

Land and agrarian reform in South Africa: A status report 2004



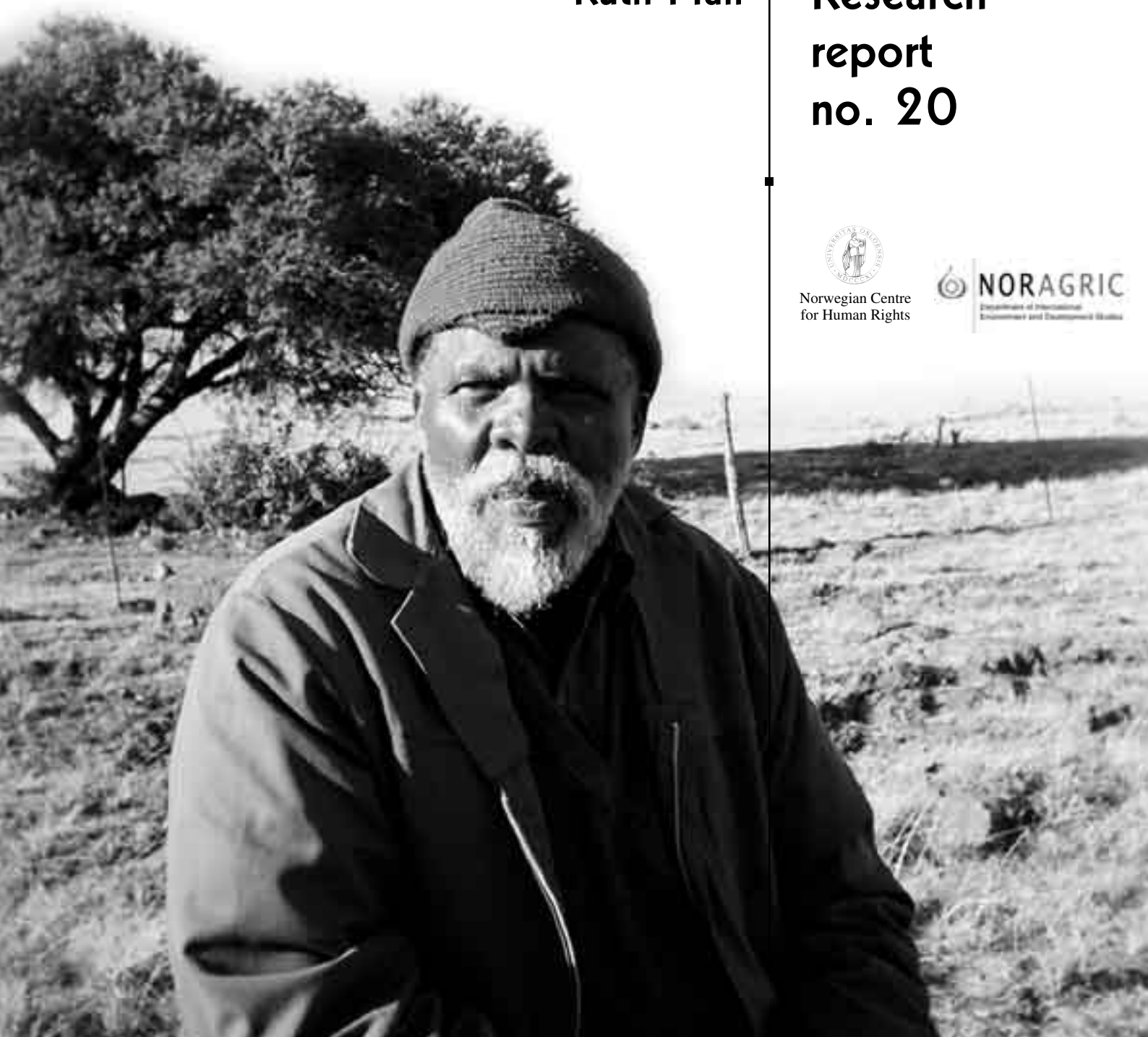
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Ruth Hall

Research
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no. 20



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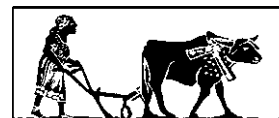
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and Agrarian Studies
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Ruth Hall

Ruth Hall is a researcher at the Programme for Land and Agrarian Studies, University of the Western Cape.

Published by the 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. plaas@uwc.ac.za. www.uwc.ac.za/plaas

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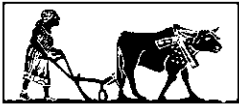
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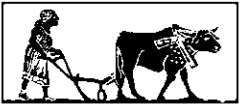
Acronyms and abbreviations

Act 9	Rural Areas Act 9 of 1987
Agri-SA	Agri South Africa
AgriBEE	Agricultural Broad-based Black Economic Empowerment charter
ANC	African National Congress
BEE	black economic empowerment
CASP	Comprehensive Agricultural Support Programme
CLRA	Communal Land Rights Act 11 of 2004
Contralesa	Congress of Traditional Leaders of South Africa
CPA	communal property association
CRLR	Commission on the Restitution of Land Rights
DLA	Department of Land Affairs
DoH	Department of Housing
ESTA	Extension of Security of Tenure Act 62 of 1997
Gear	Growth Employment and Redistribution macroeconomic strategy
ha	hectares
IDP	integrated development plan
IPILRA	Interim Protection of Informal Land Rights Act 31 of 1996
ISRDP	Integrated Sustainable Rural Development Programme
KZN	KwaZulu-Natal
LCC	Land Claims Court
LPM	Landless People's Movement
LRAD	Land Redistribution for Agricultural Development programme
LTA	Land Reform (Labour Tenants) Act 3 of 1996
M&E	monitoring and evaluation
NDA	National Department of Agriculture
NGO	non-governmental organisation
NLC	National Land Committee
PDaA	provincial department of agriculture
PLAAS	Programme for Land and Agrarian Studies
PLRO	Provincial Land Reform Office (of DLA)
RDP	Reconstruction and Development Programme
Restitution Act	Restitution of Land Rights Act 22 of 1994
RLCC	Regional Land Claims Commission
SLAG	Settlement/ Land Acquisition Grant
TRANCRAA	Transformation of Certain Rural Areas Act 94 of 1998



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Preface

This is the third 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. The second status report (Turner 2002) discussed developments in the sector from 2000 to 2002.

During 2002 and 2003, PLAAS undertook a wide-ranging study to evaluate progress in each of the key policy areas of land reform. The ‘Evaluating Land and Agrarian Reform in South Africa’ (ELARSA) project resulted in the publication of a series of nine reports. These are downloadable from the PLAAS website: www.uwc.ac.za/plaas.

This report updates the analysis and data presented in the ELARSA series. While much of the data here is cumulative, the focus of this report falls on developments in 2003 and 2004. The report reviews the achievements and shortcomings of land and agrarian reform in South Africa in the first decade of democracy and provides a description of the status of these initiatives as at 2004.

Chapter 1 presents a brief historical background and describes the challenge of land and agrarian reform faced by the democratic state in 1994. Chapter 2 describes the research methods used in the preparation of this report. Chapter 3 is a brief retrospective of the past decade of land and agrarian reform, noting the shifts during this period and distinguishing between the ‘Mandela era’ (1994–1999) and the ‘Mbeki era’ (1999–2004). The next four chapters describe the status of each of the main land reform programmes, as at 2004. Chapter 4 deals with land restitution, with a focus on restitution of land in the rural areas and its contribution to agrarian transformation. Chapter 5 describes the various land redistribution programmes, noting the emergence of the Land Redistribution for Agricultural Development (LRAD)

programme as government’s primary means of redistributing land. Chapters 6 and 7 deal with the attempts to enact land tenure reform in two distinct contexts – among farm workers and farm dwellers resident on commercial farms, and among people living under communal tenure regimes either on land reform projects, in the former ‘coloured reserves’ or in the former bantustans or ‘homelands’.

The report identifies the following as the key achievements in South Africa’s land and agrarian reform:

- The transfer of over 2.6 million hectares of land to black South Africans through all aspects of land reform.
- The settlement of 56 650 land restitution claims.
- The enactment of legislation to regulate tenure relations between landowners and farm workers or others residing on farms.
- The introduction of a Comprehensive Agricultural Support Programme (CASP) to provide training, inputs, infrastructure and market access to new farmers.
- Increases in national budget allocations to land reform over time, and improvements in expenditure of these allocations.
- Decentralisation of implementation and broader participation in project approval.

Shortcomings of the programme highlighted in the report include:

- The slow progress towards redistributing 30% of commercial agricultural land by 2015 – only 3.1% was transferred by 2004.
- The limited impact of restitution on patterns of land ownership, as most rural claims are not yet settled and most urban claims have been settled with cash compensation.
- The weak enforcement of laws to protect farm dwellers’ rights, and the absence of a proactive mechanism to provide farm dwellers with land of their own.
- The inadequacy of land reform budgets – and land grants – compared to the high and rising price of land.



- The absence of a rural settlement policy framework to address the demand for land for housing and other non-agricultural purposes.
- The failure thus far to reform communal tenure or address the chaotic state of land administration in the former bantustans, despite the passing of the Communal Land Rights Act.

A lack of reliable monitoring and evaluation means that implementers, policy makers, politicians, civil society organisations and the public at large have little idea of what the impact of the programme has been. Instead, instances of success and failure that emerge in the public domain tend to be highly anecdotal.

Chapter 8 reflects on the future of land reform: how land is to be made available; what funds are needed; how to ensure that those accessing land receive the necessary

post-settlement support; and how land reform relates to black economic empowerment. A core challenge now facing the programme is the need for the state to intervene to make suitable land available to meet local needs, rather than relying wholly on land markets and the willingness of current owners to sell.

The report concludes that the objectives and vision informing land reform in South Africa have changed substantially over the past decade. The emphasis has shifted from a major restructuring of agriculture to a limited programme of farmer settlement. While the programme has made significant progress in some areas, there remains the challenge of integrating land reform with agricultural policy, rural development, and local economic development, and so locating the redistribution of land and land rights at the centre of a wider process of pro-poor agrarian reform.



Chapter 1: Introduction

Land dispossession was central to both colonial conquest and the social engineering of grand apartheid. The Natives Land Act 27 of 1913 legally designated land on a racial basis and it was in protest against this law that the African National Congress (ANC), soon after its formation, sent a delegation to appeal to the British Parliament for intervention.

Millions of black South Africans were forcibly removed from their land and homes in terms of the Group Areas Act in urban areas, and in the rural areas in terms of the Natives Land and Trust Acts of 1913 and 1936, as well as apartheid bantustan and influx control policies (SPP 1983). After homeland consolidation, the ‘reserves’ or ‘homelands’ came to account for just 13% of South Africa. Forced removals continued up until the 1980s, by which time only a few ‘black spots’ of land owned or controlled by black South Africans remained in so-called ‘white’ South Africa. Removals provoked popular resistance, forming a focal point for wider political mobilisation in the rural areas. The permitted forms of African tenancy on white-owned farms were also restricted, as successive governments introduced coercive measures to separate Africans from independent production and convert share, rent and labour tenants into wage labourers. In contrast, the Freedom Charter envisaged that a non-racial order would distribute land on an equitable basis, and declared that ‘the land shall be shared among those who work it!’ (Congress of the People 1955).

By the late 1980s, as the liberation movement entered talks with the apartheid regime, it started to develop a land policy, which was adopted at the ANC’s 1992 National Policy Conference. Having agreed that land should be restored to the dispossessed, formal negotiations in the early 1990s addressed whether this should be applied back to 1652 (the arrival of Dutch

settlers) or 1913 (the Natives Land Act) or 1948 (the start of National Party rule). The agreement to limit the restoration of land to those dispossessed after 1913 was a political compromise consistent with the wider tenor of transition talks, in which confiscation of white-owned assets was ruled out. In the course of negotiating the policy framework for land reform, a range of options were discussed, including expropriation of land with compensation, the imposition of ceilings on the size of landholdings, and the imposition of taxes to discourage the speculative holding of underutilised land. Eventually, it was agreed that property rights would be protected, while the transformation of property relations would be pursued through a gradual and market-based programme of land reform.

The challenge facing the land reform programme is immense. About 16 million people or 30% of the country’s population lives in the communal areas of the former ‘homelands’, and possibly in the region of 3–5 million people on farms. The poverty and inequality report of 1996 (May 1998) confirmed that poverty is largely a rural phenomenon, with over 70% of the rural population living below the poverty datum line. High levels of poverty persist in the ‘deep’ rural areas in the former ‘homelands’, but also in the midst of prosperity in the commercial farming areas. Changing migration patterns, as well as job losses from industry and agriculture, have also contributed to new concentrations of poverty in the informal settlements growing in



and around small towns. A central policy challenge facing South Africa in the 1990s was to provide a comprehensive response to this deep rural poverty in both the communal areas and among workers and their families in the commercial farming areas. Land reforms were thus required to meet multiple needs in

different situations, including people's needs for secure title to residential land, access to land for livelihood purposes, access to land and related support services to engage in agriculture, and in so doing, to provide historical redress and promote national reconciliation.



Chapter 2: Research methods

This report represents the output of ongoing monitoring and analysis of the official land reform programme.

To augment this, in-depth interviews were conducted, largely telephonically, with key national government officials, with the directors of the provincial land reform offices (PLROs) of the Department of Land Affairs (DLA), and with the directors of non-governmental organisations (NGOs) in the land sector. Analysis of the interviews provided a geographic description of trends in different regions as well as highlighting the contradictory views of different sources. Quantitative data on progress with land reform was gathered from regional land

claims commissions (RLCCs) and from PLROs and this was verified against national project lists and through telephonic interviews with project officers. Triangulation between sources enabled limited data cleaning that involved refining official lists. Case lists from the Land Claims Court (LCC) have also been used to generate summary data on legal cases appearing at the LCC, by year and by type of case. Where possible, quantitative data on land delivery was analysed to generate provincial breakdowns of delivery trends according to financial year and types of project.



Chapter 3: A retrospective of ten years of land reform

The end of the first decade of democracy in South Africa has been commemorated and assessed in various ways. During 2004, a number of conferences were held and books were published that aimed to take stock of the achievements and remaining challenges in consolidating the new political order and transforming the economy and society.

An official ten year review evaluated the progress of all government programmes and their impact on the quality of life of citizens, political participation, access to services and social inclusion. Although land reform was not a prominent part of this review, the end of a decade of democracy is a milestone for the new South Africa and an apt moment to reflect on the initiatives taken to redistribute access to land, secure land rights and promote land-based livelihoods.



South Africa's experience with land reform over the past ten years has involved significant shifts as well as some continuities. While policy changes have been prompted by lessons from experiences on the ground, political leadership and the macroeconomic framework have also influenced the evolution of land reform. In a number of respects, the first decade of land reform is best described as taking place in two distinct five-year periods. These coincide with the presidencies of Nelson Mandela and Thabo Mbeki, and the ministerial leadership of Derek Hanekom and Thoko Didiza respectively.

First period: 1994–1999

The period 1994 to 1999 was characterised by slow delivery of land reform but this was also a period of 'tooling up' through policymaking, consultation and the building of institutions for delivery.

In 1994 the Department of Land Affairs (DLA) was established and charged with

creating and implementing a land reform programme to transform economic relations in the countryside. It incorporated the former Department of Regional and Land Affairs, itself a successor to the notorious Department of Native Affairs. The DLA inherited an old guard of civil servants, but also saw the influx of a new cadre drawn in large part from the ranks of NGOs involved with rural resistance. Derek Hanekom of the ANC was appointed Minister of Land Affairs. The National Department of Agriculture (NDA) had its own minister, Kraai van Niekerk of the National Party (NP), until the NP's withdrawal from the Government of National Unity in 1996, at which point the two departments were united under one Ministry of Agriculture and Land Affairs, although they continued to operate according to parallel policy frameworks. Their separation was exacerbated by their different status and constitutional mandates – land affairs is a national competency based in a national department, whereas agriculture is a 'concurrent' competency, with policy direction coming from a national department, while provincial departments are partly funded by and answerable to provincial legislatures.

The World Bank's 1993 'proposal for rural restructuring' promoted a 'market-assisted' land reform that would transfer 30% of South Africa's agricultural land to 600 000 black smallholders within five years, at a cost of R21 billion. This land would be bought at market prices with the help of state land-

purchase vouchers or grants and without any compulsion on current owners to sell. The programme would be 'demand-led' in that the state would not identify land for redistribution nor select beneficiaries; rather, those wanting land would identify it themselves and apply to the state for financial assistance.

The ANC established the Land and Agricultural Policy Centre (LAPC) as a think-tank to engage in policy-relevant research. NGOs that had been active in supporting communities to resist to forced removals formed themselves into a countrywide network and in 1990 the National Land Committee (NLC) was established with a national office in Johannesburg. The challenge the NGOs faced in the 1990s was to re-orientate their work, give input into policy development and start to work alongside government in implementing and learning from the land reform pilot projects. This period also saw a substantial movement of NGO staff into the LAPC and DLA.

The Reconstruction and Development Programme (RDP), launched as the ANC's election manifesto and later concretised in a White Paper, endorsed the emerging proposal of a wide-ranging reform programme. It also proposed that at least 30% of the country's agricultural land should be transferred to the rural poor within the first five years of the programme. In the RDP, land reform was to be the central driving force of a wider programme of rural development, which did not materialise. In practice, land reform in the first five years of democracy was a relatively small and isolated intervention into the livelihoods of the rural poor.

A Land Reform Pilot Programme (LRPP) was launched by DLA in 1995 to test a range of approaches to land reform and to develop appropriate institutional systems and procedures. Alongside the pilots, the policy framework was being created through a lengthy consultation process involving rural communities, commercial farmers and farming organisations, NGOs, planners, academics, financial institutions, statutory organisations, government departments and foreign experts. The emerging policy framework was debated in a series of workshops and conferences, including

discussion of the Draft Land Policy Principles in September 1995, the Green Paper published in 1996, and the final policy framework, the White Paper on South African Land Policy, adopted in 1997 (DLA 1997).

The three 'legs' or 'pillars' of land reform emerging through policy discussions were enshrined in the 'final' 1996 Constitution (successor to the 'interim' 1993 Constitution). Section 25 in the Bill of Rights, often called the 'property clause', prohibits arbitrary deprivation of property, but allows property to be expropriated in the public interest, including for land reform purposes. It also requires the state to enact a land reform programme as follows:

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

In addition to the World Bank, a number of other international donors became involved with land reform, with the European Union, the UK government and Danida (the Danish bilateral aid agency) committing substantial funds. However, the ANC's principled position was not to accept donor funds for the core costs of the programme, namely the purchase of land. Instead, donors and other stakeholders supported the pilot programme, monitoring and evaluation activities and other important aspects of the programme.

A mid-term review of the pilot programme in 1997 found that while important progress had been made, performance had been slower



and less effective than envisaged. It identified a range of institutional and technical problems, including the need to decentralise decision making, to strengthen management and increase the staff complement and skills base, to intervene more forcefully in the unequal negotiations between landowners and beneficiaries, to establish better working relations with NGOs, to address the lack of post-transfer support, and to create reliable systems of monitoring and evaluation. The small grants were blamed for the 'rent-a-crowd' syndrome in which large groups, often with little in common, pooled their grants in order to purchase farms together, and then experienced problems with group production, decision making and control of resources. The review concluded that grants for land purchase were not sufficient to support investments in productive use of this land – further sources of finance were needed. Independent research also demonstrated how beneficiaries were pursuing multiple livelihoods, and that few were committed to full-time farming, due to both cost and risk factors. Beneficiaries also diversified their livelihoods spatially, as households retained their existing livelihood systems as well as taking advantage of their new land, straddling the two and distributing family labour between them.



During this early phase two conceptions of the central purpose of redistributing land were discernible – one which emphasised the importance of *justice* in transferring land to the poor and providing them with tenure security, and another emphasising the *economic* rationale for promoting smallholder agriculture, which also focused on the need to sustain viable production. Field-based research during the LRPP contradicted the view that secure tenure by itself could improve livelihoods, and suggested that post-settlement support must be provided so that new owners could establish proper residential settlements and successfully engage in production. These concerns about the quality of the programme and the impact on the livelihoods of beneficiaries were corroborated in a number of Quality of Life reports conducted and commissioned by DLA. In the absence of support from other state agencies,

DLA started to experience what some have characterised as 'mission creep', performing functions that were properly the domain of other institutions, such as development planning and production support, rather than confining itself to the acquisition of land and securing of land rights.

During the late 1990s, government rapidly deregulated the agricultural sector in response to international pressure to limit subsidies, and to domestic pressures for bringing to an end the apartheid-era support for the white commercial farming sector. This involved removing an array of financial and legal mechanisms, including state-run marketing boards, price regulation, subsidised inputs, soft loans, tax write-offs and a highly protectionist trade regime. Services previously provided by departments of agriculture, including extension services, have been either curtailed, privatised or converted to a system of cost recovery. The outcome of this process of deregulation and trade liberalisation was to drive some farmers out of business while others sought ways to cut costs, both of which contributed to job losses. These policy changes in agriculture have also created a more hostile economic environment for new entrants, posing particular challenges for those entering into farming through land reform.

Second period: 1999–2004

The period 1999 to 2004 saw a significant shift in redistribution policy, a hiatus in policy concerning farm dwellers' tenure rights, and the development and passing into law of the Communal Land Rights Act. On entering office in July 1999, the new Minister of Agriculture and Land Affairs, Thoko Didiza, put in place a moratorium on land redistribution, in response to critiques of the programme, and ordered a review of all aspects of land reform. Her policy statement regarding the future of land reform, released on 11 February 2000, signalled the end of this review and the start of a lengthy phase of policy development on land redistribution and communal land rights (MALA 2000).

The new Minister shelved the Land Rights Bill, which was ready for submission to Parliament, and announced a new approach

Box 1: Gender equity and land reform

The new land policy aimed to eliminate discrimination against women's land rights and to promote gender equality in access to land. Putting these principles into practice has proved challenging. Despite the adoption of gender policies and the establishment of a Gender Policy and Implementation Unit within DLA, progress in both the conceptual work of determining what constitutes gender equity in land reform, and the task of promoting this objective, appears to be slow. There has been little assessment of the impact of land reform on gender relations between women and men in households and communities, for example, finding out who controls the land and the resources and income derived from land use. Implementers and activists criticised the early redistribution policy of providing grants to households for favouring men who were more likely to control household resources. Even after the introduction of grants for individuals, though, only 12% of beneficiaries are women and, where these grants are pooled, women's rights are still in practice contingent on power relations within their households and communities. Between 2000 and 2002 DLA and NLC jointly engaged in the Promoting Women's Access to Land (PWAL) project to try to identify obstacles and opportunities to advance women's rights to land. The project demonstrated that a legalistic approach to addressing gender discrimination has had limited effect, and that tenure and inheritance practices constitute long-term barriers to realising gender equity. It called for innovations in policy and approaches to implementation.

Sources: DLA 1997; DLA 2004; Cross & Hornby 2002.

Table 1: Land reform legislation 1990–2004

Legislation	Purpose
Provision of Land and Assistance Act 126 of 1993	Empowers the Minister of Land Affairs to make available grants for land purchase and related purposes to individuals, households or municipalities.
Restitution of Land Rights Act 22 of 1994	Establishes the right of people dispossessed of property after 1913 to restitution of that land or alternative redress.
Land Reform (Labour Tenants) Act 3 of 1996	Provides tenure rights to labour tenants living on private farms and enables them to apply to acquire full ownership of the land they already reside on and use.
Communal Property Association Act 28 of 1996	Enables groups of people to hold and manage their land jointly through a legal entity registered with the Department of Land Affairs.
Interim Protection of Informal Land Rights Act 31 of 1996	A temporary holding mechanism to protect the tenure rights of people who occupy land in the former homelands without formal documented rights, pending promulgation of an Act regulating communal land tenure rights (see Communal Land Rights Act below) – and renewed annually.
Extension of Security of Tenure Act 62 of 1997	Protects farm dwellers from arbitrary eviction and enables them to acquire long-term secure tenure rights, either on the farms where they currently reside or elsewhere.
Transformation of Certain Rural Areas Act 94 of 1998	Repeals the Rural Areas Act 9 of 1987 ('Act 9') and establishes procedures for upgrading the tenure rights of residents to commonage and residential land in the 23 former 'coloured' reserves (formerly Act 9 areas).
Restitution of Land Rights Amendment Act 48 of 2003	Empowers the Minister of Land Affairs to expropriate property without a court order, for restitution or other land reform purposes.
Communal Land Rights Act 11 of 2004	Provides for the transfer in ownership of land in the former homelands to communities residing there, or alternative redress, on the instigation of the Minister (not yet in effect).



to reforming the communal areas: title to communal land would be transferred to 'tribes' or 'traditional African communities'. In the area of redistribution, the minister announced a new set of objectives and target groups. This period saw the creation of the Land Redistribution for Agricultural Development programme, aimed at creating a class of black commercial farmers, which has largely replaced the previous Settlement/Land Acquisition Grants (SLAG). The emphasis on LRAD as the key programmatic focus for provincial and district offices has largely eclipsed the rest of the redistribution, as has been evident in declining budgetary allocations to, for example, the municipal commonage programme.

Tussles between DLA and NDA over drafts of their new 'integrated programme' of LRAD demonstrated the difficulties of co-operation between the two departments. Even so, the second five years of land reform saw the gradual improvement of co-operation between DLA and NDA. This was evident largely in the sphere of policy thinking and departmental relations, rather than being concretised in the form of tangible contributions of resources by the NDA to supporting land reform.

During this period, organised agriculture, as represented in Agri South Africa (Agri-SA), started to embrace land redistribution and to carve out more of a clear role for itself in this area. The recent policy emphasis on land reform as a route to commercial farming fitted in well with the desire of commercial farmers to leave the agricultural sector structurally intact by deracialising it. Spurred on by events in Zimbabwe, Agri-SA's leaders vowed that land grabs would not happen in South Africa, and that they would work with government to support land reform. They joined the National African Farmers' Union (Nafu), representing black farmers, in a presidential working group on agriculture to forge a strategic plan for agriculture, which acknowledged the need to redistribute land and to support new black farmers. Farmers' associations have made headway in supporting 'emerging' black farmers, though on a limited scale, mostly through small development projects, but

have not as yet negotiated with government how their membership will contribute to the wider vision of land reform, by making land available (Agri South Africa, undated).

The political landscape changed significantly during these five years, as the conservative fiscal stance of the Growth Employment and Redistribution (Gear) macroeconomic strategy took root in budgeting and policy making. Wider changes in the agricultural economy were behind the restructuring taking place in agriculture, as commercial farmers took advantage of new export opportunities, responded to growing demand and competition in the domestic market, and made adjustments to cope with the removal of subsidies and price supports. This economic context explains declining land prices in some regions and the increase in bankruptcies, which in some respects created a more favourable environment for land reform by reducing the gap between the market price and the productive value of land. The period saw government emphasising the need for land reform to drive a gradual integration of black producers into the agricultural sector, to retain investor confidence in land and agricultural markets, and to protect commercial agriculture from further destabilising changes.

NGOs responded to the policy shift by reorienting their role and criticising policy. As their previously close relations with government became more distant, NGOs placed increasing emphasis on supporting social movements as a means of giving a more direct voice to the demands and aspirations of the landless rural poor. This may be in part due to the changes in how policy was being made in this period – the nature of policy processes shifted towards being less consultative and more expert-driven – but was also due to capacity limits and a degree of internal conflict and disagreement among the NGOs themselves. Some NGOs shifted away from implementing government's land reform framework and focused instead on development planning and post-settlement support for those who had acquired land, as well as supporting farm workers to defend their rights. On the civil society front, perhaps the most



significant development in this period was the emergence in 2001 of the Landless People's Movement (LPM), with a campaign entitled 'landlessness=racism' at the United Nations World Conference Against Racism (WCAR). The LPM drew together disparate groupings of landless and land-hungry rural people, together with residents of urban informal settlements. With the support of NLC and some of its affiliates, the LPM called on government to speed up land reform and threatened to occupy private and public land to drive home its point. It called for a National Land Summit of landless people, government and other stakeholders to thrash out a new land policy. Although the LPM was relatively weak at the time, and did not follow through on its threats to occupy land, it has affected the political terrain by capturing substantial public attention through its high-profile 'Week of the Landless' at the World Summit on Sustainable Development (WSSD) in 2002, and its 'no land, no vote' campaign in the run-up to the 2004 national elections. Also in the period 2001–2004, there have been more high-profile but sporadic illegal occupations of peri-urban land. Less public attention has been focused on growing and widespread encroachment onto private farms, especially in KwaZulu-Natal.

The implementation of land reform was further decentralised during this second period. DLA's Project Mutingati delegated the power to approve grants to the directors of its provincial offices. The department also stressed integration between land reform processes and local government planning – particularly municipalities' integrated development plans (IDPs). District assessment committees (DACs) or district screening committees (DSCs) have been created across the country, drawing cognate government departments and local government into the process of determining which land reform projects should be approved, and in some instances involving civil society representatives – both NGOs and commercial farmers.

Legalising and upgrading tenure in urban areas is an aspect of land reform that has not been pursued. Instead, local authorities have developed different approaches to confronting

problems of insecure tenure. Some have transferred council housing to their *de facto* residents and written off municipal arrears, and some informal settlements have been formalised. These various responses have been pursued in the absence of any co-ordinated support or policy guidance from the DLA to secure land rights, since the focus of its land reform efforts became more focused on farmer settlement. Another challenge is to link land reform to sustainable land use and environmental practice. Initiatives were made in the late 1990s to develop environmental guidelines for project design. These were supported by donors and approved in 2003 but did not elicit strong political support. Implementation is due to start in 2006.

Land reform proceeded in the absence of a wider rural development framework until the Integrated Sustainable Rural Development Programme (ISRDP) was launched in 2001. Its vision is that rural development be realised at a district level through co-ordination of state and other agency functions – rather than through dedicated funds – to improve infrastructure and service delivery. Thirteen 'nodal' districts were identified. Its effect has been the creation of a number of priority projects to which funds and support are channelled. The ISRDP thus seeks to concentrate existing resources into 'projects' rather than addressing the redistribution of assets or scaling up the availability and quality of infrastructure and services across the country (Everatt 2004). With varying levels of success, these projects are to be strategic catalysts of development within the nodes.

Despite a slow start, delivery of land to beneficiaries picked up pace during the second five years of democracy, as the programme shifted in emphasis from a focus on delivering land to the poor to one of establishing a class of emerging commercial farmers. By September 2004, a total of 2 688 046ha of land had been transferred through all aspects of the programme (MALA 2004). This is equivalent to 3.1% of the commercial agricultural land in the country. Figure 1 (page 11) shows a breakdown of the land transferred through the programme, by the type of land reform project.

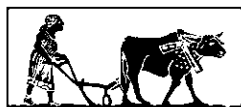


Box 2: The regional context

Like South Africa, Zimbabwe and Namibia faced the need to redistribute land ownership after liberation and initially adopted market-based policies. Unlike South Africa, though, their governments bought land from willing sellers and identified suitable beneficiaries for resettlement. Both programmes proceeded slowly, hampered by limited funds to buy land but also by limited political will.

About 4 000 mostly white farmers own half of Namibia's land, including the best arable land. Through land reform, the Namibian government has bought 69 farms over the past five years. While it has a right of first refusal, it has issued certificates of 'no interest' to about another 600 landowners – either because the land was deemed unsuitable for resettlement or because its market value exceeded state funds available for land purchase – N\$157 million in 2004/05. A policy shift towards expropriation was announced in February 2004. This marks a new course of action for land policy in Namibia but is unlikely to bring down the cost of acquiring land unless the government revises its current position of paying market-related compensation to landowners. The first expropriations were due to proceed before the end of 2004, and 19 commercial farmers received expropriation notices by July.

Fast-track land redistribution and occupations of farmland in Zimbabwe from 2000 led to the rapid decline of the commercial farming sector, as well as the withdrawal of investment and donor support to Zimbabwe. These followed the willing buyer-willing seller strategy pursued during the 1980s, and the introduction of a right of first refusal with market price compensation during the 1990s. The occupation of commercial farms by war veterans and others grabbed headlines internationally and underlined the potential political volatility of the land question in the region. It resulted in an estimated 150 000 farm workers being displaced and many more losing their jobs. A government-appointed committee was established in August 2004 to consider paying compensation to landowners whose farms were forcibly acquired. Little is known about the nature of land use and production on fast-track land, though it appears that while some occupiers have left, others have commenced with production themselves or entered into a range of tenancy agreements with those farm workers remaining on-farm.



Sources: Maletsky 2004; Menges 2004; Ncube 2004.

Box 3: HIV/Aids and land reform

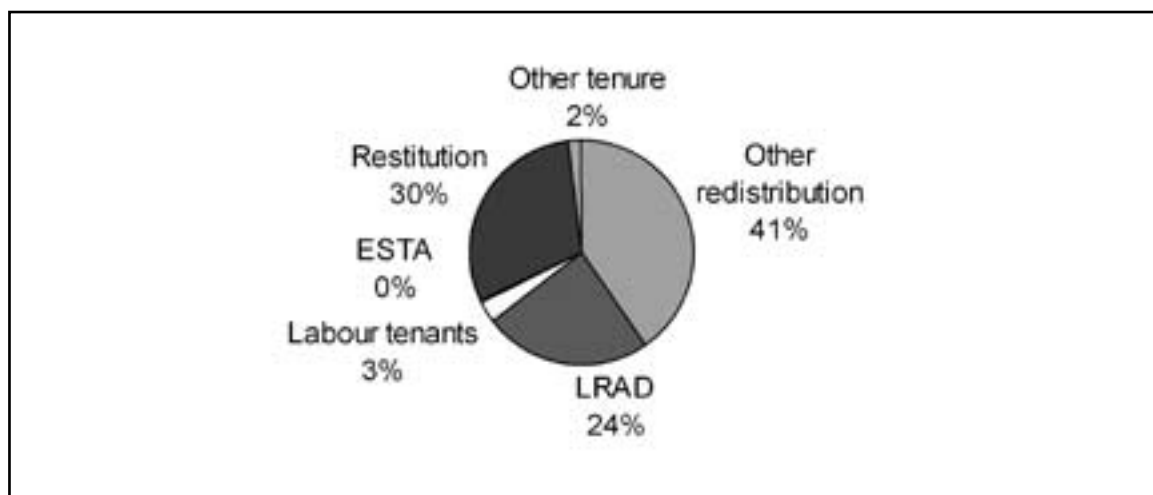
HIV/Aids has changed the composition of households and the availability of labour among rural communities, as well as changing land tenure relations. The impacts of the epidemic include increased morbidity and mortality among young adults, and more destitute child-headed households and elderly-headed households. This suggests a situation of labour scarcity, increased demand for rural extension and development services, and challenges to traditional coping strategies and systems of mutual assistance. HIV/Aids has promoted risky survival strategies like selling assets, presenting the danger of a downward spiral of poverty, asset loss and food insecurity. In this context, diversification of livelihood strategies is important as is reducing labour input requirements and minimising risk in project design. Policy is still to grapple with the role of land reform in mitigating the social and economic impact of HIV/Aids or to acknowledge the challenges that will be faced by land reform beneficiaries living with HIV or dying from Aids. DLA's current policy on HIV/Aids deals largely with the epidemic from a human resource perspective, rather than dealing with the policy implications for land reform – the focus is on staff rather than beneficiaries.

Sources: DLA 2000; HSRC 2002; VetAid 2003.

The rest of this report presents the evolution and current status of the official land reform programme as at 2004, noting recent trends

and focusing in turn on the land restitution, land redistribution and land tenure reform programmes of government.

Figure 1: Land transfers by project type (ha)*



* As at September 2004. Note: The figure for restitution is updated to 31 August 2004; the rest of the figures are updated to 30 September 2004.

Source: MALA 2004.



Chapter 4: Restitution

I'm glad our ancestral land has been returned to us, but it must be of benefit to people like us who wake up every morning to nothing (Avhaphani Ndou of the Gumbu community, Madimbo, cited in Molefe 2004).

It was clear by the early 1990s that land reform in South Africa would have to respond to the demands of people who had lost land within living memory, or within a generation or two, for that specific land to be restored to them. Restitution would need to address the legacy of forced removals, and the significance of land not only as an economic asset but also a constitutive element of identity, culture, history and tradition.

The Restitution of Land Rights Act 22 of 1994 ('Restitution Act') was one of the first pieces of legislation passed by the Government of National Unity which came into power after the first democratic elections. It gives effect to the constitutional provision that people unfairly dispossessed after 1913 are entitled either to restitution of that property or to compensation. The Act established a Commission on the Restitution of Land Rights (CRLR) to solicit and investigate claims for land restitution and to prepare them for settlement, and a Land Claims Court to adjudicate claims and make orders on the form of restitution or redress that should be provided to claimants.

From 1995, the CRLR, together with partners both in and outside government, advertised the restitution process and invited those eligible to submit claims to do so by the end of December 1998. Since then, it has become clear that many people who would have been eligible for restitution were unaware of the process or for other reasons did not lodge claims. This has resulted in a fairly arbitrary distinction between those who made their claims in time and those who missed the deadline. It is not known how many of those dispossessed after 1913 or their descendants did not lodge claims, but

the number is probably very substantial. Up to now, there has been little political impetus among those excluded from the process, though there have been intermittent calls for new claims to be accepted into the process, in both urban and rural areas.

By December 1998, a total of 63 455 claims had been lodged nationally. The total number of claims has risen to 79 693 (Mayende 2004), as shown in Table 2, not due to new claims being lodged, but due to existing claims being split up, where it is necessary to settle claims individually or by household, rather than with entire communities.

Progress with land claims

Restitution is expected to advance reconciliation and historical justice by undoing some of the legacies of dispossession and the social upheaval it entailed. However, there is little basis on which to judge how successful this has been. Instead, progress with restitution has been most commonly measured by counting the number of claims that have been settled. By this measure, the pace of the programme increased dramatically from 1999, following the implementation of recommendations from a ministerial review (Du Toit et al. 1998). This resulted in a shift from a judicial process, in which the Land Claims Court adjudicated each claim and made restitution orders, to a largely administrative process in which the CRLR settles claims primarily through negotiation, only referring cases to the LCC where there are disputes or where claimants contest the type or level of compensation offered. Another innovation that enabled the commission to speed up the settlement of

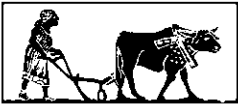


Table 2: Claims lodged by province 2004

Province	Claims at Dec 1998	Claims at March 2001	Claims at March 2002	Claims at Feb 2003	Claims at March 2004
Eastern Cape	9 615	9 292	9 469	*	*
Free State		4 715	2 213	*	*
Northern Cape	12 044		2 502	2 502	*
Western Cape		11 938	11 938	*	*
Gauteng	15 843	15 843	13 158	*	*
North West			2 508	*	*
KwaZulu-Natal	14 208	14 808	14 808	*	*
Mpumalanga	11 745	6 473	6 473	*	*
Limpopo		5 809	5 809	*	*
TOTAL	63 455	68 878	68 878	72 975	79 693

* This information is not available even though national totals have been announced.

Sources: DLA cited in SAIRR 2000:154; CRLR 2001:11; CRLR 2002:67; CRLR 2003c:10; Mayende 2004.

claims was the introduction from 2000 of Standard Settlement Offers (SSOs) of cash compensation for urban claims, usually set at R40 000 per household for former owners (R50 000 in certain metropolitan areas) and R17 500 per household for former long-term tenants.

Primarily as a result of these two changes in implementation, the number of claims settled jumped from 41 in 1999 to 3 916 in 2000; 12 074 in 2001; 29 877 in 2002; and 46 727 in 2003 (CRLR 2003:25). By the

end of August 2004, a cumulative total of 56 650 claims had been settled, resulting in the transfer of 810 292ha of land (just under 1% of agricultural land in the country) at a cost of about R1.5 billion (see Table 3). A further R2.5 billion had been paid out or promised to claimants as cash or other forms of compensation. In other words, the funds spent on land represent less than half of total awards, according to official figures, though the proportion has increased over the past two years.

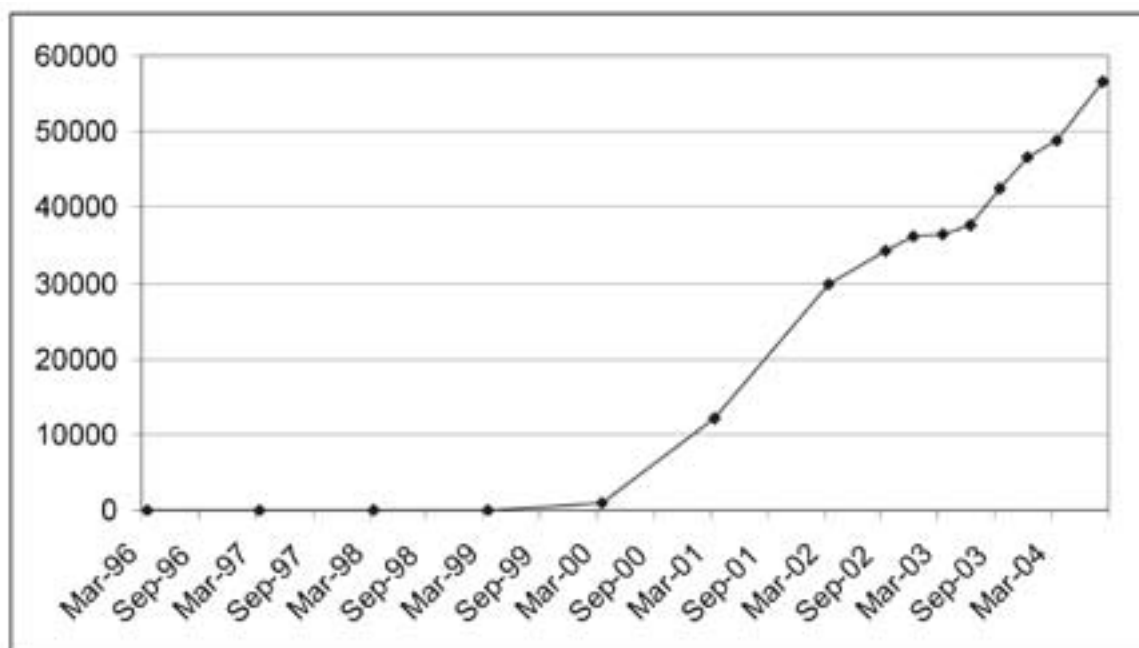
**Table 3: Land restitution claims settled by province 2004***

Province	Claims	Households	Hectares	Land cost (R)	Total award (R)
Eastern Cape	15 886	40 358	45 738	204 526 881	868 450 250
Free State	1 674	3 442	45 748	16 909 206	55 800 449
Gauteng	11 932	11 748	3 555	62 537 367	616 080 815
KwaZulu-Natal	10 551	26 307	187 583	487 986 253	998 480 348
Mpumalanga	1 546	20 973	97 983	377 785 091	514 597 858
North West	2 498	13 822	71 484	93 992 542	256 158,485
Northern Cape	1 792	5 564	233 634	69 753 602	146 564 827
Limpopo	1 314	19 886	121 466	236 061 308	373 350 135
Western Cape	9 457	12 685	3 101	8 096 187	384 854 965
TOTAL	56 650	154 785	810 292	1 557 648 437	4 214 338 132

* As at 31 August.

Source: MALA 2004.

Figure 2: Cumulative restitution claims settled*



* March 1996 to August 2004.

Sources: CRLR 2001; CRLR 2002; CRLR 2003; CRLR 2004a; CRLR 2004d; MALA 2004.

The increased pace at which restitution claims have been settled is evident in Figure 2. This shows the dramatic acceleration in 2000 and 2001, which levelled off in 2002 and picked up again in 2003.

The achievements are substantial, but need to be disaggregated. The provincial breakdown in Table 3 reveals that, in terms of land area, the most significant transfers have been in the semi-arid Northern Cape and towards the eastern seaboard of the country – particularly Mpumalanga and KwaZulu-Natal. Far smaller areas have been transferred in the desperately poor provinces of Limpopo and the Eastern Cape, in the ‘maize triangle’ of the Free State and even less in the commercial agricultural heartland of the Western Cape and the largely urban province of Gauteng. While rural claims are not evenly spread across the country, the provincial variation above also reflects uneven progress in tackling the restoration of land. For example the Eastern Cape and Limpopo are two provinces in which there is a large number of rural claims but relatively little land has been restored.

The cost of the claims settled thus far, about R4.2 billion, far exceeds the total capital budget of R2.4 billion spent on

restitution between 1995/96 and 2004/05. The Chief Land Claims Commissioner confirms that ‘we are still paying for claims settled two and a half years ago’ (Gwanya 2004, pers. comm.). In other words, the amounts agreed to in settlement of the claims have not all been spent. Future budgets will need to cover these existing commitments as well as settle those claims that are still outstanding.

Land or cash?

Although most rural claimants want their land restored, in some cases they have opted for cash compensation. Claimants also are generally provided with Restitution Discretionary Grants (RDGs) of R3 000 per household. In addition, where the claim involves land or development, Settlement Planning Grants (SPGs), a percentage of the value of the claim, are paid to consultants to assist with the planning process.

There appear to be inconsistent practices, though, to determine what claimants will get. Land restoration and ‘development’ in urban areas, including city centres and upmarket suburbs, has proved challenging and prohibitively costly. Most claimants have been offered and have accepted Standard Settlement Offers, even though these do not



adequately compensate for the market value of what was lost. As a result, restitution has made little contribution to confronting and eroding spatial apartheid in the cities. In rural areas, in contrast, where claimants have opted for cash, the level has been determined on the basis of the property's current market value (as at Baynesfield in KwaZulu-Natal (KZN)) or, in some cases, the historical market value at the time of dispossession, inflated to the current value of the rand.

Official statistics indicate that 6% of settled claims, or in the region of 3 000, are rural claims that have involved land being returned to claimants (see Figure 3). However, official statements have been misleading on the question of how much land has been restored and to how many people. More than 800 000ha had been earmarked for restoration but it is not possible to say how much land has been transferred, nor how many claimants have received land. Only a small proportion of the 154 785 households whose claims have been settled have obtained land, the majority having been paid cash compensation.¹

As the Chief Land Claims Commissioner observed, 'restoration involves more delays' than cash compensation (Gwanya 2004, pers.

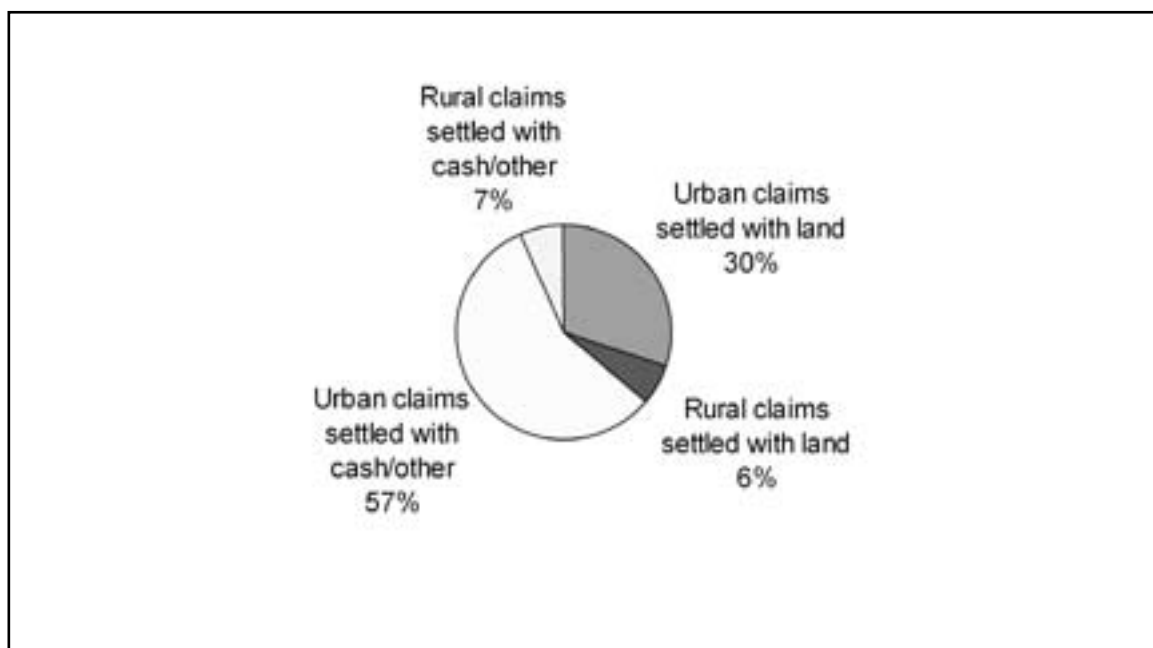
comm.). Delays in the process of restoration – and the offer of ready cash to cash-strapped communities – can be a powerful incentive for claimants to opt for financial settlement. Where community claims are split between those taking land and those taking cash, the financial payments are usually prompt while the process of acquiring and transferring land and planning for its development may take years. While the restoration of land ties claimants to one another, financial compensation can be paid to individual households – an important advantage in situations of group conflict, such as at Dysselsdorp in the Oudtshoorn area, where, over the four years since the claim was settled, an increasing number of claimants have changed their minds and opted for cash.

Rural claims

By the deadline of December 1998, a total of 19 140 claims to rural land had been lodged. This accounted for just 28% of total claims. The majority of rural claims were clustered in the north eastern regions of the country, in Limpopo and Mpumalanga and, to a lesser extent, in KwaZulu-Natal. There were few rural claims in the Western Cape and Free State, where most black people had



Figure 3: Urban and rural restitution claims by type of settlement



* As at 31 March 2004.

Source: CRLR 2004b.

no independent access to land by 1913. As of August 2004, a total of about 9 000 rural claims were outstanding, though the CRLR has no comprehensive list of these claims (Gwanya 2004, pers. comm.). These represent consolidated claims, since the validation process resulted in multiple claims in respect of the same land (made by individuals, communities and traditional leaders) being consolidated into single community claims for the purposes of settlement.

While fewer in number, the rural claims account for the bulk of the restitution programme, since these represent the majority of the people claiming restitution and will probably also account for most of the cost. Although many closely-knit urban communities were dispossessed – Sophiatown and District Six being two examples – in general, rural communities have stronger links with the land they lost and are more insistent on returning to those particular pieces of land and reviving the social networks and livelihoods that were disrupted or destroyed by forced removals. The return of entire communities to their ancestral land and to ancestral graves has become an image iconic of the new South Africa, and public ceremonies where settlement agreements are signed and where title deeds are transferred have attracted media attention and the attendance of the Minister and, on occasion, also the President.



As the restitution programme took off from 1999 onwards, the emphasis fell on settling large numbers of urban claims with cash compensation to individual households. Little progress was made in settling rural claims, with some significant exceptions including high-profile claims at Elandskloof in the Western Cape and the #Khomani San claim in the Northern Cape, the Makuleke claim in Limpopo and the Cremin claim in KwaZulu-Natal.

Each step in the restitution project cycle is more likely to be protracted and complex in the context of rural claims. Ensuring that the claims are valid is sometimes difficult, given the poor records of land rights held prior to dispossession. Tracing the dispossessed and their descendants can be logistically complex, as well as costly, but is needed

in order to verify who had what land and, where relevant, how the claimants are related to the people who were dispossessed. The Commission needs to secure agreement among claimants on the form of redress they seek – and where there is disagreement, needs to create separate groups for the purposes of settling the claim. Negotiations with private landowners to sell their farms can take years to be concluded. Settlement planning for the return of claimants entails making provision for residential needs as well as determining how agricultural land is to be used, which are processes that usually involve the contracting of private service providers and liaison with municipalities regarding service provision.

Following a directive of the Minister in 2002, the CRLR turned its attention towards the rural claims. This has slowed down the number of claims being settled, but increased the amount of land being earmarked for transfer to claimants – though there are significant provincial variations. According to the commission, a total of 6 113 rural claims were settled by 31 March 2004, of which 2 873 involved land being restored to claimants (CRLR 2004b).

There has been a marked increase in the rate of delivery in North West, where a relatively large number of rural claims have been settled, and tenders have been sent out for verification of claimants, formation of legal entities, settlement planning in respect of further rural claims (Jordaan 2004, pers. comm.). Even so, of the 1 472 lodged rural claims, only 67 claims (in twelve projects) were settled with land by March 2003 (Hall 2003a). By September 2004, this number had risen to 28 projects (CRLR 2004d). In the Free State, progress has been particularly slow with only one rural claim being settled over the past year. In Limpopo, though, where the overwhelming majority of claims are rural (approximately 85%), the attention has turned fully to these rural claims (Mufamadi 2004, pers. comm.). In the Western Cape, a number of rural claims have been settled, but only two involved the transfer of land.

The CRLR is engaged in an ongoing effort to clean its data and to improve record keeping and data management, but official data remains misleading in a number of

Box 4: Interrogating the restitution statistics

There remain substantial problems with official statistics on restitution, though there have been some significant improvements in the maintenance of restitution data by the CRLR over the past two years, including the creation of standard formats for reporting that are being applied across all provinces. Nevertheless, the problems that remain draw into question any national figures. Data problems also undermine confidence in reports regarding what remains to be done. Errors in the national data on settled claims indicate that the actual figures may be much lower than those reflected above, for the following reasons:

- Urban claims listed as rural: half of the rural claims cited as settled are in fact settlement agreements with each household in the East Bank claim in East London, which is within the metropolitan area, was previously listed as an urban claim, and which accounts for over R230 million.
- 'Land cost' is actually financial compensation: the R681 211 cited as the land cost of the Heidelberg/ Slangrivier claim in the Western Cape was not in fact spent on land but was the monetary value of the land lost, inflated to current rand values, which was paid out in cash.
- 'Land cost' is actually development funds: The R47 million cited as the land cost of the Keiskammahoek claim in the Eastern Cape was not spent on land, but rather has been earmarked for investments in development. No land is to be bought.

Though most errors have the effect of over-representing achievements in restitution, some do the opposite – for instance, the purchase of private land to restore to the Majeng claimants in the Northern Cape cost more than R3 million, but no land cost appears on the CRLR's national records.

Sources: CRLR 2004d; 2004 pers. comms: Piccolo, Westaway and Zottl; Hall 2003a.

respects (see Box 4). One discrepancy arises from different methods of counting claims – according to the way the claims were originally lodged or according to the number of settlement agreements finally signed, which could be either higher than this (if each household signs a settlement agreement) or lower than this (if multiple claims are collapsed into one). As an example, according to Mpumalanga statistics, 96 of the 5 210 rural claims (as originally lodged) have been settled, yet the total settled in the province is 910 according to the national office and 152 according to the RLCC (MPRLCC 2004 & CRLR 2004d).

Speculation and inflated prices

Reports of land speculators unduly profiteering from sales to the CRLR emerged publicly in September 2004 (Arenstein & Groenewald 2004:3). As one report characterised it, 'shrewd land speculators are milking the land reform programme by systematically selling farms to the Land

Claims Commission at massively inflated prices' (Arenstein 2004:1). The exposé was preceded by rumours of estate agents informing farmers that they stood to be expropriated and offering to buy land under claim, to 'take it off their hands' at discounted prices – and then holding onto this with the aim of hiking up prices (Anonymous 2004, pers. comm.).

Conflict and overlapping claims

KwaZulu-Natal, Mpumalanga and Limpopo provinces are widely described as 'hotspots' for restitution, since a high (but unknown) percentage of land is under claim. Competing claims and the possibility of further dispossession in the course of implementing land reform makes these conflict-prone.

Although DLA and the CRLR have improved their co-ordination in KZN, in Mpumalanga the commission is reportedly restoring land to claimants without talking to DLA about how to deal with labour tenants claiming the same land (Williams 2004, pers. comm.).



The separation of restitution from other land reform programmes is a problem... In Gongolo we have 1 200 families that are resident on the farms. Some are restitution claimants and some are not. Some are labour tenants and some are not. If we don't find a holistic approach we will have another problem

(Mkhize 2004, pers. comm.).

Conflict is also more likely where landowners have resisted restitution on a political basis. For instance, the Transvaal Agricultural Union is assisting landowners to respond to claims through its Restitution Resistance Fund (Gwanya 2004, pers. comm.).

The Richtersveld case

The ruling of the Constitutional Court on the Richtersveld case in 2004 set two important precedents in South African jurisprudence: the recognition of aboriginal title and the inclusion of mineral rights within the scope of the Restitution Act. However, the judgment in favour of the Richtersveld claim required that the parties negotiate a settlement. The value of the claim is estimated at a total value of R10 billion, much of which is to come from the parastatal diamond mining company, Alexkor, from which the claimants are seeking retrospective profits.



Validation and verification of claims

The validation campaign which determined which claims were valid in terms of the Act was completed at the beginning of 2003. It raised expectations among claimants that their claims would be pursued, but there appears to have been a lull in the process since then. A further step is required in order to verify the claimants and their relation to the land in question. In the first half of 2004, the verification of large batches of claims started to be outsourced to private service providers. With support from the Belgian government, this major initiative is aimed at completing the verification of all outstanding claims by June 2005, and to pave the way for the settlement of these claims. Until verification is complete, it is not possible to say how much land has been claimed and where this is, 'because we do not know the extent of each claim, which we can only

know when we have done the rights enquiry' (Gwanya 2004, pers. comm.). Verifying claimants may be a lengthy process, since descendants of the dispossessed may be dispersed across the country, forcing the CRLR to decide how thoroughly to advertise and how long to hold open the process.

Continuing delays

In addition to the sheer volume of work entailed in restitution, those working on claims have cited some specific and potentially remediable reasons for the delays in settling some of the rural claims. First, delays result both from disputes between the CRLR and landowners and between the commission and claimants. In some cases, disputes between claimants and the CRLR have arisen about the extent of claims, or owners have refused to sell or have contested the validity of claims. Second, the sharing of regional commissioners has been cited as a challenge in the Northern Cape (which shares a Commissioner with the Free State) and the North West (which shares a Commissioner with Gauteng), since neither commissioner is able to attend fully to either province (Manong 2004, pers. comm.). Third, mandates to project officers engaged in negotiations with claimants and landowners could be made clearer and stronger:

The nature of these claims is that you need people who are empowered to actually say certain things, quite clearly, to the landowners, and to the claimants. There is too much to- and fro-ing because each time the project officer has to get a fresh mandate from the Commission

(Jordaan 2004, pers. comm.).

Fourth, there are also ongoing delays in the implementation of settlement agreements, such as in the betterment claim of Keiskammahoek, which was settled on 16 June 2002 with a total value of about R100 million. More than two years later no money had been made available in respect of this claim, even to start planning development (Westaway, 2004, pers. comm.).

Partially settled claims

Where owners are unwilling to sell, the CRLR attempts 'to settle with the farmers

who are happy to sell and then to work on the others' (Jordaan 2004, pers. comm.). This results in some claims being only partially settled. However, when people claim a territory which is now divided into separate properties, restoration and settlement on the land makes little sense if adjacent farms cannot be bought.² In the Northern Cape, for example, nine state farms of 21 farms under claim are to be restored to the Bucklands claimants, while no progress has been made towards the restoration of the remaining 12 farms that are privately owned (wa Tsogang 2004, pers. comm.). Although settled, the Uitkyk community claimants in Ventersdorp have received only two of the seven farms they claimed.

Where land is not available for restoration, settlement agreements have sometimes been signed, and the monetary value of the claim paid into a trust account, pending the identification of suitable land. While on paper the claim is signed and funds have been spent, in practice the claim remains unresolved. At Bosch Hoek in Ladysmith, 'people have not got land but there is a broad agreement... Nothing is there, it is just that the trust has been registered, the budget has been approved' (Mkhize 2004, pers. comm.). As experienced in the Northern Cape, 'as far as the Commission is concerned, the claim is settled, but people are not getting back all their land' (Manong 2004, pers. comm.). The phenomenon of partially settled claims suggests that just because a claim is 'settled' doesn't mean that no further work by or funds from the Commission will be required, though the scale of the outstanding work is immensely difficult to quantify.

Post-settlement support

The CRLR has recognised the crucial importance of post-settlement support being provided to restitution claimants who return to their land, to enable them to use it profitably to improve their livelihoods. A trilateral agreement on post-settlement support was concluded between the CRLR, the Land Bank and the National Development Agency in 2002. However, the latter agency provided capacity building in only three projects, and the Land Bank's loan products

are considered inappropriate to the needs of claimants. As the Chief Land Claims Commissioner observed, 'you cannot assume that all these land reform beneficiaries are sophisticated types who can borrow and repay and if they don't then you can repossess' (Gwanya 2004, pers. comm.). In practice neither institution is contributing to restitution at the moment. Settlement Support and Development Planning (SSDP) units have been established in each of the regional commissions, tasked with co-ordinating the roles of district and local municipalities, and departments of agriculture and housing – and ensuring that these institutions include restitution projects in their plans and budgets. A study of six settled claims in Limpopo has been initiated with the aim of developing a system for the delivery of post-settlement support, and is being conducted by the Southern African Development Community Centre for Land-related Regional Development Law and Policy at the University of Pretoria.

The CRLR has also attempted to secure buy-in from local government to support restitution by integrating a claims perspective into integrated development planning, and providing services to communities that have resettled on restored land. One example is Kalkfontein in Mpumalanga, where the community is moving towards establishing a township on the land and the local municipality is currently providing water services. Some municipalities have entered into service-level agreements with DLA and the CRLR to implement projects and disburse funds, although some such arrangements have foundered, as municipalities have held on to these funds for years instead of disbursing them in the manner intended. However, there remain substantial challenges to link local development planning with land claims and a broader land reform perspective.

Partnerships with the private sector, where appropriate, offer the possibility of the state withdrawing but having a support system in place. DLA and the CRLR have reached agreements with Agri-SA in some provinces to ensure that commercial farmers provide mentorship support to land claimants moving back onto their land. In some instances, the



commission will pay the mentors. Where poor communities lack the resources to use their restored land productively, one response has been to opt for 'inverse' rentals in which claimants lease their newly regained land back to white commercial farmers, sometimes the former owner. Rental markets may be expected to emerge where owners of land lack the capital to invest in it, but it appears that settling claims has been conditional on such deals, specifically in the high-value end of commercial export agriculture in Limpopo and Mpumalanga. While this may benefit the community financially, and remove some of the risks of farming the land themselves, rental income has to be divided among large communities, often bringing limited benefit to individual members.

Land availability and expropriation

A contradiction that lies at the heart of the restitution programme is recognising the right of the dispossessed to restitution while relying on the willingness of private landowners to sell at prices that the CRLR is prepared to offer. While many owners have agreed to sell at market price, some have asked for exorbitant prices while others have refused to negotiate or table their asking price, which has stymied the commission and effectively stalled progress with claims. In these cases, the state's only options are to offer claimants compensation or to expropriate. Stronger powers have been introduced to expropriate property for the purpose of restoring it to land claimants, though these are yet to be used.

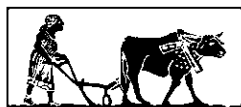
During 2003, government passed the Restitution of Land Rights Amendment Act 48 of 2003 to make possible the expropriation of property for restitution purposes without the need for a court order. Instead, the power to expropriate will reside with the Minister of Land Affairs (Section 42E). Compensation is still to be determined by the LCC (CRLR 2004c). The application of the Act is not limited to land that is claimed under restitution; land can be expropriated for 'restitution and any other land reform purposes'. The prospect of land being expropriated on the basis of a ministerial

order prompted a great deal of public debate and media speculation about the potential for abuse of this power by the Minister and the possible impact of expropriations on investor confidence. Parliamentary hearings held by the Portfolio Committee on Agriculture and Land Affairs revealed widespread support for the amendment from a range of non-governmental groupings and, unsurprisingly, representatives of land claimants.

The process revealed ambivalence on the part of government to the issue of restitution: on the one hand, government sought stronger powers to expropriate, but on the other, there appears little political will to use expropriation to redistribute land and settle restitution claims. Government has chosen not to use its existing powers to forcibly acquire land to restore to restitution claimants by applying to the LCC for expropriation orders. Up to 2004, expropriation has been invoked in two cases of restitution and two cases of redistribution.

Guidelines for expropriation in terms of Section 42E of the Amendment Act were published by the CRLR in July 2004 (CRLR 2004c). These guidelines map out three phases to the expropriation process. First is an initiation stage, in which commissioners should identify where expropriation should be initiated, determine a 'just and equitable' level of compensation in view of the criteria in the Bill of Rights,³ and deliver a notice of possible expropriation.⁴ Second is a decision stage, in which the Minister must decide whether or not to expropriate, in view of the representations made by affected parties, and may grant them a hearing in person.⁵ Third is an implementation stage, when the Minister decides to expropriate and compensation is determined. Landowners will have recourse to the courts to contest the level of compensation. Remarkably, the guidelines do not provide any guidance to commissioners on the circumstances in which they should initiate expropriation proceedings. This decision will remain at the discretion of each regional commissioner, subject to approval by the Minister.

The minister's extended powers are likely to be invoked selectively in restitution 'hotspots' like Limpopo, where little progress has been made in addressing the



nearly wall-to-wall claims over much of the province's prime agricultural land like Levubu, Waterberg and Tzaneen. As well as the almost prohibitive cost of settling these claims – the claims in the Levubu region alone are expected to cost around R100 million and settling the Makgoba claim alone could take up the entire annual budget for restitution in the province – the unwillingness of current owners to sell this land remains a stumbling block. However, there has been some movement towards negotiation, with a number of landowners finally agreeing to hold discussions with the CRLR during 2004. This is apparently an indirect result of the amendment to the Restitution Act and the resulting fears among farmers that, unless they negotiate, they may face expropriation. In addition they appear to have the belief that they will be able to negotiate preferable terms, including the payment of full market price for the improved value of their properties (Mufamadi 2004, pers. comm.).

Betterment claims

The negotiated settlement of the Chata claim in 2000 set a precedent by recognising that betterment planning in the bantustans, which involved the reorganisation of land uses and the enforced creation of villages, amounted to dispossession in terms of the Restitution Act. 'If the point of restitution is to deal with post-1913 dispossession, then it must apply to betterment' (Westaway 2004, pers. comm.). A second betterment claim was settled at Keiskammahoek in 2002. This raised the possibility that people dispossessed through betterment who had not lodged claims because they were told they were ineligible, have the right to be included in the restitution process. A task team including the Chief Land Claims Commissioner, the DLA Director-General, churches and NGOs was formed to look into this matter, but only in the Eastern Cape. The rationale for excluding the rest of the country was that it was only in that province that the Regional Land Claims Commissioner had publicly stated that betterment claims fell outside the ambit of restitution, thereby discouraging potential claimants from applying. Because betterment involved

partial dispossession, these restitution claims have resulted not in restoration, but rather in compensatory funds being earmarked for 'development', as well as a portion being paid out in cash. 'Developmental' restitution is contentious since it entails people using their compensation for dispossession to pay for their own development, purchasing infrastructure and services that elsewhere, and notably in urban areas, are provided by the state. Roads, schools, clinics and housing are some of the main aspects of 'developmental' restitution, but are also ongoing priorities of government within the ISRDP.

In the former Ciskei and Transkei, research has been done to determine the scale of the potential betterment claims and which communities may be eligible. The potential scale of betterment restitution is enormous: an estimated 62 500 households in the Ciskei and 280 000 households in the Transkei would be eligible, with the cost running into the billions – R12 billion for these Eastern Cape claims alone, by some estimates (Westaway 2004, pers. comm.).

The emerging scale of these claims casts a new light on the restitution process – its cost and duration. However, government is unlikely to want such a massive injection of public funds into these poor areas to be directed through a cumbersome restitution process rather than having a free hand to determine how these funds can be invested in development. Betterment claims may also set precedents around dispossession of quitrent rights and unregistered rights to South African Development Trust land in the former homelands – precedents which will extend the possibility for residents of communal areas elsewhere in the country to assert that they too have valid claims to restitution.

Betterment claims may bring substantial funds into some of the poorest areas of the country, where the cost of dispossession is still being acutely felt. The cost of restitution to the state – and to South African society at large – must therefore be weighed up against the continuing legacy of dispossession and the structural impoverishment of these areas. While nationally it appears that most rural claims are still outstanding, the betterment issue indicates that most potential rural claims may, in fact, never have been lodged.



Claims on state land

Although most claims appear to be on privately owned land, there are many on land owned by the state – the largest single landowner in the country.

Protected areas

A sizeable number of claims pertain to land in protected areas, from national parks to provincial conservation areas, state forest reserves and private reserves. Although there is no comprehensive list of restitution claims in protected areas, there are thought to be claims in respect of 23 different national and provincial parks or other protected areas – and in a number of cases, multiple claims by different communities to portions of the same parks (Wynberg & Kepe 1999:71–4). In these cases, the right of claimants to restitution must be reconciled with the right of South Africans to conservation of natural resources and biodiversity (Kepe 2004).

A protocol between the CRLR and nature conservation authorities, approved by Cabinet in 2003, formalised a compromise position. According to the Chief Land Claims Commissioner, ‘our view was that we need to transfer the right in land in title to the people, even if the people agree that they will continue with our conservation objective’ (Gwanya 2004, pers. comm.). Despite the new consensus that protected areas need not mean the exclusion of people in the interests of wildlife, evident at the World Parks Congress in Durban in 2004, land claim negotiations have been premised on the view that claimants may own the land but should not have access to it for their own agricultural use or for natural resource harvesting (Kepe 2004).

Claims in respect of national parks have been the most high profile and include the Makuleke claim in the Kruger Park, Dwesa-Cwebe in the Transkei’s Wild Coast National Park, and the #Khomani San and Mier claims in the Kalahari Gemsbok Park in the Northern Cape. The main route being followed currently is to distinguish between issues of ownership and land use. Although ownership has been transferred in both the Makuleke and #Khomani San cases, the nature of this land right is unclear. The limitations

on the powers of ownership are substantial since the ‘owners’ have almost no scope to transact their rights – they may not sell, mortgage, lease or lend – nor do they have unfettered scope to use the land themselves. Indeed, while in a strict legal sense they have ownership in that title has been transferred, in practice claimants have limited scope to exercise the rights of ownership.

Military land

As with the protected areas, there is no definitive information about how many claims have been made on land owned by the military. The CRLR estimates that there are just ten such claims. Some of these are sizeable and negotiations with the South African National Defence Force (SANDF) have been intractable in a few cases. The Lohatla claim in the Northern Cape and the Madimbo corridor in Limpopo are two contrasting cases. In the case of Lohatla, the SANDF refused to make available the 67 000ha area, which it uses for a battle school. The LCC ruled in favour of the SANDF and ordered that the claimants should be provided with alternative land. Later attempts to get alternative land, and to negotiate with the SANDF for a smaller portion of the land, have not borne fruit and, despite being a high profile case, the claim had not been settled by 2004.

The SANDF, though, has been willing to part with land that is not being used for training and is not contaminated with explosives or ammunition, such as part of the Madimbo corridor which borders Zimbabwe in the northern part of Limpopo. This is the site of a successful restitution claim by the Gumbu and Mutele communities, who were forcibly removed to make way for a military corridor along the border during the 1980s. In 1998, the army opposed their claim but, after lengthy negotiations between the CRLR and the SANDF, the claim was settled in 2004 and the land restored to the two communities, although the army will maintain a base there. Future land use and development plans remain unclear and contested. Conservationists want to incorporate it into the Great Limpopo Transfrontier Park and are offering opportunities to the claimants through eco-tourism, while diamond



prospecting companies are approaching community leaders to propose mining operations (Molefe 2004).

Forestry land

It is not known how many claims have been made on state forest land, though there are such claims in a number of provinces. Little headway has been made with settling these claims, though some have been addressed alongside the process of unbundling the State Forest Company Ltd. (Safcol). In the Transkei, claims on state forest land at Elangeni, Bayiza and Zingisi were validated, verified and valued by 2001, but the verification process has now been re-opened to incorporate those residing elsewhere and tenders have gone out to re-verify the claimants in cases where there is dispute. In the meantime, some of this land has been privatised and is now under the control of private companies (Simokunda 2004, pers. comm.).

Deadline for claims

Restitution has attained renewed prominence in recent years, as has been evident in the extent of political attention and increased funding accorded to it. In particular, President Thabo Mbeki in 2002 announced a three-year deadline, now extended to December 2005, for the finalisation of all claims, at which time the CRLR is scheduled to be closed.⁶ Deciphering the political subtext for the new insistence on finalising restitution ahead of its original schedule involves a degree of speculation. Precisely how the deadline will be pursued cannot be foreseen, but a variety of 'fast-track' versions of restitution, including the promotion of cash compensation and the linking of restitution with redistribution, can be expected in the coming months. Another strategy to fast-track settlement is by 'bundling' together claims that are in the same area, where people were dispossessed in a similar manner around the same time in terms of the same legislation (Gwanya 2004, pers. comm.).

There appear to be two emerging positions on the deadline. One is that restitution needs to be finalised so that the business of land reform proper can begin. Interestingly, there are variations of this view from the

Presidency, the Minister and NLC, usually a strong critic of government land reform policy. According to the land rights co-ordinator of NLC, 'restitution has been part of an effort to distract from the lack of land reform in the country' (Mngxitama 2004, pers. comm.). Another perspective held by NGOs, academic analysts and some CRLR staff is that, while improved pace is important, this should not be the overwhelming imperative and that the historic potential of restitution should be prioritised – to transfer land and to establish a basis for development on this land. Few believe this is possible before the end of 2005.

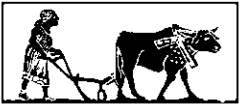
There appears to be confusion among the provincial offices of DLA about whether 2005 will mark not only the settlement of all outstanding restitution claims and the closing of the CRLR, but also that both budget and staff capacity will be redirected from restitution to redistribution. Some provincial offices of DLA indicate that they are waiting until the end of 2005 to pick up the pace of redistribution, as they anticipate a windfall of staff and funding from the CRLR. According to the commission, the opposite can be expected; while CRLR staff will be absorbed into the provincial and district offices of DLA, these offices will need to implement settlement agreements by doing development planning and land transfer for at least a further ten years (Gwanya 2004, pers. comm.). The latter appears a more realistic prognosis; if it continues to be implemented in its current form, restitution should be expected to take another decade, at the least, and cost tens of billions of rands.



Endnotes

1. Yet the Director-General stated in July that there had been 'more than 600 000 hectares delivered to 662 307 individual beneficiaries' – grossly exaggerating the recipients of this land, since this assumes about six beneficiaries per household, counting all households including those that did not get land.
2. The same applies to attempts to secure alternative land. To purchase land equivalent to that which was lost sometimes entails buying a 'block' of farms – and this has proved to be unfeasible in some instances (2004 pers comms; Oganne and Mkhize).

3. These are: the current use of the property; the history of the acquisition and the use of the property; the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and the purpose of the expropriation (Section 25(3) of the Constitution).
4. All affected property rights holders to be expropriated (which could include holders of mineral rights and farm dwellers) must be notified, not only owners.
5. The Amendment Act cross-refers to the Promotion of Administrative Justice Act 3 of 2000, requiring that, before making a decision to expropriate, the Minister must give all interested parties an opportunity to make representations on the matter (CRLR 2004c).
6. The deadline has since been extended for a further two years to 2007.



Chapter 5: Redistribution

Alongside restitution, the ANC set out in the early 1990s a vision of a separate land redistribution programme to redress the racially skewed distribution of land and to provide a basis for equitable economic development.

The land redistribution programme was to address the divide between the 87% of the land, dominated by white commercial farming, and the 13% in the former 'homelands'. Redistribution was to ease congestion in the communal areas and diversify the ownership structure of commercial farmland. Policy debates in the early 1990s considered the merits of a range of tools to promote land redistribution. These included the extent to which the process should rely on land markets, and approaches to beneficiary identification, financing mechanisms for redistribution and provision of credit to new producers (LAPC 1994). Also debated were land taxes and land ceilings to raise the opportunity cost of owning underutilised land and bring additional agricultural land onto the market, and subdivision to create holdings suited to the needs of resource-poor, small-scale producers.

Policy advice from the World Bank emphasised the potential economic benefits of promoting a smallholder sector, arguing that there is an inverse size-productivity relationship in agriculture. In other words, small farms are more efficient than large ones. The bank promoted its model of market-assisted land reform in which the state would facilitate market transactions but, unlike in Zimbabwe, would not purchase land itself. Nor would it select beneficiaries. Instead, those eligible would be required to apply to the state, which would provide subsidies, support and advice (World Bank 1994). These proposals substantially shaped the land redistribution programme.

Land redistribution started under the pilot programme from 1995 until 1999, and

aimed to benefit poor households who could apply for grants from the state to enable them to buy land and have a little start-up capital. This approach was later confirmed in the White Paper on South African Land Policy (DLA 1997). Ownership of land was seen primarily as providing security of tenure for residential purposes and small-scale agriculture for subsistence purposes. Eligibility was restricted to households with an income below R1 500 per month.

Achievements of land redistribution

In the first ten years of land reform, most land transfers have been through the redistribution programme, with restitution contributing just less than a third of the total. Transfers to farm dwellers or tenure upgrades for residents of the former homelands, through the tenure reform programme, comprise a small proportion. The total land redistributed through redistribution and tenure reform, as of September 2004, was nearly 1.9 million hectares. The rate of delivery rose in the late 1990s and then dipped during the moratorium and ministerial review, followed by a surge as the new LRAD programme came on stream and projects that had been 'parked' (pipeline projects) were approved and transferred. Land transfers peaked in 2002 at just under 300 000ha during that year, and then declined to about half that during 2003 (Table 4). An overall trend is towards a declining size of land per project (fewer hectares), but also a sharply declining size of group, with the result that the number of hectares per beneficiary, on average, appears to be on the rise.



Table 4: Land redistribution and tenure reform by year 2004*

Year	No. of projects	Households	Female-headed households	Individuals (LRAD)	Hectares
1994	5	1 004	12	0	71 655
1995	12	1 819	24	0	26 905
1996	49	6 256	189	0	72 416
1997	97	11 928	1 029	0	142 336
1998	236	14 943	2 934	0	205 044
1999	156	30 383	1 675	0	245 481
2000	236	29 699	1 941	363	222 351
2001	400	23 213	2 912	3 732	249 302
2002	742	14 132	691	10 650	299 969
2003	502	17 438	226	8 192	158 668
2004 (to Sept)	251	2 730	0	16 284	183 625
TOTAL	2 686	153 545	11 633	39 221	1 877 752

* As at 31 September.

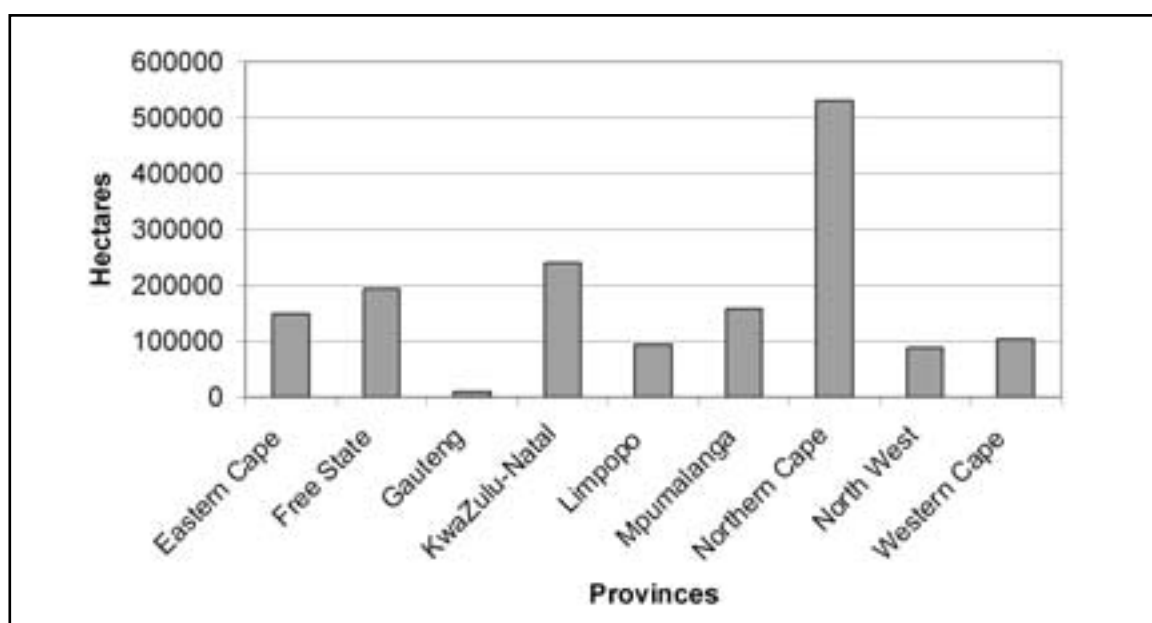
Source: MALA 2004.

The provincial picture is quite varied (see Figure 4).¹ More than half of land transferred has been in the semi-arid Northern Cape. Excluding the predominantly urban province of Gauteng, the redistribution of land ranged from 87 000ha in North West and 95 000ha in Limpopo to 239 000ha in KwaZulu-Natal (DLA 2003).



Little is known about the impact of land redistribution on livelihoods or what land use is occurring on redistributed land. Anecdotal evidence suggests that the phenomenon of 'straddling' is prevalent, particularly among poorer beneficiaries who need to maintain their livelihoods in communal areas and combine these with activities on

Figure 4: Land transferred through land redistribution and tenure reform (ha)*



* As at June 2003.

Source: DLA 2003.

Box 5: Redistribution grants and services

According to DLA, there have officially been five land redistribution sub-programmes since 2001:

- Land Redistribution for Agricultural Development
- Municipal Commonage
- Settlement
- Equity Schemes
- Non-Agricultural Enterprises.

The sub-programmes more or less coincide with the grants defined by DLA, except that LRAD grants are used in equity schemes, and SLAG grants are used for settlement and non-agricultural enterprises. Both the commonage programme and equity schemes were under review as at the end of 2004. According to the most recent DLA grants and services document (version 7, dated July 2001), the redistribution grants available to applicants are:

- Land Redistribution for Agricultural Development grants to purchase land that will be used for agriculture, and LRAD planning grants up to 15% of the value of total project costs.
- Settlement/ Land Acquisition Grants and Settlement Planning Grants of up to 9% of total project costs, for settlement, tenure security and non-agricultural purposes.
- Restitution Discretionary Grants of up to R3 000 per claimant to enable them to relocate to and manage their restored land.

In addition, two grants are available to municipalities:

- The commonage acquisition and infrastructure grants which allow municipalities to purchase additional commonage land and to invest in infrastructure on this land.
- The Land Development Objectives (LDO) planning grants are for the purpose of determining LDOs, but are no longer used.

Source: DLA 2001a.



Box 6: State land disposal

State land disposal is another form of land reform, though it consists of a combination of redistribution, tenure upgrades and the sale of land in both the former commercial farming areas and the former 'homelands'. In 2000, President Mbeki committed government to disposing of a total of 669 000ha of state land. Provincial State Land Disposal Committees (PSLDCs) in each province have overseen the identification of state land, its vesting and its transfer or sale. The process has met and even overshot its original target. By 2004, 770 000ha had been disposed of, most of which was in the former homelands where existing land users have secured their tenure. The disposal of state land therefore does not necessarily reflect the wider redistributive thrust of land reform – namely addressing the racial distribution of land – though it has increased access to land and contributed to securing tenure.

Sources: MALA 2004; Mayende 2004.

newly redistributed commercial farmland (Andrew et al. 2003). Conservative elements within the commercial farmer lobby have sought to discredit the entire land reform initiative by pointing to the decline in production on redistributed farms. The

Transvaal Agricultural Union, for example, published a book arguing that land reform is economically disastrous, apparently calling into question the capabilities of a black government. However, concerns have arisen within more progressive quarters in both

government and civil society about both the limited improvement of the livelihoods of beneficiaries and the difficulties of maintaining production levels on redistributed farms. These have emerged in response to specific problem cases; the absence of standardised post-transfer monitoring means that such debates take place without the benefit of a comprehensive picture of land reform. (See Box 10 on page 33 for more information on monitoring and evaluation.)

LRAD

The Land Redistribution for Agricultural Development programme was launched in August 2001, after a hiatus of more than a year in the redistribution programme, during which a ministerial review assessed existing programmes and developed new policy directions. LRAD was devised by DLA and NDA and was billed as the programme that would integrate the acquisition of land (land redistribution) with support for new owners (agricultural development), and would be jointly implemented by DLA, NDA and provincial departments of agriculture (PDoAs).



LRAD introduced three innovations that distinguish it from its predecessor. First, the income ceiling was removed; eligibility on the basis of race was introduced in place of restricting access to poor households. In place of the focus on the poor, targets were set for delivery to four specified 'marginalised groups': women, farm workers, the youth and disabled people. Second, it required that applicants make a contribution in the form of their own capital, loans, assets or labour, and introduced a sliding scale of grants from R20 000 to R100 000, depending on the size of the 'own contribution'. In this manner, LRAD was intended to leverage private finance from applicants themselves; making a contribution was also expected to increase participants' commitment to the project (MALA 2000). Third, grants were made available to individuals rather than to households, and each adult in a household became eligible. Together with the new grant structure, this greatly increased the amount of grant finance available to beneficiaries. Whereas under SLAG a household could

access only R16 000 in grant finance, under LRAD the same poor household could secure a grant of R60 000 if three adults were to apply and pool their grants. This could, in theory, rise to R300 000 for a better-off household.

Who is benefiting?

Land NGOs responded to the policy shift with hostility, arguing that LRAD represented an abandonment of the poor. This was because it opened the programme to people who already have substantial resources, introduced a principle of 'the more you have the more you can get' and emphasised the creation of a class of black commercial farmers, in place of the previous emphasis on redistributing land to the poor for subsistence purposes. In 2004, the Director-General defended the policy, claiming that 72% of land reform beneficiaries were 'poor', from which he concluded that 'targeting of the most poor has taken place' (Mayende 2004). What constitutes being 'poor' or how this is measured is not clear. A real debate on who is benefiting is impeded by a lack of consistent information in the public domain.

Clearly, the poor are no longer exclusively targeted, but it is not apparent how benefits are now being distributed and whether or not the poor continue to be the primary target. Nearly a quarter of the 72 LRAD projects in the Western Cape involve applicants accessing the grant at the R20 000 level, without any own contribution in cash or kind or any loans. These are likely to be poorer applicants and, because they are generally in larger groups, they represent the majority of LRAD applicants – 2 444 of the total of 4 647 adults who have received grants (WCPLRO 2004). Since no information is available on the actual wealth of beneficiaries, the size of grants is being used as an indication. A more useful way of assessing equity would be to compare the proportion of grant funds going to the poor versus others, but this would require improved data collection.

LRAD by province

LRAD has progressed furthest in the Eastern Cape, which has the largest number of projects and has transferred the largest number of hectares (see Table 5). This is a

Table 5: LRAD project data by province 2004*

Province	Projects	Hectares	Beneficiaries
Eastern Cape	268	96 346	3 146
Free State	200	45 664	1 424
Gauteng	103	6 237	2 134
KwaZulu-Natal	70	29 505	1 658
Limpopo	98	44 425	688
Mpumalanga	39	27 326	3 991
Northern Cape	50	41 560	478
North West	111	49 984	2 302
Western Cape	62	36 889	2 644
TOTAL	1 001	376 936	18 465

* Approved projects which have not necessarily been transferred (exact date varies by province).

Sources: ECPLRO 2004; FSPLRO 2004; GTPLRO 2004; KZNPLRO 2004; LPPLRO 2004; MPPLRO 2004; NCPLRO 2004; NWPLRO 2004; WCPLRO 2004.

change from 2003, when the Free State was the leading province in terms of LRAD land transfers.

People wanting land to farm commercially now compete with those wanting it for basic subsistence purposes. However, because policy is interpreted differently across the provinces, and because of contextual factors such as land prices, the composition of projects also differs between the provinces. As a result, LRAD is largely a programme for those engaging in commercial farming in the provinces of KwaZulu-Natal and Limpopo, while in the Eastern Cape and Western Cape many beneficiaries are poor people getting minimum grants of R20 000. In effect, this latter group has to pool their grants, as was the case with the SLAG grants, because these grants are too small to purchase good land.

Escalating land prices are a factor cited as inhibiting land redistribution, not only in the high value agricultural areas like the Western Cape or the coastal regions that are in demand among property developers and foreign buyers (see Box 7). Most provincial directors of DLA report that there has been a marked increase in land prices over the past two years (2004 pers. comms: Brislin and Mongae). Where projects are delayed for a year or two, projects may no longer be feasible with the available grants because

property prices may have risen (Fife 2004, pers. comm.). Land price increases have not been matched with a concomitant increase in land grants – in fact, there has been no increment in the grant structure of LRAD since its inception and so, in real terms, the available grants have been declining in size. However, an inflation-related increase is reportedly under consideration and a new LRAD grant structure was expected before the end of 2004; the proposal is for an annual inflation adjustment in the grant (Van der Merwe 2004, pers. comm.). However, this was likely to be linked not to an index of property prices but rather to the more modest CPIX (consumer price index excluding mortgage costs).

Group sizes

LRAD was presented as a solution to the ‘rent-a-crowd’ syndrome evident in earlier SLAG projects, namely the tendency for large numbers of people to joint together to pool their grants in order to purchase land. LRAD projects certainly involve fewer people, on average, than was the case in the past, though there is enormous variation in practices, reflecting different interpretations of the LRAD policy which states that group production will be ‘discouraged’ (MALA 2001). The variation is also due to the dynamics of different sectors of agriculture.



Box 7: Foreign land ownership

In August 2004, the Minister appointed a commission of enquiry into foreign landownership. She argued that this was one factor contributing to spiralling land prices; one which impeded land reform and put urban and rural land out of the reach of most South Africans. The committee is to investigate the nature and extent of foreign land purchases, and their impact on land prices, as well as determine the extent to which these are speculative or lead to investment in productive land use. The committee, comprised mostly of legal experts, will also explore international practices in regulating foreign ownership of land, and make recommendations regarding a regulatory framework for South Africa to govern the purchase, and use, of land by foreign individuals or foreign-owned companies.

In general, though, LRAD involves smaller groups of people obtaining existing properties intact, that is, without subdivision.

It now appears that projects in the Free State and Gauteng are being restricted to ten or fewer people and there is a preference for family-based groups – though these considerations are set aside in the case of farm dwellers facing eviction. Similarly, in the Eastern Cape, projects can involve up to a maximum of ten people if it is a family, but if the applicants are not related, then projects are limited to four people. In KwaZulu-Natal, too, there is no particular limit but rather a preference for small projects, especially in the sugar industry where the PLRO is focusing on establishing smallholders,



often in a husband-and-wife team. In these provinces, then, the small grants offer limited opportunities for poor people to purchase agricultural land, as the restriction on group size precludes them from forming larger groups to purchase entire farms.

There can be no limit on group size in Mpumalanga, says the provincial Director, because of the cost of land; instead, projects involve up to 200 members and the largest project is an equity scheme in the timber industry involving 500 LRAD grantees. 'If we were to limit the group size to 20 or 30, then we would not be able to buy up those farms' (Archary 2004, pers. comm.). In the Western Cape, too, limits on group sizes are not enforced in equity schemes, since these

Box 8: Land Bank projects

In 2001, DLA concluded an 'agency agreement' with the Land Bank, empowering it to approve and disburse LRAD grants, while lending applicants the 'own contribution' they required. The agreement enabled applicants to get loans and so opened the way for higher value land to be acquired for redistribution, for instance in the Lowveld of Mpumalanga where, the local DLA Director reports, 'it allowed us to buy up those major commercial farms, which we would not have been able to do under the grant structure, without these loans from the Land Bank'. However, the agreement was not renewed after it transpired that the Bank had severely over-committed the LRAD funds provided by DLA, leading to allegations of poor oversight on its part. After the agency agreement collapsed, projects approved by the Land Bank were transferred to the provincial offices of DLA to implement and to fund from their own limited budgets. This contributed in large part to the budget backlog that emerged during 2002 and 2003, which led to an informal moratorium on new projects being put in place in a number of provinces, and some approved projects being 'parked' pending the availability of funds to proceed with purchase. The high debt-equity ratios in some Land Bank projects have also raised concerns that debt repayments by LRAD beneficiaries may not be sustainable. The Land Bank has not published any information on the ability of LRAD beneficiaries to service their loans and it remains to be seen how the Land Bank and the DLA will respond to defaulters. The agency agreement with the Land Bank will reportedly not be renewed.

Sources: 2004 pers. comms: Archary and Van der Merwe.

usually involve, of necessity, more grantees than other types of projects. A maximum of 20 members per project is imposed in the North West. DLA in the Northern Cape prefers to keep projects to below 50 members. There is no limit on group size in Limpopo, though in practice LRAD in that province consists of two entirely distinct components: most are commercial projects each involving only one man, and just two projects consist of more than a hundred beneficiaries each, most of whom are poor women (Wegerif 2004). Aggregating these figures produces spurious results.

Dealing with scarce resources

In a context where demand for land outstrips the funds available for redistribution, there are different practices in the various provinces. Some spend and hope that funds underspent in other provinces can be redirected to make up the shortfall or that additional allocations will be forthcoming from the Treasury. In the Eastern Cape and KZN, though, provincial offices only approve projects for which there are funds. This means halting applications earlier on in the process – for instance during the planning phase. In the Western Cape – perhaps the province most affected by the budget backlog – more than R200 million worth of projects were put on hold or ‘parked’ due to a lack of funds. Now projects where planning has been started will be pursued, but most other projects that are on the department’s books will be deregistered and applicants will be told that they can apply again (Fife 2004, pers. comm.). In 2004/05, the land reform budget for the Western Cape was R38.3 million.

Private sector

Since the agreement with the Land Bank lapsed, Ithala Bank in KZN and other private financial institutions are securing service level agreements to implement LRAD projects for their clients. The private sector has also assisted DLA to establish and support LRAD projects. Much of the involvement of the private sector has been geared to create commercial farmers and has influenced the direction of land reform by making available land, packaging projects, business planning – as well as co-ordinating post-settlement support. Commodity sector organisations have established ‘emerging farmer’ projects within their respective industries and DLA relies on them to plan projects of a highly commercialised or agribusiness type, since this falls outside its core business and its skills competency (Shabane 2004, pers. comm.). The private sector’s role in supporting land reform is probably most evolved in the oligopolistic sectors such as sugar, where a few large corporations play a key role in establishing and supporting small-holders, often through outgrower schemes (see Box 9).

Conclusions on LRAD

Is LRAD an apt response to the identified problems of the SLAG programme? It has been successful in increasing the pace of delivery, spending the available budgets, and private finance has been leveraged. In some respects, though, LRAD has reproduced some of the previous problems. Firstly, it has reduced but not stopped the tendency for groups to pool their grants in order to buy land. Now, groups can be smaller because of the larger grants available, and most



Box 9: Transformation in the sugar industry

The sugar industry has its own ten-year land reform plan, through which it plans to sell 78 000ha at market price to LRAD applicants. This accounts for 3% of the land under cane production. Land prices on the sugar estates of the KZN coast have escalated, reaching as much as R200 000 for an undeveloped acre of land. The Inkezo Sugar Company was launched in September 2004 by major sugar companies to co-ordinate land sales, and to plan and prepare commercial farming projects for grant approval. The focus is on skilled people with some resources of their own: ‘these are people who have been former magistrates or teachers or social workers, who... resign from their work and take up farming as their full-time business... largely professionals’.

Source: Shabane 2004, pers. comm.

provinces restrict the size of group they may form. Secondly, the lack of post-settlement support that was a main failing of SLAG is unresolved within the LRAD programme. With LRAD becoming the main form of land redistribution, there is now no programme geared to those interested in non-commercial farming, or not interested in farming, since LRAD only deals with land for agricultural purposes. There remains a need for a viable programme for those wanting land for settlement or a combination of land uses.

Settlement

Across large parts of the country, there appears to be substantial demand for settlement – access to land for housing and related services and infrastructure. Many people seek to settle on relatively small parcels of land in urban and peri-urban areas, as well as in rural areas. However, policy concerning rural settlement remains in flux. The Settlement / Land Acquisition Grant was the first land purchase subsidy made available by the DLA. As well as providing access to land for residential and livelihood purposes, it was used by those seeking to enter into agriculture. This latter function has fallen away with the advent of LRAD, and so SLAG remains, in theory, a financing mechanism that can be invoked to provide access to land for residential or other non-agricultural purposes. There is no particular settlement programme. The SLAG grant, while still available, is not being actively promoted and is now seldom used.

In general, rural settlement falls between stools: while DLA focuses on land for agriculture, rather than for housing, in rural areas, the Department of Housing (DoH) primarily provides housing in urban settlements. Land reform has not been a feature of the urban areas; despite some initial policy intentions to contribute to the Urban Renewal Programme (URP), only a small handful of settlement projects have been created in urban areas through land reform. Those receiving SLAG grants are not eligible for housing subsidies and, because the SLAG is not inflation-adjusted, the housing subsidy is now much more attractive, offering up to R24 000

per household, compared to just R16 000 through the SLAG. SLAG is now being used occasionally in certain provinces, according to DLA sources, to meet a wide range of needs – not only for land for housing. Over the past year, these grants have been accessed in the Eastern Cape for settlement and to buy forestry land in the Ciskei and Transkei; for tourism projects as well as establishing new townships in Mpumalanga; for evicted farm workers and to create equity schemes in the North West; and for settlement projects in the URP development node at Galashewe in the Northern Cape (2004 pers. comms: Nkonyane, Archary, Mongae and Mvula). One settlement project was established in Limpopo (Letsoalo 2004, pers. comm.).

Most of the SLAG projects date from when this was the only grant on offer, and involved people buying land for farming (See Table 6). Land reform has made a limited contribution towards addressing the urgent need for settlement in rural areas. A new policy involving a trilateral partnership has been under discussion between DLA, DoH and the Department of Provincial and Local Government since 2003, though so far only an executive summary of this new proposed policy has been made publicly available. Meanwhile, there is no specific policy framework to guide rural settlement.

Farm worker equity share schemes

In some parts of the country, farm workers have applied for and used their land grants to purchase equity in the farming businesses where they are employed, instead of purchasing their own land. These equity schemes emerged in the Western Cape particularly as a favoured approach to land reform that transfers ownership without affecting the scale and nature of production.

In a context where the cost of land and capital investments in commercial agriculture are prohibitive for poor people wishing to participate in the agricultural sector, these schemes provide a means by which to redistribute to workers both ownership of and profits from commercial farming, without disrupting established commercial enterprises. This is intended to contribute to

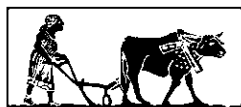


Table 6: SLAG project data by province 2004*

Province	Projects	Hectares	Beneficiaries
Eastern Cape	105	43 865	40 390
Free State	98	37 469	2 576
Gauteng	43	5 094	6 505
KwaZulu-Natal	89	68 293	8 974
Limpopo	77	45 181	6 714
Mpumalanga	53	58 858	6 973
Northern Cape	27	51 394	703
North West	36	30 554	18 128
Western Cape	71	17 493	4 908
TOTAL	599	358 201	95 871

* Exact date varies by province.

Sources: ECPLRO 2004; FSPLRO 2004; GTPLRO 2004; KZNPLRO 2004; LPPLRO 2004; MPPLRO 2004; NCPLRO 2004; NWPLRO 2004; WCPLRO 2004.

Box 10: Monitoring and evaluating land reform

There has been an ongoing process of redesign of data management systems, including DLA's Landbase. The Monitoring and Evaluation (M&E) Directorate has been expanded and now includes restitution. Its key output, the Quality of Life reports, have been produced three times, and a further survey of land reform beneficiaries is planned for 2005. Data cleaning exercises have been launched across all programme areas, including re-capturing project data in the provinces. Nevertheless, fundamental problems remain. Because there is no standard format for recording and reporting on delivery across the provinces, a number of data anomalies arise. In addition, missing data regarding the amount of land (in hectares) and numbers of beneficiaries (in households or individuals) draw all national totals into question. This suggests that the department may in some respects be under-reporting its achievements.



easing social conflict between landowners and farm workers and to increase worker productivity as workers feel more affinity with and ownership of the enterprise in which they are employed. Whether either of these presumptions is borne out in practice, however, is a moot point – there are a number of cases that suggest otherwise, but also some successes (Mayson 2003).

However, both officials and activists are sceptical about these schemes. They argue that a few years into a project, the beneficiaries, who are now co-owners of the farms and enterprises, are often still in master-servant type relations with their white employers who still control decision making. However, this assessment is based on anecdotal evidence and, since no systematic

monitoring and evaluation activities are undertaken of equity schemes, it is difficult to determine how prevalent these problems are. The primary questions still to be convincingly answered are whether power relations and race relations are changing on farms, as a result of equity schemes, and what kinds and levels of tangible benefits these new shareholders are receiving.

As is usually the case, equity partners who are minority shareholders seldom exert much influence over the business. An innovation introduced in recent years in larger projects has been to appoint someone with farming expertise as a paid representative of workers to transfer relevant business skills to them and to represent workers' interests within the business (Mayson 2003). Some of the

more successful projects involve transferring tangible benefits to workers, such as upgrading or transferring full ownership of workers' houses to them, sometimes using housing grants, or providing additional land for worker co-operatives to farm, while continuing to engage in wage employment on the farms where they are shareholders.

One of the main advocates of equity schemes has been Khula Enterprises, which manages the Land Reform Empowerment Facility (formerly the Land Reform Credit Facility), a fund established by the European Union together with DLA, for the purpose of extending credit to people entering the land reform programme. A few projects have been established with Khula finance, and these appear to receive relatively high levels of expert input in the planning phase but, like other equity schemes, they lack systematic monitoring. Commercial banks and the Land Bank have also provided financing, sometimes in conjunction with land grants from DLA. Some of the more complex schemes entail worker trusts securing loans to increase their shareholding and to top up grants for housing. However, the ability to repay these loans is contingent on income from dividends. In some instances in the volatile apple industry, worker shares have devalued, dividends have not materialised and they have been unable to repay these loans.

Equity schemes have been favoured by

the private sector and also by government. The DLA Director-General has said that 'share equity schemes have great BEE [black economic empowerment] potential' (Mayende 2004). However, officials engaged in implementation have a more measured response. DLA in the Northern Cape found that there are limited benefits in the schemes they established: 'we are very cautious on equity schemes because they have to be properly packaged. You need to know how to do this otherwise they will stay workers ... [for] five years without benefiting' (Mvula 2004, pers. comm.). In KwaZulu-Natal, DLA considers equity schemes to be more feasible than subdivision of large commercial holdings (Shabane 2004, pers. comm.). Critics have pointed out, however, that farmers themselves initiate many of the schemes, motivated by a need to recapitalise their businesses rather than an interest in sharing profits (Mayson 2003). Nevertheless, there are clearly opportunities for win-win solutions, but careful vetting of grant applications is needed to ensure that the projects approved are structured to secure workers' interests and to minimise their exposure to risk.

Although equity schemes are now being established in a number of other provinces, they remain largely a Western Cape phenomenon, as Table 7 demonstrates. These schemes may exaggerate the extent of land



Table 7: Equity scheme project data by province 2004*

Province	Projects	Hectares	Beneficiaries
Eastern Cape	NO INFORMATION AVAILABLE		
Free State	1	109	218
Gauteng	3	574	388
KwaZulu-Natal	0	0	0
Limpopo	NO INFORMATION AVAILABLE		
Mpumalanga	4	2 893	1 259
Northern Cape	2	7 820	3
North West	1	1 846	74
Western Cape	22	7 546	2 439
TOTAL	33	20 788	4 381

* Exact date varies by province.

Sources: ECPLRO 2004; FSPLRO 2004; GTPLRO 2004; KZNPLRO 2004; LPPLRO 2004; MPPLRO 2004; NCPLRO 2004; NWPLRO 2004; WCPLRO 2004.

Table 8: Commonage project data by province 2004*

Province	Projects	Hectares	Beneficiaries
Eastern Cape	29	34 019	2 939
Free State	30	33 510	258
Gauteng	1	458	N/A
KwaZulu-Natal	1	441	53
Limpopo	NO INFORMATION AVAILABLE		
Mpumalanga	3	2 460	166
Northern Cape	50	392 692	N/A
North West	10	12 292	392
Western Cape	2	5 844	66
TOTAL	126	481 716	3 874

* Exact date varies by province.

Sources: ECPLRO 2004; FSPLRO 2004; GTPLRO 2004; KZNPLRO 2004; LPPLRO 2004; MPPLRO 2004; NCPLRO 2004; NWPLRO 2004; WCPLRO 2004.

redistribution – in its records, DLA appears to include the entire land area of the farm into which farm workers are buying as hectares redistributed into black ownership.

Equity schemes are likely to continue to feature as one option for land reform where land prices are prohibitive for people relying on land grants from the state, and where capital-intensive forms of agricultural production predominate. If land prices continue to rise while grant levels remain low, they may become more prevalent.

Municipal commonage

Municipal commonage is land owned by municipalities and earmarked for public use by residents. However, over the years much of this land has been leased out to commercial farmers or public access has been removed in other ways. One objective of land reform is to convert commonage back into a public resource, this time reserved for poor residents to graze livestock and cultivate food crops on a small scale. Another is to expand municipal commonage by providing grants to municipalities to buy additional land and to invest in necessary infrastructure, such as fencing and boreholes.

In the first five years, newly acquired commonage accounted for most of the land redistributed through all aspects of land reform, and almost all of this was in

the Northern Cape. The programme now appears to be in decline but is still among the options available within the ambit of land reform. In practice, most PLROs say that they are not actively promoting commonage, partly because of insufficient buy-in from municipalities. This has resulted in inadequate management of commonage land after the land has been transferred. In North West, DLA is waiting for clear indications from municipalities that they are willing to drive the process and to meet the demands of managing commonage land (Mongae 2004, pers. comm.). The financial and human resource constraints faced by smaller municipalities make commonage appear to be an additional burden, though it is also a targeted intervention providing a livelihood resource for poor livestock owners. The possibilities of making available commonage for uses other than grazing – for instance for vegetable production in allotments – have been discussed and tested, for instance in the cultivation project on the Vredendal commonage, where tomato production is underway. However, the security issues associated with guarding vegetables in a peri-urban setting have made this option unpopular elsewhere (Ndlela 2004, pers. comm.).

Municipal commonage grants are still available and commonage projects are being established, though this sub-programme has



Box 11: Local government and land reform

DLA officials have pointed to a promising trend towards land reform being more closely integrated into local economic development, and the inclusion of land needs and project support within the integrated development plans of local government. This seems to have progressed furthest in the Western Cape, where implementation is now being delegated to the district level; the Overberg district, for instance, has developed its own district land reform implementation strategy in line with the strategy for the province. There are also individual district municipalities across the country where local government has identified land needs and working with other state agencies to address these. Makhado in Limpopo and Amatole in the Eastern Cape are two municipalities that have taken this process on board, though it remains to be seen whether this integration can lead to more, or better quality, land reform. PLAAS research on IDPs during 2004 showed that many municipalities recognise the need to support land reform but few have taken proactive steps to identify land needs, determine what public or private land is available to address these needs and work with DLA to budget and plan for land reform at a district or local level.

Sources: Fife 2004, pers. comm.; Hall et al: 2004.

been de-emphasised. A review of DLA's commonage programme was underway in 2004, and research on its operations and impact may lead to further policy developments.

Despite the challenges of ensuring that commonage is well-managed, the municipal commonage programme remains one way in



which to broaden access to land at low cost and low risk to the users.

Endnotes

1. No official statistics on the provincial spread of land reform have been made available since June 2003. Later figures only indicate the national total per calendar year.

Chapter 6: Farm tenure reform

About three million people reside on farms, and an estimated 940 000 people are employed, either full-time or as casual workers, on farms (Statistics South Africa 2004:3).

A large number of people live on farms owned by others, but are not employed there, notably but not only children and elderly people. Most farm workers are men, while women predominate among casual workers. Farm workers are among the poorest South Africans, earning an average of R544 a month in 2000, with much lower wages in some parts of the country. Even so, farm wages constitute a crucial source of livelihood, contributing 39% of rural incomes (DoL 2000:13, 19).

Most farm dwellers have access to residential land only, but a minority are labour tenants who also have access to grazing land for their own livestock or to arable land for cultivation, in return for which they are required to provide (unpaid) labour to the landowner. As well as being limited in its extent, farm dwellers' rights to land are precarious – until recently farm owners had unrestricted rights to evict farm dwellers. Their vulnerability to losing their jobs and being evicted is recognised by government as a source of instability in the rural areas, and an obstacle to realising socio-economic rights (DLA 1997:33). It was in response to these conditions that the DLA developed, as part of its land reform programme, policies to secure the tenure rights of farm dwellers.

The Extension of Security of Tenure Act 62 of 1997 (ESTA) was enacted to secure farm dwellers' tenure rights and to prohibit arbitrary evictions. This law places rights and responsibilities on both parties – farm owners and farm dwellers – and prescribes the procedures through which an occupier may be evicted. It also provides for farm dwellers to acquire long-term tenure rights by purchasing land with state support. ESTA is applicable to all people living on land zoned for agriculture with the consent of the owner,

including farm workers and their dependants as well as people living on farms but not employed there. Another farm tenure law, the Land Reform (Labour Tenants) Act 3 of 1996 (LTA), differs from ESTA in that it applies only to those farm dwellers who have access to land for their own agricultural purposes. The progress and outcomes of these two laws are discussed below.

Trends

A notable trend over the past decade is the substantial movement of people off farms. It is difficult if not impossible to quantify the scale of this phenomenon, but it is apparent that large numbers of people, probably hundreds of thousands, have moved off farms mostly due to coercion but in some instances voluntarily. Some have moved to urban centres while others have moved to former 'homelands' to join their extended families. Many have joined the ranks of the landless in informal squatter settlements, forming a pool of casual labour for agriculture and other industries. It appears that evictions peaked in the period just preceding and just after the promulgation of ESTA and LTA and were in part a reaction against these attempts to regulate the tenure of farm dwellers.

After 1994, labour legislation was extended to protect workers in the agricultural sector and a minimum wage for farm workers came into force in March 2003. Commentators have attributed the massive loss of farm jobs reported over the past decade and the rise in the rate of farm evictions to a combination of economic pressures on farmers as well as farmers' hostility towards labour and tenure security laws. Job losses are, however, part of a larger process of restructuring in agriculture, in



which changes in global commodity markets have combined with domestic deregulation and trade liberalisation to severely undermine the market for agricultural labour. In turn, this has contributed to ongoing evictions in most provinces.

Evictions have not slowed down in the Western Cape, according to officials. Although illegal evictions continue, these appear to be less frequent – in other words, evictions are increasingly occurring through court orders (Fife 2004, pers. comm.). However, illegal evictions are notoriously difficult to monitor, not least because the evictees often move on to live with relatives, or, as one senior official put it, ‘farmers drop them off in the communal areas or in other towns’ (Shabane 2004, pers. comm.). In the Northern Cape, DLA reports that illegal evictions appear to be continuing unabated and outnumbering legal evictions; even so, there were about 50 eviction cases in the courts in August 2004 (Mvula 2004, pers. comm.).

In Gauteng, evictions are reportedly on the rise and have fuelled the demand for land for settlement in the peri-urban areas around the metropolitan centres, leading to what government now terms ‘shack farming’. According to the Gauteng DLA Director, agricultural landowners are charging people rentals of R250 to R800 per month per shack erected on their farms (Ndlela 2004, pers. comm.). Those evicted might also settle on land without permission. DLA in Gauteng has established a committee on evictions and invasions ‘because the one leads to the other: when they are evicted and are desperate for accommodation, they will invade any piece of land that seems to be vacant’ (Ndlela 2004, pers. comm.).

DLA officials and NGO activists concur that most evictions are triggered by labour disputes, and often follow the loss of jobs or the reclassification of permanent workers as seasonal or casual (2004 pers. comms: Mongae and Mufamadi). The conversion of agricultural land into game farms is another noted trigger that is prompting evictions, given that game farms are often less labour-intensive or require specialised skills, and thus result in job losses for farm

workers (2004 pers. comms: Mufamadi and Williams). Large numbers of game farms have been established across the country over the past five years. These are now found in the Lowveld regions of Limpopo and Mpumalanga, in northern KwaZulu-Natal, in North West and in the Southern Cape region of the Western Cape province (2004 pers. comms: Archary, Conway, Letsoalo, Mongae and Shabane).

The introduction of a minimum wage for farm workers for the first time in March 2003 is another factor cited as contributing to ongoing evictions. In addition, changes in the conditions of service, such as the introduction of cash rentals for farm workers’ houses, have been recorded, indicating that even where minimum wages are being paid, these are sometimes offset against deductions, not necessarily improving conditions for workers, and sometimes undermining housing and land-related tenure rights. The minimum wages were set at two levels for different magisterial districts, at R650 and R800 per month for full-time workers, with slightly higher pro-rata wages for those employed on an hourly or daily rate. With the first annual increase, the minimum wages now stand at R713.65 and R871.58. However, the impact of the minimum wage on job losses and evictions is, as one official observed, ‘a rumour that cannot be quantified’ (Mongae 2004, pers. comm.).

Attempts to transfer ownership of farms through land redistribution or restitution have sometimes led to tensions between new owners and farm workers employed or residing on the land. This presents a danger that, ironically, farm dwellers could be dispossessed in the course of land reform. This is particularly the case where commercial farms are to be returned to their former owners who plan to farm without hired labour. The large restitution claims by the Makgoba clan on 124 farms in the Magoebaskloof area of Limpopo is a case in point. Here the potential benefits of transferring prime agricultural land into black ownership must be considered in the light of the implications for the local economy – it is estimated that the employment of 3 000 farm workers may be affected (Khoza 2004:3–4).



Box 12: Selling tenure rights

Some landowners induce farm dwellers to ‘voluntarily’ vacate their homes and leave the farm in return for cash payments, instead of pursuing a legal route. The phenomenon of people contracting out of their tenure rights appears to be continuing. The rates vary markedly across the country and even within provinces, with households being paid between R2 000 and R10 000 in the Western Cape to give up their homes, though higher amounts of up to R40 000 for a family have been offered in KZN, where farm dwellers could plausibly claim stronger rights as labour tenants.

Sources: Hall 2003b; Shabane 2004, pers. comm.

Interventions

In general, ESTA is invoked when farm dwellers are threatened with evictions; it has seldom been used as a proactive measure to secure or upgrade tenure. The uncertainty over the future of the legislative framework has compounded its weak implementation; nevertheless, there have been some attempts to improve the implementation of ESTA. DLA and civil society groups have made certain interventions to promote a human rights culture on farms, by raising awareness of ESTA, promoting co-operation between state agencies and mediating disputes.

Raising awareness

Rights education among farm workers has been a focus of a number of organisations, particularly NGOs. Some DLA offices have conducted workshops on tenure rights and obligations for both farm workers and owners, though most acknowledge that much more needs to be done in this regard. Physical isolation, low literacy levels and limited exposure to public media are among the factors that inhibit rights education among farm workers. Officials and activists complain that access to farms remains a problem and that they have been refused access or threatened with violence by landowners. In response to complaints, a protocol on access to farms was concluded between DLA and Agri-SA, which attempted to strike a balance between farm dwellers’ rights to freedom of association, and farmers’ security. More recently, after an inquiry into human rights violations in farming communities the South African Human Rights Commission (SAHRC) highlighted the limited awareness among farm workers of their tenure and labour rights. Following the inquiry, the

SAHRC conducted ‘roadshows’ in rural areas to popularise rights education. However, awareness of rights in itself is not sufficient to realise these in practice. Instead, rights abuses must be understood in a context of power relations between farmers and workers where, as one DLA official put it, ‘it is hard to challenge what the boss is saying’ (Mongae 2004, pers. comm.).

Provincial ESTA forums

Provincial ESTA forums have been set up in the Western Cape and Mpumalanga (and possibly elsewhere). These forums include DLA, the departments of agriculture, housing, social development, safety and security, the South African Police Service (SAPS), land rights NGOs, and sometimes also the SAHRC, rural advice offices, farm worker trade unions and farmer associations. ESTA forums allow for monitoring of evictions and the mobilisation of support and intervention from other institutions in cases of threatened eviction. ESTA forums have co-ordinated the training of SAPS officials and prosecutors. DLA, with support from the Legal Resources Centre (LRC), provided training for magistrates on ESTA after its promulgation, though this has not been repeated.

Resolving disputes

Given the costs and obstacles involved in defending rights through the formal judicial route, DLA has increasingly emphasised the need for informal mediation, and in 2002 employed consultants to design a system of alternative dispute resolution for resolving land-related disputes. The system is to include mechanisms to refer disputes to the relevant authority, training and remuneration of mediators and a possible arbitration



mechanism. It is to be used, in the first instance, in conflicts between farm dwellers and farm owners, but could also be applicable in land disputes in communal areas and among restitution claimants. Informally, officials and NGO fieldworkers are already engaged in mediating disputes on farms, focusing their efforts on threatened evictions. Although this has had some success, such interventions are usually only triggered once relations have broken down. As the DLA Director in the Free State observed, ‘the problem we have is that you get the case at the last minute, when people are actually being evicted or have [already] been evicted’ (Brislin 2004, pers. comm.). However, mediation cannot obviate the realities of power in social relations on farms. Tangible change requires that farm workers gain their own independent assets, to become less dependent on landowners. The DLA Director in Limpopo expressed this view as follows: ‘unless there is a settlement where people are getting their own land, we haven’t solved the problem’ (Letsoalo 2004, pers. comm.).

Monitoring evictions

There is no systematic monitoring of evictions at a national level. DLA officials collate information that reaches them on actual or threatened evictions, and the national office of DLA compiles these but is unwilling to release any figures, because they believe the data to be inaccurate and

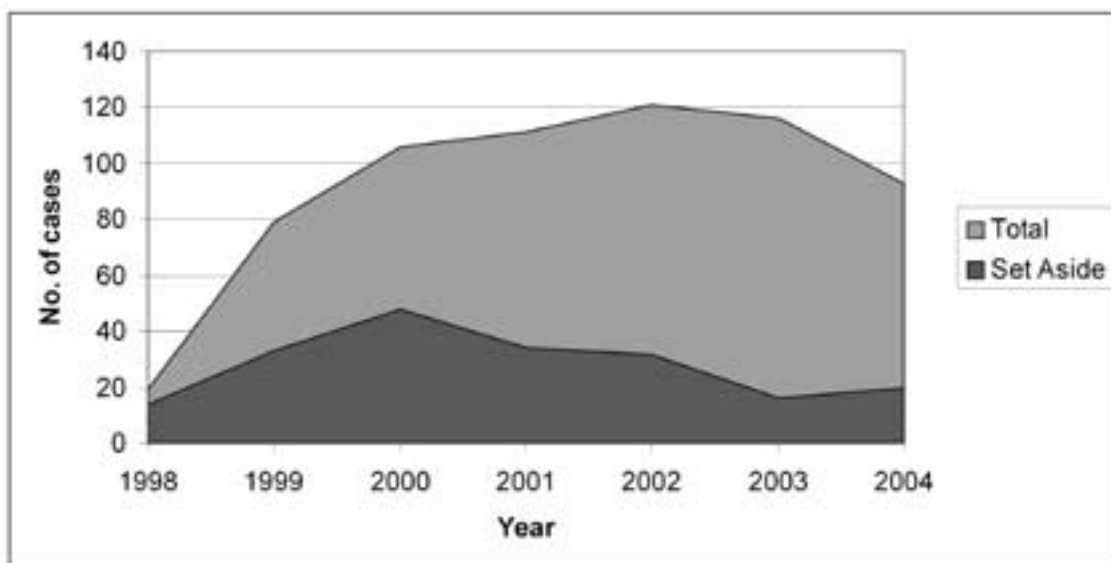


misleading. Certain NGOs have monitored evictions. In KZN, DLA collaborates with a local NGO and the provincial farmers’ association to monitor evictions in the province. In the Western Cape, the Department of Social Services and Poverty Reduction initiated a farm dweller hotline from which cases are referred to DLA, but it does not record numbers of cases.

Eviction orders

In terms of ESTA, no person may be evicted from a farm except in terms of a court order from a magistrate’s court. The courts must consider all circumstances of the farm dwellers involved, as well as the farm owner, including the availability of alternative accommodation for those evicted. Section 19(3) of ESTA requires that the Land Claims Court automatically review and confirm each eviction order before it is carried out – though this does not always happen. LCC records show that there has been a rise in the total number of eviction orders on review each year until 2003 when it reached a peak of 121, after which the number dipped to 116, and then dipped again to 93 in 2004 (See Figure 5). However, among those eviction orders being reviewed, fewer are being set aside; the proportion of eviction orders being confirmed is increasing. It is not possible, though, to say how many people have been evicted, since these orders often include

Figure 5: ESTA eviction orders on review at the LCC



Source: Derived from LCC 2002; LCC 2003; LCC 2004.

Box 13: Women's farm tenure rights

The case of *Hanekom v. Conradie* heard by the LCC in 1999 set a precedent by recognising the tenure rights of women. The judgment clarified that women's tenure is not contingent on their partners' tenure, and that their rights cannot be extinguished as a result of their partners receiving eviction orders in terms of ESTA. Mary Hanekom lived on a farm in the Western Cape where she was a full-time employee. Her husband was dismissed from his job on the same farm and an order was granted for his eviction. When Mary was threatened with eviction, the court ruled that she had ESTA rights of her own. She was able to remain in her house on the farm and, because she had the right to family life, her husband was able to stay on the farm with her on the basis of *her* tenure rights. However, in a later ruling in *Landbou Navorsingsraad v. Klaasen*, Judge Gildenhuis of the LCC found that women who live on farms but are not employed do not have tenure rights and are not ESTA occupiers in their own right. This restricted the previous precedent to those women formally employed on farms, thereby excluding the large proportion of women who are unemployed or engaged in temporary or casual work.

Source: LCC 1999; LCC 2001b.

extended families or even communities of people, nor is it possible to determine on the basis of official records the geographic spread of evictions across the provinces.

Ensuring that farm dwellers threatened with eviction have access to legal representation during court proceedings has proved immensely difficult. The Legal Aid Board is severely under-funded and most attorneys are unwilling to take on eviction cases, resulting in farm dwellers facing eviction without support to understand or defend their rights. In response, a Limpopo-based NGO, Nkuzi Development Association, launched a court application in 2001 for a declaratory order on legal representation for farm dwellers. The LCC ruled that the state is obliged to make available legal representation at its own expense to farm dwellers or labour tenants who are indigent and are facing eviction (LCC 2001a). More than three years after this landmark judgment, though, it is not possible to determine the extent to which the state is complying with this ruling, since the LCC itself does not, when reviewing eviction orders, monitor whether people facing eviction have had legal representation, and no other mechanisms are in place to do so.

The services available to people under threat of eviction have been improved, though, with the advent of the Rural Legal Trust (RLT), a network of attorneys and paralegals that addresses farm dwellers' tenure rights. DLA officials frequently refer

cases to these professionals, who are based in private law firms as well as at university legal aid clinics and in NGOs. Despite the good work being done, the demand for legal support by farm dwellers generally far exceeds the services available – in KwaZulu-Natal, RLT is 'intervening on a daily basis' but 'they don't have enough attorneys to represent these people' (Shabane 2004, pers. comm.).

On-site and off-site settlement

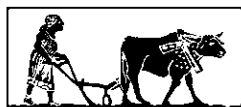
Where people are evicted from farms, the state is responsible for providing alternative accommodation, as long as their eviction was not due to them violating their conditions of tenure – for instance by causing damage to property (ESTA Section 4). However, most people evicted have not received land or housing from DLA or from the landowners who evicted them. This widespread non-compliance with ESTA has been made possible in part by the unwillingness of the courts, including the LCC, to make the provision of alternative accommodation part of their eviction rulings.

Under current policy, long-term tenure can be secured either in on-site settlements where farm dwellers are donated or buy a subdivided portion of the farm where they already live, or in off-site settlements, where farm dwellers acquire land or housing elsewhere – often urban low-cost housing. On-site settlements, though, have been



rare. In a few instances, properties have been subdivided to enable farm dwellers to become owners of their own land and houses, where they already reside. However, this is only possible where the owner is willing to subdivide and sell, where relationships between owner and tenant are good, or where the farm is being sold or is not going to continue to be farmed (Fife 2004, pers. comm.). Two on-site settlement projects have been undertaken in the Northern Cape in the Upington and Kimberley areas where, unusually, farms have been subdivided for housing purposes in projects that include people not previously resident on these farms (Mvula 2004, pers. comm.).

Less frequently, farm workers have been able to purchase the entire farm. In the Eastern Cape, for instance, when a farm is put on the market, DLA has proactively approached the farm workers to find out whether they would like to acquire it through LRAD and become farmers in their own right (Nkonyane 2004, pers. comm.). This is a rare occurrence both because of the generally reactive approach to land reform (evident in the focus on evictions), and because of the grant structure of LRAD which makes it unusual for small groups of farm workers, without capital to contribute, to be able to gather sufficient funds to purchase a commercial property in its entirety. The small



size of grants available makes purchasing an entire farm prohibitive for most farm dwellers. Only redistribution grants are used to provide long-term secure tenure to farm dwellers – a SLAG grant of R16 000 per household or an LRAD grant of, at minimum, R20 000 per individual – despite the discretionary powers given to the Minister in Section 4(1) of ESTA to make funds available on terms she or he ‘may prescribe in general or determine in a particular case’.

Most projects for farm dwellers, though, involve off-site settlements and most of these involve housing only, without land for cultivation. Nationally, few ESTA projects have been approved. To provide a sense of scale, six such projects have been undertaken in Gauteng, eight each in the Northern Cape and North West, and one in KZN, while 25 have been implemented in the Western Cape (see Table 9). These projects have transferred a total of 58 751ha to 5 089 households.

However, these figures must be treated with caution. As part of the data cleaning process, the national M&E directorate appears to be removing references to labour tenants and ESTA in project lists and reclassifying these as SLAG or LRAD redistribution projects, according to the type of grant used for land purchase. For this reason, people with occupier rights in terms of ESTA who face eviction are mostly

Table 9: ESTA project data by province 2004*

Province	Projects	Hectares	Beneficiaries
Eastern Cape	NO INFORMATION AVAILABLE		
Free State	8	3 003	124
Gauteng	6	72	142
KwaZulu-Natal	1	53	160
Limpopo	NO INFORMATION AVAILABLE		
Mpumalanga	NO INFORMATION AVAILABLE		
Northern Cape	8	53 390	2 199
North West	8	1 631	505
Western Cape	25	602	1 959
TOTAL	56	58 751	5 089

* Exact date varies by province.

Sources: ECPLRO 2004; FSPLRO 2004; GTPLRO 2004; KZNPLRO 2004; LPPLRO 2004; MPPLRO 2004; NCPLRO 2004; NWPLRO 2004; WCPLRO 2004.

Box 14: Service delivery to farm dwellers

Prior to 1994, farmers were considered by the state to be 'intermediaries' who would provide services directly to farm workers and, in recognition of this, the state would subsidise farmers' investments in infrastructure, including farm worker housing and farm schools. However, farm workers' access to services was very curtailed. With the new municipal boundary demarcations that came into effect in December 2000, all agricultural land now falls within the jurisdiction of a municipality, which has obligations to provide basic services. Farm dwellers are constitutionally entitled to socio-economic rights, including rights to certain services. The relationship between municipalities as service providers, and farm workers as residents on private land, is thus unclear. During 2004, the Department of Water Affairs and Forestry (DWAF) and the Department of Housing started to consider developing a policy on how they could deliver services to farm workers without investing in farmers' private property. DWAF has recently drafted a manual to guide municipalities in the provision of services to residents on private land. Thus far, individual departments have tried to grapple with this complex issue, largely in isolation from the question of reforming the status of farm dwellers' tenure rights. Solutions are being formulated in isolation, and may conflict or overlap with one another. A co-operative approach across these sectors is now needed to determine how to ensure viable service delivery on farms.

Sources: Atkinson 2004, pers. comm; Lebert 2004.

invisible among the broader category of land redistribution applicants. It is therefore not possible to say with any confidence how many farm dwellers have benefited from land reform or how many farm dwellers facing eviction have been provided with long-term settlement options. It is likely that the figures above thus under represent land transfers to farm dwellers, though it is not possible to say to what extent.

There have also been a few instances in which farmers have donated land to workers for their own use and provided some support. Individual farmers and agribusinesses have taken these initiatives particularly in the horticultural sector, notably the wine and deciduous fruit industries of the Western Cape. In KZN, DLA reports that it lacks the capacity to assist farmers who offer to donate land, and as a result opportunities to transfer land to farm workers may have been missed. In general, it seems that tenure reform has not involved a sharing of costs of alternative accommodation between the state and private landowners. Tenure reform tends not to involve any costs to landowners; instead, the cost of providing housing or land for evicted farm workers tends to fall squarely on the DLA or on local authorities – and thus on

public resources. 'The municipalities commit themselves to the provision of services, but for the acquisition of land, it is mainly Land Affairs [that carries the cost]' (Mongae 2004, pers. comm.).

From available information, it seems that the vast majority of people evicted from farms have not been provided with alternative accommodation. Despite the original intentions of policy makers and the drafters of ESTA, then, even legal evictions can and do lead to farm dwellers being forced out of farms and left with nowhere to go.

Labour tenants

Labour tenants are farm dwellers who have access to grazing land for their livestock or to arable land for cultivation, in return for which they are required to provide unpaid labour to the landowner. The land reform programme introduced protection for labour tenants through the Land Reform (Labour Tenants) Act 3 of 1996, which does two main things. Firstly, it protects labour tenants from unfair or arbitrary eviction, by regulating when and how tenants may be deprived of their homes, fields and grazing land. Secondly, it allows labour tenants to obtain long-term secure and



Table 10: Labour tenant applications submitted 2001*

Province	Number of applications
Eastern Cape	79
Free State	770
Gauteng	650
KwaZulu-Natal	7 713
Limpopo	380
Mpumalanga	9 709
Northern Cape	15
North West	100
Western Cape	0
TOTAL	19 416

* By March.

Source: DLA 2002.

independent tenure rights through the assisted purchase of the land they currently use, or alternative land.

By the LTA deadline of March 2001, labour tenants had lodged a total of 19 416 applications to become the owners of the land they live on and use. According to the Deputy Director-General, 'no land used by farmers for commercial production would be excised for labour tenant occupation' (Hoffstatter 2004b). Applications were received in all provinces except the Western Cape, but the vast majority were in KZN and Mpumalanga, where labour tenancy is most prevalent (See Table 10).

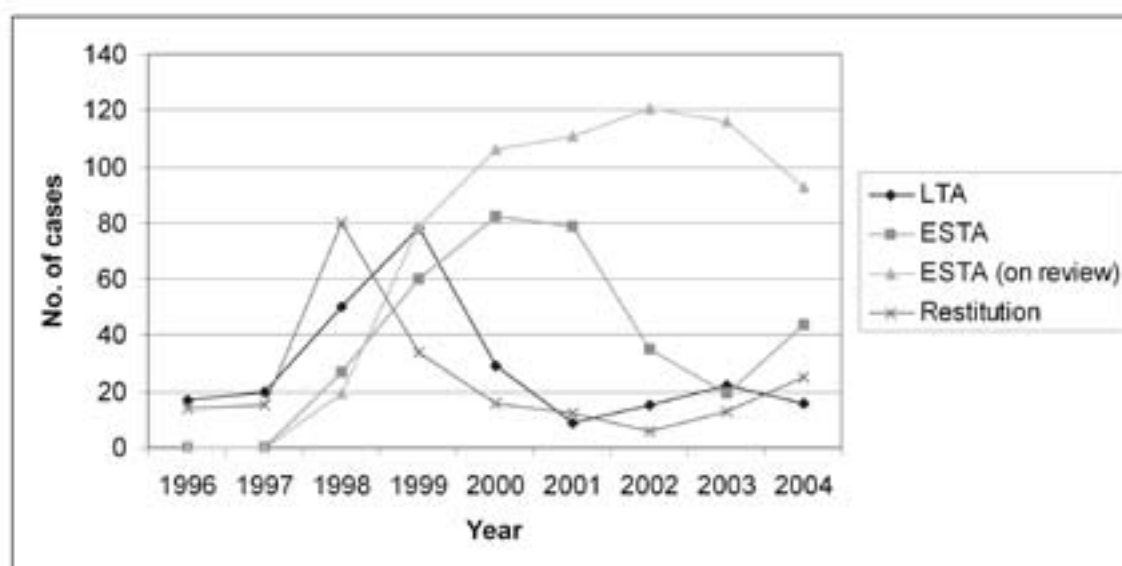
Applications have proved difficult to process, due to information gaps (for example, names and location of the farms in question), overlapping tenants' applications on the same farm, the hostility of some landowners towards the process, and the sheer scale and cost of the programme relative to the resources and capacity of DLA in KZN and Mpumalanga. DLA has not complied with Section 17 of the LTA, which requires it to notify landowners immediately of claims on their land. As a result, many landowners remain unaware of these claims years after these were lodged. This inaction may have minimised, or merely delayed, conflict and pre-emptive evictions.

Since 2003, DLA has implemented a district-based approach to resolving labour

tenant applications. This has involved batching the applications for each district and contracting consultants to vet these and verify applicants' details before starting negotiations with landowners. In KZN, however, the district-based approach is reported to have prompted an increase in both legal and illegal evictions, according to the DLA's provincial Director: 'We have seen an increase in constructive evictions, infringements of rights, denial of burial, access to roads and schools' (Shabane 2004, pers. comm.). Farmers are also alleged to be starting to charge grazing fees per head of livestock owned by farm dwellers. In some districts of KZN, farmers have jointly hired legal representatives to oppose labour tenant claims. The reclassification of farms as game reserves is also considered by officials and activists to be an effort to stall the labour tenant claims (2004 pers. comms: Mkhize and Shabane). The 'hotspot' areas of KZN, where conflict between landowners and tenants is most serious, are reported to be Utrecht, the Ingogo area around Newcastle and the Underberg (Shabane 2004, pers. comm.).

Where landowners do not acknowledge that an applicant is a *bona fide* labour tenant, and refuse to subdivide and sell their land, LTA applications are supposed to be forwarded to the LCC for adjudication. However, the LCC has heard relatively few



Figure 6: Cases at the Land Claims Court

Source: Derived from LCC 2002; LCC 2003; LCC 2004.

labour tenant cases. Since the enactment of the LTA, the number peaked at 78 in 1999 and then declined sharply, as DLA officials, fearing that the process would be stalled in the courts, opted to enter into negotiations with owners rather than refer cases to the judiciary (see Figure 6).

The Minister announced to Parliament in October 2004 that a total of 80 000ha of land had been transferred to labour tenants (MALA 2004). Provincial data, where available, indicates that half of this was in KZN (and presumably the other half was

in Mpumalanga) (See Table 11). Although 200 projects were approved by 2004, it is not possible to determine how many of the 19 416 applications these represent, since some projects involve a number of labour tenants on a single farm. It does appear, though, that the vast majority of labour tenant applications are still to be resolved.

According to a September 2004 directive from the Minister, 10 000 labour tenant claims are to be settled in KZN and Mpumalanga by March 2005 and half a million hectares are to be transferred to

**Table 11: Labour tenant projects by province 2004***

	Projects	Hectares	Beneficiaries
Eastern Cape	NO INFORMATION AVAILABLE		
Free State	4	1 394	47
Gauteng	0	0	0
KwaZulu-Natal	105	40 397	3 623
Limpopo	NO INFORMATION AVAILABLE		
Mpumalanga	91	7 507 041 ¹	4 164
Northern Cape	0	0	0
North West	0	0	0
Western Cape	0	0	0
TOTAL	200	41 791	7 834

* Exact date varies by province.

Sources: ECPLRO 2004; FSPLRO 2004; GTPLRO 2004; KZNPLRO 2004; LPPLRO 2004; MPPLRO 2004; NCPLRO 2004; NWPLRO 2004; WCPLRO 2004.

labour tenants in KZN alone within three years. However, this is estimated to require R2.9 billion over the next three years – a fortyfold increase on the R24 million available for labour tenants in the 2004/05 financial year (Thomas, cited in Hoffstatter 2004b). Despite the political commitment to addressing the claims in a speedy manner, it remains to be seen whether adequate institutional capacity or funding is available to realise these targets and whether, in the interim, the potential for conflict between owners and tenants can be contained.

The future

Official reviews of both ESTA and the LTA between 1998 and 2001 found that these laws had been poorly implemented, failed to secure farm dwellers' rights, and had resulted in 'unintended consequences', particularly in prompting more evictions. In response, the Minister in 2001 announced that ESTA and the LTA would be consolidated into one law, which would strengthen the rights of all farm dwellers. This would not, however, affect the applications already lodged by labour tenants in terms of the LTA.



Since then, DLA has drafted legislation, proposing the creation of a category of non-evictable occupiers, which would include those who have resided on-farm for much or all of their lives, but the Minister has not approved this policy direction. Reportedly, this could constitute expropriation of owners' rights, which would require compensation. Policy development in this area is now stagnant and there is little political impetus to drive a more proactive programme to strengthen farm dwellers' rights. Although

there are farm worker formations in the Southern Cape, KZN and Limpopo, there is little evidence of farm dwellers themselves mobilising to table their demands to government, and landowners' representatives continue to lobby for the curtailment of rights already recognised in ESTA and LTA.

In the absence of strong rights in law and proactive approaches to implementation, officials 'have been fighting fires, trying to convince landowners not to evict people' (Ndlela 2004, pers. comm.). The notion embraced in the White Paper (DLA 1997) of legally defining and protecting a range of tenure rights, not necessarily in a hierarchical relation, remains unrealised, as LCC judgments demonstrate that freehold title continues to trump other land rights. Another long-term solution proposed for farm dwellers is to expand opportunities for their own independent production on the farms where they live. This does not imply that they would always stop working on farms, but they would have some independent livelihood (Wegerif 2004). This requires a proactive programme to provide land rights to farm dwellers, complemented by development support to enable people to derive alternative incomes beyond wage labour in the farming sector.

Endnote

1. The project data for Mpumalanga includes a number of decimal point errors, with the result that this figure is incorrect; it is three times the total land redistributed nationally. For this reason, the hectares transferred in Mpumalanga have been excluded from the total.

Chapter 7: Communal tenure reform

While tenure reform in the commercial farming areas has focused on balancing the rights of landowners and farm dwellers, in the communal areas of the former bantustans or 'homelands', tenure reform is needed to clarify who has rights to what land, the nature and content of these rights, and how they are to be allocated and administered, recorded and adjudicated.

Tenure reform will require the establishment of systems of land administration and land management that can support rights holders to exercise these rights sustainably and with certainty. A pressing issue facing those holding land under communal tenure – on land reform projects or in the former homelands – is the extent to which public resources will be made available to administer users' rights and to subject administrative structures to public scrutiny.

The White Paper on South African Land Policy identified the following guiding principles for the programme of tenure reform (DLA 1997:60):

- *Tenure reform must move towards rights and away from permits*
- *Tenure reform must build a unitary non-racial system of land rights for all South Africans*
- *Tenure reform must allow people to choose the tenure system which is appropriate for their circumstances*
- *All tenure systems must be consistent with the Constitution's commitment to basic human rights and equality*
- *In order to deliver security of tenure a rights based approach has been adopted*
- *New tenure systems and laws should be brought in line with reality as it exists on the ground and in practice.*

Communal tenure reform is the least evolved of all aspects of land reform, with

implementation of tenure reforms in the former homelands only planned to start in 2005. Tenure reforms have proceeded further in another context of communal tenure: the former 'coloured reserves', where consultations are ongoing regarding how people are to hold and manage their land. New tenure arrangements have also been developed. Communal property associations (CPAs) were created as a new type of legal entity through which groups of land reform beneficiaries may hold and manage their land jointly, subject to certain democratic checks and balances. These three different aspects of communal tenure are discussed in turn below.



The need for communal tenure reform

South Africa's tenure reform policy is intended to address the chaotic state of land administration in the communal areas of the former homelands and coloured reserves. The communal areas make up most of the land in the former homelands, and much of this is not surveyed. These areas consist of land falling under a variety of colonial and apartheid proclamations, as well as land successively owned by the South African Native Trust, South African Bantu Trust and South African Development Trust (SADT), and now nominally owned by the Minister of Land Affairs. The homeland areas and SADT land amount to approximately 17 million hectares, including Ingonyama Trust land in KZN.

This includes the former 'self-governing territories' of KwaZulu, Gazankulu, Lebowa, KaNgwane, KwaNdebele and QwaQwa as well as the former 'independent' TBVC states – Transkei, Bophuthatswana, Venda and Ciskei.

The communal areas are home to nearly a third of all South Africans and the site of the deepest concentrations of poverty in the country. Many residents have insecure forms of tenure, which is both a potential source of conflict and an impediment to investment and development. Administrative systems for issuing and maintaining records of land allocations, including Permission to Occupy (PTO) certificates, have disintegrated, particularly since 1994. Since then, an administrative vacuum has exacerbated overlapping claims to land and the degree of uncertainty over who has what rights to which land. The dysfunctional land administration situation is evident in the poor state of land registers in which rights were recorded, some of which have been lost. There are also instances of the same land being allocated to more than one person, and illegal allocations and sales to outsiders who have proceeded to build permanent structures on tribal land. In this climate of uncertainty, residents have complained of being unable to defend their rights against corrupt or abusive practices by chiefs or unilateral 'developments' by local government and, in the absence of documentary proof of their land rights, are unable to access loans or housing subsidies (Claassens 2003:31).

As well as residents' rights being legally insecure, conflicts emerge from overcrowding and from overlapping claims to land which are the result of conquest and successive forced removals. Tensions between local government and chiefs have also stalled development, as these parallel structures compete for control over decisions regarding land use and for positions of patronage. This constrains service delivery and infrastructure development as well as impeding investment. Discrimination against women is a feature of most communal tenure systems. Women are often unable to get land allocated to them, and risk being dispossessed of both residential and agricultural land on the death

of their partners – a situation aggravated by HIV/Aids (*Mail & Guardian* 2003).

To protect people living in the communal areas against dispossession in this context of uncertainty, the Interim Protection of Informal Land Rights Act 31 of 1996 (IPILRA) was promulgated as a holding mechanism, pending general tenure legislation, to provide 'temporary protection of certain rights to and interests in land which are not otherwise adequately protected by law' (preamble). However, in the absence of comprehensive legislation addressing communal tenure, it has been extended year-on-year from 1996 to 2004. IPILRA applies to people who have no registered or contractual land rights but are beneficial occupiers of land and prescribes that 'no person may be deprived of any informal right to land without his or her consent' (Section 2(1)). It may be invoked by those threatened with being dispossessed in favour of other land users or uses, such as immigrants or private investors aiming to use the land or to extract natural resources. However, because IPILRA introduces concepts of 'tribe' and 'community', which are presumed to have group rules regarding communal land, land users may be deprived of their rights if this is decided by a majority of the group, 'in accordance with the custom and usage of that community' (Section 2). If the land is alienated from the group, then rights holders are entitled to compensation.

There is no national record-keeping of cases where people have invoked IPILRA, nor the outcomes of these cases. It is thus difficult to assess its impact. There have been few cases thus far, and anecdotal evidence suggests that it has been used more in the Eastern Cape than in other provinces, possibly due to the influence of land rights officials and activists. It has proved effective in ensuring compensation for rights holders whose land is to be put under new land uses, especially through leases with outside developers. IPILRA's requirement of a community resolution has been used to confirm existing land uses or to clarify agreement on changes to who can use the land for what purposes. However, it is less effective in addressing dispossession



within communities. Most importantly, though, IPILRA cannot and was not intended to clarify or secure existing rights or reform land administration. This was to be achieved through general land rights legislation.

Following lengthy preparations, a Land Rights Bill was published in 1999 as draft tenure legislation to address insecure land rights in the communal areas. The starting point of the Bill was to recognise existing *de facto* land rights based on various forms of communal tenure and to provide institutional support for the administration and management of communal land. A benefit of this approach was its recognition that land rights are not absolute or exclusive; it allowed the registration of multiple rights to natural resources on the same land and comparable redress via tenure awards in cases where people were forced into situations where their rights overlap. This statutory approach to tenure rights was backed up by proposals for land rights officers to resolve disputes, and local-level land rights boards to support claims to land rights. This was a blanket approach to securing rights through law, but would be costly and entail ongoing responsibilities for the state. Following the appointment of a new Minister in 1999, the Bill was shelved and the process of legal drafting started anew, resulting five years later in the passing of communal land rights legislation.

Communal Land Rights Act

The Communal Land Rights Act 11 of 2004 (CLRA) was passed by Parliament in February 2004 and signed into law by the President on 15 July 2004. The Act empowers the Minister of Land Affairs to transfer ownership of communal land to communities, to be held under 'new order rights', whose content is not yet defined. The Act is to provide for the democratic administration of land by the communities who own it. It requires that land rights administration committees allocate and administer the land, in terms of 'community rules'. These rules must be written down and registered, which will convert a community into a single 'juristic person' capable of owning property. However, this requires

that there is agreement on the size, nature and boundaries of the 'community' that will own the land. Where tribal authorities are already in place – almost everywhere in the former homelands – they will administer the land through their traditional councils. In terms of the Traditional Leadership and Governance Framework Act 41 of 2003, these tribal authorities are to be transformed and are to become known as traditional councils, including elected membership and a minimum representation of women. Where there is no tribal authority, land administration committees are to be elected democratically. Communal land is thus to be administered locally by committees, in most cases comprised of a combination of elected and unelected members.

The Communal Land Rights Bill was gazetted in August 2002 for public comment during a 90-day consultation period. Both DLA and a coalition of civil society groups opposing the Bill held consultations with rural people to explain the content of the Bill and to solicit responses. The details and outcomes of the official consultations were not published. The civil society consultations, organised by the NLC and PLAAS, involved meetings with 75 rural communities in five provinces and the outcome was compiled into a report which was tabled in Parliament (Claassens 2003). In summary, the findings of the report were that residents of communal areas saw the Bill as the state abdicating responsibility for land administration and 'washing its hands' of communal areas, with the unrealistic expectation that these former public roles could be fulfilled by unremunerated community members (Claassens 2003:33).

Those consulted said that the focus on transferring ownership to groups failed to define, clarify or support individuals' land rights, thereby falling short of the objectives of tenure reform. It would fail to secure women's land rights, especially for unmarried or widowed women, since it contained no requirement that women be allocated land on the same basis as men. Furthermore, the Bill proposed a top-down process in which the Minister will instigate a transfer and determine who has land rights, on what basis, and the



membership of the community that will receive the land; consultation with communities was not addressed. The legislation would prompt boundary disputes, isolate rural communities from local government services, and entail a time-consuming and intricate transfer process that would not guarantee their rights and, until transfer occurred, the status of people's existing rights to occupation and use would remain unclear (Claassens 2003: 32–7). Instead, those consulted said they needed additional land and supported the provision of compensation or 'comparable redress' for tenure insecurity. They called for protection from rights abuses, and called on government to support land allocation systems, keep records of rights, and enforce land management rules to prevent open access problems and the stripping of natural resources (Claassens 2003:32). Community representatives presented these views at Parliamentary hearings held in November 2003.¹ Cabinet approved the Bill prior to the hearings, in October 2003.

One reason for slow progress towards reforming communal land rights is the political volatility of the issue, as it can potentially affect powerful vested interests, including traditional leaders' control of land allocation, a key source of power and patronage in the rural areas. The traditional leader lobby, though, has differing politics around the country, from the Eastern Cape, home to much of the leadership of the Congress of Traditional Leaders of South Africa (Contralesa) but also home to strong resistance to chiefly power, to KZN, where the *amakhosi* are intimately linked with the balance of power between the ANC and Inkatha Freedom Party (IFP) in the province. In general, though, traditional leaders have been supportive of the final version of the CLRA and the role it accords them.

An earlier draft of the Bill was debated at the DLA's National Land Tenure Conference in Durban in November 2001. Key disputes centred on whether the answer is to transfer title or not; and if so, to whom or to what institution; at whose instigation; the institutional basis for rights allocation and administration; and checks and balances on the exercise of authority over land rights.

These heated debates went to the heart of what constitutes democratic governance. Critics insisted that land rights holders should be able to choose which institution should hold their land and administer their land rights – and that the principle of choice in democratic governance was being trammelled by the Bill. In response, the traditional leader lobby, through Contralesa, emphasised the possibility of democratising the institution of traditional authority. Debates on communal tenure have tended to proceed along polarised lines, with adversaries invoking either African customary law or constitutional guarantees of gender equality, tenure security and democratic governance, despite the fact that aspects may be reconcilable. The Constitutional Court's recent judgment on the customary law of intestate succession is a case in point. The Court overturned the principle of male primogeniture on the grounds that it discriminates against women, arguing that codified customary law had in fact perverted the more egalitarian principles underlying customary practices (Constitutional Court 2004).

A critical question regarding communal land rights is what the role of the state in these areas is to be and how much investment it will undertake. Even though capital costs will be minimal as land does not need to be bought, the process of surveying and transferring land to communities will be costly. Official estimates of the cost of implementing the CLRA have varied wildly, rising from R68 million (tabled in Parliament in 2003), to R500 million a year (tabled in Parliament in early 2004), to R1 billion a year (announced in July 2004) (Hoffstatter 2004a).

Reforming tenure in the homelands, by defining the rights of those holding land and the powers of those administering land, holds the possibility of prompting protracted boundary conflicts between as well as within communities and between residents and chiefs. It also has the potential to bring about greater certainty by moving the allocation of land rights from the private realm into the public, and by entrenching public state support for the registration or these rights. The CLRA however privatises responsibility for land rights administration.



Box 15: Transfer of title and service delivery

The lengthy drafting process that led to the CLRA happened in parallel to local government reforms and new municipal demarcations, which resulted in ‘wall-to-wall’ local government – in other words, all rural areas within the country now fall under the jurisdiction of municipalities. Local government structures raised concerns that, while they had just included communal areas within their jurisdictions, the ‘privatisation’ paradigm of the CLRA may undermine their capacity to deliver services to communities living in communal areas, since local government cannot service or make improvements on private land. It remains to be seen whether or not this privatisation poses an obstacle to service delivery, in practice, and whether servitudes are registered prior to land being transferred to communities to allow for the provision of bulk infrastructure.

Box 16: Steps towards implementing the CLRA

After the CLRA was passed, DLA held consultation meetings to explain to communities who will be affected about the requirement of registering community rules. The department has established a CLRA Systems Reference Group, consisting of its own staff as well as outside advisers, and held a series of workshops in June 2004 regarding the institutional arrangements for the implementation of the Act. DLA anticipates that implementation of the Act will be phased in during 2005 and 2006, with a few communities being identified in KZN as pilots for transfer while systems are established and staff trained for a more large-scale roll-out. The provisions of the CLRA can and may be applied outside the ‘homelands’, for instance to restitution or redistribution beneficiaries who hold their land jointly. However, the Act will only take effect where the Minister specifically invokes it, in which case it can supersede existing property rights, such as those held by CPAs – though the legality of this is questionable.

Sources: CLRA Section 39; Simokunda 2004, pers. comm.; Sibanda 2004.



Rights enquiries and land rights boards are to facilitate transfers to communities, but may need to play an ongoing institutional role in supporting land rights. The CLRA may also lead to discrimination against women; this is a contention of the Legal Resources Centre, which is mounting a legal challenge to the Act to contest its constitutionality.

Communal property associations

Since land reform often involves people accessing land as a group, and communal tenure systems offer social and economic benefits, it was essential to provide an accessible system of group ownership for poor and disadvantaged communities (DLA 1997:63). CPAs are a legal form of landholding established in terms of the Communal Property Associations Act 28 of 1996 specifically for land reform purposes.

They are a mechanism to manage and resolve the tension between individual and group property rights. Land reform beneficiaries can form a CPA as the means through which they jointly hold and manage land in terms of a written constitution and with democratic checks and balances. While the CPA itself owns the land, its members have procedural rights – for instance, to participate and vote at meetings – and the CPA may also allocate substantive rights to individuals to use land and other resources. As a result, individuals’ rights to property are only secure if the CPA functions well as an institution when allocating and protecting their rights.

More than 600 CPAs have now been registered by DLA but they are not subject to systematic monitoring and little is known about their performance after the land has been transferred to them. DLA officials, NGOs and communities themselves have raised concerns about how viable these

institutions are, and the extent to which members of CPAs are able to enforce their rights effectively *vis-à-vis* other members of the group and against the intrusion of outsiders. In KZN, for example, one such group attempted to prevent a 'warlord' from settling people on its land, and recently lost a court application for an injunction to get the newcomers off the land (Shabane 2004, pers. comm.).

Typical problems recorded in CPAs are mismanagement by CPA committees, for example misappropriation of CPA funds, discrimination against women in allocation of land rights, and conflict between committees and members regarding land uses. Not all CPAs have experienced these problems, but in many instances it appears that CPA committees have become dysfunctional or even ceased to exist, while there are also cases of two rival committees competing for control of the same land and the power to allocate it and extract rents. One of the most fundamental problems, though, is that land has been transferred to CPAs without agreement among beneficiaries about how rights to use the land will be allocated among members, with the result that no formal allocation takes place, and instead a free-for-all develops.



Despite widespread recognition that CPAs have in general failed to provide secure tenure to their members, there remains disagreement about whether the problems besetting them stem from the CPA model itself or from its implementation (see Box 17). Indications from case study research thus far are that implementation has been poor; few CPAs have received institutional support following their establishment, as required by the Act. Unlike trusts or other legal entities, DLA has a specific ongoing obligation to provide CPAs

with support and to intervene where there are problems of mismanagement.

DLA implementers across the country have responded in a number of different ways. In some provinces, the department is pushing ahead with establishing CPAs, for instance in the North West and Eastern Cape where, despite acknowledged problems, CPAs are the usual option adopted to facilitate group landholding. In the lead-up to the restitution deadline, numerous legal entities are being fairly rapidly established within land claimant communities. In Gauteng, close corporations are being favoured (Ndlela 2004: pers. comm.). In KZN, officials have promoted the registration of trusts instead, which have the advantage of being simple to establish – the registration process is quicker than with CPAs – and after transfer the DLA ceases to have any direct responsibility to support, monitor or intervene in the legal entity. At issue in the debate on whether the CPA model is inherently flawed or whether it can succeed, is the extent of public support that they need, both in their establishment and subsequently. The sentiments of the director of DLA in KZN echo those of other officials concerned that the problems of CPAs require ongoing intervention and will continue to compound the workload of land officials indefinitely:

If they are well-capacitated self-managing entities, Land Affairs wouldn't be needing to go back. But this is not the case, and they become 'our baby' in terms of the Act. You never get to exit

(Shabane 2004, pers. comm.).

However, the additional obligations of the state are precisely why CPAs were created as a landholding mechanism for land reform – so avoiding these subverts the intention of

Box 17: Review of communal property institutions

In 2003, DLA initiated a review of CPAs as well as other types of communal property institutions (CPIs) used in the land reform context, such as Trusts and closed corporations. The review is to investigate the problems that exist within these, to document best practice and to design interventions, including possibly amendments to the CPA Act, to improve their performance. This was in response to anecdotal indications of widespread dysfunctionality among CPAs and other legal entities. The results of the review are expected in 2005.

the legislators. As the director of a land rights NGO also in KZN pointed out:

We have not been satisfied with the legal entities that have been set up. Now they are setting up Trusts. People are not participating in the decision of which entity to set up... Because of that haste we have seen communities' input and participation being very minimal, especially when there are large communities... We are wondering why government is ignoring its own legislation – the CPA Act
(Mkhize 2004, pers. comm.).

TRANCRAA: Reforming the 'coloured reserves'

The process of reforming the tenure rights of people living in the former 'coloured reserves' aims to secure users' rights to state-owned land that has traditionally been used in common by residents. In these 'reserves', small and desperately poor communities occupy and use large areas of semi-arid rangeland for subsistence agriculture, but do not have real rights to this land that they have occupied for generations. The Transformation of Certain Rural Areas Act 94 of 1998 (TRANCRAA) proposes that their tenure rights be secured by transferring ownership of certain land including commonage either to the residents, through a CPA, or to another accountable local institution such as the municipality. TRANCRAA affects the 23 'Act 9' areas of the Northern, Western and Eastern Cape, and Free State.

To date, no land transfers have taken place in terms of TRANCRAA. No processes towards transfer have been initiated in the Free State and Eastern Cape, while in the Western Cape consultations with residents are in their early stages at Ebenhaeser, Rietpoort and Mamre. The process has progressed furthest in the Namaqualand region in the Northern Cape, where consultations with communities on what form of landholding they prefer were conducted between January 2001 and September 2003. Five of the six affected areas (excluding Komaggas) held referenda on what legal entity should own the land on their behalf. The outcome showed a preference for CPAs, with only

Leliefontein voting marginally in favour of the municipality owning and managing the land in trust for residents (Wisborg & Rohde 2003).

The status of the communities' input remains unclear. Despite lengthy consultations with the affected communities over the past three years, the Minister is yet to decide whether or not to accept their decisions. According to the provincial director of DLA, 'the Minister will apply her mind and they will be informed' (Mvula 2004, pers. comm.). Controversially, it appears that DLA may recommend that the Minister overturn the outcome of the referenda, and instead transfer the land to municipalities in all cases except in the Richtersveld, where better capacity exists within the community to manage the land alone. The reasoning is the need to keep public resources available, via the municipality, to administer the land rights of users. However, the provincial DLA office is still assessing the feasibility and cost implications of its proposals and is drafting a submission to the Minister with recommendations (Mvula 2004, pers. comm.).

Even though tenure has not yet been reformed in the former 'coloured reserves', the process thus far has yielded important lessons. One lesson is that it is difficult for communities to choose which entity should own their land, when faced with the option of two institutions of which they have little or no experience – the new municipalities and CPAs. Second, emphasis in the TRANCRAA process has fallen on transfer of ownership, to the detriment of development. As Wisborg and Rohde (2003) point out, tenure rights will remain vulnerable unless they are linked to other entitlements and resources that can support livelihoods in these desperately poor rural areas. It remains to be seen whether these crucial steps are taken before the land transfers proceed.

Third, regardless of whether land is transferred to a CPA or to municipalities, public support is needed to administer the rights of users, once these are defined. The rights of individual users and mechanisms for their enforcement are still to be defined



– this is not specified in the legislation. The Surplus People Project (SPP), the NGO that conducted the consultations with residents, proposed that transfer should be conditional on the provision by the state of support for land rights administration and infrastructure development. As an SPP fieldworker insists, addressing tenure by itself is not adequate since ‘changing title deeds won’t change the lives of the people using the land’ (May 2004, pers. comm.).

Alongside tenure reform, then, there is a need to invest in (a) institutional capacity for rights administration and (b) development support for infrastructure and productive land use. TRANCRAA has been the first attempt

at communal tenure reform. The process still has a long way to go, but experience with its implementation thus far demonstrates that ‘the time, funding and institutional support required to carry out tenure reform have been seriously under-estimated’ (Wisborg & Rohde 2003:1).

Endnotes

1. The submissions presented to the portfolio committee hearings can be found on the website of the Contact Trust, filed under 11, 12, 13 and 14 November 2003, at www.contacttrust.org.za/asp/meet.asp?page=second&commid=5#



Chapter 8: Moving forward: Debating the future of land and agrarian reform

Reviewing the progress and limitations of land reform within the first decade of democracy, the most striking question that arises is: why has an ANC-led government chosen not to pursue more vigorously a programme to restructure property relations and redistribute assets?

To explain this, commentators often point to the ANC's urban power base. However, the party is balancing its transformation agenda with an interest to appease the interests of agricultural and corporate capital, and to secure investor confidence in the country. There are those within the ANC – and its alliance partners the Congress of South African Trade Unions (Cosatu) and the South African Communist Party (SACP) – who would support a much more aggressive programme, including one involving expropriation, the discarding of the willing buyer-willing seller approach, and substantial investments in funding provincial departments of agriculture and agricultural co-operatives. The launch in 2004 of the SACP's 'Red October' campaign on agrarian reform is the first clear sign of the issue becoming a priority within the alliance. However, there may also be factions within the ANC that are hostile to radical land reform, on ideological grounds or because it is in opposition to their own class interests.

Recent years have seen a rising level of public interest and debate on land reform and agrarian change, and an expanding range of policy options being promoted. While Gear led to the shelving of the pro-poor and interventionist role for the state envisaged in the RDP, it is evident that the ANC is now searching for a new balance between the status quo and transformation, and between the roles of the state and market. Rural poverty and land reform are discernibly rising

on the political agenda of government and increased public support has been given to social spending and anti-poverty strategies in the period following the 2004 national elections. This section of the report explores the key issues that have emerged, as South Africa debates the prospects for, and routes to, a wide-reaching land and agrarian reform. These are:

- land availability
- budgets
- post-settlement support
- black economic empowerment.



Matching supply and demand

There remains a fundamental tension between responding to the needs of the landless and reliance on willing sellers in an open land market to make land available for redistribution. This was acknowledged in the Minister's policy statement of February 2000, which stated:

The placing of responsibility on market forces, as [the] core redistributive factor has not produced the desired effect and impact. This has limited the level of choice, suitability and quality of land parcels acquired for the beneficiaries of [the] land reform program
(MALA 2000:2).

The constitutional mandate to expropriate land in the interests of land reform has been invoked in only a few instances. Nevertheless,

Box 18: Subdivision of agricultural land

A law repealing the Subdivision of Agricultural Land Act 70 of 1970 was passed by Parliament in 1998, but has not yet been signed into law by the President. Meanwhile, the Minister's approval is required before land is subdivided, but land reform projects are exempted from this requirement. 'The ability of participants to sub-divide existing large land units will be critical to the success of LRAD'. This appears not to have materialised; there is no mechanism for beneficiaries to subdivide properties in the process of purchase. Most farms are offered for sale without being subdivided, as there are not sufficient incentives for existing owners or developers to take on the risk of subdividing with a view to selling smaller plots to land reform beneficiaries. Instead, there is some evidence of the number of agricultural properties decreasing – that is, that holdings are being consolidated rather than subdivided. In conjunction with a land tax to raise the costs to landowners of retaining ownership of large tracts of un- or under-utilised land, subdivision can assist in bringing land that is suited to land reform needs onto the market.

Source: MALA 2001.

there remain signs that expropriation may be used more in the future, if reliance on 'willing sellers' hampers progress. However, politicians and policy makers have thus far dismissed the option of paying below-market compensation to landowners.

Obstacles experienced in the market-based programme include racism among landowners who have allegedly refused to sell to black land reform applicants. Applicants also find it difficult to engage with land markets – particularly if they are poor and illiterate – and both officials and activists agree that they need better information on properties being offered for sale. In addition, there remain structural obstacles. Most notably, redistribution has not challenged the size of holdings in the commercial farming areas through subdivision. The results are



large groups obtaining large farms and attempting to farm them collectively or to carve out plots for individual use. Only where beneficiaries have substantial capital of their own or are willing to incur high levels of initial debt can individuals or small groups operate their farms as one commercial entity. There is thus a mismatch between policy mechanisms emphasising entry at a variety of levels (ranging from food safety net projects to small and medium sized farms) and the actual array of properties available to would-be beneficiaries. Subdivision is one way to address this (see Box 18).

Another intervention into land markets that could improve the availability of land for redistribution is the planned introduction of land taxes (see Box 19). The willing buyer-willing seller approach relies on applicants

Box 19: Land taxes

Land taxes, by introducing a cost to retaining ownership of un- or under-utilised land, are expected to increase supply of land onto the market, according to neo-classical economics. The newly promulgated Local Municipality: Property Rates Act 6 of 2004 empowers municipalities for the first time to levy taxes on agricultural land, and each municipality will be able to determine the level at which these will be set. However, these rates are seen as a source of revenue for local government rather than as an instrument to induce supply of land onto the market. It is unlikely that the taxes will be set at a high level – probably in the region of 0.5% to 1% per annum of the market value of the land, which is not a punitive tax. After all, the state has an interest in maintaining property values, and in ensuring the sustainability of the financial sector that is heavily reliant on the property market. Nevertheless, the land tax proposals have elicited opposition from landowners. Land reform beneficiaries will be exempt from paying land taxes for a period of ten years.

to identify land being offered for sale, and has resulted in *ad hoc* land transfers that are isolated from wider processes of development such as local economic development, and delivery of infrastructure and services. Government is reluctant to purchase land upfront and then identify suitable beneficiaries. However, various proactive approaches to land acquisition are now being discussed and some have been tested. DLA piloted a proactive district-based approach in Pongola in KZN. However, this was halted in 2004 and, instead, a model of ‘community-driven land reform’ advocated by the World Bank is now in the design phase and is to be piloted in Mpumalanga (Van der Merwe 2004, pers. comm.).

DLA in North West has also tested a proactive approach to land acquisition in the Southern District around Klerksdorp, identifying state land owned by the district and then finding the ‘right beneficiaries’ whose needs fit with the identified land (Mongae 2004, pers. comm.).

However, even though there is, in a generalised sense, plenty of supply of land on the open market, intervention in land markets is needed to make available suitably sized plots for the needs of beneficiaries in areas of high demand. An alternative proactive approach would take local people’s land needs as its starting point and then identify appropriate public or private land that could address these needs, either available state land, land available through the open market, or through negotiated sales or expropriation. A district or area-based approach would involve government proactively matching supply and demand, so that large blocks of land could be acquired at reasonable cost – or expropriating where necessary. Assessing land needs and planning for land reform would be central to the IDPs of municipalities. This would enable district-wide planning for infrastructure and service provision, including facilities for marketing produce. Such an approach would be particularly appropriate in commercial farming areas adjacent to the former homelands, districts with a high proportion of the land under restitution claim, and areas with the potential for high productivity cash cropping by smallholders (Cousins 2004).

A key challenge for the period ahead, then, is to develop ways of assessing land needs at a local level and proactively finding land to meet these needs, through a range of market and non-market methods.

Budgets

Approximately R4.5 billion has been spent on land reform, including restitution, since 1994 (National Treasury 2004). The budgets for all aspects of land reform have grown over the past decade, but still constitute less than 0.5% of the national budget. Although the restitution budget has grown substantially over the past five years, funds available for land redistribution and tenure reform have declined in real terms. Increased budgets across all programmes will be needed if the pace of delivery, and the quality and sustainability of projects, is to improve. The policy decision to pay market prices for land makes land reform inherently costly but, even if below-market prices are to be paid, substantial funds will still be needed.

No official national estimate of the likely total cost of land reform has been published and provinces are at very different stages of costing what will be needed to reach the stated target of transferring 30% of agricultural land. Estimates vary greatly, and there are no standard approaches to this costing exercise, and so they can only be considered a broad indication of the scale of funds needed. However, the available information suggests that significant increases are needed across the board to scale up delivery to approximate to the target.

According to DLA sources, what is needed in the Eastern Cape is a threefold increase of the current R54 million yearly budget, R1 billion between 2005 and 2015 in Mpumalanga, half that again in North West, and about R1 billion a year in the Free State. DLA in the Western Cape needs R1.5 billion per year, and the same amount again over the whole period is needed in the Northern Cape. Land prices, though, suggest that much higher amounts will be needed in some provinces than is currently being estimated, notably in Mpumalanga. No estimates have been developed for Gauteng and Limpopo. Most costings only relate to the average



purchase price of land per hectare, and exclude consideration of the institutional and human resource costs of implementing land reform. The actual cost of transferring 30% of the land will be contingent on a number of factors well beyond the control of DLA's provincial offices, including policy on the market-led approach to redistribution and the impact of reforms on markets. Experience to date suggests that, if the current approach is pursued, in order to scale up delivery towards the targets, R2 billion will be needed each year for land redistribution, R1.67 billion for restitution, and additional budget items will be needed in the area of tenure reform – possibly R1 billion a year each for the farm dweller programme and for communal tenure reform (see People's Budget 2005).

A challenge for the second decade of land reform will be to greatly increase the public resources available for land acquisition as well as non-capital costs, and to justify these increases on the basis of delivery to date.

Post-settlement support

The chronic lack of support for beneficiaries after land transfer is widely acknowledged. Official surveys and independent research both indicate that land reform has produced limited tangible benefits for participants in terms of improved livelihoods and incomes, largely as a result of a lack of post-settlement support. Unless new owners are able to build sustainable livelihoods on their new land, they may be forced to sell it – or it may be repossessed. The degree to which land reform is being reversed in this way is unknown, but the issue is of sufficient concern that the DLA Director-General has established a committee to investigate the extent of the 'land loss' problem.

The problem also extends to inappropriate pre-transfer business planning, which sometimes emphasises capital-intensive investment rather than cheaper alternatives or basic infrastructure like fencing and boreholes. In such cases, post-settlement support is needed for 'real world' planning, once people are on the land. Improved pre-transfer planning and post-settlement support are thus critical to the success of the programme. Nevertheless, there remains

ambivalence about the meaning, duration and degree of ongoing support, with DLA insisting that it cannot 'nanny' projects indefinitely.

Provincial departments of agriculture are under-capacitated and short-staffed, given the role they are meant to play in supporting land reform. In addition, they scaled back the services they offer as public funding declined as part of the deregulation of agriculture during the 1990s. Some PDoAs have large numbers of unskilled staff – particularly those that inherited old bantustan agricultural bureaucracies – but there have been improvements, with new extension officers being hired and trained some provinces. Party political tensions between the DLA (a national department) and PDoAs are reported to have hampered relations in KZN and the Western Cape, the only provinces where parties other than the ANC were in power before 2004. Alignment between these departments apparently improved during 2004.

The launch of the Comprehensive Agricultural Support Programme (CASP) in August 2004 marked the first dedicated funds made available by the National Department of Agriculture to support land reform. A total of R750 million has been earmarked for the CASP, spread over a three-year period in increasing tranches (National Treasury 2004). CASP is to fund training, technical advice, marketing and business development, infrastructure, production inputs and financial assistance. At a provincial level, a portion of the CASP funds has been set aside for land reform beneficiaries – between about R10 million and R20 million per province – to be split between restitution and other land reform projects. DLA officials have selected which projects will get support and funds had in most cases been earmarked, though not necessarily transferred or spent, as at August 2004. Further funds to support new entrants into agriculture have been committed. President Mbeki announced in his post-election State of the Nation address in May 2004 that the Agricultural Credit Scheme would be revived to support small and medium agricultural enterprises, with an immediate capital allocation of R1 billion,



enabling the Land Bank to focus instead on the established commercial sector.

Despite these recent improvements, the challenge ahead is to revive the provincial departments of agriculture, to increase their skills base, to upgrade extension services and to provide more capital funds to enable land reform beneficiaries to invest in and use their land productively.

BEE

Like other initiatives to transform the economy and society, land reform is now considered as a means of achieving black economic empowerment. A draft of the Agricultural Broad-based Black Economic Empowerment (AgriBEE) charter was released on 26 July 2004. It reiterates the existing target of redistributing 30% of agricultural land to black South Africans by 2014, but also sets ambitious targets for the deracialisation of ownership, management and procurement in the agricultural sector, including 35% black ownership of existing and new enterprises by 2008 (NDA 2004b). The targets apply throughout the value chain rather than just at farm level, including value adding and processing industries in secondary agriculture.

However, the BEE focus on deracialising demographics in shareholding, management and procurement is relevant to enterprises only in larger farms and the agribusiness sector. In this sense, the charter is at present largely an agribusiness charter. It is not clear what commitments are entailed for the majority of the landowners in the farming sector, nor how it will empower farm workers and smallholders who are marginalised within the agricultural sector. The charter's focus on agricultural land and on transferring assets suggests that it could contribute to land reform, but the commitments in this

area are weak and it makes no mention of the obligations of the sector to address poverty. The charter is yet to clarify what contribution existing landowners and the 'established industry' will actually make towards this key land reform target, other than selling land at market prices. It also does not commit farmers or farming businesses to support new resource-poor entrants into farming.

The process leading up to the release of the draft charter involved two years of consultations between Agri-SA, the National African Farmers' Union and the National Department of Agriculture, that have been unfolding since they adopted the Agricultural Sector Plan in 2002 in the Presidential Working Group on Agriculture. However, key groups such as the trade unions organising in agriculture, and the Landless People's Movement, have not been consulted.

This is a significant moment in the debates about land and agricultural reform in South Africa. The AgriBEE charter is likely to become the overarching framework within which land reform is pursued, though there is still likely to be robust contestation of black economic empowerment – what it should look like, whom it is for and what constitutes 'broad-based' empowerment. The advent of the AgriBEE charter could signal the emergence of a bifurcated approach to land and agrarian reform, with the private sector increasingly pursuing the more commercial end of the spectrum, establishing and mentoring commercial producers, while the state focuses on addressing basic needs. The challenge that remains is to ensure that the charter contains tangible commitments from landowners and businesses in agriculture to make available land, expertise, marketing opportunities and finance in support of land and agrarian reform and to support smallholders in particular.



Chapter 9: Conclusions

Land and agrarian reforms, historically and elsewhere in the world, have sought to restructure relations between landowning classes and landless workers and tenants, and have usually been associated with dramatic and often violent political change.

In South Africa, a negotiated transition from apartheid to democracy curtailed the realisation of the vision embodied in the Freedom Charter: 'The land shall be shared among those who work it!' Here, land reform is premised on the protection of property rights, including those of existing landowners.

Like most land reforms, South Africa's is driven by a combination of moral and economic imperatives. However, little is known about the extent to which land reform is in fact promoting justice and reconciliation, or bringing about development and improved livelihoods for beneficiaries. The lack of reliable monitoring and evaluation means that implementers, policy makers, politicians, civil society organisations and the public at large have little idea of the impact of the programme. Instead, instances of success and failure that emerge in the public domain tend to be highly anecdotal.

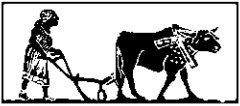
Land reform is an emotive and political matter in South Africa, as elsewhere, and the absence of monitoring data aggravates this situation, as it is difficult to derive reasoned positions on the merits of the programme. Further, the reasons why people want land remain relatively unexplored; little is known about the nature and scale of the demand for land, or the implications for the type of land reform that is needed.

Agrarian reform, by restructuring the agricultural economy, is key to translating land reform into economic development. However, South Africa's land reform programme has advanced largely in isolation from other interventions into the rural and agricultural economies. To the extent that there are elements of agrarian reform

underway, these include agricultural policy to promote new entrants, reforms to farm labour and the provision of post-settlement agricultural support in the form of training as well as infrastructure and credit. However, these have been limited in their scale and impact thus far, and agricultural deregulation policies have created a particularly hostile economic environment for new farmers, making the prospects of success slim for poor people, women and farm workers who are able to access the programme.

Aspects of an agrarian reform that have not been pursued are spatially focused land reform planning, extension and marketing support for small-scale and resource-poor producers, and intervention in land and commodity markets and in the size distribution of land holdings. A core challenge now facing the programme is the need for the state to intervene to make suitable land available to meet local needs, rather than relying wholly on land markets and the willingness of current owners to sell. To advance a wider agrarian reform, there is now a need for convergence and joint policy development across the areas of land affairs, agriculture, rural development and local government.

The objectives and vision informing land reform in South Africa have changed substantially over the past decade. The emphasis has shifted from a major restructuring of agriculture to a limited programme of farmer settlement. The land redistribution programme has discarded its pro-poor provisions and now in practice favours those with their own resources to invest. Emerging black commercial farmers now compete with the mass of the rural



poor for preferential access to land reform benefits. While the programme has made significant progress in some areas, the question of who should benefit from land reform is hotly debated, and there remains the challenge of integrating land reform with

agricultural policy, rural development and local economic development, and so locating the redistribution of land and land rights at the centre of a wider process of pro-poor agrarian reform.



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Appendix A: Semi-structured interview schedule for PLRO directors

Redistribution

1. What have been the major changes in delivery of redistribution over the past year?
2. Are you enforcing a maximum limit on the group sizes in redistribution projects?
3. What kinds of redistribution projects have you been implementing over the past year, other than LRAD?
4. Have you implemented any municipal commonage projects in your province? If so, how many, and do you have more in the pipeline? Are you promoting these, or mostly waiting for municipalities to come to you?
5. Do you have guidelines for the prioritisation of projects in your province?
6. What is the situation in terms of project commitments and the budget to fund these projects – do you have projects in the pipeline and if so, what is the total value of these and what is your strategic thinking on how to address the situation?
7. Are you accepting new applications at present?
8. Has your province worked out how much money will be needed to transfer a total of 30% of the agricultural land?



Farm dwellers

9. With respect to farm dwellers, what are your perceptions about trends in your province or region over the past year?

10. Has your office made any specific interventions in the area of farm dwellers' tenure rights?

Relationships

11. How would you say your relationship with individual farmers or with the private sector has changed over the past year?
12. How would you say your relationship with NGOs has changed over the past year?

Post-transfer support

13. To what extent do you see the PDoA coming on board? Is the CASP being rolled out? What other support are they offering – and is the situation improving?

Monitoring and evaluation

14. Do you have an M&E officer in your PLRO or in district offices? If so, I would like to obtain the following information from her / him.
15. Is it possible to obtain a project list?
16. How many ESTA settlement projects were transferred?
17. How many LTA projects were transferred?
18. What data do you have on farm evictions in the province?

Appendix B: Semi-structured interview schedule for NGO directors

1. What are the main activities your organisation is involved in?
2. Do you interact with the DLA in your province?
3. If so, what are your perceptions about their direction and in what ways are you interacting with them?

Redistribution

4. Are you involved with assisting people to access the redistribution programme?
5. If so, what do you feel have been the major changes in delivery of redistribution over the past year – and what changes has your organisation made in your work in this area?
6. What is the situation in terms of project commitments and the budget to fund these projects – do you have projects in the pipeline and if so, what is the total value of these and what is your strategic thinking on how to address the situation?
7. Do you know if DLA is accepting new redistribution grant applications at present?
8. Do you have guidelines for the prioritisation of projects in your province?
9. Do you have access to a provincial project list?

Restitution

10. Are you involved with assisting people to access the restitution programme?
11. If so, what do you feel have been the major changes in delivery of restitution over the past year – and what changes has your organisation made in your work in this area?
12. What claims are being prioritised, if any?

13. What rural claims have been settled with land over the past year to 18 months?
14. How many rural claims are outstanding?

Post-transfer support

15. Are you involved with assisting people with post-transfer support or land use planning, extension services, etc?
16. If so, what do you feel have been the major changes in delivery of post-transfer support over the past year – and what changes has your organisation made in your work in this area?

Farm tenure

17. Are you involved with assisting farm dwellers to secure their tenure rights?
18. If so, what are your perceptions about trends in your province or region over the past year?
19. Do you know of any ESTA settlement projects that have been established in your province? Since the beginning of 2003?
20. Do you know of any LTA projects that have been established in your province? Since the beginning of 2003?



LPM [Landless People's Movement]

21. Are you supporting LPM or trade unions or any other grassroots movements?
22. If so, what are your perceptions about their direction and in what ways are you supporting them?

Private sector

23. Do you interact with the private sector – farmers' associations, banks, etc?
24. If so, what are your perceptions about their direction and in what ways are you interacting with them?