productivity or livelihood benefits for the majority of participants. Nevertheless, despite much political hand-wringing and some changes in direction, the policy fundamentals remain largely unchanged from the formula that was put in place at the time of the transition to democracy. Of particular interest, therefore, is not so much the chronic underperformance of a policy area that many saw as critical to post-apartheid transformation, but the ability of the government to persist for so long with an approach that enjoys so little popular support and is clearly failing to deliver on its ostensible objectives.

The period following the National Land Summit of July 2005 witnessed heightened debate about land reform policy and a flurry of policy initiatives not seen since the transition period a decade earlier. Much of this attention centred on the principle of 'willing seller, willing buyer', which was roundly condemned by the summit delegates, led by the Deputy President, the Minister of Agriculture and Land Affairs, the Directors-General of the Departments of Agriculture and Land Affairs, and assorted luminaries. Since then, the Department of Land Affairs (DLA) has engaged in a stop-start process of consultations and the drafting of a variety of new policy papers. To date, this has yet to yield any significant challenge to the fundamental character of a market-based reform programme that provides

modest amounts of land to a small minority of the rural population, but leaves the underlying structure of the agrarian economy largely intact.

Debates around land reform since 1994 have been dominated by the extent of land redistributed from white to black owners (or occupiers), usually expressed as a proportion of the total area of agricultural land owned by white people at the end of apartheid. By March 2007, the land reform programme in all its forms had transferred somewhere in the order of four million hectares – roughly 5% of white-owned land – to historically disadvantaged South Africans.¹ Of this, approximately 45% came from restitution and 55% under various aspects of redistribution, including the Settlement/Land Acquisition Grant (SLAG), Land Reform for Agricultural Development (LRAD), commonage, farm worker equity schemes, state land disposal and tenure reform (see below).

This quantitative measure provides only a crude indication of the pace and direction of land reform, obscuring as it does equally important issues of land quality and location, the socio-economic profile of beneficiaries and the quality of post-settlement (or post-transfer) support, if any. However, the ongoing attention to the headline statistics for land transfer has been closely linked to a second prominent theme in land reform debates – the means by which land is to be acquired from its current owners, and particularly the market-based approach favoured by the state.

Effectively, the debate around market-based land reform to date has been limited to the degree of discretion granted to landowners around whether to make their land available to the programme or, alternatively, the degree of persuasion or coercion to be used by the state in order to acquire land and the extent of compensation to be provided. As argued elsewhere (Lahiff 2007a), the weakness of the market-based approach that underlies the South African land reform programme – loosely captured under the slogan of 'willing seller, willing buyer' – extends well beyond this question of land acquisition, and has implications for the types of benefici-

1. This and other statistics on the land reform programme are the subject of considerable debate, due in large part to inconsistent and aggregated reporting by the relevant authorities. The highest cumulative figure reported by the DLA is 4 211 140 ha, for the period between 1994 and March 2007 (DLA 2007: 18). See detailed discussion below.

aries accessing the programme, the often inappropriate models of land use being imposed on them,² the general failure of post-settlement support and, ultimately, the slow pace of reform and the generally disappointing performance of land reform 'projects'. Recent policy developments in the areas of expropriation and the proactive purchase of land tend to support the hypothesis that the means of acquiring land is only one element within a complex mix, and that changing this element alone will not necessarily resolve other problems and contradictions that have plagued the land reform programme since its inception. Indeed, there is a likelihood – given recent policy pronouncements – that a more interventionist approach to land acquisition by the state may lead to an even more top-down and conservative process that emphasises the deracialisation of the commercial agricultural sector (that is, the substitution of a relatively small number of whites by a similar number of black 'entrepreneurs') at the expense of a more radical restructuring of the agrarian economy in favour of the mass of the rural poor and landless.

This *Status Report* looks at the state of land reform over the period 2005 to early 2008, with a particular focus on land redistribution. This is appropriate for a number of reasons. First, in the context of extreme inequality in landholding, particularly in a country with a relatively high rural population, the redistribution of land assets must be seen as a central element of a land reform programme and a key indicator of success. Redistribution of land is, not surprisingly, central to the redistribution sub-programme, but is also a critical component of the restitution sub-programme and plays a minor role within tenure reform. Restitution is where redress for historical injustice and dispossession is addressed most directly within the land reform programme, but it is noteworthy that the great majority of restitution claims have been settled by means of cash compensation rather than the restoration of land. For the purposes of this report, land restored under the restitution programme is considered as a form of redistribution, and one that is making a significant contribution to the performance of the land reform programme as a whole. Second, the number of hectares to be redistributed is one of the few concrete targets set by the state and on which it reports with any degree of detail and frequency; therefore, it lends itself to a detailed analysis. Third, the other core element within the land reform programme – tenure reform, on commercial farms

and in communal areas – has received relatively little attention from policy-makers or implementers during the period under review and receives only passing mention in official reports. Ongoing eviction and abuse of farm dwellers undoubtedly remains a critical problem, as does the long-delayed implementation of the reform of communal tenure, but these issues require in-depth research and analysis of their own, and will hopefully form the basis of future status reports. Finally, redistribution, while always central to South Africa's land reform, appears to have reached a critical juncture, in terms of changes within the redistribution programme itself, the attention now being given within restitution to the restoration of high-value agricultural land, the setting of ambitious new targets and talk of greater use of expropriation.

Between 2005 and 2006, the annual target set by the DLA for land transfers under the redistribution programme (now referred to in official reports as 'land and tenure reform') increased by a factor of 16, however implausible this might be. Moreover, the introduction of the Proactive Land Acquisition Strategy (PLAS) and, more recently, the Land and Agrarian Reform Project (LARP), together with a renewed political emphasis on expropriation, raises the possibility of at least some increase in the rate of land transfer. Furthermore, by 2007, virtually all urban restitution claims appeared to have been settled and the focus of the Commission on Restitution of Land Rights (CRLR) is now squarely on the outstanding rural land claims, many of them on high-value (and privately owned) agricultural land, with the potential to dramatically increase the area of *productive* land delivered under this programme.³

Thus, by early 2008, several factors were converging that suggested land reform (especially land redistribution) was moving up the political agenda and might be entering a dramatic new phase. Major questions remain, however, about the availability of resources and the capacity of state departments to deliver land on a greatly expanded scale, and to address other gaps in policy such as post-settlement support and an effective anti-poverty strategy. These and other related issues are the focus of this report.

Overview of land reform, 2005–2008

During the period under consideration, land reform policies and debates followed the broad

2. 'Inappropriate' is used here in the sense of inappropriate to the expressed needs and abilities of the beneficiaries.

3. In July 2007, the Chief Land Commissioner told the National Assembly's Agriculture and Land Affairs Committee that the last 7% of claims was going to be the toughest: 'We are entering the most difficult part of the restitution process where we have to settle the outstanding 5 279 rural claims.' (http://www.news24.com/News24/South_Africa/Politics/0,,2-7-12_2157965,00.html)

contours established since 1994. Policy continues to be guided by the provisions of the White Paper on South African Land Reform Policy of 1997, with its emphasis on a market-based approach, although critical areas have been under review.

Redistribution

Redistribution is still effected largely by means of discretionary grants provided by the DLA for the purchase of land on the open market. The introduction of PLAS in 2006, however, has led to a growing proportion of land being purchased directly by the state, albeit still on the basis of voluntary transactions and at agreed (i.e. 'market-based') prices. A potentially worrying trend is for land to be purchased by the state without first identifying the intended owners of that land, implying that policy may be swinging from an entirely 'demand led' approach to one that is increasingly 'supply led'. This implies that prospective beneficiaries may not be directly involved in the purchase decision or in the immediate post-purchase planning for the land, opening up the possibility of a more top-down ('statist') approach to both project implementation and beneficiary selection.

LRAD, which has almost entirely replaced the older SLAG since 2001, has brought an increase in per capita grant levels and encouraged the trend towards smaller group sizes in redistribution projects. Information on the distribution of grants is available only for the first two years of the LRAD programme (August 2001 to July 2003), during which time grants provided directly by the DLA were heavily concentrated at the lower end of the 'sliding scale'. Out of a total of 8 591 grants awarded during these two years, 41% were at the R20 000 level, 40% were at R30 000, 12.5% were at R40 000 and the remaining 6.5% were in the range R50 000 to R100 000 (MoA 2003: 8). While this is presented as evidence of the successful targeting of relatively poor beneficiaries, no direct evidence of income status is captured or reported. The absence of detailed information on the socio-economic characteristics of land reform beneficiaries, and failed applicants, remains a critical weakness in the land reform debate.

Most redistribution projects are based on outright ownership of land, but often this means group ownership and owners who do not live on the property but commute from their established homesteads. A limited number of farm worker equity schemes (whereby workers pur-

chase a share in an existing farm enterprise) continue to be implemented in the Western Cape, and municipal commonage projects (where local municipalities make land available to users on a permit basis) in the Northern Cape, but, with a few exceptions, these have not been taken up as models of redistribution in the rest of the country and, thus, remain marginal to the redistribution programme as a whole.

Restitution

In restitution, 2007 marked the settlement of virtually all outstanding urban claims, and continued the recent trend of settling large community claims with the restoration of sizable areas of rural land. Many of these claims were on land of high agricultural value, on forestry land, or on land with well-developed tourism enterprises, including large citrus estates and game reserves in Limpopo, tourist lodges in Mpumalanga, sugarcane plantations in KwaZulu-Natal and tea estates in the Eastern Cape. The year 2007 also saw the first case of land expropriation for restitution, when the Pniel farm in the Northern Cape was expropriated by the state from the Evangelical Lutheran Church of South Africa. In January 2008, a second such expropriation was reported to be underway on a citrus-producing farm named Callais, in Limpopo province.⁴

Recent years have seen an emphasis on the creation of 'strategic partnerships' between restitution claimants and commercial operators. This trend is a response to a number of high-profile project failures and the large areas of high-value agricultural land – often involving large amounts of fixed capital and thriving commercial operations – affected by some claims, but is also driven by the demands of claimants for development assistance, training and investment.

The great majority of restitution claims are now being settled by the so-called administrative route, but some still come before the Land Claims Court and the Constitutional Court. During 2006/07, two important judgements were handed down by the courts, in the cases of Popela and Minaar, which have implications for how other cases might be settled (see Chapter Two, below). Also, in October 2007, resolution was finally found to the long-running Richtersveld land claim involving land and diamond mining rights in the Alexander Bay area of the Northern Cape. In the run-up to the 2008 presidential deadline for settling all restitution claims, the CRLR and the Minister of Land Affairs signalled

4. 'State to take possession of expropriated farm', *Mail & Guardian Online*, 21 January 2008.

5. One of the few references to labour tenants in the DLA Annual Report 2006/07 appears to suggest that a total of 6 271 claims were outstanding at the beginning of the year, of which 589 were settled (DLA 2007: 60). A target for the number of disputed labour claims referred to court and finalised was set at 200, with an achievement of zero, due to the 'slow process of tracing claimants and negotiations' (DLA 2007: 60). A report from the Government Communication and Information System in October 2007 stated that 8 000 labour tenant claims were outstanding in KwaZulu-Natal alone (Government Communication and Information System 29 Oct 2007, 'Govt to fast track land distribution'). In March 2008, the new Director-General of Land Affairs told the parliamentary Portfolio Committee on Land and Agriculture that 12 427 labour tenant claims had been settled and 4 840 were outstanding, but these numbers appear to be incomplete (Presentation to the Portfolio Committee on Agriculture and Land Affairs on the *Department of Land Affairs' 2008/09 Strategic Plan and Budget*, 11 March 2008).

6. See also budget vote speech by Lulu Xingwana, Minister for Agriculture and Land Affairs, National Assembly, 18 May 2007

7. 'To protect and benefit people living on commercial farms, a framework was developed (and has been in place since October 2006), separating the management of evictions from issues of tenure security for farm dwellers. One of the major features of this framework is the leveraging and maximisation of existing redistributive measures to provide for tenure security (for people living on commercial farms)' (DLA 2007: 19). 'In order to provide long-term security, we will also acquire land for the settlement of farm dwellers to provide long term tenure security' (Lulu Xingwana, Minister for Agriculture and Land Affairs, National Assembly, 18 May 2007).

8. Speech by the Honourable Minister for Agriculture and Land Affairs, Lulu Xingwana. Launch of Land and Agrarian Land Reform Project and Land Rights Awareness Campaign in the Eastern Cape Province. Rockhurst Farm, Makana Local Municipality in Grahamstown, 3 November.

that the deadline would not be met, and that resolution of up to one-third of the outstanding claims, which were particularly complex or in dispute, might continue beyond the deadline. Although no official announcement has been made in this regard, recent budgetary allocations and the extent of ongoing activity makes it clear that the 2008 deadline has effectively been lifted and the CRLR will continue to exist and operate for some time to come.

Farm dweller tenure reform

Tenure reform remains the poor relation within land reform policy. Particularly neglected in recent years have been dwellers on commercial farms, including farm workers and their dependants, and labour tenants in the provinces of KwaZulu-Natal and Mpumalanga. The high incidence of farm evictions was clearly established by the landmark Nkuzi/Social Surveys study of 2005, and the abuse of farm labour and farm dwellers continues to be highlighted by the South African Human Rights Commission (SAHRC 2003) and land reform NGOs. While there has been occasional official mention of new legislation, little in the way of concrete policy initiatives have emerged that might prevent evictions or address the land needs of farm dwellers. Critical problems remain around the criminal justice system's failure to protect farm dwellers, or to act against landowners, especially the ongoing failure to provide free legal aid as mandated by the Nkuzi judgement of 2001. Little detail has been reported on progress with the settlement of approximately 20 000 labour tenants' claims under the Land Reform (Labour Tenants) Act 3 of 1996. It appears that many labour tenants may have been resettled on land acquired as part of the redistribution programme, but others have been evicted from farms while their claims await official attention.⁵ Various initiatives have been announced around the monitoring of evictions from commercial farms and the provision of legal and other forms of assistance to farm dwellers (DLA 2007: 19)⁶, but the reports of NGOs and others working in the field suggest that this is having little impact to date.

More important, it seems, is the trend towards treating farm tenure as a redistributive matter, and addressing the needs of farm dwellers for tenure security through including them in the redistribution programme, particularly under the new LARP.⁷ This was signalled in the Min-

ister's Budget Vote speech of March 2007, and was elaborated further at the launch of LARP in the Eastern Cape in November:

*The focus of LARP in the Eastern Cape Province is on the acquisition of land in order to provide long-term security to farm dwellers, farm workers and emerging communal farmers.*⁸

Such an approach serves to sidestep the more controversial issue of securing long-term tenure rights for farm dwellers on the (usually privately owned) farms on which historically they have lived. It also tends to ignore the status of many such dwellers as farm workers, whose needs might be served better by securing their position as workers within the agricultural sector rather than transforming them into farmers in their own right.

While farm workers and farm dwellers have always featured among the official target groups for land reform (e.g. in the Reconstruction and Development Programme of 1994 and the White Paper of 1997), few specific measures have been put in place to cater for this group. Under LARP, much greater attention is paid to farm dwellers, at least at the rhetorical level, but it is not clear whether they will be treated any differently from the general mass of potential land reform beneficiaries (See Chapters 3 and 4). While this emphasis on farm dwellers is certainly welcome, the lack of reference to the specific needs and demands of farm dwellers is cause for concern, particularly given the increased emphasis on creating new agricultural 'entrepreneurs' that pervades the discourse around LARP.

In the area of land rights and prevention of illegal eviction, the DLA has developed what it terms a Land Rights Management Facility, designed to provide legal services to farm dwellers in conjunction with the Department of Justice and other agencies. Rather than relying on public-interest law practices and NGOs, as in the past, the new system makes use of a network of private-sector lawyers.

According to the Department, the new facility has the following objectives:

- to offer a basket of options on land rights and tenure issues;
- legal representation;
- mediation of disputes and settlement thereof;
- eviction monitoring;
- raising land rights awareness and promot-

- ing access to services and products offered by the DLA through a call centre;
- training of stakeholders on applicable legislation and policies; and
- establishing district, provincial and national forums.⁹

Communal tenure reform

Little progress was made in the area of communal tenure reform during the period under review, due in part to a Constitutional Court challenge to the Communal Land Rights Act 11 of 2004 by various affected communities. The DLA's annual report for 2006/07 makes almost no mention of communal tenure reform, other than to note that the implementation of the Act could not be pursued due to the court order lodged on 6 April 2006: 'The continuing dispute has had a negative impact on the valued contribution that this Act would make in accelerating land reform in the rural areas. Nevertheless, there is a concerted effort from the Department to resolve this matter' (DLA 2007). Draft regulations under the Act were published for public comment in February 2008. These included provisions on the creation of land rights boards, on land rights enquiries, on the content, making and registration of community rules and on land administration committees, as well as various general provisions.¹⁰ The court challenge to the Act is expected to be heard before the Constitutional Court in October 2008.

Achievements to date

Land transfers, under both redistribution and restitution, have accelerated rapidly in recent years, but still lag far behind official targets. For the end of March 2007, the DLA reported

a headline figure of 4 211 140 ha of land transferred since 1994 (DLA 2007: 18). In the presentation of its annual report to Parliament in 2007, the DLA reported a slightly lower figure, with the breakdown between redistribution and restitution as shown in Table 1.

These figures differ somewhat from the cumulative total for restitution reported by the CRLR in its own annual report, which was 1 650 851 ha, as of 31 March 2007 (CRLR 2007: 60).

The long-standing target for land transfer under all aspects of the land reform programme is 24.9 million hectares by 2014, equivalent to 30% of white-owned agricultural land in 1994 (estimated at 83 million hectares). The figure of 4 196 000 thus represents just 5.06% of white-owned land, or one-sixth of the target amount.

The total amount of land transferred under redistribution during 2006/07 is reported as 258 890 ha (DLA 2007: 18). Unlike previous years, no breakdown is given for sub-categories of redistribution such as land transferred as part of tenure reform or state land disposal. A year earlier (in 2006), the DLA provided a breakdown of land transfers, as shown in Table 2.

As the total shown in Table 2 for state land is close to the maximum figure for state land available for redistribution reported at various times in the past, it is assumed that the disposal of state land has now effectively come to an end. Land transfers under the tenure reform programme (e.g. to farm dwellers and occupiers of communal land) are not specifically reported for 2006/07, but all the indications are that the figure for this category remains minimal. More-

Table 1: Land transferred by redistribution and restitution, 31 March 2007¹¹

	Redistribution	Restitution	Total
Hectares	2 299 000	1 897 000	4 196 000
Percentage	54.79	45.21	100.00

Table 2: Breakdown of land transfers, 31 March 2006¹²

	Redistribution	Restitution	Tenure reform	State land	Total
Hectares	1 477 956	1 007 247	126 519	761 524	3 373 246
Percentage	43.81	29.86	3.75	22.58	100.00

9. 'Eviction of Farm Workers'. Briefing to the National Council of Provinces Select Committee on Land and Environmental Affairs, 21 August 2007, by Mr. Mduzuzi Shabane, DDG: Land and Tenure Reform. PowerPoint presentation.

10. Republic of South Africa, *Government Gazette* No. 30736, 8 February 2008.

11. Department of Land Affairs, *Presentation of the 2006/07 Annual Report to the Select Committee on Land & Environmental Affairs*, 6 November 2007. PowerPoint presentation.

12. Department of Land Affairs, *Presentation to the Select Committee on Land and Environmental Affairs: Annual Report 2005/06*. 19 June 2007. PowerPoint presentation.

over, it would appear that any such transfers that take place are included now under the general heading of redistribution.

The figures presented to Parliament by the DLA (which seem to overstate the contribution of restitution and understate that of redistribution) suggest that by 31 March 2007 restitution had contributed 45.21% of total land restored, while the redistribution programme (i.e. the rest of land reform) had contributed 54.79%. This contribution by restitution is particularly significant given that the great majority of restitution claims have been settled not by land restoration but by cash compensation, and the fact that many large rural claims have yet to be settled.

For many years, there has been a major disparity between the headline targets for land transfer and the operational plans (including budgets) put in place by the DLA. The Strategic Plan of 2005 (DLA 2005: 36), for example, set relatively modest annual targets, which were in line with performance to date but which clearly were not on course to reach the 2014 target. For 2005/06, the DLA actually exceeded its *annual* target for redistribution but, as the Director-General conceded in the Department's report for 2006/07, delivery on this scale was unlikely to reach the overall target by the set date:

Though for the 2005/2006 financial year the Department exceeded its target of land delivery by 34%, it was clear that the Department still faced a serious challenge in achieving the target of redistributing 30% of white-owned commercial agricultural land by 2014. (DLA 2007: 15)

In 2006, the Department took the significant, if obvious, step of working backwards from the overall target and calculating the annual amount of land transfer required to meet it. This led to a dramatic jump in the annual target:

In an attempt to address this challenge, the Department resolved to increase its target to 3.1 million hectares of land with 2.5 million thereof to be delivered through the land redistribution programme and the rest by the land restitution programme. (DLA 2007: 15)

While the overall target remains fixed at '24.9 million hectares of productive white-owned land', the DLA, possibly for the first time, has included a target for the number of beneficiaries: '60 000 individual black South Africans'. It has also included additional 'performance indica-

tors' that set targets for livelihoods and agricultural productivity: 'Increase in jobs created and incomes earned within five years of receiving land. Increase in crop yields and livestock production within five years of receiving land' (DLA 2007: 60). The recent introduction of LARP, and the setting of further targets for the next two years, does not appear to fundamentally alter the overall targets already set by the DLA. This is discussed in detail in the subsequent chapters.

Impact of land reform

Recent studies have revealed the limited impact of most land reform projects in terms of productive land use and household livelihoods (CSIR 2005; CASE 2006; SDC 2007). This has been attributed to many factors, but the most widely cited are inadequate or inappropriate planning, a general lack of capital and skills among intended beneficiaries, a lack of post-settlement support from state agencies, most notably local municipalities and provincial departments of agriculture, and poor dynamics within beneficiary groups.

While various initiatives have been undertaken to address the challenge of post-settlement support, such as the introduction of the Comprehensive Agricultural Support Programme (which, despite its name, has effectively been limited to grants for farm infrastructure), the provision of micro-credit under the Micro-Agricultural Finance Initiative of South Africa (MAFISA) programme and the creation of post-settlement support units within the CRLR, it would appear that many, if not most, land reform projects remain without the support they need to use their land productively. Potentially the most significant initiative in this area is the recent Settlement and Implementation Support (SIS) strategy, developed by the Sustainable Development Consortium on behalf of the CRLR, which proposes 'a joint programme of government, spearheaded by the Ministry of Agriculture and Land Affairs in partnership with organised land reform beneficiaries, private sector role-players and NGOs... to provide comprehensive support services to ensure sustainable land reform projects and the fulfilment of broader constitutional obligations' (SDC 2007) (see Chapter 4). The projected acceleration of land transfers does not in itself address the ongoing challenge of post-settlement support – indeed, it makes the need even greater – and it remains to be seen whether the SIS or other strategies will be implemented on a significant scale and have the required impact.

Political climate

Politically, there were signs of support for radical changes in land reform policy at the National Land Summit of 2005 and in President Mbeki's 'State of the Nation' speech in 2006, when he spoke of the state playing 'a more central role in the land reform programme'.¹³ This sentiment was echoed by the Minister of Agriculture and Land Affairs in her Budget Vote speech of March 2006, which referred to 'focusing on the state as a lead driver in land redistribution rather than the current beneficiary-driven redistribution'.¹⁴ Subsequent months saw the emergence of a bewildering array of policy proposals, which included area-based planning (premised on partnerships between the DLA and local government), reviews of policies on 'willing buyer, willing seller' and expropriation of land for land reform purposes, the development of new policies in the areas of land tax and land ceilings,¹⁵ policy reforms to benefit people living on communal land and state land, development of draft regulations on communal land rights,¹⁶ and the drafting of a new Expropriation Bill (especially for restitution), which is to fall under the Department of Public Works (DLA 2007: 50). Mention was also made of possible changes to the White Paper on South African Land Policy arising from the National Land Summit:

In terms of the amendments to the White Paper on Land Policy by 31st March 2009, as recommended by the Land Summit, a landmark document, Key Policy areas in the White Paper that need to be affirmed or amended, has been developed. The importance of this document is that it clearly spells out the terrain policy amendment process that needs to be covered. Furthermore, two important elements of the White Paper, the willing buyer-willing seller principle and the one pertaining to expropriation of land for land reform purposes, have been reviewed and stakeholders consulted thereon. (DLA 2007: 19)

Strong political support for a new approach to land reform emerged from the ANC's National Conference in Polokwane in December 2007, which passed a comprehensive and far-reaching resolution on rural development, land reform and agrarian change. While the resolution restates much that the party has already committed itself to in the RDP of 1994 and other policy statements over the past 13 years, there are some notable new areas of emphasis, clearly based on

the experience of the past years. Among the areas receiving new, or renewed, emphasis are smallholder agriculture, integrated rural development to support agricultural livelihoods, strengthening the role of local government, promoting the interests of women, addressing the conditions of farm dwellers and those living in communal areas, encouraging mobilisation and organisation of the rural poor and landless, and a central role for the state in both the acquisition of land, through provision of infrastructure and services, and regulation of land and agricultural markets. The section of the resolution most specific to land reform resolved to:¹⁷

Embark on an integrated programme of rural development, land reform and agrarian change based on the following pillars:

(a) The provision of social and economic infrastructure and the extension of quality government services, particularly health and education, to rural areas.

(b) Fundamental changes in the patterns of land ownership through the redistribution of 30% of agricultural land before 2014. This must include comprehensive support programmes with proper monitoring mechanisms to ensure sustainable improvements in livelihoods for the rural poor, farm workers, farm dwellers and small farmers, especially women.

(c) Agrarian change with a view to supporting subsistence food production, expanding the role and productivity of modern smallholder farming and maintaining a vibrant and competitive agricultural sector.

(d) Defending and advancing the rights and economic position of farm workers and farm dwellers, including through improved organisation and better enforcement of existing laws.

The emphasis by the ANC on the rural poor and on production of food for household consumption is notably stronger than in current state initiatives, such as LARP, and it remains to be seen what the impact of ANC policy on state policy will be.

The Proactive Land Acquisition Strategy

PLAS was adopted as official policy in 2006, and saw the state becoming the 'willing buyer' of land for redistribution, by actively using market opportunities where they arise and, in some in-

13. State of the Nation Address of the President of South Africa, Thabo Mbeki: Joint Sitting of Parliament, 3 February 2006 (www.info.gov.za).

14. 'Budget Vote 25, Speech of Minister For Agriculture And Land Affairs, Ms Thoko Didiza, at the National Assembly, 28 March 2006 (www.info.gov.za).

15. 'By the end of the financial year, two reports (with clear and specific recommendations) had been developed as a major leap towards the development of two key policies: one being a policy on land tax and the other a policy on land ceilings.' (DLA 2007: 19)

16. 'With regard to policy reforms to benefit people living on communal land and state land, draft regulations on Communal Land Rights were developed to constitute the basis for consultation purposes and processes.' (DLA 2007: 19)

17. ANC 52nd National Conference 2007 – Resolutions: Rural Development, Land Reform and Agrarian Change (Resolution 1, A-D), available at <http://www.anc.org.za/ancdocs/history/conf/conferences52/resolutions-f.html>

stances, approaching landowners to sell. Under this approach, the state buys land directly from owners rather than issuing grants to applicants to buy, and this state-owned land can then be allocated on a leasehold basis for three to five years, following which the lessee may be allowed an option to purchase. The proactive intervention by the state in the land market is an advance on the limitations of the 'willing buyer, willing seller' model. Hall (2008), however, has identified three problems with this approach. First, and most crucially, acquisitions have been directed by offers of land for sale, rather than coherent plans to address identified needs. To avoid problems of inappropriate acquisitions, it will be important to provide a clear framework within which decisions can be made about where land will be bought, and for whom. Second, PLAS appears to be aimed at meeting the land needs of the poor, in particular, for whom cash leasehold may be inappropriate, unless grants can be used to pay leases; secure tenure equivalent to ownership may be better suited to this target group. Third, the leasehold model creates an administrative burden for the government for which it does not have the capacity at present, if previous experience with land administration is anything to go by. While PLAS has enabled DLA offices to spend their allocations with greater ease, it appears that planning, allocation of land and settlement of beneficiaries lags far behind acquisition, thus limiting the scaling-up effect.

Area-based planning

Since 2007, area-based planning has been rolled out across the country, with the appointment of consultants who are to develop land reform plans for each district by 2008. According to the Minister of Land Affairs, this is intended to provide the basis for integration of land reform into the Integrated Development Plans (IDPs) of local and district municipalities and the alignment of relevant institutions:

Area Based Plans are proposed as the fundamental tool for the integration and alignment of land reform with the strategic priorities of the provinces, municipalities and other sectors. The Area Based Plans (ABP) will be an integral part of the Integrated Development Plans (IDP), and will serve as a catalyst for land related developments at a Municipal level. Area Based Plans will be aligned to the Agricultural, Local Economic Development, Sustainable Human Settlement, and Basic Service Plans, and

other relevant sectors of an IDP. The ABP is designed to speed up the Land and Agrarian reform programmes while at the same time providing for enhanced economic development. It is thus an important tool in the delivery of key national policy objectives such as Accelerated and Shared Growth Initiatives of South Africa (ASGISA). (DLA 2007: 9)

Foreign ownership of land

Also prominent during the past two years has been debate around foreign ownership of land, a potential area of reform that has been seized upon by politicians with uncharacteristic enthusiasm. A panel of experts presented its report to the Minister in August 2007, recommending a number of measures to regulate foreign ownership of land, of which the most controversial was the proposed inclusion of race (along with nationality and gender) on all title deed records – an issue with implications for all land rights holders (not just foreigners), and one that is seen by many as regressive in terms of South Africa's transition from a race-based polity. The main recommendations of the panel of experts are summarised below (see box).

AgriBEE

Like other initiatives to transform South Africa's economy and society, land reform is now considered as a means of achieving black economic empowerment, as required by the Broad-based Black Economic Empowerment Act 53 of 2003. A draft of the Agricultural Broad-based Black Economic Empowerment (AgriBEE) Charter was released in July 2004, and further modified at the AgriBEE Indaba (summit) in November 2005. The process leading up to the release of the draft Charter involved two years of consultations between AgriSA (the main organisation representing white landowners), the National African Farmers' Union and the national Department of Agriculture, which unfolded since the parties adopted the Agricultural Sector Plan in 2002 in the Presidential Working Group on Agriculture. However, key groups such as the trade unions organising in the agricultural sector and the Landless People's Movement complain that they have not been consulted (Hall 2004a). The draft Charter reiterates the existing target of redistributing 30% of agricultural land to black South Africans by 2014, but also sets ambitious targets

Report and Recommendations by the Panel of Experts on the Development of Policy Regarding Land Ownership by Foreigners in South Africa. Presented to the Minister of Agriculture and Land Affairs, Hon. Lulu Xingwana, August 2007, Pretoria

Summary of 'actionable recommendations':

- compulsory disclosure of nationality, race and gender and other information in all registrations of land title;
- special ministerial approval for certain changes in land use and for disposal of certain categories of land to foreigners where such change of use or disposal to foreigners has the potential to negatively impact on the state's constitutional obligations to effect land reform and achieve realisation of access to adequate housing;
- creation of an inter-ministerial/inter-departmental oversight committee to monitor trends in foreign ownership of land and changes in land use, and to recommend to the government appropriate corrective interventions;
- outright prohibition on foreign ownership in classified/protected areas on grounds of national interest, environmental considerations, areas of historical and cultural significance, and national security;
- a limited, temporary moratorium on the disposal of state land to foreigners and to South African citizens who do not qualify for redress under the national land reform policies and legislation;
- rationalisation and harmonisation of laws affecting land-use planning and zoning through enactment of overarching national legislation;
- inclusion of municipally owned land under the definition of state land for the purpose of these regulations;
- medium- and long-term leases of public land for future acquisition of land use by foreigners;
- enabling omnibus legislative amendments to give effect to some of the recommendations; and
- measures to counteract the practice of 'fronting' (i.e. dealing through more politically acceptable proxies).

for the de-racialisation of ownership, management and procurement in the agricultural sector, including 35% black ownership of existing and new enterprises by 2008 (DoA 2004). The targets apply throughout the value chain, rather than just at farm-level, including value-adding and processing industries in secondary agriculture. However, the BEE focus on de-racialising demographics in shareholding, management and procurement is relevant mainly to larger farms and other enterprises in the agribusiness sector. In this sense, the Charter is effectively an agribusiness charter. It is not clear what measures are envisaged for smaller commercial farms or how BEE might empower farm workers and smallholders who remain marginalised within the sector (MoA 2005b). In November 2006, Minister Xingwana stated that the AgriBEE Charter would be finalised by the end of that year.¹⁸ Seventeen months later, the Minister announced that the AgriBEE Sector Transformation Charter

would soon be gazetted and an AgriBEE Council would be established:

Today, the finalisation of the broad-based guidelines for economic empowerment within the agricultural sector has shifted actions into higher gear with emphasis on implementation and impact. In this regard, I would like to take this opportunity to inform you that the Minister for Trade and Industry has approved our application for the AgriBEE Sector Transformation Charter to be gazetted in terms of Section 12 of the Broad-based Black Economic Empowerment (BBBEE) Act (2003). I am now impatiently waiting for the gazetting itself. In the meantime, the national Department of Agriculture is also in the process of finalising the formation of the AgriBEE Council.¹⁹

Delays in the finalisation of the AgriBEE Charter can be attributed, at least in part, to ongoing

18. Media statement by the Minister for Agriculture and Land Affairs, Ms Lulu Xingwana, at the end of the Ministerial Lekgotla held at Kopanong Conference Centre, Benoni, 2-4 November 2006.

19. Speech by the Minister for Agriculture and Land Affairs, Honourable Lulu Xingwana. Gauteng AgriBEE breakfast, Birchwood Executive Hotel and Conference Centre, 7 March 2008 (<http://www.info.gov.za/speeches/2008/08031013451003.htm>).

resistance from the white-dominated farmers' unions. In April 2008, the Charter was finally launched, to complaints from some farmers' organisations that they had not been properly consulted.²⁰

Ongoing problems in communal property institutions

The predominance of group projects, often consisting of hundreds of households, continues to be a characteristic of both the redistribution and restitution programmes, and brings with it multiple challenges in areas such as production (especially where production is collectivised), internal organisation and distribution of benefits. Studies by the CSIR (2005), CASE (2006) and others suggest that most communal property institutions (CPIs) – including trusts and communal property associations – are failing to meet their statutory obligations and many have effectively collapsed, leading either to a collapse of productive activities on the land they own or the capture of benefits by a minority of members. External support for CPIs, such as envisaged under the Communal Property Associations Act 28 of 1996, has largely failed to materialise and does not feature in current or proposed policies (see Chapter 4). Along with post-settlement support

for productive activities, long-term support to CPIs is a vital element of a strategy for sustainable land reform, and one that requires urgent attention.

Land and Agrarian Reform Project (LARP)

In the latter half of 2007, the government signalled that it was planning a major new departure in its approach to redistribution. Earlier discussions around the formation of a special-purpose vehicle for land reform, and of public-private partnerships later gave way to a new Project Management Unit (PMU) to be co-ordinated by the Ministry of Agriculture and Land Affairs with representatives from both the Department of Agriculture and the Department of Land Affairs. The proposed work of the PMU was further developed as one of 24 Presidential priorities, known as the Apex Priorities, under the Presidential Charter adopted in July 2007, and aimed to deliver five million hectares of land by 2009 to 10 000 new agricultural producers. The new initiative was formally launched in October 2007 under the name of the Land and Agrarian Reform Project (LARP). This initiative, and how it relates to existing programmes of land reform, is discussed in detail in Chapter 3.

20. 'AgriBEE charter score-card fails to add up', *Farmers Weekly*, 14 April 2008.

Chapter 2: Restitution

Current trends in restitution

Recent years have witnessed dramatic increases in the number of restitution claims settled and, equally important, the amount of land actually restored to claimants. While earlier phases of the restitution process were dominated by cash compensation and the restoration of state-owned land, restitution is now firmly focused on claims affecting privately owned land where claimant communities are demanding restoration. Many of these claims are on relatively high-value agricultural land and face resistance from current owners, which has contributed to the slow pace of settlement. Addressing these complex claims and the various deadlines for settlement of all restitution claims has seen much attention focused on the prospect of expropriation, although, by the end of 2007, only one such

expropriation had actually been carried out, at Pniel in the Northern Cape (see box).

Another important recent development has been the attention given to the needs of claimants who have had their land restored to them and wish to use it productively, generally referred to under the heading of 'post-settlement support'. This issue has been forced onto the public agenda by the multiple problems reported around high-profile restitution settlements, such as Khomani San, in the Northern Cape, and Elandskloof, in the Western Cape, the growing awareness that beneficiaries across the spectrum of land reform are receiving little in the way of training, finance or support beyond the transfer of land, and the difficulties experienced by many successful claimants in launching productive enterprises.

Pniel expropriation – State takes possession of farm

'The Pniel Farm 281 in the Northern Cape is now a property of the state following the expropriation of the property by the Minister of Agriculture and Land Affairs Lulama Xingwana. The State took physical possession of the property today during a handover ceremony attended by the Chief Land Claims Commissioner Thoziso Gwanya and representatives of the previous land owners the Evangelical Lutheran Church of South Africa (ELCSA).

The State will transfer the land to the Pniel restitution claimants once all the outstanding matters relating to the claim have been resolved. In the interim, the State has appointed the South African Farm Management (SAFM) company to manage the farm on its behalf. The company is required to develop a detailed Land Use Management Plan in consultation with all the relevant stakeholders including the Pniel claimants. Part of SAFM's responsibility is to ensure optimal use of the land and the creation of employment opportunities for the claimants.

In terms of service delivery, SAFM's performance will be measured against issues such as financial management support; agricultural technical support; as well as the transfer of skills to the claimants.

Currently there are two groups of people staying on the land. The one group is made up of people who were working on the farm for the church and are now retired. The other group consists of people who were previously allowed to stay on the property as part of the Mission's outreach programme. The tenure security of these people will be respected.

The state recognizes the different lease agreements on the land that the church had entered into with regard to game farming; water rights; as well as grazing for cattle. All the leases are currently subject to review by the State and a decision will be taken in due course.

The expropriation of the Pniel farm was effected in line with Section 42E of the Restitution of Land Rights Act after negotiations between the state and the Evangelical Lutheran Church of South Africa collapsed.'

Media statement issued by the Commission on Restitution of Land Rights, 15 March 2007

While the great majority of claims continue to be settled by the so-called administrative route – that is, in terms of section 42D of the Restitution of Land Rights Act 22 of 1994 – and without recourse to the courts, claims continue to come before the courts where no agreement can be reached between the parties. Two recent cases that stand out are those of the Richtersveld and Popela communities, where important judgments were delivered in the areas of aboriginal and minerals rights, and the rights of former labour tenants, respectively (see boxes).

Richtersveld Community Restitution Claim

The Richtersveld community lodged a land claim on the diamond-rich lands along the Orange River, in the Northern Cape, from which it had been removed in the 1920s. At the time of the claim, the land was owned by the state and used by the state-owned mining company, Alexkor Limited. The claim for restitution – which was contested throughout by both the state and Alexkor – was rejected by the Land Claims Court in 1999, but this decision was reversed on appeal to the Supreme Court of Appeal in 2003. The Supreme Court of Appeal found that the Richtersveld community had been in exclusive possession of the whole of the Richtersveld, including the subject land, prior to and after its annexation by the British Crown in 1847. It held that those rights to the land (including minerals and precious stones) were akin to those held under common law ownership and that they constituted a ‘customary law interest’ as defined in the Act.

In October 2003, following an appeal by Alexkor and the state, the Constitutional Court confirmed that the Richtersveld community was entitled in terms of section 2(1) of the Restitution of Land Rights Act to restitution of the right to ownership of the subject land (including its minerals and precious stones) and to the exclusive beneficial use and occupation thereof, and referred the matter back to the Land Claims Court for determination of the restitution award.

The settlement eventually agreed between the parties – and accepted by the Land Claims Court in October 2007 – will see the state hand over to the community a land area of 194 600 ha, including an 84 000 ha coastal strip of diamond-bearing land currently being mined by Alexkor. In addition, the state will make an extraordinary reparation payment of R190 million to a community-owned investment company and a R50 million development grant, as well as transferring Alexkor’s farming operations to the community. Alexkor and the community will enter into a joint mining venture, in which the Richtersveld community will hold a 49% interest, to which the state will contribute up to R200 million in capitalisation. The mine-owned town of Alexander Bay will also be transferred to the community and Alexkor will pay R45 million to continue housing its staff there for the next decade.

The culmination of the past ten years’ dispute came symbolically in a ceremony on 1 December 2007, when Ministers Erwin and Xingwana handed over the deeds to the land to the Richtersveld community leaders.

Popela Restitution Claim (based on an article by Teresa Yates, 2007)

In 1996, the Popela community lodged a restitution claim for land they had lost in the Moketsi area of Limpopo province. The claim was based on a gradual process of dispossession, beginning with the arrival of the first white settlers in the 1890s, the conversion of once-independent farmers into labour tenants and the eventual removal of access to agricultural land by the 1970s. The Popela claim was referred to the Land Claims Court (LCC) by the Regional Commissioner for the Northern Province in May 2000. The court found that the Popela community had no accepted tribal identity to make a community claim and, while it accepted that the claimants had a right in land as labour tenants and that their land rights had been dispossessed after 19 June 1913, the court found that this dispossession was influenced by economic factors rather than by

any racially discriminatory law or policy of the then government. This decision was appealed to the Supreme Court of Appeal (SCA), which upheld the decision of the lower court that the dispossession of the Popela community had not occurred as a result of past racially discriminatory laws or practices.

On 6 June 2007, the decisions of the Land Claims Court and the Supreme Court of Appeal were overturned by the Constitutional Court, which found that although the Popela community had been dispossessed of many of their land rights before 1913, the loss of the land rights they held through the labour tenancy system was the result of 'a grid of integrated repressive laws that were aimed at furthering the government's policy of racial discrimination'. The Constitutional Court recognised that the existence of the system of labour tenancy was itself the product of racist laws and practices that denied black people ownership of land. It also overturned the finding of the LCC and SCA that the community's dispossession was not as a result of apartheid laws and policies. The court rejected the notion that white farmers acted purely in their best economic interests in diminishing the land rights of the Popela people and other labour tenants, and concluded that the Popela community had been dispossessed of their rights in land after 19 June 1913 as a result of racially discriminatory laws or practices as contemplated by the Restitution of Land Rights Act.

The experience of the Popela claim has led Yates (2007) to question the role played by the LCC, and its very limited vision of transformation, when compared to the more progressive position taken by the Constitution Court:

The LCC has been very formalistic in its interpretation of statutes, which has led the judges to disregard the discretion conferred upon them by the Restitution Act to fashion decisions that promote rather than obstruct transformation. This case supports the criticism that the LCC has failed to deliver justice to those dispossessed of land. In contrast, the Constitutional Court shows a full understanding of the history of the country and how legislative measures were used over decades to strip black South Africans of their land rights and dignity. This judgment was long overdue. It recognises the extent and nature of the land dispossession inflicted on the Popela community and millions of other farm dwellers in the apartheid era. It is a validation of their right to justice and their right to the land that was originally theirs. It furthermore delivers a clear vision of how the Restitution Act should be interpreted to deliver on the post-apartheid promise of transformation.

Settled claims

According to the CRLR (2007), 2 772 restitution claims were settled during the period April 2006 to March 2007. This brought the cumulative number of claims settled to 74 417 out of a total of 79 696 claims lodged (see Table 3), leaving a total of 5 279 outstanding claims to be settled.

2006/07 was exceptional in terms of the number of claims settled by way of land being restored. The total area of land approved for restoration during the year was in excess of 579 000 ha, at a total land cost of R2.8 billion, which directly benefited 33 051 households (CRLR 2007: 5). This brought the cumulative total for land restored under restitution since 1994 to 1 650 851 ha.

Table 3: Land claims settled in 2006/07 and cumulative total to date

Year	Claims settled	Households affected	Beneficiaries affected	Land restored (ha)	Land cost (R mil)	Financial compensation (R mil)	Total grants (R mil)	Total awards (R mil)
2006/07	2 772	52 071	269 110	579 004	2 845	1 131	650	4 627
1994–2007	74 417	251 862	1 273 043	1 650 851	5 244	4 054	1 470	10 775

Source: CRLR (2007: 58–60)

21. The Act refers throughout to claims by persons (i.e. individuals) and communities only, which, in turn, relates to the manner in which land rights were held prior to restitution. The Preamble to the Act, for example, states that its purpose is to 'provide for the restitution of rights in land to persons or communities dispossessed of such rights after 19 June 1913 as a result of past racially discriminatory laws or practices'. Virtually all urban claims are likely to be individual (which effectively includes household or family claims), whereas a high proportion of rural claims are community claims. Rural community claims appear more likely to be settled by restoration of land, whereas urban individual claims are more likely to be settled by means of cash compensation, but the available data does not allow definitive conclusions to be drawn in this regard.

The cumulative number of 'households' benefitting from restitution is reported as 251 862, and the number of 'beneficiaries' as 1 273 043 (which typically includes all adult members of community claims, and all adult descendants in the case of individual claims, although this rule might not be applied consistently).

Of the cumulative total of claims settled to date, 65 642 (or 88.2%) are classified as urban claims, while 8 775 (or 11.8%) are rural, although there has been much debate over the years around the consistency, and relevance, of these categories, as they are not referred to in the Restitution of Land Rights Act or other legislation.²¹ If, as appears to be the case, all outstanding (unsettled) claims are rural claims, the number of rural claims as a proportion of total claims is likely to amount to something in the order of 17.6%.

Most claims settled to date have been settled by means of cash compensation, rather than restoration of land, and such compensation has been particularly prevalent in the case of urban claims. Overall, 69.7% of claims settled to date have been settled by means of cash compensation, and 26.4% by means of land restoration, with the remaining 3.9% being settled by means of an 'alternative remedy' (i.e. developmental assistance and/or alternative land) (CRLR 2007: 58). Nearly half of all settled rural claims (4 188

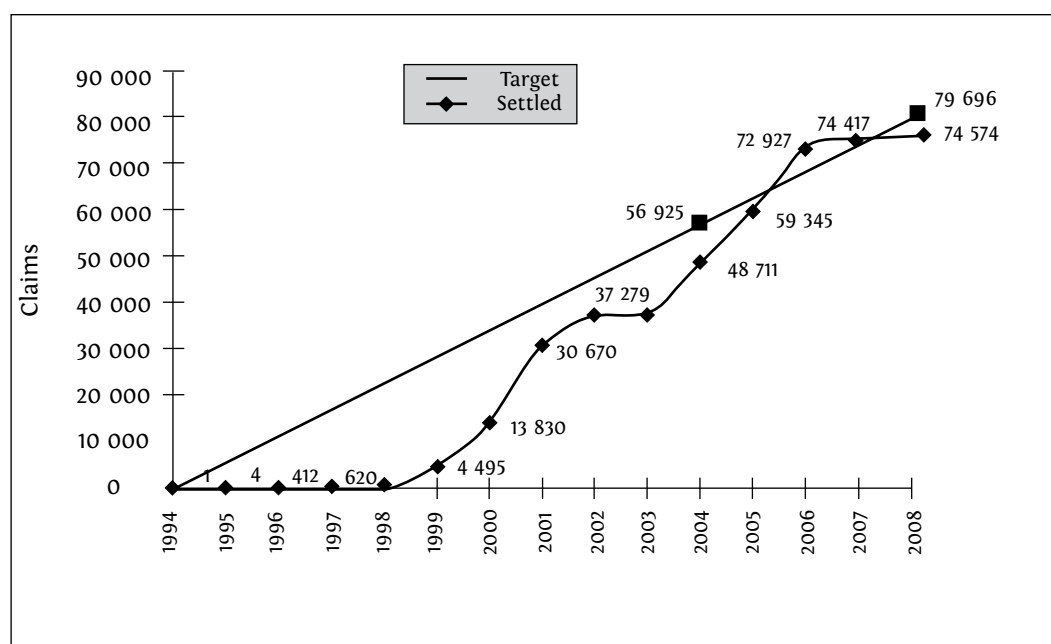
or 47.7%) were settled by means of land restoration, whereas less than a quarter (23.5%) of urban claims were settled in this manner.

The most dramatic phase of restitution settlement has been the period between 2003 and 2006 and, in strictly numerical terms, the process now appears to be slowing down, as show in Figure 1 (which is based on a presentation made by the DLA to Parliament in 2007). The impact of the final phase of restitution, however, looks set to be highly significant in terms of the amount of land to be restored, the cost and the number of beneficiaries potentially involved.

Expenditure

During 2006/07²² the CRLR reported that it spent 100% of its budget of R2.3 billion, compared to R1.8 billion in the previous financial year, but this was after some downward revision of the original amount allocated by Treasury. The total cost of restitution awards reported for the year, however, was R4.6 billion (R4 627 127 879.14), of which R2.8 billion was for land acquisition, R1.1 billion for financial compensation and R649.7 million for development grants. This suggests that the amount in excess of budget (R2.3 billion) will have to be met from the budgets of subsequent financial years.

Figure 1: Restitution claims settled (and projected), 1994–2008



Source: Department of Land Affairs, 2006/07 Annual Report to the Select Committee on Land & Environmental Affairs, 6 November 2007. PowerPoint presentation.

The cumulative resources expended on restitution are vast, and accelerating: a total of R10.77 billion has been allocated to restitution awards since 1994.²² Of this cumulative total, 48.7% has been for land purchase, 37.6% for financial compensation and the remaining 13.7% for various grants to successful claimants (of which the development grant has been by far the most important, amounting to 7.5% of the total value of restitution awards to date). The year 2006/07 accounted for 42.9% of the total value of awards to date, and 54.3% of the cumulative amount allocated to land purchase to date, demonstrating the greatly increased importance of land purchases within restitution awards of late. The figures for 2006/07 bring the cumulative expenditure on land purchases under restitution to R5.2 billion (R5 243 984 434).

Regional performance

The annual report of the CRLR for 2006/07 provides a breakdown of the 2 772 claims settled during the year, by province (see Table 4), but few details on specific claims. By far the most claims were settled in the Western Cape, with 1 263 settlements, followed by the Free State, with 463, which were almost entirely urban in both cases. The highest number of rural claims settled was in Mpumalanga, with 315 rural claims settled out of a provincial total of 334. This was followed by North West, with 213 (out of a total of 214) and Limpopo with 71 rural claims settled (out of a total of 72).

The total amount of land restored during the year was 579 004 ha. Of this, the greatest amount was in Limpopo, with 152 687 ha, or 26.4% of the national total, followed by North West with 134 876 ha (23.3%), Mpumalanga with 113 238 ha (19.6%) and KwaZulu-Natal with 100 087 ha (17.3%). Large claims in Limpopo included the Baphalane Ba Ramokoka Community claim, which saw 10 443 ha restored in the Thabazimbi area of the Waterberg District, and the Moletele Community Land Claim in which over 4 500 ha was restored in two phases around Hoedspruit.

The greatest expenditure on restitution awards (including land and other awards) in 2006/07 was in Mpumalanga, at R1.5 billion (R1 527 796 680), or 33% of the national total for the year. This was due, in part, to the settlement of the massive Tenbosch claim, among the most expensive claims settled to date, which is valued at R601 million in all (CRLR 2007: 38).²³ This was followed by KwaZulu-Natal with 17.2% of expenditure, Limpopo with 14.8% and North West with 14.5%.

A total of R2.8 billion was spent on land during the year, of which nearly half (47.2%) was spent in Mpumalanga alone. Limpopo, with considerably more land and more beneficiaries reported, accounted for only 20.9% of expenditure on land during the year, followed by North West with 16.7%.

Financial compensation to claimants amounted to R1.13 billion, the greatest proportion be-

22. This is based on the table *Statistics on Settled Restitution Claims* (CRLR 2007: 60). It is not clear in the source whether all of these amounts have actually been spent to date (i.e. from existing budgets) or what amount, if any, will be drawn from future allocations.

23. In a press release in June 2007, the CRLR described the Tenbosch settlement as consisting of 32 000 ha of 'highly commercial land' valued in excess of R1 bn, and more than 8 000 households, as part of the settlement of the Greater Tenbosch claim (CRLR Press Release, 15 June, 'Massive Land Handover for Mpumalanga Communities').

Table 4: Claims settled, by province, 2006/07

Province	Settled	Rural	Urban	Households	Beneficiaries	Hectares
Eastern Cape	42	15	27	5 648	15 893	15 389
Free State	463	4	459	646	10 279	0
Gauteng	15	7	8	1 352	6 494	4 002
KwaZulu-Natal	267	67	200	11 717	72 748	10 087
Limpopo	72	71	1	7 297	48 090	152 687
Mpumalanga	334	315	19	7 159	30 346	113 238
Northern Cape	102	11	91	4 698	26 195	58 710
North West	214	213	1	10 863	47 073	134 876
Western Cape	1 263	3	1 260	2 691	11 992	15
Total	2 772	706	2 066	52 071	269 110	579 004

Source: Department of Land Affairs, 2006/07 Annual Report to the Select Committee on Land & Environmental Affairs, 6 November 2007. PowerPoint presentation.

24. This is confirmed by looking at the number of rural claims outstanding: stated as 6 975 in 2006, and reduced (through settlements) by 706 in 2006/07, which should give a total outstanding of 6 269. If 990 of these claims were reclassified as urban, the total number of outstanding rural claims would fall to 5 279, which is indeed the number reported for all outstanding rural claims.

ing spent in KwaZulu-Natal, with R318 million, or 28.1% of the total, followed by the Eastern Cape, with R225 million, or 19.9%. A further R649 million was spent on various financial grants to claimants – Development Grants, Restitution Discretionary Grants and Settlement and Planning Grants – with the greatest proportion again being spent in KwaZulu-Natal, with 31.2% of the national total, followed by North West, with 27.7%.

The cumulative totals from 1994 to 2007 broadly reflect the regional trends reported for 2006/07. The highest expenditure on all types of restitution awards has been in KwaZulu-Natal, at R2.5 billion (24.1% of the cumulative national total), followed by Mpumalanga with R2.2 billion (20%), Limpopo with R1.6 billion (14.8%) and the Eastern Cape with R1.2 billion (11.1%). The lowest amount has been spent in the Free State, at R125 million (R0.125 billion, or 1.2% of the national total) (CRLR 2007: 60). The highest expenditure on land, however, has been in Mpumalanga, at R1.846 billion, or 35.2% of the cumulative national total, which includes the Tenbosch settlement. The second-highest expenditure on land has been in Limpopo, with R1.290 billion spent to date (24.6% of the national total), followed by KwaZulu-Natal, with R1.006 billion (19.2%). The greatest area of land restored since 1994 has also been, not surprisingly, in KwaZulu-Natal, with 435 190 ha (or 26.4% of the total), followed by Limpopo, with 356 043 ha (21.6%) and the Northern Cape, with 305 389 ha (18.5%). The lowest amount of land restored has been in the Western Cape, with just 3 115 ha, or 0.2% of the national total. Again, the highest proportion of beneficiaries has been in KwaZulu-Natal, with 314 299, or 24.7% of the national total, followed by Limpopo, with 196 434, or 15.4% of the national total.

Outstanding claims

The CRLR's annual report for 2005/06 records that 8 051 claims remained outstanding (i.e. unsettled) at 31 March 2006, of which 1 076 were classified as urban and 6 975 as rural (CRLR 2006: 59). During the financial year 2006/07, a total of 2 772 claims were reported as being settled (CRLR 2007: 58), bringing the total number of outstanding claims down to 5 279. Elsewhere, however, it is reported that the total number of outstanding *rural* claims is 5 279 (DLA 2007: 53; CRLR 2007: 3, 11). This implies (although it is nowhere explicitly stated) that all remaining claims are rural and that all urban claims have

Table 5: Unresolved rural claims, by province, 31 March 2007

Province	Number	Percentage of total
Eastern Cape	600	11.4
Free State	100	1.9
Gauteng	10	0.2
KwaZulu-Natal	1 822	34.5
Limpopo	700	13.3
Mpumalanga	971	18.4
Northern Cape	229	4.3
North West	247	4.7
Western Cape	600	11.4
Total	5 279	100.0

Source: CRLR (2007: 11)

now been settled. These outstanding claims are spread across all nine provinces, with the greatest numbers being in KwaZulu-Natal (1 822, or 34.5%) and Mpumalanga (971, or 18.4%) (see Table 5).

The 2006/07 CRLR report also shows that the number of urban claims settled during the year 2006/07 was 2 066, well in excess of the 1 076 reported as outstanding the previous year. It is assumed that the additional 990 urban claims settled represent claims classified as rural in 2006 and subsequently reclassified as urban.²⁴

The Minister of Land Affairs (CRLR 2007: 3) described the challenges facing the settlement of outstanding claims in the following terms:

- *High land cost based on market values in terms of the constitution;*
- *Unsurveyed and unregistered land rights (no title deed on land); this requires detailed mapping and "in-loco-inspections" on the land with communities to identify historical sites, graves, boundaries etc.;*
- *Protracted negotiations with landowners and claimants, and disputes taken before the Land Claims Court;*
- *Community disputes, traditional authorities' jurisdictional issues and disagreements;*
- *Incoherent land use practices and need for the alignment of priorities – i.e. communal and commercial land use practices.*

According to the Chief Land Claims Commissioner, the CRLR is committed to settling all outstand-

ing rural claims by the year 2008, while acknowledging that it may not be able to settle some more complex or difficult claims, such as those that:

- are referred to the Land Claims Court for adjudication;
- are facing conflicts with traditional leaders on issues such as jurisdiction, land ownership and boundary disputes between communities;
- involve disputes with current landowners on issues such as land prices or the validity of the claim; and
- involve untraceable claimants (incomplete claimant verification list).

The CRLR estimates that these cases constitute about one-third of the outstanding rural land claims (i.e. in the order of 1 760 claims). A completion report to be prepared by the Commission at the end of the 2008 financial year will include this list of complex claims, with provision being made for their finalisation:

It must be noted that all restitution cases are claims against the State and thus any outstanding claims will not be thrown away but will have to be processed through the Department of Land Affairs...The White Paper on Land Reform Policy provides that the Department of Land Affairs or a competent authority will be responsible for the implementation of restitution awards. (CRLR 2007: 11)

Apparent discrepancies between number of claims settled and number of restoration projects

Doubts have been raised by various authors about the accuracy of the number of settled claims, especially the number of rural claims which have been settled by means of land restoration, and these continue to be a cause for concern – both in regard to the number of such claims actually settled and, perhaps more importantly, the scale of the task still remaining. Attention has focused particularly on the discrepancy between the number of rural claims reported as settled by means of land restoration and the much smaller number of named restoration 'projects' reported by the Commission.²⁵

Hall (2003: 26) cites documents from the CRLR in 2002 that reported as many as 9 764 rural claims having been settled by means of land restora-

tion, but the following year (June 2003) this had been reduced to a figure of 4 715 rural claims settled, of which 'more than 80%' were settled with land awards. For Hall, these differences reflect inconsistencies in the classification of claims as either rural or urban (for which there seem to be no agreed definitions) and, more commonly, between the number of 'claims as lodged' and the number of settlement agreements arising from them – the implication being that claims, as represented by single claim forms at the time of lodgement, can be broken up during the settlement process, resulting in multiple settlement agreements for a single lodged claim, with extreme cases where individual settlement agreements were signed with every member of a large group claim, driving the number of settlements far above the reported number of original claims. Hall's own research in 2003, based on information supplied by the regional offices of the CRLR, estimated the total number of rural claims settled by land restoration as 185 (in terms of claims lodged), or 68 restoration 'projects' – far below the official estimates. In a similar vein, a 2005 study by the Centre for Applied Social Enquiry (CASE 2006) on behalf of the DLA identified 'a total of 190 settled land restitution claims with a developmental component' – that is, claims involving restoration of land and requiring some development planning or assistance. While this figure may not include all rural claims settled by land restoration, it is in line with Hall's estimate of two years earlier. Also in 2005, the Sustainable Development Consortium, working on behalf of the CRLR, identified a maximum of 260 projects in this category:

The Development Planning and Facilitation Unit (DP&F) in the CRLR is currently engaged in developing an improved information management and monitoring and evaluation system which analyses this data and which is able to generate reports about specific queries and trends across all settled claims... To date, data has been gathered from 191 settled claims requiring development support while project information is still to be collected from 69 projects, thus indicating that there are currently 260 settled projects that will require developmental support. (SDC 2006: 15)

There is no obvious reason why the CRLR would exclude any claims involving land restoration, especially in rural areas, from the total requiring developmental support, unless the land

25. Undoubtedly, this problem has been exacerbated by the lack of detailed lists of settled claims put into the public domain by the CRLR.

26. The effective date for this data is 31 March 2006. Source: Commission on the Restitution of Land Rights, 'Report: Settled Restitution Claims'. Excel spreadsheet. Updated to 31 March 2006. Obtained 29 November 2007. The author is grateful to Ruth Hall for assistance in interpreting this data.

27. Detailed analysis of the available provincial figures suggests that the discrepancy between the number of 'claim forms' and the number of 'claims settled' is explained entirely by an anomalous practice in the North West province, which is the only province reporting more 'claims' than 'claim forms'. On the original spreadsheet, all provinces except North West report 'Number of claims settled', whereas North West reports 'Number of claims'. This might be a typographical error on the heading, or it might suggest that North West is reporting something quite different under this heading. It should also be noted that very little has been reported on the number of claims rejected by the Commission or by the Land Claims Court – this is, the number of claims that have not resulted in any settlement.

parcel was very small, exclusively intended for housing or covered by an agreement with some other agency (such as a national park or forestry project). A further complication is likely to be that claims on land described as rural at the time of dispossession may have been incorporated subsequently into urban areas, thereby blurring the distinction between these two categories.

Unpublished data provided by the CRLR may help to resolve the seeming disparity between the number of rural claims reported as settled and the number of restoration 'projects' identified by researchers.²⁶ These data include detailed lists of 'rural projects' involving restoration of land, and the number of settled claims (and claim forms) associated with each project (see Table 6).

It is this distinction – between 'projects' and 'claims' (or 'claims settled') – that is crucial to making sense of the information, and seems to have been overlooked by previous studies. The data show a total of 280 'rural projects', of which 233 involve restoration of land. These projects are associated with a total of 2 547 claim forms and 3 027 'claims settled'.²⁷ Thus, it is immediately apparent that a single rural 'project' (typically, a farm or group of farms restored to one community or group of related claimants) may represent multiple claim forms (as originally lodged) and multiple claims as ultimately set-

tled: on average, every rural 'project' represents 9.1 claim forms and 10.9 settlements.

Detailed analysis of the data, and knowledge of various restitution settlements involving land restoration, suggest that the approach used by the CRLR is to group closely related claims at the point of land restoration, but without necessarily merging the claims into single 'settlements'. In practical terms, this could mean the purchase of a single property (or a group of neighbouring properties) for restoration to multiple claimants, resulting from multiple claim forms, which would be reported as a single restoration 'project' but as multiple 'claims settled'. In other words, restoration 'projects' are effectively land transfer initiatives, flowing from restitution claims, which are important from a practical (project management) perspective within the Commission but which do not reflect the underlying legal processes. In this respect, the CRLR could be said to be under-representing its achievements, and adding to popular confusion by not publicising the numbers of claim settlements (or claim forms) underpinning particular restoration 'projects'.

This picture varies considerably between provinces. KwaZulu-Natal, Northern Cape and the Free State show relatively little divergence between the number of 'projects' and the number of 'claims settled', the highest number of set-

Table 6: Rural claims settled – national summary, 31 March 2006

Province	Number of rural projects	Number of rural projects involving land restoration	Number of claim forms	Number of claims settled	Households	Hectares	Land cost (R millions)	Financial compensation (R Millions)	Total grants (R millions)	Total award cost (R millions)
Eastern Cape	38	23	161	161	1 7347	67 248	28.2	72.8	119.2	220.2
Free State	8	6	7	7	1655	44 094	7.2	1.3	7.2	15.7
Gauteng	6	3	1 579	1 579	2028	3444	19.4	14.2	4.3	37.9
KwaZulu-Natal	62	56	90	90	1 5781	325 959	630.6	48.9	207.5	893.3
Limpopo	60	52	181	181	2 2179	178 329	586.4	1.2	105.9	693.5
Mpumalanga	39	37	205	205	2 6676	88 748	299.6	0	123.3	422.9
Northern Cape	13	13	14	14	5969	246 679	48.8	4.7	36.6	90.1
North West	45	41	166	646	1 2630	86781	124.2	0	58.5	182.7
Western Cape	9	2	144	144	1280	5246	4.6	25.0	2.4	32.1
Total	280	233	2 547	3 027	105 545	1 046 528	1 749.0	168.1	664.9	2 588.4

tlements associated with any one project being seven (the Silindokuhle Community, in KwaZulu-Natal). The Western Cape presents an extreme contrast, with just two rural claims settled by means of land restoration: Dysseisdorp Community claim with 143 settlements (a case of splitting after initial lodgement of the claim, presumably because what had been lodged as a single community claim was later judged to be multiple individual claims) and Elandskloof, itself a large community, with just one settlement (based, in turn, on just one claim form). Other provinces are more varied. The Eastern Cape has just one large multi-claim rural project, COLCRA Community, comprising 119 settlements arising from 119 claim forms. Limpopo, Mpumalanga and the North West show considerable variation, with notable examples in these provinces being Makotopong (a single 'project' based on 73 settlements and 73 claim forms), Kromkrans Phase 1 (54 settlements and 54 claim forms) and Doornkop (300 claim forms), respectively. Gauteng has two exceptionally large projects: Wallmansthal 281 JR (based on 726 settlements for 726 claim forms), and 'Wallmansthal Agricul Holdings' (based on 852 settlements and 852 claim forms); both of these, today, are peri-urban rather than rural in nature.

The remaining 47 rural 'projects' (the difference between the reported total of 280 and the 233 actually involving restoration of land) have been settled largely by means of financial compensation or developmental assistance, or a combination of the two.

Strategic partnerships

In recent years, the concept of 'strategic partnerships' has become increasingly important in large restitution settlements, especially those involving high-value land. Under this model, successful claimant communities, organised in a communal property association (CPA) or trust, form a joint venture with a private entrepreneur in which the entrepreneur – the so-called 'strategic partner' – invests working capital and takes control of all farm management decisions for a period of ten years or more, with the option of renewal for a further period. The potential benefits to the claimant communities include rent for use of the land, a share of operating profits, preferential employment opportunities, training and the promise that they will receive profitable and functioning enterprises at the termination of the contracts and lease agreements. Notable examples include the Makuleke claim on a por-

tion of the Kruger National Park, where the community has entered into profit-sharing agreements with the National Parks Board and with a number of private tourism operators who have established up-market lodges on the restored land. At Zebediela Citrus Estate, in Limpopo, the Bjatladi community has entered into a ten-year management and shareholding agreement with a private agribusiness company, which promises revenue for the community through dividends and land rental, plus opportunities for employment, training and participation in management. In the Levubu Valley in Limpopo, the transfer of over 400 farms, amounting to almost 30 000 ha, to various communities, in alliance with two strategic partners, is at an advanced stage. Levubu is an important test for restitution because of its highly developed agricultural economy, based on a subtropical climate and abundance of water for irrigation, its integration into both national and international markets, and the unprecedented scale of land restoration envisaged.

Strategic partnerships represent an important new departure for land restitution in South Africa. Derman, Lahiff and Sjaastad (2006) argue that the key policy shift is away from an emphasis on *land access* by claimants and towards the maintenance of *agricultural productivity*. While this has potential benefits for claimants, and for the wider economy in terms of employment and trade, it also carries considerable risks for all parties involved. The complex nature of the deals being constructed, and the divergent interests of claimants, potential partners and the state, means that creating acceptable contractual arrangements is itself a major challenge, as witnessed by the withdrawal of one of the two designated partners in Levubu at the end of 2007, and its replacement by another company. Further potential problems with the model include lack of direct access to the restored land, with the result that members may be no better off in terms of land for housing and their own small-scale farming, which are clearly expressed needs in many claimant communities. Indirect benefits, in terms of income from shareholding, look unlikely to materialise for many years while profitability is established, and income from land rental is likely to be reinvested in the farming enterprise rather than redistributed to community members.

The social, political and economic factors influencing the South African restitution process

suggest that some variant of the strategic partnership model is likely to be implemented across most claims on high-value agricultural land for the foreseeable future. The creation of strategic partnerships is viewed by the CRLR as a solution to the challenge of post-settlement support, to the extent that this function has now effectively been privatised. Strategic partners, through their agreements with the claimant communities, become responsible for the development of economic activity on the restored land, including the provision of working capital and training for community members. Nonetheless, there remains a clear need for continued involvement by governmental and non-governmental organisations in monitoring the performance of the new joint ventures in order to protect the interests of claimants and to support communal property institutions (CPIs) in areas such as capacity building, business advice, dispute resolution and distribution of benefits. It is far from clear where such support will come from, or what the precise role of the CRLR or other bodies will be in the provision of post-settlement support in the longer term.

Overall, while significant progress has been made in settling restitution claims, considerable challenges remain for those who have regained their land and for the state bodies responsible for providing them with support. Experience to date suggests that successful claimants, especially those organised in large community groups, require substantial support over a prolonged period, both in terms of their productive activities and the effective administration of CPIs. Role-players such as local municipalities, provincial departments of agriculture and the provincial offices of the national Department of Land Affairs have not been as active in the area of post-settlement support as might be expected and need to show greater commitment to the restitution process. A strong argument can also be made for the continued operation of the CRLR, in overseeing the settlement of all outstanding claims and co-ordinating the activities of other agencies in order to ensure that all claimants receive the post-settlement support they require and which has been promised as part of their settlement agreements.

Chapter 3: Redistribution

Trends in redistribution

Redistribution is potentially the most important and far-reaching component of land reform in South Africa. In line with Section 25(5) of the Constitution, the objective of the land redistribution programme is 'to foster conditions which enable citizens to gain access to land on an equitable basis'. In practice, this is generally taken to imply the redistribution of land from white to black owners and occupiers. Given the extreme racial imbalance in landholding at the end of apartheid, when close to 90% of agricultural land was controlled by the white minority, this has potential implications for most of the national territory and much of the population.

According to the DLA (2007: 58), the aims of its combined Land Redistribution and Tenure Reform Programme are as follows:

- redistribution of 30% of white-owned agricultural land by 2014 for sustainable agricultural development;
- provision of long-term tenure security for farm dwellers and other vulnerable groups;
- contribution to poverty reduction;
- contribution to economic growth; and
- promotion of social cohesion and economic inclusion.

The original target of 30% over five years was set in 1994 as an interim aim during the transition to democracy and need not be seen as the ultimate objective, although it has since tended to be treated as such.

As mentioned in Chapter 1, the period since the National Land Summit of 2005 has witnessed a wide range of policy initiatives in the area of redistribution, but by early 2008 it remained unclear how radical a departure these really represented. Probably the most important policy change arising from this extended process of policy review and development to date has been the Proactive Land Acquisition Strategy (PLAS), for which an implementation framework was piloted in the Free State with a view to replicating it across the country in 2006/07, when it was implemented in all the provinces. According to the Director-General of the DLA at the time, the area of land redistributed during 2006/07

was 70% up on the previous year's total 'thanks to the PLAS' (DLA 2007: 15). The new approach was not sufficient, however, to reach the much-increased target set for 2006/07 (see below).

While PLAS claims to combine both a 'needs-based approach' and a 'supply-led approach', it is in fact almost entirely supply-led, dominated by the state: 'the state will proactively target land and match this with the demand or need for land' (DLA 2006: 4–5). The main advantages of this approach, according to the Department, are to:

- *accelerate the land redistribution process;*
- *ensure that the DLA can acquire land in the nodal areas and in the identified agricultural corridors and other areas of high agricultural potential to meet the objectives of ASGISA [Accelerated and Shared Growth Initiative for South Africa];*
- *improve the identification and selection of beneficiaries and the planning of land on which people would be settled; and*
- *ensure maximum productive use of land acquired.*

The approach is primarily pro-poor and is based on purchasing advantageous land, i.e. either because of the property's location, because it is especially amenable to subdivision, because it is suitable for particular agricultural activities that government would like to promote vis-à-vis redistribution, and/or because it is an especially good bargain.

While the PLAS *Implementation Plan* claims to offer improved identification and selection of beneficiaries, better planning of land and, ultimately, greater productivity of the land acquired, it is largely silent on how these and other pressing needs – such as the subdivision of landholdings – are actually to be met. The target group for PLAS is virtually identical to that of land reform in general (as set by the RDP and the White Paper), and no specific mechanisms are proposed that will ensure that it will – as claimed – be 'pro-poor':

The Framework in terms of the strategy will target black people (Africans, Coloureds and Indians), groups that live in communal areas and black people with the necessary

farming skills in urban areas, people living under insecure tenure rights. In this way the Framework seeks to contribute to the decongestion of the communal areas, secure on or off farm accommodation and to create sustainable livelihoods. While the approach is pro-poor, it also caters for emergent and commercial farmers. (DLA 2006: 8)

After relatively low growth in preceding years, expenditure on redistribution increased dramatically in 2006/07 and looks set to increase at a similar rate across the period of the medium-term expenditure framework. The total allocation for land reform (including both redistribution and tenure reform) within the budget of the DLA grew from R454 million in 2004/05 to R907 million in 2006/07, and is projected to rise to R3 304 million by 2009/10 – a 628% increase over five years (National Treasury 2007: Table 28.7). PLAS is central to this expanded expenditure:

Over the medium term, expenditure is anticipated to rise rapidly, reaching R3,3 billion in 2009/10. The bulk of the increases are in the Land Reform Grants subprogramme, primarily for fast-tracking the land redistribution for agricultural development (LRAD) programme's contribution to the proactive purchase of land for human settlements, and other land reform initiatives such as purchasing land for industrial and commercial purposes. (National Treasury 2007: 591)²⁸

Indeed, the recently announced budget for 2008/09 confirms this trend. While the total budget for the DLA shows an increase of 19% over 2007/08, the budget for land reform (redistribution and tenure) has almost doubled (an increase of 94%, National Treasury 2008). The bulk of this increase is due to a dramatic rise in funding for proactive land purchase, which, at R853 million, now accounts for one-third of the funding in this area, the other two-thirds being for land purchase grants to individuals.

Two other closely related areas of policy remained under review during the period, but without resolution – the 'willing seller, willing buyer' principle and the expropriation of land for land reform purposes (DLA 2007: 19). The concept of proactive land acquisition has introduced an important modification to the longstanding 'demand-led' orientation of 'willing seller, willing buyer', in that it no longer places responsibility on would-be beneficiaries to iden-

tify land for purchase or to initiate negotiations with the landowner. Furthermore, it allows DLA officials to purchase land as it comes on to the market, even if no specific beneficiaries have yet been identified, and allows landowners to initiate transactions by offering land for sale directly to the state, something that was not tolerated under the previous approach. Effectively unchanged, however, is the veto that is offered to landowners over transactions – that is, in the absence of expropriation, landowners still decide which land will be available for redistribution and retain the power to block any transaction. Indeed, PLAS could be seen to actually increase the options available to landowners, who are now free not only to block transactions that they do not favour but to initiate transactions that they do. Payment of 'market-related' prices for land – a much-contested element of the 'willing seller, willing buyer' approach – remains the norm despite much (but largely unsubstantiated) official complaint about exorbitant land prices.²⁹ To be convincing, any break with the policy of 'willing seller, willing buyer' would require limits on the discretionary powers of landowners and changes in compensation to landowners (i.e. payment at below 'market' value), as well as a more direct role for intended beneficiaries in the selection of land and planning of resettlement projects.

To date, expropriation of land for land reform purposes has relied on the application of the Expropriation Act 63 of 1975, which is widely seen as incompatible with the Constitution in terms of its requirement for market-based compensation for owners and its limitation to land that is acquired for 'a public purpose', which is generally taken to mean for a public use (i.e. by a state body). By contrast, Section 25 of the Constitution allows the state greater discretion in setting compensation – which could, in theory, be substantially below that calculated in terms of the current Act – and, moreover, permits expropriation 'in the public interest', which is deemed to include land reform. Thus, the Constitution allows the state to expropriate land for transfer to private individuals – the beneficiaries of land reform – on the basis that land reform is in the public interest, even though the land will be used for private gain. While the restrictive (and arguably unconstitutional) nature of the Expropriation Act is certainly not the only reason why land reform policy has tended to eschew expropriation, the reform of the statutory framework is a necessary and important step towards giving effect to the principles set out in Section 25 and

28. Proactive acquisition involves direct purchase of land by the state, as opposed to the making of grants to individuals who, in turn, use the money to purchase land. Here, the two concepts appear to run together.

29. See comments by Director-General of DLA, Glen Thomas, quoted in the *Mail & Guardian* 06 October 2007, 'State will not make land target' and by Minister Lulu Xingwana, quoted in *Business Report*, 15 February 2008, 'Black and white farmers unite in worry: Xingwana "is gambling with future of SA economy"'.²⁹

making more effective use of expropriation as a land reform policy instrument. An important step towards reforming the expropriation process came in 2007 with the drafting of an Expropriation Bill, which is intended to replace the Expropriation Act of 1975. The Bill came before Cabinet in early 2008 and is expected to be presented to Parliament later in the year following a period of public consultation. Once passed into law, it is likely that the powers granted under the law will be used mainly in restitution cases, at least in the short term; given the greatly increased annual targets being set for redistribution, and continuing popular pressure for a more interventionist approach by the state, however, it seems likely that over time it will be used in cases of redistribution as well.

Potentially, the most important development of the past few years, however, is the Land and Agrarian Reform Project (LARP), the details of which were still emerging in early 2008. This is discussed in detail below.

Redistribution achievements to date

The headline figure reported for land transferred under the redistribution programme during 2006/07 was 258 890 ha, which was signifi-

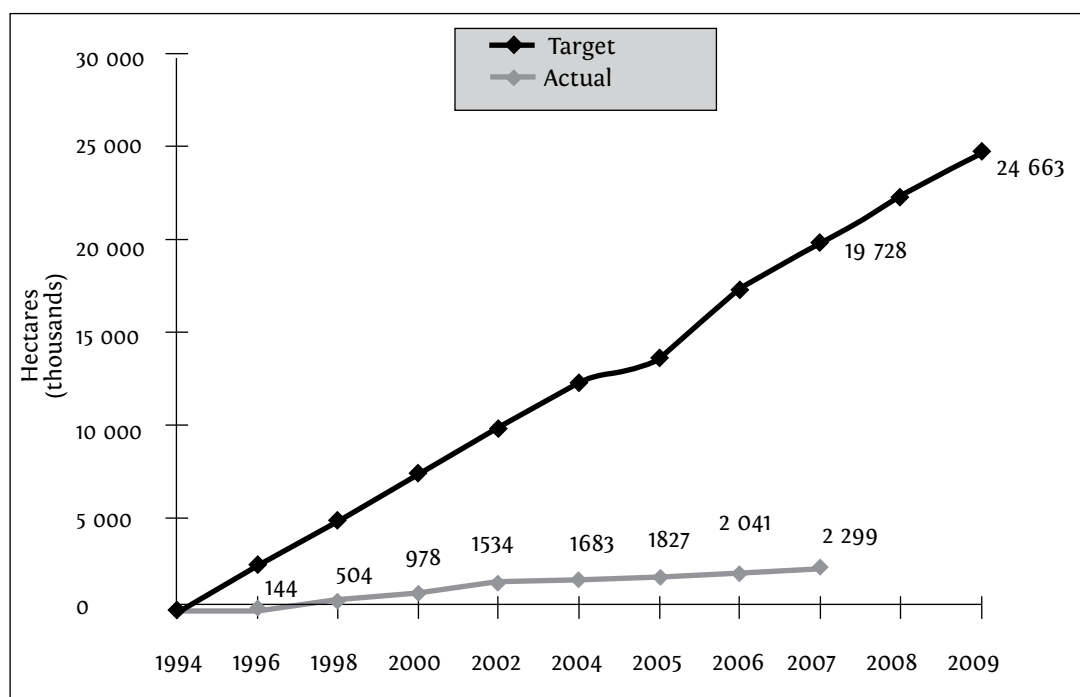
cantly higher than what was achieved in any of the three previous years and comparable to the levels achieved at the high point of redistribution (roughly 1999 to 2002, see Hall 2004a: 26). This achievement is overshadowed somewhat by the failure to come even close to achieving the revised target set by the DLA for the year – of 2 500 000 ha – of which only a tenth (10.4%) was achieved.

The performance of the redistribution programme since 1994 is shown in Figure 2.

In contrast to some previous years, spending of the capital budget for land redistribution and tenure reform has improved over the last two years, with 100% of the capital transfers allocation budget of R669 million (for 2006/07) being spent. The DLA warns, however, that rising land prices have the potential to negate ongoing increases in the budget:

As the department continues to double its efforts in land delivery with its continuously increasing budget within the next MTEF (Medium Term Expenditure Framework) period, we are unlikely to see any corresponding increase in hectares of land acquired mainly due to high land prices. (DLA 2007: 58)

Figure 2: Target and actual land transfers under the redistribution programme, 1994–2009



Source: Department of Land Affairs. Presentation of the 2006/07 Annual Report to the Select Committee on Land & Environmental Affairs. 6 November 2007 Powerpoint presentation.

At face value, this would appear to contradict the commitment to substantially increasing the amount of land acquired, and greatly exaggerates the likely rise in land prices (given that the budget for land purchase is set to roughly double for each year over the next two years). Further policy changes in this area, however, are signalled: 'The interventions that have been developed in response to this will be a subject of discussion in the next annual report' (DLA 2007: 58).

No definitive provincial breakdown of land transfers under redistribution has been reported publicly by the DLA. The annual report for 2006/07 provides lists of projects by province, but these include varying categories of data (including projects shown as 'approved' and 'transferred'), with numerous gaps. The total area of land exceeds the total reported elsewhere in the report by 60 417 ha (or 23%) (see Table 7). This suggests that these provincial lists may include some projects that were approved in previous years and only completed during the year in question, or that were initiated in the current year and will be funded in subsequent years. Nevertheless, they provide much useful detail on trends at the provincial and project levels.

The total number of redistribution projects reported is 354. The highest number in any one province is 57, in the Free State, and seven provinces report 36 projects or more. The exceptions are Limpopo, with 15 projects, and the North West with only seven.

The total area of land involved, according to these provincial lists, amounts to 319 307 ha. Provincial contributions to this total vary widely, from lows of 2 512 ha in the North West and 5 574 ha in Limpopo to highs of 82 160 ha in the Northern Cape and 135 208 ha in the Western Cape.

Expenditure on (or committed to) land purchase over the year amounts to over R500 million, but this excludes any figure for the Northern Cape. The lowest expenditure was in the North West and Limpopo, which may be expected from the relatively few projects and small areas of land acquired, and the highest was in the Western Cape (R116 million), followed closely by KwaZulu-Natal (R112 million).

The average size of land per project was 902 ha, which again showed considerable provincial variation. Most provinces (seven out of nine) fell into the range 184–515 ha, with the Northern Cape and Western Cape reporting much higher average sizes per project, of 2 282 ha and 3 756 ha, respectively.

The average land cost *per project* was R1.4 million, ranging from as little as R475 243 in the Eastern Cape to as much as R2 088 804 in KwaZulu-Natal and R3 235 358 in the Western Cape. The highest land price paid for any project during 2006/07 was the Rennie Farm Workers project in the Western Cape, at R13.5 million, followed by Harmony/Nkwalini and Dundee Cluster in KwaZulu-Natal, at R12.5 million each, followed by Carmel Estate in Gauteng, at R11 million.

Table 7: Land reform projects by province, 2006/07

Province	Projects	Hectares	Cost	Average ha/ project	Average cost/ project (R)	Average R/ha
Eastern Cape	53	21 983	25 187 904	415	475 243	1 146
Free State	57	24 721	44 253 731	434	776 381	1 790
Gauteng	48	10 533	90 971 120	219	1 895 232	8 636
KwaZulu-Natal	54	27 808	112 795 396	515	2 088 804	4 056
Limpopo	15	5 574	10 121 000	372	674 733	1 816
Mpumalanga	48	8 808	88 164 709	184	1 836 765	10 009
Northern Cape	36	82 160	-	2 282	-	-
North West	7	2 512	12 210 000	359	1 744 286	4 861
Western Cape	36	135 208	116 472 901	3 756	3 235 358	861
Total	354	319 307	500 176 760	902	1 412 929	1 566

Note: Cost data is not reported for the Northern Cape

Source: Compiled from data contained in DLA (2007: 68–107)

The average per hectare price of land for the country as a whole was R1 566, ranging from R861 in the Western Cape to R8 636 in Gauteng and R10 009 in Mpumalanga. The relatively high price paid for land in the latter two provinces did not translate into particularly high overall expenditure, not because of the number of projects implemented in these provinces, which was above average in both cases, but because of the relatively small sizes of projects. By contrast, and despite the lowest average land price, the Western Cape was able to report the highest overall expenditure, again due to the exceptional size of a relatively small number of projects.

It is important to note that the number of beneficiaries (or households, or individuals) associated with each project is not reported consistently and, in some cases, especially projects implemented under PLAS, the number of beneficiaries is recorded as zero. It is not, therefore, possible to calculate either the average size of grant or amount of land per beneficiary on the basis of the published data. Given that the number of beneficiaries associated with projects is usually reported along with other details of projects at the point of approval, it will be necessary for the DLA to develop alternative mechanisms for reporting on PLAS projects, where the identity of beneficiaries is not necessarily known at the time of land purchase and may only be decided after a considerable period, potentially in a subsequent financial year.

Examination of the provincial lists reveals some notable trends and important differences between provinces – in the types of projects, their size, cost and numbers of beneficiaries. For the Eastern Cape, for example, although the number of ‘households’ is not reported for all projects, it is notable that 20 projects are shown as consisting of just one household, and just four are shown with more than five households, suggesting that relatively small (probably family-based) projects are now the norm for that province. A similar pattern is evident for the Free State, where the numbers of households recorded are all in the range one to three, although a relatively large number of projects are shown with zero households (because they are PLAS projects and beneficiaries have yet to be identified).

Gauteng is the only province to report ‘beneficiaries’ rather than ‘households’ and, while a few projects are shown with zero beneficiaries, the total number of beneficiaries is clearly stated as 263, of whom 68 are women and 27 are youths.

KwaZulu-Natal is notable for the relatively high number of labour tenant projects reported (15 out of a total of 54), the other projects in the province being made up of 26 LRAD projects, nine PLAS projects, two ESTA projects, two settlement projects and one state land project. Labour tenant projects generally had relatively large numbers of members, ranging from one household to 137 households, with an average of 50.7 households for the 15 projects in this category. LRAD projects in the province were also relatively large, with an average of 31 households per project. Land sizes provided for labour tenants were surprisingly small for beneficiaries who are (or were until recently), by definition, already farmers in their own right – these ranged from 3.23 ha (for a group of six households) to 1 271 ha (for a group of 51).

In Limpopo, 14 LRAD projects and just two PLAS projects were implemented during the year. Household numbers are provided for all the LRAD projects and show two exceptionally large projects (with 100 and 132 households, respectively) with the remainder falling into the range 1–21 households.

Mpumalanga reports both LRAD and PLAS projects but, surprisingly given the history of labour tenancy in the province, nothing specifically for labour tenants. This appears to be due to the use of PLAS to settle labour tenant claims in the province. While this demonstrates some creativity on the part of local officials, it tends to blur the distinction between the rights-based claims of labour tenants and the discretionary approach of the general redistribution programme, and obscures whatever progress is being made in settling the claims of labour tenants. Numbers of members are reported for most projects, but not all, and show a persistence of large groups: 13 LRAD projects are reported as having 40 households or more, with the two biggest groups reported as 137 and 200 households, respectively.

The Northern Cape is notable for reporting nine projects that are either exclusively commonage or have a commonage component. Such projects are not particularly big in terms of membership, ranging from 12 to 50 ‘beneficiaries’, but, in this relatively arid area, tend to be extensive in terms of land area, with two projects in excess of 10 000 ha.

The North West reports remarkably few projects and, unlike other provinces, records five of its seven as being at the ‘post-transfer’ stage and

one at the 'disbursement of balance of grant' stage. These six projects are notable for their very small membership size – five have just one 'household' and one has two households. On the basis of these figures, it would appear that the total number of confirmed beneficiaries in the North West for the year is just seven households, who between them have benefited from 2 512 ha of land at a land purchase cost of over five million rand (R5 410 000). A further R4.8 million was spent on an unknown number of hectares and an unknown number of beneficiaries in the La Rey Stryd PLAS project.

The Western Cape reported a wide range of project types, under LRAD, PLAS, ESTA and Farm Worker Equity Schemes, and is notable for a number of exceptionally large and expensive projects. The largest of these, in terms of land area, was 'Mountain to Ocean Forestry' involving 118 499 ha purchased at a price of R10.5 million for 654 beneficiaries. The most expensive, however, was the Rennies Farm Workers Trust, at a cost of R13.5 million, involving the purchase of a relatively small 75 ha on behalf of 281 individual beneficiaries. In all, nine projects in the Western Cape cost in excess of R5 million each.

From these provincial figures, it may be seen that wide variety continues to characterise both the size and cost of land reform projects, with some strong provincial trends emerging. Relatively small group sizes are now the norm for the Eastern Cape, Gauteng and North West provinces, while at least some very large group projects – upwards of 100 members – continue to be implemented in KwaZulu-Natal, Mpumalanga, Limpopo and the Western Cape. Land areas per project vary greatly both within and between provinces, which may be explained partly by differences in land quality. The comparatively arid Northern Cape, not surprisingly, continues to report relatively large land sizes, but more surprising are the large sizes reported for the Western Cape, although it should be noted that the most extensive project involves forestry rather than prime agricultural land. Projects implemented under PLAS look set to consume a growing proportion of the land reform budget, but it remains unclear how many beneficiaries, and of what type, stand to benefit from this programme. Given that land acquisition is now becoming disconnected from (i.e. precedes) beneficiary approval, alternative means will have to be found of reporting on PLAS projects, especially where these elements of project implementation occur in separate years.

Prices paid for land also vary dramatically, but without detailed information on land quality it is impossible to draw any overall conclusions in this regard. No information is supplied by the DLA as to the value of grants paid out per beneficiary, and the data available on project costs and numbers of beneficiaries are insufficient to draw any definitive conclusions, but it does appear that the value of grants paid out to beneficiaries varies considerably. It is also not possible, on the basis of the published data, to draw any conclusions as to the socio-economic characteristics of beneficiaries. The available data suggest that a sizable proportion of beneficiaries continue to access the LRAD grant at the lower end of the sliding scale (i.e. R20 000 per beneficiary), but this does not necessarily mean these people are poor (in absolute or relative terms), and there is clearly a need for more detailed information on the socio-economic characteristics of people benefiting from the land reform programme.³⁰ Authors such as Wegerif (2004: 23) have argued that land reform may be meeting its social targets by concentrating relatively poor people in large group projects, with relatively small areas of land per head, while providing a privileged minority with large areas of land in relatively small (individual or family-based) projects. The persistence of some large group projects alongside many smaller projects suggests that the dichotomy of large group projects for the poor and small (household or individual) projects, albeit with relatively large per capita land areas, for the better-off may be continuing. The observed differences between project types across the country cannot be explained solely in terms of agro-ecological differences, but would appear to reflect different interpretations of policy and different approaches by the various provincial offices of the DLA.

Targets, old and new

The redistribution of 30% of white-owned agricultural land has stood since 1994 as the overall target for the land reform programme, and is generally understood to include both the redistribution and the restitution programmes. In the DLA's annual report for 2006/07 (DLA 2007: 60), the 'strategic objective' for the redistribution and tenure reform programmes is stated as: 'Redistribution of 30% of white-owned agricultural land by 2014 for sustainable agricultural development'; while the associated 'performance indicator' is:

30. The limited data available raise many questions. For KwaZulu-Natal, for example, which includes the type, cost and number of beneficiaries for all its projects, those projects labelled as 'LRAD' show an average cost per 'household' ranging from as little as R2 782 (for Eholo/South Hills), a figure far below the official minimum LRAD grant of R20 000, to as much as R2 250 000 (Warcommon), 25 times greater than the maximum grant of R100 000. It would appear that these data are either incorrect or refer to something other than the LRAD grant, and cannot therefore be used for analytical purposes.

*A total of 24.9 million hectares of productive white-owned land provided to 60,000 individual black South Africans by 2014; Increase in jobs created and incomes earned within five years of receiving land; Increase in crop yields and livestock production within five years of receiving land.*³¹

In this instance, the redistribution and tenure reform programmes appear to be solely responsible for reaching the overall target of 30% (defined here as 24.9 million hectares), which is described elsewhere as the target for land reform as a whole, including the restitution programme. Indeed, on the same page of the annual report (DLA 2007: 60), the DLA seeks to correct a previous 'typographical error' that had failed to distinguish the specific contribution made by land redistribution and tenure reform from that made by restitution in reaching the overall target figure of 30% – an error that appears to have been repeated here.

The annual report also argues that the introduction of PLAS has allowed for year-on-year increases in the amount of land transferred. The overall systems and budgets available, however, have clearly not yet changed to such a degree that they might produce the ten-fold increase envisaged by the headline target of 2.5 million hectares per year – a figure in excess of the *total* amount transferred under redistribution since the programme began in 1994/95. Not for the first time, this raises questions about the relevance of setting such targets and the manner in which they are set, seemingly without reference to resources and systems that are needed to achieve them.

The DLA's annual report of 2006/07 is also much more specific about the number of beneficiaries targeted for land reform than has been the practice in the past. The specific target set for the year was to transfer 2.5 million hectares to 7 500 individual South Africans. This implies an *average* land transfer of 333.33 ha per individual beneficiary (rather than per household) – a very significant jump not only in the total area of land to be transferred but in the per capita size of holdings to be created under the land reform programme. Figures cited by Hall (2004a: 26) suggest that the average area of land transferred per household over the period 1994 to 2004 was 12.2 ha. For the year 2006/07, the amount actually transferred, as reported by the DLA (258 890 ha to 9 405 individuals), suggests an average of 27.5 ha per beneficiary – a significant rise on the

earlier average but indicative of gradual change rather than the quantum leap suggested by the latest targets. The proposed provision of average holdings of 333.33 ha per beneficiary suggests a very different type of land reform to what has been envisaged, or implemented, to date; and it is significant that the greatly increased overall target is to be achieved by increasing not the number of beneficiaries per annum but the area of land per beneficiary.

Indeed, the number of beneficiaries per annum looks set to fall dramatically, if these figures are to be taken at face value. Since 1997, the total number of beneficiaries (including those reported as 'households' and 'individuals') has exceeded 10 000 in every year: in 2003, for example, 17 438 'households' plus a further 8 192 'individuals' benefited – a total of 25 630 beneficiaries in all – compared to the latest target of 7 500 beneficiaries per year (Hall 2004a: 26). Also unclear is how existing (past) beneficiaries will be counted towards the cumulative target. The new (cumulative) target is to benefit 60 000 individuals by 2014, yet in excess of 200 000 have already benefited. It is difficult to comprehend why this significant achievement should be overlooked and effectively excluded from revised targets now being set for 2014. What remains important, however, even if the cumulative target is disregarded, is that for the first time specific annual targets are being set for numbers of beneficiaries; and the indications are that land reform (at least in the redistribution programme) aims to provide land not for 'the masses' but for a relatively small group (an 'elite' of 60 000), a target no doubt influenced by the number of 60 000 widely used in reference to the number of white farmers in South Africa at the end of apartheid. Land redistribution, therefore, aims to settle a comparable number of black farmers on 30% of that land. What lies behind the setting of these numbers – especially the restriction of the target to only 60 000 beneficiaries, and the substantial size of holdings it implies – can only be imagined, but is clearly at odds with the more populist sentiments expressed at the National Land Summit in 2005 and by politicians and senior officials since then.

Land and Agrarian Reform Project

The evolution of the recently unveiled LARP can be traced back at least to the period surrounding the National Land Summit of 2005, when various

31. The DLA would appear to have no systems in place to monitor factors such as numbers of jobs created, incomes earned or increase in crop yields and livestock production 'within five years of receiving land'. Once again, the impression is of worthy targets being set without any means of monitoring or adjusting policies in order to ensure they are achieved.

pronouncements were made by senior officials and politicians about the need for an alternative to the existing 'demand-led' approach based on 'willing seller, willing buyer'. LARP emerged in 2007 as one of 24 Presidential priorities, known as the Apex Priorities, and is described as Apex Priority 7. The new initiative, officially launched in October 2007, creates an elaborate new structure for the implementation of land reform and, while no indication is given in official sources that it is intended to reverse existing policy directions, the 'commercial' emphasis throughout the LARP *Concept Document* suggests that it is set to accelerate the trend towards more capital-intensive projects catering for better-off 'entrepreneurs':

The Land and Agrarian Reform Project (LARP) provides a new Framework for delivery and collaboration on land reform and agricultural support to accelerate the rate and sustainability of transformation through aligned and joint action by all involved stakeholders. It creates a delivery paradigm for agricultural and other support services based upon the concept of 'One-Stop Shop'

service centres located close to farming and rural beneficiaries. (MoA 2008: 7)

While the primary emphasis of LARP appears to be on land redistribution, other far-reaching objectives are addressed in the areas of agricultural support services and agricultural trade. According to the *Concept Document*, LARP has the following objectives:

- to redistribute 5 million hectares of white-owned agricultural land to 10 000 new agricultural producers;
- to increase the number of black entrepreneurs in the agribusiness industry by 10%;
- to provide universal access to agricultural support services to the target groups;
- to increase agricultural production by 10–15% for the target groups, under the LETSEMA-ILIMA Campaign; and
- to increase agricultural trade by 10–15% for the target groups.

Some sense of the very wide scope of LARP, and the multiplicity of areas that will require the development of detailed policies and implementation strategies, may be seen from the 'Indicative

Land and Agrarian Reform Project

Priority 1: Redistribute 5 million hectares of white-owned agricultural land to 10 000 farm dwellers and new agricultural producers

The key activities:

- create agricultural villages;
- report on agricultural development corridors;
- settle farm dwellers in agricultural holdings around rural towns;
- settle new producers along major and secondary corridors of national and provincial commercial road and trade networks;
- provide land for livestock and arable farming purposes;
- provide transportation to and from work;
- provide health, education, sanitation, recreational and other social amenities and infrastructure;
- mobilise farm dwellers into farmers' organisations and co-operatives;
- establish a single virtual land reform database utilising AGIS to visually represent the location of all SLAG and LRAD projects, rural restitution transfers, the acquisition of labour tenant rights and ESTA transfers;
- establish a register of all farm dwellers that engage in agricultural production in their own right;
- provide comprehensive agricultural support services to all registered producers;
- locate land reform project decision-making at provincial level with synchronised granting of CASP funds at project planning stage within Provincial Grant Approval Committees; and
- promote multiple income-generation activities.

Source: Ministry of Agriculture and Land Affairs (2008: Annexure B)

List of Activities' associated with just one of the five priorities (see box).

LARP is characterised by an elaborate new institutional framework for implementation, as shown in extracts from the LARP *Concept Document* (see box).

Political statements surrounding the launch of LARP suggest that the project leans heavily towards the provision of new (alternative) land for farm dwellers. According to the official press release from the Ministry at the time of the launch of the project in the Western Cape, in October 2007, its broad objectives are 'to accelerate sustainable land redistribution, focusing on farm dwellers and communal farmers'. Subsequently, at the launch of the project in the Eastern Cape in November 2007, the Minister stated that 'the focus of LARP in the Eastern Cape Province is on the acquisition of land in order to provide long-term security to farm dwellers, farm workers and emerging communal farmers'. At the provincial launch of LARP in KwaZulu-Natal in Oc-

tober 2007, the Minister again stated that 'the Department of Land Affairs is committed to fast tracking land distribution amongst farm dwellers and those who have been forcefully removed from their farms with the new Land and Agrarian Reform Programme (LARP)'. While the LARP *Concept Document* makes reference to farm dwellers as a priority group – 'Farm dwellers are a first priority, given the urgent need for them to fully realise their constitutional rights' (Ministry of Agriculture and Land Affairs 2008: 40) – no reference is made to the specific needs of farm dwellers or how they can be met. Rather, the emphasis throughout is on agricultural entrepreneurs and the expansion of commercial agriculture.

While LARP undoubtedly marks a major new departure for land reform in South Africa, especially in terms of the renewed political attention it has brought to the subject and the substantial institutional realignment it entails, it gives rise to a number of questions.

LARP: Governance and institutional arrangements

LARP is a joint project between different spheres of government. The proposed institutional structure has two components, an implementation arm and an arm for joint strategic content and guidance. LARP will be managed in accordance with the Intergovernmental Relations Framework Act, Act No 13 of 2005 and the Department of Provincial and Local Government 'Guidelines on Managing Joint Programmes'.

The Guidelines indicate that a Joint Steering Committee should implement a joint project. A National Intergovernmental Forum for Agriculture and Land (NIFAL) and an Intergovernmental Technical Committee for Agriculture and Land (ITCAL) have been formalised in the agricultural sector in terms of the Intergovernmental Relations Framework Act and these bodies will take overall responsibility for LARP with the Ministry and MECs assuming the role of key champions. Standing Committees have been established within ITCAL to drive the strategic direction of each of the LARP priorities.

Provincial Forums of relevant stakeholders will be established in each province to oversee joint annual provincial land and agrarian reform planning and implementation of LARP while District Committees will assume all planning and decision-making responsibilities regarding individual LARP projects in a province. Existing Provincial Grant Approval Committees (PGACs) and District Screening Committees (DSCs) should be restructured to assume these roles.

These implementation structures at provincial and district level will have the responsibility of ensuring that LARP settlement projects are viable and sustainable over a 5-year incubation period.

A National LARP project manager will assume overall coordinating responsibility for the planning and implementation of LARP under the direction of ITCAL.

All programmes of the DoA, DLA and PDAs are involved with LARP and will provide line function support and resources towards LARP objectives.

Source: Ministry of Agriculture and Land Affairs (2008: 10–11)

32. Minister's speech at the provincial launch of LRAD, quoted in Government Communication and Information System press release, 'Govt to fast track land distribution', 29 Oct 2007. According to a press release by the Government Communication and Information System, the entire provincial target of 416 824 ha was earmarked for farm dwellers (GCIS 29 Oct 2007, 'Govt to fast track land distribution').

33. Speech by the Honourable Minister for Agriculture and Land Affairs, Ms Lulu Xingwana (MP). Launch of Land and Agrarian Land Reform Project and Land Rights Awareness Campaign in the Eastern Cape Province. Rockhurst Farm, Makana Local Municipality in Grahamstown, 3 November 2007.

The first has to do with the (largely unexplained) implications of LARP for existing land reform programmes, with which there is little obvious integration or direct linkage. Indeed, it is unclear whether LARP is intended to operate in parallel with existing programmes, to complement them or to replace them. Given that LARP appears to have no budget of its own, and shares the targets already set for land reform in general (see below), it seems, at best, to represent a new way of using existing resources. The implications for existing programmes, such as LRAD and commonage, are not explained in the official statements surrounding the launch of the new initiative. Most worrying, perhaps, is that LARP appears to diverge greatly from existing programmes, in areas such as its targeted beneficiaries and intended outcomes – particularly with regard to the much greater size of landholdings envisaged under the programme (500 ha per beneficiary, on average), compared to past performance. A potential downside, therefore, is that LARP implies a major redirection of existing programmes and resources, which have evolved on the basis of years of experience and experimentation. It would appear that this significant shift in policy direction has taken place with minimal public consultation or debate.

Second, LARP sets ambitious targets, but effectively these are the same targets already set for the land reform programme as a whole. LARP aims to redistribute 1.5 million hectares in its first year (2008/09), and a further 2.8 million hectares in its second year (2009/10) – a total of 4.3 million hectares in all; a further one million hectares will come from the restitution programme over the same two-year period, giving a total programme target over two years of 5.3m (LARP 2008: 32). Why the target already set for redistribution should be recycled as the target for LARP is unclear, but particularly puzzling is the inclusion of restitution under this heading. LARP clearly has no means of influencing the amount of land transferred as a result of successful restitution claims, and does not appear to contribute to the restitution programme in any way. Furthermore, political statements regarding LARP greatly complicate the precise targets of the project. According to the Minister, LARP in KwaZulu-Natal alone will target more beneficiaries than the official target for the entire country: 'Through LARP we will deliver 416 824 ha to 14 784 beneficiaries by March 2009 in KwaZulu-Natal'.³² In the Eastern Cape, the Minister committed to redistributing a further 650 000 ha of agricultural land to 5 250

new agricultural producers by 2009.³³ Given that the target for the entire country was officially stated as 10 000 new farmers, the provincial target for the Eastern Cape, like that for KwaZulu-Natal, appears relatively high.

Third, LARP appears to be proceeding without any dedicated budget of its own, despite its multiple objectives. The discussion of the budget in the *LARP Concept Document* (MoA 2008) makes clear that it is not bringing any new resources to land reform, and acknowledges that under current budgetary allocations its stated targets will not be achievable:

An additional budgetary allocation from National Treasury of R2.3 billion for 2008/09 and R7.1 billion for 2009/10 subject to a contribution of 1 million hectares by the Commission on Restitution of Land Rights would be required to meet these acquisition targets. Furthermore the current capacity constraints would need to be rectified by the approval and implementation of the new DLA structure with an additional operational budget of R2.1 billion.

In other words, to reach the LARP targets (effectively, the targets already set for both redistribution and restitution) would require at least R11.5 billion over and above the existing projected budgetary allocations over two years.

The *LARP Concept Document* (MoA 2008) further argues that a more achievable target within the existing budgets and capacity of provincial offices of the DLA would be in the order of 608 060 ha in 2008/09 – far below the targets already set for redistribution. According to the LARP document, reaching the 30% target by 2014 would require dramatic year-on-year increases in land transfer in order to redistribute a total of 21.4 million hectares over the six-year period starting in 2008/09 (described as an 'incremental approach'), and a budget for land purchase alone of R94.021 billion. Of this, R19.574 billion is currently budgeted for, leaving a shortfall of R74.447 billion.

An alternative scenario (the 'linear approach') is also presented, based on uniform annual targets, positing the delivery of 1.259 million hectares per year over 17 years, thereby reaching the target of 30% only by 2025 (Ministry of Agriculture and Land Affairs 2008: 35). No reason is provided for the choice of this amount of land or this time period, as it is not based on either existing delivery rates or existing budgets. Using

current budgetary projections (and assuming an annual increase of 6%), the LARP *Concept Document* estimates that an additional amount of R85.2 billion would have to be found over the 17-year period in order to reach the 30% target. Thus, while LARP does not appear to present a coherent or feasible programme, it does serve to highlight the additional budget that will be required to purchase the necessary areas of land at market prices. Whether this is a coded argument for the abandonment of market purchases remains to be seen. Alternatively, it casually introduces an entirely new target date – 2025 instead of 2014 – for reasons that remain obscure, but possibly as a step towards abandoning the existing target in the face of recurring delivery failure, and testing the political waters for such a revision.

Overall, it is difficult to discern from official documents and political statements what exactly is new about LARP and what it adds to existing land reform efforts. With no new resources, and a frank admission that existing resource commitments are greatly insufficient to meet the target of 30% by 2014, it seems unlikely that LARP will impact significantly on either the pace or sus-

tainability of land reform. Rather, the emphasis on providing land to only 10 000 commercially oriented farmers suggests that LARP represents a major narrowing of existing commitments, which a rhetorical emphasis on farm dwellers and the landless does little to disguise.³⁴ Scant acknowledgment is given to the multiple problems confronting the land reform programme, and virtually no new mechanisms are proposed in order to accelerate the acquisition of land or broaden the base of land reform beneficiaries, especially the very poor who wish to produce on a small (non-commercial) scale. In stark contrast to the sentiments expressed in the ANC's Polokwane resolution on land reform, the possibility of a radical restructuring of the agricultural (or agribusiness) sector is effectively dismissed, as is any mention of poverty alleviation or a switch from capital-intensive market-oriented production to a labour-intensive consumption-oriented model. If this new strategy is implemented, it will undoubtedly see a massive diversion of state resources away from the rural poor and landless and towards better-off black entrepreneurs capable of substituting for existing white commercial farmers and agribusiness companies.

34. See the similar argument by Neva Makgetla in *Business Day*, 5 March 2008, 'Land reform plans do not get to root of rural ills'.

Chapter 4: Critical issues for South Africa's land reform programme

Introduction

Since 1994, land reform in South Africa has attempted to achieve many things, among them a more equitable pattern of landholding, the alleviation of rural poverty through the creation of opportunities for employment (including self-employment), the economic development of rural areas and reparations (both symbolic and material) for historical injustices. The methods chosen by the democratic state to achieve these objectives – and land reform in South Africa has been an almost exclusively state-driven process – have been both modest, in terms of the scale of the task undertaken and the resources dedicated to the process, and moderate, in terms of the lengths to which it has gone in order to avoid antagonising powerful interest groups or interfering with the functioning of the wider economy.

The result has been a land reform programme that has largely failed to meet its objectives, some of them by a long way. This is most obvious in the crude statistics of hectares of land transferred, but is also evident in the failure to restructure the agricultural economy, which remains dominated by relatively few, large-scale, capital-intensive and generally white-owned enterprises alongside millions of small and poorly resourced black farmers. It is evident too in the widespread under-utilisation of much of the land that has been transferred, the continuing abuse and eviction of farm dwellers, the high proportion of non-functioning communal property institutions and the lack of any firm evidence on job creation or poverty alleviation.

Against this generally gloomy background, however, there are some bright spots. Tens of thousands of claimants have had the pain of historical dispossession officially acknowledged, and have received some form of restitution for their loss. While it may be regrettable, given the scale of historic dispossession, that more people did not lodge claims, or were not entitled to do so under the restrictive restitution criteria, and that only

a minority of claimants have actually had their land restored, the restitution programme stands out as possibly the most important example of public redress for the wrongs of colonialism and apartheid. Given the major problems confronting the rest of the land reform programme, it is also worth noting that restitution is broadly on track to meet its stated objectives, thanks to massive commitment of financial resources by the state and high-level political support. Elsewhere, significant numbers of farm workers, particularly in the Western Cape, have obtained a stake in the farms on which they work, and some have been assisted to start their own enterprises. Municipal commonages have been extended and upgraded for poor livestock owners, particularly in the Northern Cape and Free State. A variety of new farmers, ranging from small group projects to large entrepreneurs, have been assisted to acquire land by means of SLAG and LRAD grants, although many questions remain around the socio-economic targeting of beneficiaries under these programmes and the extent to which projects have led to improvements in livelihoods.

Recent shifts in policy and proposals for further changes have the potential to dramatically alter the way in which land reform is implemented, but strong continuities with previous approaches suggest that the changes in policy may not be as radical as called for by land NGOs, the ANC's Polokwane conference and organisations of the landless. While budgets for land purchase are set to rise steadily, these remain insufficient to meet the targets set by the state. The rise of the Proactive Land Acquisition Strategy (PLAS) does not reduce reliance on the market, or on the co-operation of landowners, but it does put the state in a stronger position to drive the process of acquisition. Recent emphasis on expropriation, including the drafting of a new Expropriation Bill, suggests growing political support – amidst strong opposition from some quarters – for approaches that go beyond the market. While expropriation is undoubtedly a necessary element

within a broad land reform strategy, there is no evidence to suggest that it is likely to become the principal method of land redistribution. Whether these developments will translate into more, and more appropriate, land being acquired, and ultimately into more productive and sustainable forms of land use that benefit the broad mass of the rural poor and landless, remains to be seen. This will depend to a large extent on the types of beneficiaries that are targeted, the types of land uses that are promoted and the range of support services available to beneficiaries. These and other critical issues confronting the South African land reform programme are discussed in the following sections, in the context of recent policy developments.

Land acquisition

The manner in which land is to be selected, acquired and paid for has been the most contentious issue in South African land reform policy since 1994. The 'willing buyer, willing seller' model, based on the World Bank's recommendations for a market-led reform, emphasised the voluntary nature of the process, payment of full market-related prices, up-front and in cash, a reduced role for the state (relative to previous 'state-led' reforms elsewhere in the world) and the removal of various 'distortions' within the land market. This approach fitted well with the general spirit of reconciliation and compromise that characterised the negotiated transition to democracy, although it can be seen as considerably more favourable to landowners than strictly required by the 1996 Constitution. The South African approach to redistribution diverges, however, from the model promoted by the World Bank in important respects, particularly in the failure to introduce a land tax to discourage speculation and dampen land prices, the absence (to date) of an element of expropriation to deal with difficult cases, the failure to allow beneficiaries to design and implement their own projects and the failure to promote subdivision of large holdings.

The 'willing buyer, willing seller' approach has remained at the centre of the South African land reform policy, despite widespread opposition and recurring promises of change from government leaders. At the National Land Summit of July 2005, for example, the 'willing buyer, willing seller' approach was criticised openly by both the President and the Minister of Land Affairs, and its replacement was the uppermost demand

from civil society and landless people's organisations. Representatives of large-scale landowners remain broadly in favour of the approach, especially the payment of market-related prices, although they too have been critical of protracted processes around land purchase and payment (Lahiff 2007a).

South Africa has an active land market and well-developed market infrastructure, which undoubtedly presents many opportunities for land acquisition. The weaknesses that have become apparent in the current system of land acquisition are largely in three areas: the suitability of land being offered for sale, the prices being demanded, and bureaucratic delays (including budgetary shortfalls) in funding purchases. The market-led approach, as implemented in South Africa, offers landowners an absolute discretion on whether or not to sell their land, to whom they sell it, and at what price, with the result that most land that comes onto the market is not offered for land reform purposes. Many landowners are politically opposed to land reform, or lack confidence in the process, especially the slowness of negotiation and payment, and, if possible, prefer to sell their land to other buyers. There have been widespread reports that suggest that land being offered for land reform purposes is of inferior quality (Lyne & Darroch 2003; Tilley 2004). In addition, there have been recurring complaints – from land reform beneficiaries, officials and politicians – that where land is offered, excessive prices are being demanded, but little firm evidence has been offered to support this contention.

The introduction of the PLAS, and the likelihood that this will soon become the principal means by which land is acquired for redistribution, signals a significant break with past approaches, but also gives rise to a number of concerns. First, as argued above, while the ability of the state to buy land from owners has undoubtedly been strengthened, there has been no accompanying strengthening of the powers of intended beneficiaries to influence the process or any official elaboration of criteria for the types of land to be acquired. Matching land to the needs of intended beneficiaries – in terms of land size, quality and location – is an essential requirement for a successful land reform strategy; the absence of beneficiaries from critical decisions affecting their livelihoods, and the strong possibility that the identity of beneficiaries may not even be known to officials at the time of land purchase,

reduces the likelihood that these needs will be met.

It may be possible to identify broad land needs at a local level, as proposed under the area-based approach, and to base land purchase decisions on this. However, this would require functioning land reform structures at a local level, with adequate representation of the landless, as well as national guidelines for prioritisation of different categories of need. Such an approach has been piloted recently with NGO involvement in the Breede River Winelands district, but has yet to be taken up elsewhere. The strong possibility is that district officials of the DLA will be under pressure to meet quantitative targets for land acquisition, and will concentrate on buying what land is offered to them by landowners, rather than seeking out land that best meets the needs of local landless people in terms of location, size and quality. Furthermore, the proactive approach on its own does little to reduce the prices paid to landowners – indeed, an aggressive purchasing drive by the state is likely to push up prices in some areas – and, therefore, does nothing to close the enormous gap between redistribution targets and available budgets.

Expropriation offers the potential of expanding the range of land available for redistribution beyond what the market offers, and reducing the compensation paid to owners. Like proactive purchase, however, the success of this approach will depend on the guidance provided to state officials as to what categories of land to target and the manner in which they exercise their powers. Legal challenges to the amount of compensation offered may also slow down the process, and drive up the ultimate costs, making it unlikely that expropriation will entirely replace other, more consensual, approaches. Matching land acquisition to local needs remains the priority, which, in turn, requires that intended beneficiaries are granted a central role in the process. Ensuring that redistribution targets the most appropriate land, and that a more interventionist state remains accountable to intended beneficiaries, is at least as important as accelerating the pace or reducing the cost of the reform process.

Beneficiary targeting

From the outset, the intended beneficiaries of land reform have been defined in very broad, and almost exclusively racial, terms. The 1997 White Paper cast a wide net that included the poor, labour tenants, farm workers, women and

emergent farmers, but no specific strategies or system of priorities were developed to ensure that such groups actually benefited. Unlike the situation in countries such as Brazil, India and Malawi, where market-based land reforms are also underway, the self-selection process in South Africa lacks a strong element of oversight by communities, labour unions and other civil society organisations, reflecting the generally low level of popular participation in the implementation of land reform in the country.

Under SLAG (from 1995) a household income ceiling of R1 500 per month was set, but not always enforced. The low level of the grant, and the requirement that people acquire land in groups (often consisting of upwards of 100 households) was probably effective in targeting the relatively poor and deterring the better off. The replacement of SLAG by LRAD from 2001 removed this income ceiling and, with its larger grant sizes and emphasis on commercial production, made the redistribution programme more attractive to the better off. As in other areas of land reform, there is a critical shortage of data, from either government or independent sources, so it is impossible to say with any certainty how different socio-economic categories of people have benefited. The limited evidence, however, would suggest that young people, the unemployed and farm workers have been particularly poorly served.

Recent policy proposals have contained mixed messages as to the intended beneficiaries of land redistribution, but there is a strong underlying emphasis on better-off, more commercially oriented, agricultural 'entrepreneurs'. The PLAS *Conceptual Framework* takes a typically all-embracing definition of its target groups, with no indication as to which groups are to be prioritised or how the (potentially competing) needs of different groups will be met. Nothing in the *Framework* supports the contention that the approach will be 'pro-poor':

The Framework in terms of the strategy will target black people (Africans, Coloureds and Indians), groups that live in communal areas and black people with the necessary farming skills in urban areas, people living under insecure tenure rights. In this way the Framework seeks to contribute to the decongestion of the communal areas, secure on or off farm accommodation and to create sustainable livelihoods. While the approach is pro-poor, it also caters for emergent and commercial farmers. (DLA 2006: 8)

The Land and Agrarian Reform Project (LARP) Concept Document (MoA 2008) does not discuss target groups in the main body of the document, but rather offers generic, catch-all definitions in the glossary for the various priority areas:

Target group for priority 1: Farm dwellers; new producers from and in rural, peri-urban and urban areas.

Target groups for priority 2–5: New primary producers; farm dwellers; communal farmers; new and existing black agribusiness entrepreneurs from and in rural, peri-urban and urban areas.

Note that all five elements of the programme are 'priorities' – there is no prioritisation within these elements or among the associated groups.

However, the detailed proposals and business-style language associated with the implementation proposals of both PLAS and LARP do not support the contention that a wide range of beneficiaries will be targeted, and appear particularly unsuited to the needs of poorer households wishing to produce mainly food crops for household consumption, as the following extracts show:

Lease agreements with an option to purchase must be concluded with the selected beneficiaries. Lease period must be linked to one production cycle of the enterprise that the beneficiaries are engaged in. Beneficiaries who are in arrears with their lease fees and who have not broken even during the lease period will be removed from the farming operation and new beneficiaries will be installed. However circumstances beyond beneficiaries control such as adverse weather conditions or animal diseases/ pest problems will be considered before the decision is taken to remove underperforming beneficiaries. Leases currently utilized as part of state land disposal will be utilized during proactive disposal. The trial lease period does not apply to beneficiaries that have been assessed in terms of rights-based programmes such as Extension of Tenure Security Act and the Land Reform (Labour Tenants) Act. (DLA 2006: 17)

LARP will be managed at the individual new settlement or business enterprise level. Each such project will be coherently planned and supported for a five year incubation period with the objective of achieving sustainability over this period. This support will be

articulated in individual business plans which will be utilized for monitoring progress. Land will only be transferred to beneficiaries who have the required entrepreneurial and other skills to farm and have thus received appropriate training and/or passed a skills test. Criteria for this will be determined by the Land Reform SC [Standing Committee]. Furthermore, Government support under LARP will be provided to an individual project on condition that the beneficiary is a member of a local farming or business association/ or formally constituted study group for the duration of that project and that enterprise and physical data regarding the farm is provided to and maintained by the Government for the duration of the project. (MoA 2008: 21–22)

The relatively small numbers of beneficiaries targeted by the redistribution programme in general (60 000 by 2014) and by LARP in particular (10 000 over two years), together with the consistent emphasis on increased agricultural output for the market, clearly demonstrate that the main thrust of policy is directed towards those with the skills and resources to produce on a substantial scale. Despite the political rhetoric, there appears to be little understanding of the needs of relatively poor households, including farm dwellers, or specific measures to ensure that they are adequately addressed. While many of the newer elements of redistribution policy, including area-based planning, have the potential to include poorer participants and contribute to poverty alleviation, experience to date suggests that this is unlikely to be achieved on a significant scale unless it is clearly prioritised at every stage of the process, with concrete strategies to ensure maximum participation by poor and marginalised groups.

Project design and land use

While land reform in South Africa has given rise to a variety of forms of land use – or 'projects', to use the dominant terminology – a few characteristics stand out, particularly the preservation of existing farm (property) boundaries and an emphasis on production for the market. This has led, in turn, to a 'collective' dimension to many land reform projects, especially those involving relatively poor members, those implemented under the SLAG programme and large, community-based restitution settlements. A high proportion of land reform beneficiaries (the exact number is

35. See, for example, comments by the Acting Director-General of Land Affairs quoted in *Business Day*, 19 February 2008, 'Land reform failure rate may be 50 per cent'.

36. See, for example, MoA (2008: 17): 'An internal review of LRAD also identified a number of key improvements needed to heighten the impact of the program, including de-emphasizing collective farming.'

37. It is highly unlikely that landowners would be willing to bear the cost and inconvenience of selling off land piecemeal, or that beneficiaries would be in a position to undertake subdivision following purchase. Thus, the state would be required not only to tolerate subdivision, but to actively promote it and bear the costs of surveying and registration.

38. It should be noted that there is no legal obstacle to subdivision of land for land reform purposes; the position of the state on this issue is purely a matter of policy. In theory, new owners could proceed to subdivide their land amongst members of a group, but this has been actively discouraged by the officials of the DLA and provincial departments of agriculture responsible for provision of grants and implementation of land reform projects.

not know, but undoubtedly exceeds 90% of all participants) are members of some sort of collective (or communal) structure, typically organised as a communal property association (CPA) or a trust, and many of these not only own land in common but are involved in some form of collective production.

Collective ownership of land and collective agricultural production are not in themselves problematic, and are undoubtedly favoured by many people. The trouble – and there is widespread agreement that many of these collective institutions are in trouble³⁵ – is that they are effectively imposed on people by the land reform programme with little consideration of their appropriateness in particular circumstances, the actual wishes of participants and possible alternatives. Groups typically struggle to make use of available resources and rarely receive the external support they require to function effectively. While collective (or communal) ownership of land has been actively promoted in official land reform policy, the collective forms of production that tend to accompany it have not, and appear to be an unintended (if not entirely unpredictable) consequence of the model of landholding – something which has only recently been acknowledged in the official discourse.³⁶

While collective ownership of land is driven by a range of factors, including the desire of many people, especially relatively poor people, for the solidarity and protection of a group enterprise, and African custom, the most important factor is the refusal of state agencies to contemplate the subdivision of existing agricultural units.³⁷ An official insistence on collective production then emerges as a 'solution' to the (officially imposed) challenge of managing large farming units in a way that resembles the practice of previous owner-occupiers. This is reinforced by the imposition of 'business plans' based on conventional commercial farming models and often questionable financial assumptions, with little reference to the needs and resources of the actual participants (Lahiff, Maluleke, Manenzhe & Wegerif 2008). Some better-off participants have been able to get around the collective model by amassing sufficient grants, loans and resources of their own to buy entire farms, either individually or as small family-based groups. For poorer participants in the redistribution programme, however, faced with grants that fall far short of typical farm prices, there has been little choice but to join together with other applicants, often

in groups of upwards of one hundred members. Similar forms of group ownership have arisen as part of large community-based restitution settlements. While the problems associated with large group schemes have been recognised almost from the beginning of the land reform programme, it is notable that new projects with large group sizes continue to be implemented in provinces such as KwaZulu-Natal, Mpumalanga, Limpopo and the Western Cape (see Chapter 3).

The official response to the problems of large group projects, especially under LRAD, has effectively been limited to targeting better-off individuals who qualify for larger grants (and loans) and thereby can purchase, either as individuals or in small groups, the relatively large landholdings that typically come on the market. Under the 'willing buyer, willing seller' policy, intended beneficiaries have been limited to the land parcels that come on the market and, because land is not purchased directly by the state (in the sense that ownership passes directly from the seller to the intended beneficiaries), the state has not been in a strong position to subdivide land after purchase.³⁸ With moves towards proactive land acquisition and expropriation, it should be possible for the state to acquire a greater variety of land parcels to meet specific needs, without being restricted to what comes on the market. Moreover, because the state may acquire direct ownership of land under both these approaches (if only on a temporary basis) it would, in theory, be in a much stronger position to subdivide land prior to its allocation to beneficiaries, if it were inclined to do so.

Recent policy developments suggest that state departments are aware of the problems of what effectively has been obligatory collectivisation, and are open to a greater variety of forms of landholding and land use. As in the past, however, the solutions proposed under LARP tend towards promoting fewer, better-resourced and commercially oriented individuals on larger holdings, with little in the way of new or innovative thinking about how to meet the needs of poor people wishing to obtain smaller plots of land primarily for food production.

PLAS also makes provision for land reform beneficiaries to lease land from the state (which itself implies access to cash resources) prior to transfer of ownership, but the context suggests leasing of whole properties to groups, with no reference to subdivision (DLA 2006: 18).

LARP makes only passing reference to the possibility of subdivision; interestingly, responsibility for subdivision is given to (undefined) 'sector partners' rather than to any state agency (MoA 2008: 39). While the LARP *Concept Document* promotes individualisation, this does not in itself suggest any commitment to subdivision or other restructuring of existing large-scale farming enterprises, and appears to offer nothing specifically to relatively small and less commercially oriented producers:

The agricultural or agri-business enterprises that are to be created and/or supported under LARP include farms and agri-businesses that can be held by individuals or groups, however, based on the evident difficulties experienced by groups in sustainable management of enterprises, preference will be given to structures where individual management decisions can be taken. (MoA 2008: 41)

Post-settlement support

Inadequate support to the beneficiaries of land reform has been a recurring complaint almost since the inception of the programme. Various studies have shown that beneficiaries experience severe problems accessing services such as credit, training, extension advice, transport and ploughing services, veterinary services, and access to input and produce markets (HSRC 2003; Hall 2004b; Wegerif 2004; Bradstock 2005; Lahiff 2007a; SDC 2007). Of late, attention has also focused on the lack of support to institutions such as CPAs and trusts charged with managing the affairs of group projects (SDC 2007; CASE 2006; CSIR 2005).

Services that are available to land reform beneficiaries tend to be supplied by provincial departments of agriculture and a small number of NGOs, but the available evidence would suggest that these serve only a minority of projects. In November 2005, the Minister for Agriculture and Land Affairs told Parliament that 70% of land reform projects in Limpopo province were dysfunctional, which she attributed to poor design, negative dynamics within groups and lack of post-settlement support³⁹

Central to the problems surrounding post-settlement support are a lack of co-ordination and communication between the key departments of agriculture and land affairs, and other institutions such as the Department of Housing, the Department of Water Affairs and Forestry and

local government structures. The well-developed (private) agri-business sector that services large-scale commercial agriculture has shown no more than a token interest in extending its operations to new farmers, who in most cases would be incapable of paying for such services anyway. The assumption that the private sector would somehow 'respond' to demand from land reform beneficiaries with very different needs to the established commercial farmers has not been demonstrated by recent experience. The principal explanation for this, of course, is that land reform beneficiaries are, on the whole, so cash-strapped that they are not in a position to exert any effective demand for the services on offer, even if these services were geared to their specific needs.

Recognition of the need for additional support for land reform beneficiaries led to the introduction, in 2004, of the Comprehensive Agricultural Support Programme (CASP), with a total of R750 million allocated over five years, and the formation of the Micro Agricultural Finance Institute of South Africa (MAFISA), which is intended to provide small loans to farmers. Widespread problems have been reported, however, with the disbursement of CASP grants. In September 2006, the DLA reported to Parliament that nearly R60 million of the first year's allocation of R200 million had been rolled over to the next year, as only R109 million had been spent. In the next year, R250 million was allocated, and another R43 million was rolled over. According to the DLA, however, even this estimate of actual expenditure may be overstated, as department officials had discovered that money counted as having been spent was merely 'parked' in a bank account to wait for tenders or other bureaucratic measures to be completed.⁴⁰ Further problems are highlighted in the LARP *Concept Document*:

the Comprehensive Agricultural Support Programme (CASP) which was instituted as a conditional grant to provincial Departments of Agriculture for support under six pillars was not synchronised with LRAD. The implementation of CASP initially focused on only one pillar, namely on and off farm infrastructure and thus support under CASP was not comprehensive. (DoA 2008: 17)

In 2006, the DLA, with support from Belgian Technical Co-operation, commissioned the Sustainable Development Consortium to develop a

39. *Farmers Weekly*, 18 November 2005, 'Didiza offers reasons for Limpopo failures'.

40. *Farmers Weekly*, 01 September 2006, 'MPs outraged at CASP's inefficiency'.

strategy for post-settlement support (SDC 2007). The resulting strategy, known as the Settlement and Implementation Support (SIS) Strategy, was officially launched by the Minister of Agriculture and Land Affairs in February 2008 (see Box).

While not yet adopted as policy by government departments, the proposals contained in the SIS strategy provide a comprehensive template for

a thorough overhaul of support services in the coming years.

An alternative vision is presented by LARP, which includes 'comprehensive agricultural support' as one of its core activities. Among the reforms proposed are that CASP be 're-branded' from its previous Division of Revenue Act (DORA) conditional grant character to a comprehensive ag-

Settlement and Implementation Support (SIS) Strategy

SIS presents a comprehensive strategy for settlement and implementation support for land and agrarian reform in South Africa.

Key elements of the conceptual framework are:

- reframing land reform as a joint programme of government with the active involvement of land reform participants, civil society and the private sector;
- measures to secure effective alignment of government actors in different spheres using the Ministry for Provincial and Local Government's draft guidelines for managing joint programmes in terms of the Intergovernmental Relations Framework Act (IGRFA);
- utilising area-based plans to locate planning and support needs in a clear spatial and fiscal framework within municipal IDPs;
- measures to determine, secure and manage land rights and ensure ongoing land rights management support from the state;
- measures to provide appropriate project-based training and learning, and strengthen capacity and institutional development;
- measures to improve access to social development benefits – health care, education, reasonable levels of service, and mitigate impacts of HIV/Aids;
- measures to ensure integrated natural resource management and sustainable human settlements; and
- comprehensive 'front-end' services to enhance individual household livelihoods, develop enterprises, and ensure access to finance, technical and business support.

These and other functions are to be facilitated and enabled by the formation of dedicated SIS entities at local and district municipal scales, interacting with local associations representing the interests of land reform beneficiaries.

SIS also proposes the formation of a new Chief Directorate of Settlement and Implementation Support within the Department of Land Affairs, with the responsibility of managing a joint programme of government in partnership with national and provincial departments of agriculture and putting in place the systems and procedures to enable the effective functioning of district and local support entities. It also proposes the establishment of an Inter-ministerial Forum in terms of IGRFA chaired by the Presidency to monitor the proposed joint programme. In addition, the SIS Strategy proposes measures to improve the alignment of the regional offices of the CRLR and DLA and suggests how provincial land rights offices (DLA) could be restructured to ensure that responsibility for managing provincial joint programmes and co-ordinating the provision of SIS services are appropriately located.

Source: SDC (2007)

gricultural support programme that will address 'the LARP universal access priority'. In the area of extension, LARP suggests that South Africa has approximately one-third of the number of extension officers required to meet its development targets and that 80% of the current extension staff are not adequately trained. It proposes a joint Extension Recovery Plan between the national and provincial departments of agriculture, which will extend over a number of years and for which funding has been approved by National Treasury. It also proposes that two or three key commodities be identified and promoted in each province, linking agricultural production, processing activities, input suppliers, consumer interests and local and international markets.

The integration of products and services from national, provincial, local government and the private sector is seen as crucial to the success and sustainability of those projects and the achievement of LARP objectives. The central proposal of LARP is, therefore, the concept of the 'one-stop shop' that will facilitate the integrated delivery of information and support services by various state and non-state agencies:

LARP will facilitate alignment and co-ordination of agricultural support services available at national, provincial and local level and in the private sector. A One-Stop Shop concept is envisaged to be developed under LARP which consists of service delivery and information centres close to the beneficiaries where initially all financing options and services, both grants and loans, private and public, will be made available to new farmers and where a farm business planning service can be accessed. Other social and economic services to farmers will be added to the service portfolio. (MoA 2008: 23)

It is not clear whether or how LARP, which has been adopted as official policy, and SIS, which remains at the proposal stage, will interact in future.

Lack of support for productive activities is compounded by a general lack of external support for collective landholding institutions such as CPAs and trusts. Recurring problems include a failure to define clear criteria for membership of the CPA or the rights and responsibilities of members, a lack of capacity for dealing with business and administrative issues, and a lack of democracy both in procedural matters and in terms of access to benefits (see Mayson, Barry &

Cronwright 1998; Cousins & Hornby 2002; CSIR 2005; Lahiff 2007b; Everingham & Jannecke 2006; Maisela 2007; Manenzhe 2007). These problems tend to be greatly compounded where the CPA is involved in commercial or productive activities on behalf of its members, in addition to the usual activities of land administration. A general lack of oversight and support from the DLA (which, in terms of the Communal Property Associations Act 28 of 1996, is responsible for monitoring CPAs and maintaining the public register of CPAs) means that problems within CPAs are not easily uncovered and, if they are, few remedies are available. According to a survey of communal property institutions (CPIs) conducted by the CSIR:

The majority of CPIs are partly functional from an institutional perspective but are largely or totally dysfunctional in terms of allocation of individual resources and the defining of clear usage rights, responsibilities, powers and procedures for members and the decision making body. Transparency and accountability is also often below what is required. (CSIR 2005: Executive summary)

The lack of an accurate and accessible CPA register makes it virtually impossible to verify details of a CPA's membership or regulations in the case of a dispute, but also indicates the failure to put in place any effective regulatory framework. According to the CSIR (2005: 58):

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

Comprehensive support for both agricultural production and group administration is a critical requirement of most land reform projects and, in the absence of affordable alternatives, it is likely that such services will have to be provided primarily by the state for the foreseeable future. The emergence of new strategies such as LARP and SIS suggests that the relevant departments at national level have grasped the importance of comprehensive and co-ordinated support and are open to innovative solutions. The challenge now is to overcome the multiple bureaucratic obstacles that exist at local and provincial lev-

els in order to ensure that support services are appropriate to the requirements on the ground and actually reach the people that need them most. Support to CPIs has been debated widely in recent years, but is not directly addressed in the recent wave of policy reforms (see Lahiff 2007b).

Conclusion

This status report has reviewed the state of land reform at the beginning of 2008, and has considered the prospects for the future, with particular attention to the question of land redistribution. The main conclusion drawn is that, following more than a decade of slow evolution, land policy is now in a period of considerable flux, with a variety of proposals and initiatives that seek to accelerate reform and overcome some of the long-standing difficulties it faces. Fundamental questions about the methods and direction of reform remain, however. There is still little clarity about how and which beneficiaries are to be targeted, the criteria for land acquisition, the models of land use that will be promoted and how support services will be delivered. Severe resource constraints, in terms of both finance and institutional capacity, have yet to be overcome. While strategies such as proactive land acquisition, expropriation and LARP appear to offer a break with past approaches, it is not clear that they enjoy sufficient political support for a radical restructuring of landholding and the agricultural economy. In the absence of effective mobilisation of the rural poor and landless, there is a strong likelihood that these new initiatives will continue to neglect the needs of marginalised groups and concentrate instead on promoting the entry of a relatively small number of black commercial farmers into the mainstream agricultural economy.

Central to any overhaul of policy must be reform of the institutions tasked to implement such policy. Lack of skills and capacity, and inability to spend allocated funds, have been repeatedly offered as reasons for underperformance by provincial offices of the DLA and provincial departments of agriculture. Almost entirely missing from the land reform scene has been local government, which has a vital role to play in the provision of services and local economic development if land reform is to achieve its objectives.

As important as the development of institutional capacity, however, is a shared vision of what land reform is trying to achieve, and clarity about the

roles of the various policy actors and the rights and responsibilities of intended beneficiaries; to this can be added the need for maximum participation by landless people and their organisations in both the design and implementation of policy. While various institutional reforms are underway, especially under the heading of LARP, there remains lack of agreement around exactly what land reform is intended to achieve and who should benefit.

As argued above, the response of policy-makers to the many problems associated with providing land to relatively poor people has been to take the programme 'up market', as occurred with LRAD and is now proposed under LARP. This has involved opening up the land reform programme to a wider target group (i.e. to include the better off), aiming for larger per capita holdings (ideally in the hands of individuals or small family groups), raising the entry requirements, in terms of skills and access to capital, and emphasising production for the market over home consumption. Rhetorical support for marginalised groups, such as farm dwellers, is of little value if programmes are fundamentally unsuited to their needs and force them to compete with better-resourced groups. A critical challenge for the land reform programme thus remains the development of strategies that effectively target groups such as the landless, the unemployed and farm dwellers, that concentrate resources in areas of greatest need and promote solutions that meet the needs of poor and landless people. Policies that focus largely on creating black agricultural 'entrepreneurs' are unlikely to have significant impacts on poverty or unemployment, even if they serve to de-racialise the commercial farming elite.

While redistributive reforms are central to overcoming the inequalities of the past and addressing the poverty of today, they are not the only way in which land reform can benefit the rural poor. Millions of residents on commercial farms continue to face abuse and eviction, and the farm dweller programme of the DLA has been utterly unequal to the task of preventing evictions, securing tenure rights for people on farms or ensuring that victims of eviction are prioritised within the land redistribution programme. Minimal information on the labour tenant programme has come into the public domain, and it appears that relatively little has been achieved in securing the rights of labour tenants. Labour tenants have featured among the beneficiar-

ies of land redistribution in KwaZulu-Natal, although it is questionable whether relocating tenant farmers from land to which they have long historical connections, often to relatively small holdings shared by numerous other families, is adequately upholding their rights.

Reform of communal tenure, meanwhile, has been caught up in legal battles around the rights of occupiers and the power of traditional leaders. It appears highly unlikely that current policy proposals, as embodied in the Communal Land Rights Act 11 of 2004, will achieve the much-needed objectives of securing land rights, reducing conflict and promoting development in the communal areas. Overall, tenure reform remains a critically weak aspect of South Africa's land reform programme, and will require substantial new investment and reformulation if the pressing tenure needs of occupiers across all categories of land are to be addressed.

Taken together, the various elements of the South African land reform programme have the potential to make a significant impact on rural poverty and unemployment, as well as addressing the inequalities and injustices inherited from the past. Progress to date, especially in areas such as redistribution and tenure reform, has been generally disappointing and it is clear that many major challenges lie ahead. Land reform has been dominated by state institutions, and recent shifts in policy continue the top-down, technocratic tendency of the past, with predict-

able emphasis on conventional models of land use based on large-scale commercial farming.

Meeting the needs of the rural poor and landless will require not only a more differentiated approach, but also mobilisation of a wider range of social actors – not least the rural poor and landless themselves.⁴¹ The low profile and limited capacity of land sector NGOs, and the absence of organisations of the landless capable of influencing policy debates, are major weaknesses that impact negatively on both the design and implementation of reform. While great emphasis continues to be placed by the ANC and land sector NGOs on the state to adopt more radical positions, and to accelerate land reform, it is likely that significant change – and change that is pro-poor – will depend at least as much on the ability of non-state actors to challenge orthodox thinking at the centre and shape the land reform process on the ground. Politically, the forces hostile to land reform – within business circles, within the agricultural 'establishment' of commercial farmer organisations, agri-business, conservative academics and even elements within the government – have shown themselves to be most effective in keeping radical restructuring of landholding and the agricultural economy off the policy agenda. It remains to be seen whether the demands of the National Land Summit and the ANC Polokwane conference can be translated into real policy changes that accelerate the process of transformation and prioritise the needs of the rural poor and landless.

41. See Hall (2008) for a discussion of some possible policy alternatives.

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