

# Land and agrarian reform in South Africa: A status report, 2002

Edited by Stephen Turner

with contributions by  
Ben Cousins  
Edward Lahiff  
and Poul Wisbourg



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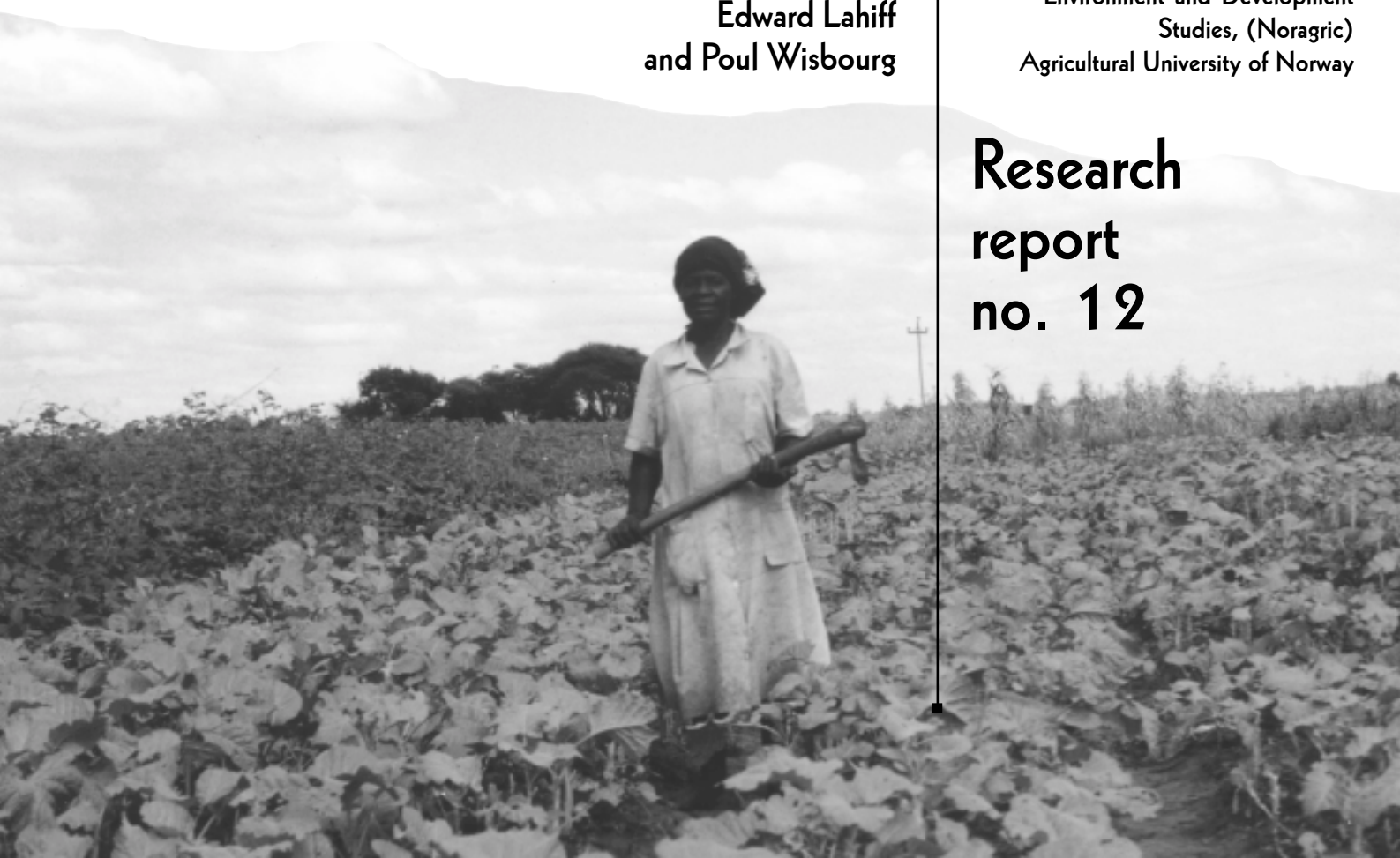


Norwegian Institute of  
Human Rights,  
University of Oslo



Centre for International  
Environment and Development  
Studies, (Noragric)  
Agricultural University of Norway

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Programme for Land  
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Programme for Land and Agrarian Studies, School of Government, University of the Western Cape, Private Bag X17, Bellville 7535, Cape Town, South Africa  
Tel: +27 21 959 3733; Fax: +27 21 959 3732; E-mail: [plaas@uwc.ac.za](mailto:plaas@uwc.ac.za)  
Website: [www.uwc.ac.za/plaas](http://www.uwc.ac.za/plaas)

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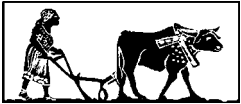
# Acronyms

CPA	communal property association
CRLR	Commission on the Restitution of Land Rights
DFA	Development Facilitation Act
DLA	Department of Land Affairs
DPLG	Department of Provincial and Local Government
EIA	environmental impact assessment
EIMP	Environmental Implementation and Management Plan
IDP	integrated development plan
IEM	integrated environmental management
ISRDS	Integrated Sustainable Rural Development Strategy
LA21	Local Agenda 21
LDOs	land development objectives
LRAD	Land Redistribution for Agricultural Development programme
NDA	National Department of Agriculture
NEMA	National Environmental Management Act
NGO	non-governmental organisation
NIHR	Norwegian Institution for Human Rights, University of Oslo
Noragric	Centre for International Environment and Development Studies, Agricultural University of Norway
PDAs	provincial departments of agriculture
PLAAS	Programme for Land and Agrarian Studies, University of the Western Cape
SLAG	Settlement and Land Acquisition Grant
TRANCRAA	Transformation of Certain Rural Areas Act
URS	Urban Renewal Strategy
WSSD	World Summit on Sustainable Development



# Preface

**T**his is the second in a series of 'status reports' on land and agrarian reform in South Africa published by the Programme for Land and Agrarian Studies (PLAAS). These reports set out to assess progress, problems and emerging perspectives within the land sector. The first status report (Turner & Ibsen 2000) discussed the period from 1994 to late 2000; this report discusses further developments in the sector since 2000.



It is again written as part of the collaborative programme between PLAAS, the Centre for International Environment and Development Studies (Noragric) at the Agricultural University of Norway, and the Norwegian Institute for Human Rights (NIHR) at the University of Oslo. The aim of the report is to contribute to the ongoing debate on land and agrarian reform in South Africa, and to enhance the understanding of the sector among Norwegians and South Africans.

The original intention in writing this report was to focus on the relationship between land and agrarian reform and sustainable development, and thus contribute to debates taking place before and during the World Summit on Sustainable Development (WSSD) in Johannesburg in August and September 2002. Those issues will now be dealt with in a separate report, with contributions by several authors. Here

the focus is on assessing progress in land reform over the past two years.

As a prelude to this debate, Chapter 3 of this report provides a critical analysis of the policy and guidelines of the Department of Land Affairs (DLA) for integrating environmental planning into the land reform process. It notes that although these guidelines have been approved by the Director-General, at the time of writing they were still awaiting approval by the Minister.

Chapter 1 sketches the historical background against which land and agrarian reform policies are being formulated and implemented. Chapter 2 describes developments and emerging themes since 2000 and up to mid-2002, including land invasions, HIV/Aids and the effects of 'the Zimbabwe crisis', and moves to an update on implementation of the land restitution and land redistribution sub-programmes, and an assessment of key problem areas. This is followed by a discussion of the debates which are currently taking place around the draft Communal Land Rights Bill.

Chapter 3, as mentioned above, assesses the new DLA policy and guidelines in relation to environmental planning. The report concludes with a summary of the key issues which have emerged within the sector over the past two years, and with which government and civil society will have to engage in the immediate future.

# Chapter 1: Background

In 1994, South Africa started a new life as a democratic nation. It faced immense challenges. Multiple economic, social and political transformations were needed to overcome the legacy of colonialism and apartheid. The racially-driven history of the prosperous South African economy had marginalised the black majority from access to resources and productive opportunities, and deprived most of them of the right to build secure homes and livelihoods in the urban areas where the nation's wealth was concentrated.

**O**ur previous status report on land and agrarian reform in South Africa summarised the ways in which this dispossession took place, and the kinds of poverty and livelihoods that it created (Turner & Ibsen 2000:2–4). Socially, the racism that black South Africans experienced at the hands of colonialists and settlers was not enormously different from that suffered by their counterparts elsewhere in Africa and Asia – at least until 1948, when it began to be systematised and institutionalised in the legislative programme of the National Party. Economically, the racial discrimination inherent in the process of European settlement was more rigidly enforced in South Africa than in many other colonies, through a programme of legislation that stretched back into the 19<sup>th</sup> century. These laws were made and enforced partly because, as diamond and gold mines began to lay the foundations of the modern South African economy, African farmers responded vigorously to the new market opportunities for their crops. They outperformed white agriculture and, as prosperous farmers, would not be available in adequate numbers for labour in the mines. They had to be deprived of their rural rights and opportunities so that they would

not compete with the regime's important rural white farming constituency, and would be forced to seek employment in the mining and industrial sectors. At the same time, they were deprived of full urban residential and land-owning rights in order to facilitate white employers' control of the work force, and maintain white political and economic dominance of the nation's commercial heartland.

By the late 20<sup>th</sup> century and the end of apartheid, there were two broad kinds of South African rural poverty, associated with two kinds of livelihoods (Turner & Ibsen 2000:4):

- There were still substantial numbers of black people living in the white-owned farming districts that covered most of the country. These were either farm workers, labour tenants or their dependants. Wages, working and living conditions had always been very poor. Changes in production methods and markets meant a constriction in the farm labour force, increasing evictions and rural homelessness, and greater hardship for those who remained on the farms.
- The majority of the rural population were concentrated in the bantustans or native reserves that, in apartheid





doublespeak, were the only legitimate homes and territory of Africans. There, they supposedly owned land and could pursue African livelihoods. In fact, they were usually forced to combine subsistence agriculture in these 'homelands' with migrant labour for subsistence wages in the mines and factories of white South Africa. Land tenure and administration in the 'homelands' was insecure and increasingly ineffective, constrained by apartheid's corruption and distortion of indigenous systems of governance.

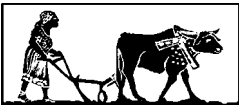
Urban poverty mirrored these conditions. Influx control had some effect in limiting the black population of the towns for most of the apartheid era. Nevertheless, generations were born, lived and died in the townships established for various racial groups. Rendered socially dysfunctional by the migrant labour system and its associated control of family movements, the townships offered the hope of employment and a reality of deep poverty for most of those who came to them. They offered no land or housing rights comparable to those in the white residential areas, but they remained an economic and social magnet for those living in the poverty and isolation of the white farms and the bantustans. When influx control was lifted in the 1980s, the growth in township populations accelerated, and extensive squatter settlements appeared in and around towns and cities of all sizes. Although it was not always recognised at the time, the strongest component of the land crisis that faced South Africa in 1994 was the need for secure title to residential land.

The dispossession of Africans from their ancestral lands, the forced removals that were carried out in the name of apartheid, and the systematic exclusion of blacks from land rights and related opportunities across most of the nation were central concerns in the policies of the liberation movements. Land and agrarian reform were thus key principles in the Freedom Charter of 1955 (Turner & Ibsen

2000:5), and remained core priorities for the African National Congress as it built its programmes during the 1980s and early 1990s. The loss and lack of land rights were among the most obvious injustices of apartheid, and it is not surprising that the manner of their redress should have been one of the most sensitive subjects in the protracted negotiations that ultimately led to a democratic government and constitution.

Indeed, the South African Constitution of 1996 requires the government to achieve several kinds of land reform. It provides for the restitution of property rights to those who lost them due to racially discriminatory laws or practices since 1913. It requires a land redistribution programme 'to foster conditions which enable citizens to gain access to land on an equitable basis'. It also addresses the tenure insecurity that undermines livelihoods. 'A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress' (Section 25).

The history of apartheid and of democratic policy making up to the mid 1990s clearly created the expectation that land reform would be a central priority for the new South Africa. When the new Department of Land Affairs began detailed design of the land reform programme in 1994, it structured its work around the three constitutional imperatives outlined above. Laws were passed to underpin programmes of land restitution and redistribution. Both activities started slowly, but were able to show at least some practical progress by the late 1990s. There were a number of other initiatives to try and protect and enhance the rights and production opportunities of those living and working on commercial farms; to reform the system of labour tenancy in KwaZulu-Natal and Mpumalanga provinces; and to restructure access to and use of municipal commonages.



Deciding what to do about tenure reform for the communal areas in the former bantustans was a more complex challenge. Interim legislation was passed in 1996 to try and protect existing rights in these areas. Meanwhile, pilot tenure reform projects and protracted consultations and drafting work tried to identify the most feasible way forward for communal land rights law. A Bill was ready for submission to Parliament in 1999, but was deferred because of the general elections of that year. The Minister of Land Affairs was replaced after the election. The new Minister decided on a significantly different approach to communal areas tenure reform, which initially emphasised the possibility of transferring this land to chiefs on behalf of the people they supposedly served and represented. Up to the time of our previous status report, little had been done to convert the new approach into draft legislation.

By 2000, the restitution programme was working more quickly, following some administrative streamlining. But scepticism remained about how many years and how much money would be needed for it to be successfully concluded, particularly since most of the more complex rural restitution claims had not yet been tackled. The redistribution programme had been brought almost to a halt by the protracted process of redesign introduced in 1999 by the new Minister. Her changes focused more on the promotion of black commercial farmers than on the poverty alleviation that had been a prominent aim of previous redistribution work. But much time and morale were lost by DLA as the Integrated Programme of Land Redistribution and Agricultural Development went through its successive drafts.

This, in brief, is the background to South African land and agrarian reform as we find them in 2002. We now present a summary update of developments in the sector since 2000.

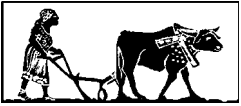


# Chapter 2: The status of land reform in South Africa in 2002

Searching the South African press for references to land reform over the last year and a half yields far more articles about Zimbabwe than about South Africa. The continuing tension over land in Zimbabwe has cast a long shadow over the South African economy, and has intensified debate about whether South African land reform programmes will avert a Zimbabwe-style crisis (Lahiff & Cousins 2001).

## Major developments and emerging themes since 2000

The initial, panicky speculation of 2000 about 'whether it could happen here' has given way to more measured debate, but national attention continues to be more strongly focused on land reform issues than it was before the Zimbabwean elections and burgeoning farm invasions of the past two years. White farmers in South Africa have reacted, predictably, with calls for stronger security measures to protect their property and their lives – not only against potential invasions, but also against the very real, continuing increase in rural crime. They have also called for more effective land redistribution, and have supported moves by DLA to focus on supporting emerging black commercial farmers.



Not surprisingly, South African politics has reacted to the Zimbabwean land crisis at various levels. None of the main parties referred to land reform in their general election manifestos in 1999 (Lahiff 2001a:4). But over the last two years they have all made various pronouncements on the subject, largely to the effect that South African land reform needs to be accelerated and made more effective. At the same time, despite various political signals of solidarity with Zanu-PF (the ruling party in Zimbabwe), government has not radically changed its willing buyer-willing seller, demand-driven approach to land redistribution, and has remained reluctant to expropriate land from white owners despite the legal powers it has to do so (see Box 1). At a superficial level, government appeared to react to the Zimbabwean land crisis with politically expedient pronounce-

### Box 1: Minister Didiza on Zimbabwe

*'Despite calls by various stakeholders at the recent Land Tenure conference in Durban to expropriate land or interfere in the free-market use of land, [Minister of Land Affairs] Didiza says the emphasis "is on sustainable reform and thoughts of Zimbabwe-style expropriation will not be entertained... The fact that we negotiate makes us very different from Zimbabwe. While they also started out with a willing seller-willing buyer principle, they digressed and chose expropriation. We are concerned with ensuring we don't create just such an imbalance' (Business Day 3 December 2001).*

ments. At the level of national budgeting and programme delivery, however, it continues to give land reform low priority. As 2002 wears on and land invasions north of the Limpopo make headlines less often, the 'Zimbabwe effect' on South African land reform debate seems to be fading.

Events in Zimbabwe have given particular prominence to the question of land redistribution in South Africa. A noticeable trend in this country over the last 18 months has been increasing media attention to 'landlessness'. This has been particularly important because of its urban dimension. In fact, the primary element of concern in the land invasions that have made the headlines has been people's need for land for housing. While many people's main impression of land reform has been that it is a rural affair, the higher profile of these urban invasions has emphasised the land dimension of the low-income housing crisis in the towns. The distinction between land for settlement needs and land for production purposes was never clear in the predominantly rural land redistribution work of the 1990s. Now it is increasingly evident that a major effort is needed to give the rapidly swelling numbers of the urban poor land on which to house themselves. The need to clarify and balance the urban and rural components of land reform, and to rationalise the relationship between land and housing policies, has become more urgent.

Landlessness hit the headlines in July 2001 when large numbers of squatters

invaded privately-owned land at Bredell in Gauteng. Thousands of people 'bought' plots at Bredell from the Pan Africanist Congress, which opportunistically sought to bring attention to itself and to the issue by orchestrating the invasion and 'selling' the holdings to the homeless at R25 each. After a two-week stand off, government evicted the squatters and demolished some 1 500 shacks that they had built, making a number of public assurances to jittery markets and land owners that land invasions would not be tolerated in this country.

Although the Bredell crisis was quickly contained on the ground, the issue of landlessness has been more prominent in the public consciousness since. A national Landless People's Movement was established in July 2001. It adopted a Landless People's Charter during the United Nations World Conference Against Racism in August, under the slogan 'landlessness equals racism' (see Box 2). There have been various gatherings and pronouncements on the issue since then, notably at the national land tenure conference that DLA convened in late November 2001. There have been threats by landless people to take land if the government will not make it available, and repeated pronouncements by government that it will not tolerate land invasions or infringement of property rights in South Africa.

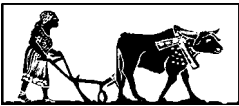
Especially during 2001, the debate on landlessness was also framed by the question of South Africans' rights to land



### Box 2: Landlessness=Racism campaign

*The continued landlessness of the majority of black South African women and men – both rural and urban – is rooted in our country's history of colonialism and apartheid, but has been reinforced by the policy prescriptions of the World Bank, International Monetary Fund and other organs of international finance capital which have defined a narrow neo-liberal macroeconomic strategy for post-apartheid South Africa... A nation that remains rooted on land owned by the coloniser remains colonised. Colonialism and apartheid gave racism its material roots through land dispossession. Racism cannot be defeated without uprooting this legacy by reclaiming the stolen land (Landlessness=Racism campaign 2001).*

and shelter, following the judgment of the Constitutional Court the previous year in the Grootboom case. Irene Grootboom and others had been repeatedly evicted from various squatter settlements in the Western Cape. They contested the eviction with the argument that homeless South Africans like themselves had a constitutional right to shelter. The Constitutional Court found in their favour, ordering government to set aside 'a reasonable proportion of their budget to provide relief for people who have no access to land, no roof over their heads, and who are living in intolerable conditions or crisis situations' (*Business Day* 19 July 2001). Once again, the focus of the attention arising from this case was on housing, and primarily on urban landlessness, rather than land for farming with which the land reform programme had mainly been concerned. While the Grootboom judgement has proved difficult to enforce, it has, nevertheless, helped publicise the plight of the poor and landless in South Africa, and the obligation on the government to promote access to land.



Another recurrent theme in commentary on South African land reform over the last two years has been the declining budgets allocated to DLA for its programme. These dwindling allocations are linked to the under-performance of DLA as, in the midst of protracted policy reappraisals, it failed to spend all the funds it had received from the National Treasury. These budgets have always been a minuscule proportion of total government spending: 0.24% in 2001/02, after DLA had underspent its capital budget for 2000/01 by R125 million (Claassens & Wheelan 2002:5). The February 2002 budget also disappointed land activists, proposing that DLA's share of the government total decline from 0.37% in 2001/02 to 0.34% in 2004/05 (with a decrease in real terms of 9% over the previous year's budget). While the budget for restitution is set to grow by 30% over that period, spending on land redistribution and tenure reform is set to shrink by 25%. In the first ten months of its 2001/02

financial year, DLA reportedly spent only 50% of its budget (Mingo 2002:11). The under-performance and declining budgets of DLA partly reflect the long periods of comparative inactivity, strategic confusion and low departmental morale that resulted from policy reappraisals since 1999. But they also show that, despite events in Zimbabwe and the heightened tensions in this country over land invasions and land redistribution, government shows little capacity or desire to accelerate delivery of land reform.

There have been significant shifts in responsibility for land and agrarian reform since 2000. The more obvious of these is the stronger role that Minister Didiza has given to the National Department of Agriculture (NDA), particularly in the execution of the Land Redistribution for Agricultural Development (LRAD) programme – although this is complicated by the fact that her national department has no operational role at farm level. That responsibility lies with the nine provincial departments of agriculture (PDAs), which are also participating (some more vigorously than others) in LRAD.

A less obvious development has been the emerging role of local government in land reform planning and delivery. Many commentators have called for a more supply-driven, integrated approach to land reform design and implementation in priority areas. Although DLA has acknowledged the desirability of moving in this direction (DLA 2001c), it has made little progress so far. But it has created more space for local governments to help design and steer land reform in their areas. The Amatole District Municipality in the Eastern Cape has been one of the pioneers in merging land reform requirements into the Integrated Development Plan that all municipalities are now required to prepare and execute. It has received R33 million for its Land Reform and Settlement Plan (for the central part of its area) through a framework agreement with DLA (see Box 3). Most of this budget has been devoted

to land reform for settlement, although some provision has also been made for production. Agricultural land reform also receives some attention from local government through participation in the district assessment committees that are being established to consider applications for LRAD grants.

The biggest issue in South Africa throughout this decade is likely to be HIV/Aids. DLA now assumes that 15–35% of potential land reform beneficiaries are HIV-positive, and that 20–35% of staff in the various agencies supporting land reform are too (*Business Day* 30 May 2002; see also Drimie & Heustice 2001). It is reported that DLA is now considering ways to adjust its policies to reflect the fact that many land reform beneficiaries will not live long enough to build sustainable livelihoods for themselves and their families on the land they receive. These policy changes are intended to ensure that those with Aids benefit more from land redistribution. DLA's HIV/Aids co-ordinator was recently quoted as saying that 'We may need to consider how poverty alleviation components [of programmes] may need to be adapted to meet challenges posed by HIV/Aids. It is a threat to sustainable agricultural and rural development through its systematic impact.'

These have been some of the most prominent general themes and develop-

ments in South African land and agrarian reform since 2000. There have been a number of additional developments in the various sub-sectors of the programme, which are summarised below.

### Land restitution

Since 2000, there has been a rapid increase in the number of land restitution claims that have been settled. Of the approximately 69 000 claims lodged, 29 877 (43%) had been settled by 31 March 2002, although it should be noted that the manner in which these statistics are derived appears to differ from that of previous years (CRLR (Commission on Restitution of Land Rights) 2002a). The Commission is currently undertaking a 'validation project', with Belgian support, which aims to validate all outstanding claims by 30 June 2002. Validation means a check whether a land claim complies with the requirements of the Restitution of Land Rights Act. Meanwhile, the President has announced that all land claims would be finalised by the end of 2004, which would require a dramatic increase in budgetary allocations and has already been publicly questioned by some senior officials (Hooper-Box 2002). In the 2001/02 financial year, the restitution budget of R136 million had been used up by October, and the shortfall of R100 million needed to



### Box 3: An integrated approach to land reform

*The strengths of the integrated approach to land reform as pioneered in the Amatole area can be summarised as:*

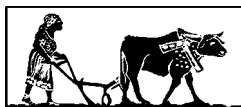
- *a clear focus on, and commitment to, land issues by the District Council ('ownership' of the policy area);*
- *a thorough process of public consultation;*
- *well-organised and articulate communities;*
- *effective NGOs with a clear vision of land reform...*
- *availability of a range of technical skills both within the District Council and on contract from the private sector;*
- *active participation by all key stakeholders: government (local, provincial and national), communities, NGOs, private sector and farmers' unions (both as landowners and as potential beneficiaries) (Lahiff 2002:40).*

fund restitution activities for the year was transferred from other DLA programmes. Mingo estimates that a six-fold increase in the restitution budget will be required if the December 2004 target is to be met (Mingo 2002:8).

As in the previous years of the restitution programme, it is important to distinguish the greater number of urban claims settled from the smaller number of rural ones that have been dealt with. One of the main reasons why it has been possible to accelerate the programme is that a 'standard settlement offer' of R40 000 per property was introduced for urban claims (there is usually one property per urban claim). It may be seen from Table 2 that, although over 5 000 claims (involving a similar number of households) have been settled in Gauteng, no land has actually been restored there. This rapid progress with

**Table 1: Cost of land restitution programme to date**

	R million
Land cost	377
Financial compensation	951
Restitution Discretionary Grant	120
Settlement and Planning Grant	40
Solatium	6
<b>Total</b>	<b>1 494</b>



urban claims has led some observers to caution that much more complex challenges lie ahead when large rural claims have to be tackled, each involving hundreds or even thousands of households. Others have argued that, up to recently, 'the state has actually prioritised, and committed most of its resources to, urban claims, perhaps due to pressure from the better organised and more vocal urban claimants or in order to be seen to be making headway in terms of numbers of claims settled' (Lahiff 2002:16-7). Since 2000, however, the Commission has argued that rural claims need more attention: 'due to the large numbers of people

involved in rural restitution claims, a policy decision was taken to prioritise such claims in order to reach more people' (CRLR 2002b).

As in earlier years, some white farm owners have resisted the restitution process. There have been continuing calls for more frequent use of the expropriation powers that the legislation confers on the Minister. The most prominent such case in 2001 concerned the farm Boomplaats in Mpumalanga, where an expropriation notice was issued against the more recalcitrant of the two owners but subsequently withdrawn. Negotiations were restarted and a sale ultimately agreed. The farmer left early this year, reportedly taking with him every fitting that he could remove from the farmhouse (*Business Day* 11 January 2002). Meanwhile, other white farmers are making restitution claims of their own for land expropriated from them by the apartheid government for homeland expansion. They claim, and the Commission denies, that the slow treatment of their cases constitutes discrimination (*Business Day* 5 March 2002).

The urban restitution process can be expected to continue along its current rapid track, although some critics argue that when the urban compensation consists so largely of cash payments it cannot really be called land reform – since there is no transfer of land or redress of skewed land ownership. The rural restitution process remains more problematic. There have been several key issues and developments in this regard since 2000.

The first of these concerns the size and complexity of the rural restitution challenge, and the question whether government will be tempted to try a standard cash compensation payment here too. This would be a controversial solution. As in the urban areas, it contradicts the common assumption that restitution is about returning land to its rightful owners. But it might tempt many claimants, and it would seem to be the only conceivable way in which government could meet its public target of December 2004.

**Table 2: Land restitution claims settled at 31 March 2002**

	No. of claims settled	Households involved	Beneficiaries	Land restored (hectares)
Eastern Cape	9 222	18 431	81 751	27 101
Free State	1 147	914	2 926	5 339
Gauteng	5 497	5 444	28 204	0
KwaZulu-Natal	7 233	12 034	70 015	61 691
Limpopo	508	7 660	34 408	28 874
Mpumalanga	254	3 409	15 054	18 504
North West	1 050	5 628	44 614	58 814
Northern Cape	410	3 783	19 156	221 759
Western Cape	4 556	4 942	36 115	5 255
<b>Total</b>	<b>29 877</b>	<b>62 245</b>	<b>332 243</b>	<b>427 337</b>

Source: CRLR 2002a.

A second development has been an emerging concern with the sustainability of land use by rural restitution beneficiaries. In its earlier years, the restitution process was criticised for making little or no provision for planning or extension support to those who regained their land. Now, various pronouncements of the Commission make increasing reference to the need to promote sustainable development on restored land (see Box 4). More thorough efforts are being made to link beneficiaries into the rural development planning procedures that are gradually becoming more coherent in some parts of the country. Again, the Eastern Cape appears to be leading the country in this regard. There, the Regional Land Claims Commission has established a Settlement Support and Development Planning Division for these purposes. On the other side of the country, the Commission has taken steps to support the ≠Khomani San community, who took ownership of six farms through the restitution process in 1999. Since then the condition of the farms and their potential for supporting the community's sustainable development has deteriorated, and a manager has now been appointed to support the Communal Property

Association (CPA). The Chief Land Claims Commissioner was quoted as saying that 'Overall, the government has now spent R1.4 billion on the acquisition of land. Any wise investor doesn't just leave their capital investment and turn their back... We must ensure that the capital we've invested in the acquisition of land will pay dividends, at least for the community, over time' (*Mail & Guardian* 22 February 2002). Meanwhile, however, there is little to show that provincial departments of agriculture can provide the extension services that restitution or other rural land reform beneficiaries need. Not only are they losing their field capacity, but they typically lack the technologies that small-scale farming needs (Turner 2001:2).

The third significant development has been increasing attention to land claims and restitution in the former homelands. While the restitution process has mostly been thought of as addressing claims for land now privately owned in the freehold sector, two kinds of injustice are now recognised as deserving potential restitution in the communal areas:

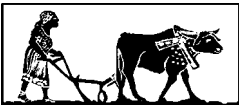
- The first of these concerns the expropriation and resettlement undertaken as part of the apartheid regime's 'better-





ment' process of forced land use planning. The pioneer case was that of the Chatha community in the Eastern Cape, which was forcibly relocated during 'betterment' in 1962. In an out of court settlement in late 2000, it was agreed that returning the community to their former land was impractical. In this case, a three-part package was decided. It comprised a cash payment of about R15 000 to each of the 334 claimant households; a contribution of R6.25 million for community development purposes; and upgrading of tenure on 2 582ha of communal grazing land to freehold ownership by the group (Lahiff 2002:20-1). In keeping with current trends, a development plan has been drawn up for this beneficiary community.

- The second type of loss in the former homelands now being increasingly addressed by restitution concerns the excision of land by the state for such purposes as agricultural projects, nature reserves and forestry. These losses were



widespread in areas such as the former Transkei, where a number of restitution agreements have now been achieved or are being negotiated. The long-standing claim over the Dwesa-Cwebe nature reserve, for example, was settled in 2001, when ownership of the reserve (which will continue to be dedicated to conservation) was handed over to a communal property association. Forestry claims are complicated by the government's simultaneous commitment to the privatisation of state forests (Lahiff 2002:21-2).

### Land redistribution

The flagship of DLA's land redistribution efforts over the last two years has been the Land Redistribution for Agricultural Development programme. LRAD's main emphasis is on the transfer of agricultural land to people from the formerly disadvantaged groups who have the resources and the commitment to build themselves up as commercial farmers. As Lahiff (2001a:14) has pointed out, 'nowhere is the shift in

#### Box 4: Statement by the Chief Land Claims Commissioner

*As more and more land is being restored to both individual households and communities, especially in rural areas, the question of land management which supports sustainable land use patterns, is being brought to sharp focus. Government support in the form of a Planning Grant of R1 440 per household and a Restitution Discretionary Grant of R3 000 per household are just not enough to ensure that as people return to land that they will be able to utilise it in a way conducive to sustainable development. As a matter of deliberate and conscious policy, the Commission on Restitution of Land Rights is acting as a catalyst, an agent for change, which links communities, where land has been restored, with donor organisations... The land restitution programme aims to encourage communities to seize the opportunities of utilising their restored land for sustainable development, but it will take more than encouragement for communities to do this. It calls for material support... The challenge is for all people of goodwill... to join hands with the South African government, in working towards a better life for all in the area of land reform, in general, and land restitution in particular. Such a well considered, well planned and well-resourced approach will bring sobriety to the fire-eaters who want to push recklessly for land invasions, with dire consequences for all involved.*

*Next year, 2002, as South Africa hosts the World Earth Summit on sustainable development, we are challenged to think, and act, sustainable development in all we do.*  
Chief Land Claims Commissioner Wallace Mgoqi, 2001.

emphasis more obvious than in the replacement of an income ceiling (a *maximum* of R1 500 per month per household) for qualifying applicants with a floor for own contribution (a *minimum* of R5 000 per person)'. LRAD, which was discussed in more detail in the previous status report (Turner & Ibsen 2000:37–42), was officially launched by Minister Didiza in Mpumalanga in August 2001, although the mechanism was also used for the transfer of state land to former tenants at Port St Johns in the Eastern Cape in May of that year. LRAD is jointly implemented by the Minister's two departments: the National Department of Agriculture and the Department of Land Affairs, and it was NDA that reported in late March 2002 that 56 225ha of land had so far been distributed under the programme. A further 2 681 applications were said to be under review (NDA 2002:1).

DLA documentation claims that LRAD is the agricultural component of the department's land redistribution programme, which also comprises a settlement component and a component for non-agricultural enterprises, such as ecotourism. DLA's strategic planning for 2001/02 (DLA 2001a) puts it a little differently, specifying the following 'policies and programmes' to achieve the 'key outputs' shown in Box 5:

- LRAD
- state land disposal
- tenure reform
- labour tenants and farm workers
- land for settlement
- the Land Reform Credit Facility
- DLA contributions to the Integrated Sustainable Rural Development Strategy (ISRDS) and the Urban Renewal Strategy (URS).

The department's formal strategic plan for 2001/02 sheds more light on the structure

#### Box 5: DLA key outputs: Strategic Implementation Programme 2001/02

- *Link land reform programmes to developmental objectives*
- *Implement land acquisition programme and new grant structure for LRAD*
- *Accelerate the pace of disposal of 669,000 hectares of state agricultural land*
- *Finalise tenure reform policy through relevant legislative amendments*
- *Align Deeds, Survey and Mapping functions to support land reform (in particular tenure reform)*
- *Target vulnerable groups, such as labour tenants, farm workers and landless communities for resettlement within context of LRAD or ISRDS*
- *Link up with NDA to create agri-villages*
- *Implement tenure reform in ISRDS nodes*
- *Implement pro-active and effective land acquisition programme to fulfil redistribution policy objectives*
- *Assist with the acquisition of land to support Urban Renewal Programme*
- *Amend and align land administration legislation, especially with respect to communal land*
- *Implement decentralised delivery system ensuring synergy with local government*
- *Improve and expand monitoring and evaluation systems*
- *Align support services to land reform*
- *Develop a comprehensive Human Resource Plan (DLA 2001a).*



of redistribution activities. It proposes that 305 000ha of land would be transferred under 'land reform grants'. Of this, 70% would be for LRAD and 30% would be for settlement; 2.5% of the LRAD land would be for 'marginalised communities'. This does not necessarily mean the very poor. 'Marginalised communities' are defined as women, youth, the disabled, labour tenants and farm workers. Half of the land to be transferred for settlement purposes, on the other hand, would be dedicated to marginalised communities, while 7% of the settlement land grants would contribute to the Urban Renewal Programme. The plan also intended that 669 000ha of state land would be distributed during the year.

Unfortunately the most recent statistics available from the DLA Directorate: Monitoring and Evaluation lump all forms of 'land reform projects' together. They combine land redistribution under both LRAD and the older Settlement and Land Acquisition Grant (SLAG); commonage and farm share equity schemes; projects under the Extension of Security of Tenure Act; and labour tenant projects, making it impossible to judge the progress of the various sub-programmes.

Table 3 clearly shows the dip in the number of projects and area transferred

that resulted from the Minister's 1999 moratorium on the land redistribution programme, and the substantial increase in 2000 after the moratorium was lifted and projects in the pipeline were allowed through. In 2001 the total area transferred dipped again. DLA has been reported as saying this is because 2000 transfers had been unnaturally high, and 2001 showed a return to a more normal rate (*Business Day* 6 December 2001). Another explanation is that confusion over land redistribution programmes continued in 2001, with LRAD only just being launched and the former SLAG now apparently restricted to settlement projects without an agricultural component.

Although we do not have a full set of data to demonstrate the trend, anecdotal evidence suggests that the pace of the land redistribution programme has been picking up over the last twelve months. LRAD transfers are starting to take off in some provinces. SLAG continues to be used, although the criteria are not always clear and there is substantial variation from province to province. State land disposals through the land reform programme have also begun. The decentralisation of decision making to provincial offices of DLA seems to have helped to speed up procedures.



	No. of projects	No. of households	Land transferred (ha)
1994	2	565	6 598
1995	17	2 923	18 179
1996	41	4 289	54 448
1997	87	9 846	127 750
1998	183	12 249	238 708
1999	142	18 304	190 916
2000	214	25 964	248 338
2001	214	15 847	199 110
Unspecified	31	8 971	19 961
<b>Total</b>	<b>931</b>	<b>98 958</b>	<b>1098 008</b>

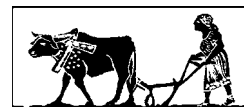
Source: DLA.

While the previous SLAG programme was widely criticised for confusing the demand for land for residential purposes with the need for land for agricultural production, the switch to LRAD would once again seem to miss the point. The rigid distinction between land for residential and productive use may make sense from a planning perspective, but it fails to capture the multiple needs of rural households which typically include both types of land as part of a diverse livelihood strategy. Focusing exclusively on the small minority of households able and willing to engage in full-time commercial farming, while resigning the majority to the 'settlement' or 'food security' sectors, is to ignore the reality of rural life in much of South Africa. Overall, the redistribution programme shows little sign of being able to tackle the landlessness and poverty that ought to be its primary concerns. Indeed, it is the restitution programme that shows a more active concern with rural livelihoods. Meanwhile, the commonage programme that had proved so popular in provinces like the Free State seems to have been absorbed into LRAD, although in practice there is confusion about whether or how the programme can still be applied. The official position is that the commonage grant facility remains available, as a way of improving people's access to municipal land. But the pace of the commonage programme is slowing down (a total of 57 grants have been made so far), and it appears that DLA does not want this facility to be seen as an alternative to the LRAD package.

LRAD does show an improved degree of collaboration between DLA and the national and provincial departments of agriculture, something that earlier critiques of South African land reform had called for. It is ironic that this flagship of the land reform programme is perceived by many in DLA as an imposition from the National Department of Agriculture. NDA, on the other hand, has little or no operational responsibility or capacity for LRAD; and

the commitment of PDAs to the programme is far from assured.

A further continuing concern in South African land redistribution is the failure of the programme to adopt a more proactive approach to area-based planning and land acquisitions. DLA refers to focused programmes in ISRDS nodal areas, but for as long as the ISRDS lacks effective vision and additional resources, this is unlikely to have much impact on poverty or land access. Indeed, the majority of the projects identified to date in the 13 nodal areas are predictably focused on infrastructure (DPLG 2001). The District Assessment Committees introduced to review LRAD applications provide a welcome degree of departmental co-ordination, but not necessarily spatial coherence. Land redistribution in rural South Africa continues to be influenced more by existing property owners than by the needs ('demands') of the rural poor. In the current buyer's market for South African farm land, government is missing important opportunities for land transfers on a significant scale (*Business Day* 4 January 2001). Presumably government is reluctant to adopt a more interventionist stance lest this be interpreted as interference in the free market and Zimbabwe-style expropriation. Market stability and international investor confidence are clearly higher priorities at present than land redistribution. While the need for urban land redistribution has become much more urgent, as shown by the events of 2001 at Bredell, the policy response in this sector is even less co-ordinated than it is for agricultural land redistribution. Government's rural target remains the redistribution of 30% of South Africa's agricultural land to black farmers within 15–20 years (DLA 2001c). At current rates that target is unlikely to be met. But considering the rate at which rural black South Africans are redistributing themselves to the urban areas, it is also essential to have a target and a coherent programme for making residential land available there.



## Land tenure reform

For most of 2001, little seemed to happen with regard to land tenure reform. Following Minister Didiza's decision to shelve the previous draft Land Rights Bill, DLA staff and consultants worked for many months on a new version that would express the revised policy she had introduced. The changed approach envisaged the transfer of land in the communal areas to 'African traditional communities' (earlier references to 'tribes' became less common), with a much stronger role for chiefs in the administration – or conceivably the ownership – of communal land.

By the end of the year, the revised Bill was at an advanced stage of preparation. To its credit, DLA organised a large national land tenure conference in Durban at the end of November to debate its ideas. But the department did not officially release the Bill either before or at the conference. An unofficial draft was leaked shortly before the conference, but many participants did not see it and there were strong calls for a more transparent consultation process following the conference. Chiefs, the landless, land NGOs, commercial farmers' organisations, researchers and other interest groups were all well represented at the conference, during which the approach of the proposed new Bill was heavily criticised. DLA – without having formally tabled the Bill – accepted that much more work would have to be done on it. At the core of the controversy was the concept of transferring land to 'African traditional communities', and the correspondingly powerful role that this would confer on chiefs. The fundamental divide was between those who believe that communal areas residents should choose what system of land management they prefer and those who say that chiefs should automatically be granted a leading role.

Linked to the powers of the chiefs is this concept of 'community', and how membership of such a land-owning group would, or could fairly, be defined. Deciding what an 'African traditional commu-

nity' is, or who belongs to it, or on what terms, would at best be highly contentious. Many observers believe that there is no democratic way in which it could work, because of the ethnic and political dimensions to any such process, and the difficulties of defining individual rights within groups (Claassens 2001).

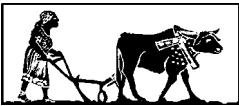
For this reason, some civil society groups proposed that the starting point of the Bill should be recognition of the *de facto* land tenure rights which exist on the ground, whether or not these are framed in terms of 'community rules'. These rights would derive from verifiable realities and practices such as length of occupation, and established patterns of occupation and use.

In a handout distributed at the November 2001 conference, the National Land Committee's Technical Committee on Tenure Reform asserted that:

*Under apartheid hundreds of thousands of people were forcibly removed from farms and 'black spots' and dumped in areas under the jurisdiction of chiefs recognised by government. The de facto rights of these people do not derive from 'shared rules', but from the fact of their established occupation and land use, and from acceptance of these by their neighbours.*

*.....the nested character of most systems of communal land rights, within a hierarchy of neighbourhoods, sub-villages, villages, wards, chieftainships, (and sometimes 'tribes' or even 'nations') makes definition of 'community' intrinsically difficult. Where precisely will the boundaries of the 'community' lie? The danger in assuming that there exist easily identifiable 'communities' with 'shared rules' is that this works to shore up the power of traditional leaders, who may or may not enjoy the support of people under their jurisdiction.*

A related concern that arose at the conference is that of institutional support for land



rights holders. What sort of agencies and officials should support the initial adjudication of land rights as a new tenure dispensation is enacted, and how should the ongoing functions of land administration be performed? Over the years there has been much discussion about appointing land rights officers and establishing land boards analogous to those of Botswana. These ideas were raised again at the conference, but there would appear to be a strong reluctance on the part of the state to create new, and potentially costly, structures to oversee the administration of communal land.

There was no clear outcome to the debate at the conference, beyond a commitment by DLA to follow a public consultation process on the revisions that would have to follow. Some of the resolutions taken by the conference and recorded by DLA are reproduced in Box 6. They show that opinions remained divided about the role of chiefs in communal areas land tenure and management.

Meanwhile, further redrafting of the Bill is under way. This time, DLA has sought the direct inputs of a wider range of academic and NGO advisers. The latest reported plans were that the department hoped to present the Bill to Parliament in September 2002. At the time of writing that seems unlikely, especially since in April fundamental conceptual problems were still being reported by a member of the Minister's review committee:

*The outcome of the drafting process is still unclear. On the one hand, the traditional leader lobby is still vociferously making known its claims for a central and guaranteed role in land allocation and use. On the other, NGO activists and policy analysts are arguing for strong and protected land rights based on established occupation and use, (rather than on community membership and agreed rules), and for a free choice by rights holders of the local land administration body. From the side of the state, Cabinet is likely*

*to be reluctant to commit significant resources to institutional support structures on a wide scale, and to favour a 'minimalist' piece of legislation. Missing as yet from the debates are the voices of the rural communities to be affected by the new law ... Public consultation on the draft Bill, as is required by law, will open the process to a wider range of political forces and influences than has been the case thus far (Cousins 2002:6).*

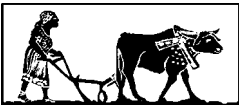
The Durban conference also addressed a range of other problems of tenure insecurity, particularly those faced on commercial farms by labour tenants, farm workers, ex farm workers and their dependants. The last two years have seen little improvement in the status of these groups, who continue to face evictions and exploitation despite legislation – such as the Extension of Security of Tenure Act and the Labour Tenants Act – that is meant to protect their rights. While state officials and representatives of commercial agriculture called for amendments to the law, representatives of farm residents pointed out that the authorities' failure to implement the existing law was largely to blame for the continuing plight of farm dwellers and labour tenants.

In most of South Africa's communal areas since 1994, residents have had to contend with a dysfunctional land tenure and management system. But, in one part of the country at least, there has been some movement on land tenure reform in recent years. In the former 'coloured' reserves of the Northern Cape, the Transformation of Certain Rural Areas Act (TRANCRAA) of 1998 is now being put into effect. In sparsely populated districts that are largely free of chiefs but certainly not devoid of politics, TRANCRAA is effectively South Africa's first attempt at comprehensive tenure reform for communal areas. It is aimed at removing discrimination, protecting residents' formal and informal rights and ensuring democratic governance of the former reserves. It is intended 'to provide for the transfer of certain land to municipalities and certain other legal



**Box 6: Selected resolutions of the National Land Tenure Conference,  
November 2001**

- *Checks and balances to be put in place when land is transferred to communities to protect individuals' land rights against abuse.*
- *Policies that confirm indigenous knowledge systems need to be developed.*
- *Comprehensive research/review to be undertaken on land rights, security of tenure and land administration.*
- *Broad consultation with and participation of stakeholders in new land reform legislation.*
- *Communities and rights holders to have freedom of choice of tenure within the national policy and laws.*
- *Customary law rules should be developed in line with the requirements of the Constitution.*
- *Tenure security concept should be understood to exist within different ownership systems, provided rights are defined and protected.*
- *[Communal Land Rights Bill should provide] clear definition of community, groups and individuals and their respective rights.*
- *Accountability of community ownership structures.*
- *Relations between institutions of traditional authorities, local government structures and other land administration bodies must be clearly defined and established.*
- *Need to recognise traditional leadership institutions in land administration in communal areas.*
- *Need to provide support and capacity to traditional leaders and institutions to carry out their role and functions in land administration in democratic, effective, efficient, participatory, fair and accountable manner.*
- *Need to build on the best practices of land administration among institutions of traditional leadership.*
- *Legislation to provide clarity and security of rights in a balance between the group/community and its constituent members.*
- *Provide a range of tenure options, including ownership via 'commonhold title' (DLA 2001c).*



entities; the removal of restrictions on the alienation of land; matters with regard to minerals; the repeal of the Rural Areas Act, 1987, and related laws; and to provide for matters connected therewith.' It defines 'legal entities' as, (a) a municipality; (b) a communal property association; or (c) another body or person approved by the Minister in general or in a particular case. The Act applies to land that has long been used in common by the communities and held in trust by the State, as well as to

farms more recently bought for the benefit of these communities and currently owned by municipalities.

The implementation of the Act was delayed pending municipal demarcation and elections late in 2000. This created a situation that required careful and urgent attention. The Act presupposed communal areas that coincided with local government structures (the former transitional local councils), while these areas have now been amalgamated into larger municipalities.

TRANCRAA stipulates an 18-month transition period during which people can decide on which ownership and management option they prefer. The transition period started in January 2001, and communities have established committees to study the implications of different options and prepare the referendum at the end of the period. The transition period got off to a rather slow start, and is likely to be extended. The deadline for submitting the final reports and recommendations to DLA is expected to be January 2003. Community information and consultation programmes that lead to genuine, informed decision making require strong advisory support from government and NGOs. TRANCRAA experience clearly shows that much hard and costly work has to go into achieving tenure reform on the ground.

The ongoing debate about tenure reform for the communal areas has led to some criticism of TRANCRAA. Like the Communal Property Associations Act, it is 'minimalist' legislation that sets out procedures for transfer of ownership without specifying what many would say is necessary detail about the content of rights or the institutional framework. As is now being recognised, tenure reform legislation (and indeed the CPA Act) needs to specify the substantive rights that are entailed, and how they can be asserted. It must set out what sort of staffing and institutional structure is going to underpin the new tenure dispensation. TRANCRAA does not

do any of these things, and some observers therefore predict post-transfer disputes and uncertainty. There are calls for the proposed Communal Land Rights Bill to be applied to the TRANCRAA areas as well, so that these shortcomings can be rectified. A uniform land rights and administration framework could then apply across all South Africa's communal areas, with adequate scope for local rights holders to choose how land ownership and administration are configured in their particular areas.

### Attitudes and strategies

What do the last two years' experience of land and agrarian reform tell us about official attitudes and intentions? The two most public concerns in the sector have been developments in Zimbabwe and urban housing land shortages at home, and the most visible reaction of government has been to assure South Africans and the outside world that the Zimbabwe scenario of land invasions and expropriation will not be allowed to happen here. Despite a somewhat higher profile for concerns about poverty, and the high-level commitments to the still largely invisible Integrated Sustainable Rural Development Strategy, government has not seen fit to transfer more resources to land and agrarian reform. Nor has it taken adequate steps to achieve a co-ordinated public programme against landlessness, although there are welcome moves towards better integration of public planning and



### Box 7: Notes on TRANCRAA

*In a context of severe economic constraints, do 'rights to land' and TRANCRAA matter? Indications that they do are people's investment in the process, the current mobilisation of stakeholder groups and the fact that people debate rights in the context of new enterprises. Given severe land shortage and extreme levels of unemployment, secure ownership of common land appears a useful, but ambiguous, contested and far from sufficient element in a process of democratisation and rural empowerment. People living in and off the Namaqualand commons need comprehensive economic and democratic empowerment to complement tenure reform (Poul Wisborg, from notes on TRANCRAA prepared for this status report).*



management in the sector. One is Minister Didiza's tighter joint management of the various departments of agriculture and DLA and another is the growing role of local government in land reform planning and implementation. This is supported by the increasing decentralisation of DLA functions to district offices.

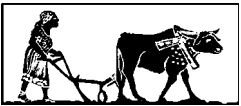
Overall, however, government still seems to judge that land and agrarian reform does not need to be a high priority. It appears to be calm about one of the most potentially troublesome dimensions of the problem, namely the role of the chiefs in communal areas land tenure and management. It has given strong emphasis to mopping up the restitution issue, with the laudable but unlikely claim that all restitution will be finalised less than three years from now. Indeed, there are signs of a strategy that would identify restitution as the only significant priority in land reform. In other words, once restitution is finalised, land reform may be said to have been achieved. LRAD might conceivably continue at the present modest scale, leading to a partial de-racialisation of commercial agriculture. Urban settlement programmes and facilities may be rationalised and made more efficient. Such a strategy neglects the much more complex challenges of land reform as part of sustainable development for the rural poor. DLA claimed last year in its Budget submission that it had 'revised its land reform programme to support sustainable rural development policies and interventions'. What it actually meant by this was that it was rolling out LRAD (DLA 2001d:599).

Government may be accurate in its estimation of the level of public concern. While there have been flashes of land hunger and some demonstrations and

campaigns, civil society as a whole has been apathetic and disorganised with regard to land and agrarian reform. Despite fierce pronouncements, the 'fire eaters' disparaged by the Chief Land Claims Commissioner – such as the Landless People's Movement – appear to be having little effect. Various calls for a national land summit have been ignored. Over the last 12 months, civil society's preparations for the World Summit on Sustainable Development have lacked direction and impact, and have often descended into acrimonious personal and institutional politics.

The previous status report concluded that, while land and agrarian reform was unlikely to be a high public priority in the medium term, the steadily increasing crisis in the rural sector may lead to it becoming a much more urgent concern in ten years' time (Turner & Ibsen 2000:48). This report has found no convincing evidence that a major transformation of land holding that can promote livelihoods and combat poverty on a significant scale is any closer now. Where there has been movement in the last two years has been in the stronger focus on urban landlessness. Government may judge that, if it can deal with that issue and make convincing progress with restitution, the rest of land and agrarian reform will not need priority attention.

As the World Summit approaches, what signs have there been of more effective attention to the environmental impact and sustainability of land and agrarian reform in South Africa? As we have reported above, the restitution programme has made a number of commitments to better support for beneficiaries in developing sustainable livelihoods, and a broader programme of integrating environmental concerns into land reform is being planned within DLA. This is discussed in more detail below.



# Chapter 3: Integration of environmental concerns into the land reform programme

South Africa is preparing to host the World Summit on Sustainable Development. It is therefore important for the nation to decide whether its own policies and programmes reflect global sustainable development principles and priorities (Turner 2001).

## South African land reform and Agenda 21

The conclusions and decisions that result from such an assessment ought to be presented in South Africa's National Sustainable Development Strategy. That document does not yet exist and we understand that it will not be published until after the World Summit.

In the meantime, there are two subsidiary questions we can ask. First, does the South African approach to sustainable development take adequate account of the necessary role that land reform must play? An earlier summary assessment concluded that it does not (Turner 2001). Secondly, is the land reform programme itself designed so as to make an optimum contribution to sustainable development? That question can be answered at various socio-economic and environmental levels. Here, we restrict ourselves to reviewing the programme's approach to environmental considerations.

The previous status report in this series (Turner & Ibsen 2000) outlined how issues of environmental impact and sustainability were recognised quite early in the South African land reform programme, and how this led to a Danish-supported project on 'the integration of environmental planning into the land reform process'. That project concluded its drafting, training and pilot field work

in 2001 with the publication of DLA policy and guidelines on the subject (DLA 2001e, f).

DLA makes it clear that it considers these guidelines to conform to the principles of Agenda 21, and to contribute to South African development of Local Agenda 21 (LA21) approaches:

*Both the guidelines and Agenda 21 share common ground in that they promote a developmental approach that seeks to integrate social, economic and environmental factors... [The guidelines] may be seen as a tool in LA21 that promotes sustainable development at the local level through land reform projects (DLA 2001f:225.)*

The guidelines list the ways in which they have taken the principles of LA21 into account (see Box 8).

## DLA environmental guidelines and the national policy framework

Within the provisions of the South African Constitution with regard to environmental rights, the apex legislation is the National Environmental Management Act (NEMA), which sets out national principles for environmental and sustainable development policy. NEMA includes a definition of sustainable development (see Box 9), with which DLA aligns itself in its



**Box 8: DLA's environmental planning guidelines and the principles of Local Agenda 21**

The guiding principles of LA21 listed below have been internalised into the guidelines in the following ways:

- **integration** (the guidelines advocate co-operative governance to ensure sustainable land reform projects)
- **informed decision making** (the guidelines combine biophysical and human elements in all decision-making processes)
- **strategic** (the most appropriate interventions are located to ensure sustainability while not adding unduly to the land reform process)
- **participatory** (participatory approaches are central to many of the methods used in the guidelines)
- **precautionary** (the guidelines encourage land reform participants to adopt an approach that takes the environment into account at an early stage in the project cycle)
- **continual improvement towards sustainability** (the guidelines see the process of achieving sustainability in land reform projects as an incremental one)
- **long-term focus** (continual monitoring of land reform projects is strongly encouraged) (DLA 2001f:225–6).

environmental planning guidelines (DLA 2001f:2). The Act requires all government departments to draw up an Environmental Implementation and Management Plan (EIMP). DLA was the first department to prepare such a plan. Its EIMP is congruent with the principles and approaches that it sets out in its policy and guidelines for environment and land reform, and was approved in 2000.

Land reform projects must also comply with the environmental impact assessment (EIA) requirements of the Environmental Conservation Act, and satisfy NEMA's requirements for Integrated Environmental Management (IEM). The guidelines say that they 'contribute towards synergy between LA21, Integrated Development Plan (IDP) and Integrated Environmental Management (IEM) processes' (DLA

2001f:226). There is some uncertainty as to whether the guidelines, as published, will be adequate from the IEM perspective. NEMA is apparently being revised in this regard and the guidelines make various suggestions as to how compliance can be achieved.

### Application of DLA environmental guidelines

Having set out a number of principles for integrating environmental planning into land reform (see Box 10), DLA now anticipates a three-phase planning model for land reform. The first, conceptualisation phase would establish what the project might do and whether it falls broadly within the department's policy and budgetary frameworks. A second phase of pre-feasibility assessment

**Box 9: Definition of sustainable development**

*NEMA defines sustainable development as:*

*The integration of social, economic and environmental factors into planning, implementation and decision-making so as to ensure that development serves present and future generations (DLA 2001f:2).*

would apply an 'Environmental Decision Support Tool' to assess the current environmental status of the project land, and to estimate the likely impacts of the land-use changes that the project would introduce. This assessment would lead to a decision either to proceed with more detailed planning; to reconceptualise the project or to reject it completely. It might also identify the need for an EIA. Phase 3, if it happens, would involve detailed project planning, including land capability assessment and preparation of a business plan.

During most of the life of the project that led to DLA's environmental policy and guidelines, the focus was on their application to the land redistribution process, and specifically on projects funded by the Settlement and Land Acquisition Grant. Ever since the initial study on environmental issues in land reform (Turner et al.

1997), questions have been raised about the extent to which DLA could insist on environmental studies and precautions in restitution awards. In restitution, 'the DLA is presented with a set of already accepted rights' (DLA 2001e:14). It was assumed that the application of environmental principles to tenure reform would be a much more diffuse process in which broader planning and management systems would be more influential than those of DLA.

By the time DLA's policy and guidelines were completed, however, the character of what DLA calls its 'products' had changed significantly. Fortunately, the planning project was able to allow for this. The guidelines present detailed recommendations on environmental assessment and planning procedure for:

- the IDP planning process as it affects land reform

### Box 10: DLA principles for integrating environmental planning into land reform

- *Land is a national asset and its efficient, sustainable use and management is the primary responsibility of the Department of Land Affairs.*
- *While DLA holds the primarily responsibility for land, it cannot fulfil this mandate on its own and must work creatively and constructively with other spheres, especially district municipalities, and other line function departments, especially departments of agriculture and environment affairs.*
- *Environmental planning cannot only be done on a project basis, but must be done first at a district-wide, strategic level.*
- *The environment does not consist solely of animals and plants which have to be protected against people. It is made up of the entire range of resources on which people depend for livelihoods, sustenance and well-being.*
- *Planning for environmental management must be done in a participative, inclusive way, involving all participants in decision making, not just officials.*
- *Project planning for land reform must be phased, with an increasing level of cost, effort and detail following each phase, and with each phase providing the opportunity for the project to be reconceptualised.*
- *In a land reform project, the beneficiaries' livelihoods should be derived from multiple sources, not a single source.*
- *Land must be suitable for the uses to which it will be put under the land reform project.*
- *DLA has an ongoing responsibility for monitoring land use patterns and activities on land reform projects after transfer, to ensure that the land resource is not being devalued for future generations (DLA 2001e:5-7).*

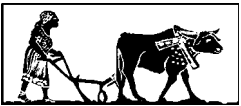


- LRAD projects
- commonage projects (the implication being that DLA continues to be involved in these)
- restitution projects
- a range of 'tenure and settlement' projects, such as activities under the Extension of Security of Tenure Act, the Interim Protection of Informal Land Rights Act and the Land Reform (Labour Tenants) Act.

Missing from this list, of course, is the SLAG itself, although we understand that SLAG-funded projects continue to be implemented by some provincial offices of DLA. If a clearer distinction arises between agricultural and settlement projects – which seems to be happening – it may be necessary for the environmental guidelines to give attention to specific procedures for residential projects.

### Planning principles

A number of appropriate planning principles run through DLA's environmental guidelines. The guidelines call for 'a change in mindset', summed up in a table that starts by urging a shift from a conservation perspective to one that views the environment 'as a management issue in promoting sustainable development' (DLA 2001f:8). The recommended procedures are dedicated to achieving sustainable livelihoods, and the sustainable livelihoods approach frames the guidelines' recommendations on land-use planning methods. Land reform business plans, for example, are required to specify how sustainable livelihoods will be achieved (DLA 2001f:124). The guidelines point out that 'land use plans will only succeed if these are locally acceptable' (DLA 2001f:185) and urge planners to consider the motives of land reform participants: do they intend to produce mainly for the market, or will production be 'needs-based'? However, it appears excessive to insist on, rather than facilitate, multiple livelihood strategies for land reform beneficiaries, as Box 10 on DLA's principles appears to suggest.



The guidelines outline and endorse community-based natural resource management concepts. An extensive checklist is presented for monitoring the creation and operation of common property institutions, quoting and elaborating on the work of Cousins (1995) (DLA 2001f:129). The guidelines recognise that much of the resource degradation with which the rural poor of South Africa must contend results from the 'environmental racism' that they suffered under apartheid (DLA 2001f:226). There is a strong emphasis on participatory and gender-responsive planning approaches. Recommended options for environmentally sound crop and livestock production include the use of indigenous knowledge (DLA 2001f:190).

It is significant that DLA's detailed guidelines begin by explaining how land reform planning should fit into the IDP process that is now required of all municipalities (DLA 2001f:4). Later, they say that they are written within the context of the six-volume IDP manual now being prepared by the Department of Provincial and Local Government. The guidelines emerge from the Directorate in DLA that has also been responsible for the Development Facilitation Act (DFA) and its requirement for land development objectives (LDOs), which were meant to dovetail into the IDP process. Much of the last few years' experience with IDPs, the DFA and LDOs has been cumbersome and bureaucratic. The DFA was intended as interim legislation, and is to be repealed by a Land Use Management Act that is currently in draft form. This Act will build on the approach of the DFA, but integrate it with spatial planning principles. It will require municipalities to draft Spatial Development Frameworks as part of their IDPs.

Meanwhile, however, DLA's environmental policy and guidelines, with their emphasis on integration into the IDP process, are a welcome response to the growing recognition that land reform projects carried out in isolation from other

development planning are unlikely to be efficient or sustainable.

This evolution in DLA's planning approach represents a change from the original assumption that the environment would have to be considered on a precautionary basis, as a potential obstacle in land reform planning. Instead, there is a growing recognition of the environment as opportunity, offering a range of livelihood possibilities that beneficiaries and planners need to assess. DLA is thus moving beyond a concern with environmental impact assessment and land transfer planning to a more proactive involvement in sustainable livelihood planning with beneficiaries and local authorities. So far, however, there has been limited practical application of these principles – although we have noted the growing commitment of the Land Claims Commission to sustainable livelihoods, and the work of some Provincial Offices of DLA in integrating land reform within Integrated Development Plans (IDPs) at the district level.

### Technical principles

From a technical perspective, the guidelines start from the assumption that most land reform projects will cause a change of land use or land-use intensity, and that the impacts and sustainability of this change need to be assessed. They apply the concept of ecosystem goods and services, and argue that human use of or demand for these services should not exceed the rate at which they can be supplied (DLA 2001f:23). They assume that resource quality and quantity can be measured and urge the development of biophysical and socio-economic indicators of sustainability.

Inherent in the guidelines is the assumption that the productive potential of natural resources is relatively static and predictable, and that land uses must work within this envelope of natural potential. There are two ways in which this assumption may be inaccurate. First, it is increasingly accepted that non-equilibrium models more accurately describe the behaviour of arid and semi-arid environments, and

that to apply fixed expectations of productive capacity in such conditions is unhelpful. The guidelines do not refer to these arguments. Secondly, it is now well known that the type of production system applied to a given natural resource base can significantly influence the kinds and levels of output achieved, while remaining within the bounds of environmental sustainability. The guidelines do implicitly acknowledge that various adjustments to labour input or soil fertility management, for example, can affect the way in which land potential and sustainability are appraised. Overall, however, the guidelines adopt the precautionary assumption that linear trends of resource degradation can be set in motion by inappropriate land uses, and that land reform planning must guard against this. Their discussion of land use planning approaches sums up the technical principles being applied:

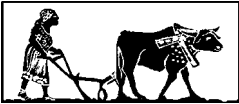
*The quality of the land and the way it will be used determines the number of people it can support sustainably. Human carrying capacity (the number of people a given area can support, including all land uses such as grazing, cropping, fuelwood collection and water supply) is normally defined by the most limiting resource. Human carrying capacity must be assessed in a socio-economic context and addresses issues such as the level of required inputs (financial resources, technology) and management (DLA 2001f:30).*

The overall technical style of the DLA guidelines well reflects the evolution of official thinking about the environmental sustainability of land use in South Africa. That evolution remains incomplete and contentious. More conventional technical thinking and more recent paradigms are all included in the guidelines, but not always fully reconciled. The clearest example of this is the core presentation of methods and tools (DLA 2001f Section 6). This begins with a detailed explanation of the Environmental Decision Support Tool (see



page 21), followed by an equally detailed discussion of the better-known concepts and paradigms of land evaluation, land capability assessment and land-use planning. It is not made clear how the two sets of methods are expected to relate to each other in practice.

The discussion of land-use planning incorporates many participatory principles. The guidelines stress that land-use planning should not be a way of telling people what to do, but rather of helping them identify the options they have (DLA 2001f:176). More conventionally, however, they present the land capability classification system developed by the KwaZulu-Natal Department of Agriculture. They largely skirt the contentious issue of rangeland carrying capacity and appropriate stocking rates, but present without much comment the concept of overgrazing, and make it clear that this is a significant hazard in land reform planning. Keeping within the conventional perception of climate and veld behaviour, they urge that the assessment of carrying capacity for extensive grazing uses 'must be based on [the] worst scenario' (DLA 2001f:200). They urge, too, that IDPs assess the risk of overgrazing, and 'determine the livestock carrying capacity of the land' (DLA 2001f:129). In discussion of the subdivision of commercial farms for land reform purposes (a common scenario), the guidelines appropriately argue for the development of a land market that meets the needs of small-scale farmers, but warn that small farms for dryland crop production will usually be commercially unsustainable (DLA 2001f:228-9).



### From guidelines to practice

Although the policy framework is certainly not yet completely stable in South Africa, DLA has now slotted its environmental approach into the complex structures of South African environmental policy as a whole. But at the time of writing, the policy (and hence the guidelines) have still not been approved by the Minister. The

lengthy delays in securing Ministerial approval mean that, although the Director-General of Land Affairs has approved both documents, he is unable to send them to the provincial offices of DLA with a directive that they be used. Despite widespread endorsement of the guidelines from other agencies of government, DLA itself has yet to act.

As in so many fields of South African policy, the broader challenge now is to convert the policy into practice. An enormous framework of legislation and procedure is now in place, although it changes constantly as various elements are revised by the responsible government agencies. What remains to be seen is how much of a difference DLA's environmental policy and guidelines make to the bulk of its project work, over and above the encouraging pilots that have already been achieved. Although the procedures have been designed to be as efficient as possible, proceeding to detail only when the need is clear, following the environmental guidelines undeniably adds to the labour of preparing any kind of land reform project, as will any attempt to move beyond land transfer planning to livelihood planning. The only way that DLA can contemplate this is by shifting most of the load to other agencies, through integration of its planning task with those of other agencies. The IDP process – still in its infancy in most of the country – should be the core vehicle for this integration, as DLA recognises. But the institutional and bureaucratic complexities of this integration are daunting.

More immediately, for DLA, there is the question of whether its environmental guidelines and procedures will be adopted by colleagues in provincial departments of agriculture as they prepare LRAD projects. The National Department of Agriculture's Environmental Implementation and Management Plan for NEMA notes that agriculture is likely to play a stronger role in land reform, and that it will be using the DLA guidelines in its LRAD implementation.

For the time being, however, there is little field implementation of DLA's

environmental guidelines in any kind of land reform project, because the document is still stacked in the Pretoria headquarters awaiting distribution after Ministerial approval. Some provincial land reform staff in the guideline project's two pilot provinces, Free State and Mpumalanga, are familiar with the guidelines and are able to use them to a limited extent. They have also been used on a preliminary basis in the Western Cape. Assuming that the guidelines are ultimately approved, a major training

task will lie ahead in order to familiarise DLA and other land reform workers in all nine provinces with them. Some further Danish funding is anticipated to support this training work.

DLA thus has its conceptual house in order with regard to the environmental implications of land reform and the ways in which land reform can contribute to sustainable development. But its current institutional difficulties mean that land reform is not contributing much to this goal at present.





# Conclusion

Despite some successes, the South African land reform programme has not to date lived up to its promise to transform land holding, combat poverty and revitalise the rural economy.

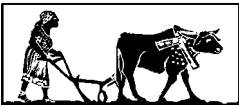
The policies adopted by government have left the structure of the rural economy largely intact or, in the case of liberalisation of agricultural markets and cuts in agricultural support services, have created a climate that is unhelpful to new, resource-poor entrants. Much of the explanation for this can be found in the government's macro-economic policies that, through their reliance on free markets, private investment and export-oriented growth, strongly favour economic efficiency over social equity. While policies of black economic empowerment go some way towards meeting equity goals, these are predicated on assisting emerging black entrepreneurs to take their place within established structures, rather than on a fundamental restructuring of the economy in favour of the poor and marginalised.

Political priorities, and preferences, are clearly expressed in the budgets and policy instruments of the state. In the case of land reform, it can be safely concluded that the effective aim of the government is a modest transfer of agricultural land – probably no more than 4% in the 15 years from 1994 – limited to areas voluntarily released by the existing landowning class, and favouring a small minority of the rural black population, selected on the basis of their skills, material resources and entrepreneurial spirit. Such a programme is deliberately designed to pose no threat to the existing landowning class, nor to the existing land market. It is also clearly incapable of meeting the needs of the great mass of the rural poor, particularly marginalised groups such as women, youth, the unemployed, the disabled and

households affected by HIV/Aids. Unless specific policies are developed that target the needs of such groups, outside of the market-based 'emergent farmer' approach, it is unlikely that land reform in South Africa will meet its equity goals.

In such a scenario, talk of sustainable development amounts to very little. Maintenance of the existing landholding pattern, albeit with a few black owners alongside the majority of whites, will not achieve the efficiency gains – in terms of productivity, household benefits and local economic development – implied in a shift from large-scale, capital-intensive production to small-scale, labour-intensive methods. The ongoing denial of opportunities for economic activity to large proportions of rural people – through either formal employment or small-scale agriculture – represents a vast waste of human potential that the country can ill-afford, and places an unbearable burden on an already overstretched urban informal sector. It also perpetuates the survival strategies of the desperately poor that depend on unsustainable use of the limited natural resources – be it residential land, firewood or water sources – to which they can gain access.

A key objective of sustainable development should be to encourage people away from economically inefficient and environmentally destructive activities towards more economically, socially and environmentally beneficial ones. With a large, poverty-stricken and poorly educated rural population, comprehensive land and agrarian reform offers South Africa perhaps the only opportunity for achieving this on a substantial scale. There is little



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doubt that, despite current weakness in commercial agriculture, South Africa's agricultural sector can support many times the number of people it currently does, given appropriate land redistribution of land and sufficient support services. There can also be little doubt that while paid employment is probably the first priority of the rural poor, there are millions of people able and willing to engage in agriculture, either as full-time farmers or as part of a diverse livelihood strategy. The challenge facing policy makers is to create an envi-

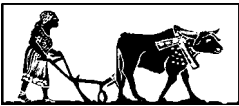
ronment that can bring this about and sustain it over the long term. The current market-based approach, which starts from the premise that the existing structure of the rural economy must be preserved, is clearly incapable of bringing this about.

If sustainable development in South Africa is to be any more than rhetoric, it must address fundamental questions of how the economy is structured, how assets and other benefits are distributed, and how mass poverty is created and perpetuated. Land is probably a good place to start.



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