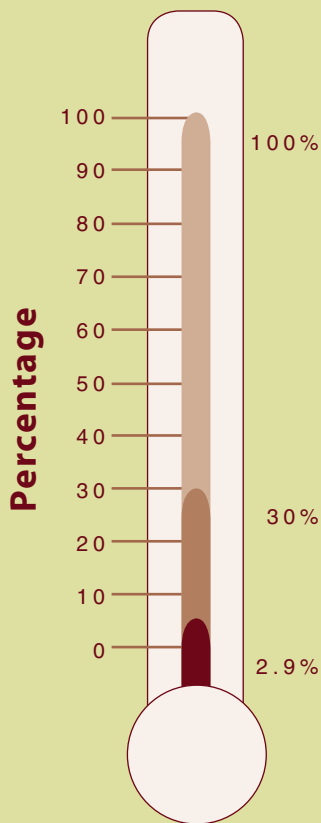




## LAND BAROMETER



### Redistribution

- Total commercial agricultural land
- Official target for 2015
- Transferred between 1994 and February 2004

## Welcome

to the introductory issue of *Umhlaba Wethu*, an initiative of the Programme for Land and Agrarian Studies (PLAAS) at the University of the Western Cape. *Umhlaba Wethu* is intended to promote information sharing and dialogue around all aspects of land reform in South Africa, and create opportunities for a wide range of stakeholders to participate in policy debates.

Since the launch of the official South African land reform programme in 1994, there has been intense debate around policy direction, implementation strategies and the impact of reform efforts on both the distribution of land in the country and on the livelihoods of intended beneficiaries. Much of this debate has centred around the adequacy, and reliability, of data on various aspects of the land reform programme.

With the increase in scale and complexity of land reform in South Africa, it has proved difficult for the monitoring and evaluation function within government departments to keep pace, and it is now widely recognised within and outside government that many information gaps exist. While information is generally available in the form of quantitative indicators such as cost and number of projects, little is available on the impact of land reform, whether on beneficiaries themselves, on rural poverty or on the wider economy. Official statistics on the performance of the land reform programme have themselves been the subject of considerable debate.

Without high-quality, up-to-date information, government faces challenges in managing its programmes effectively, and poor reliability of information in the public domain limits the prospects for reflexive learning and the development and application of 'best practice' among beneficiaries and other stakeholders. We believe there is a need for a range of stakeholders – inside and outside government – to become involved in the ongoing monitoring and evaluation of land reform, and we hope that *Umhlaba Wethu* will contribute to this.

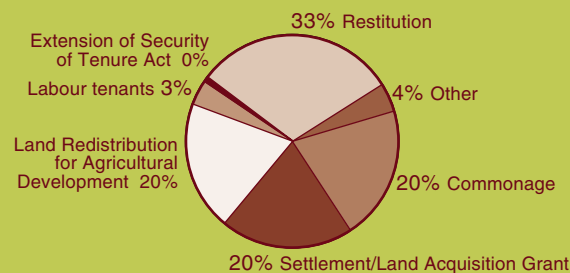
This bulletin aims to promote debate around land reform, to critically assess official data, and to provide a platform for alternative sources of information. This will be backed up by a range of networking activities that aim to share information across civil society and encourage a range of actors involved in land reform – including NGOs, CBOs and beneficiaries themselves – to monitor and evaluate their own land reform projects.

This edition focuses mainly on official government statistics. Future editions will draw on a wider range of sources, including NGOs, independent researchers and private sector organisations involved in land reform. Readers are invited to send us news and other information about land reform in their own areas, or comments on how we can make this publication more effective. We look forward to a lively sharing of information.

### Land transfers

- A total of 2 493 567 hectares has been transferred through the various land reform programmes (as of 29 February 2004). This amounts to 2.9% of total agricultural land (excluding the former homelands), and one tenth of the official target of 30% by 2015.
- There are approximately 86.2 million hectares of commercial farm land outside the former homelands in South Africa, most of which is held by approximately 55 000 white commercial farmers.
- Figure 1 shows the percentage of land restored through the various project types as at 29 February 2004. This chart excludes state land disposal.
- Here and elsewhere in this bulletin, the focus is on land transferred as part of state land reform programmes. This excludes private transactions via the market and certain industry-led empowerment initiatives.

Figure 1: Land transfers by project type (in hectares) to 29 February 2004



Source: Commission on Restitution of Land Rights (CRLR) and Department of Land Affairs (DLA)

### In this edition:

- Land barometer
- Land transfers
- Redistribution statistics
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# Land redistribution statistics

Land redistribution is intended to redress the racial imbalance in land holding patterns in South Africa. Table 1 shows the amount of land (in hectares) transferred through DLA's land redistribution and tenure programmes as reported at the end of February 2004.

**Table 1: Land redistribution and tenure reform: land transfers 1994–2004**

| Year             | No. of projects | Households     | Female-headed households | Hectares         |
|------------------|-----------------|----------------|--------------------------|------------------|
| 1994             | 4               | 1 004          | 12                       | 71 656           |
| 1995             | 11              | 1 819          | 24                       | 12 958           |
| 1996             | 45              | 5 361          | 199                      | 60 268           |
| 1997             | 87              | 10 268         | 1 415                    | 126 548          |
| 1998             | 209             | 15 664         | 2 916                    | 234 274          |
| 1999             | 142             | 28 177         | 1 718                    | 244 367          |
| 2000             | 236             | 31 596         | 2 967                    | 230 155          |
| 2001             | 360             | 17 179         | 2 734                    | 214 338          |
| 2002             | 685             | 18 817         | 5 193                    | 291 335          |
| *2003 – Feb 2004 | 427             | 22 326         | 1 413                    | 146 260          |
| Unspecified      | 132             | 4 899          | 58                       | 51 115           |
| <b>TOTAL</b>     | <b>2 338</b>    | <b>157 110</b> | <b>18 649</b>            | <b>1 683 275</b> |

Source: DLA 2004

\*Table reflects calendar years 1994 to 2002. The period 2003–Feb 2004 computes to 14 months, as reflected in official statistics.

## Key points

- Following a slow start to the redistribution programme, by February 2004 a total of just over 1.6 million hectares of land had been transferred to nearly 160 000 households.
- Significant year-on-year increases in hectares transferred were evident in 1997–98, 1998–99 and, following a dip in 2001–02, in 2002–03.
- 2003–04 shows a dramatic fall in hectares transferred, down to half of the previous year.
- The proportion of female-headed households has fluctuated greatly, the highest proportion being 28% in 2002. The proportion fell dramatically to just 6% in 2003–04.
- The number of households per project has varied considerably, but the general trend is towards fewer households per project.
- There has been a steady decline in the number of hectares per project, especially since 1999–2000.
- The number of hectares per household has fluctuated considerably, and reached its lowest level in 2003–04.
- In broad terms, the trend in recent years is towards smaller projects, with less land and fewer beneficiaries per project.

A major gap in the official data is an indication of the socio-economic profile of beneficiaries.

## Legislative update

- The **Local Government: Municipal Property Rates Act 6 of 2004** empowers local government authorities to levy taxes on agricultural land and to determine at what level to set these. In the past, properties zoned for agriculture were exempted from paying rates and fell outside the boundaries of local authorities.
- The **Restitution of Land Rights Amendment Act 48 of 2003** was signed into law by the President on 4 February 2004. It empowers the Minister of Agriculture and Land Affairs to expropriate property for restitution and other land reform purposes without a court order. The Minister has not yet invoked these powers.
- The **Communal Land Rights Act 11 of 2004** was passed by Parliament in February 2004 and signed into law by the President on 15 July 2004. This Act provides for the transfer of ownership of communal land in the former homelands from the state to communities resident there as well as the conversion of 'old order' rights to 'new order' rights. The Act stipulates how land rights are to be administered, creating a central role for 'traditional councils' in areas where these exist.

## Land reform policies under review

- **Farm tenure legislation:** The Department of Land Affairs (DLA) is engaged in a process to draft a new law that will change the nature of farm dwellers' rights to land and housing. The proposed 'Tenure Security Laws Amendment Bill' has been in the drafting process since 2002. No public consultation has yet taken place, nor has the draft law been made publicly available. It is expected to affect the rights held by farm dwellers in terms of two existing laws: the Extension of Security of Tenure Act (ESTA) and the Land Reform (Labour Tenants) Act (LTA).
- **Communal property institutions (CPI) review:** DLA has commissioned the Council for Scientific and Industrial Research (CSIR) to conduct a review of communal property associations (CPAs) and other legal entities such as trusts, through which land reform beneficiaries jointly hold and manage their land. The review is intended to provide guidance on how such entities can secure the rights of community members and what improvements should be considered.
- **Alternative dispute resolution (ADR) system:** DLA has commissioned consultants to design a new ADR system to resolve land-related disputes through mediation, conciliation and arbitration.

## Land reform budget 2004–05

Implementation of South Africa's market-based land reform is heavily dependent on the budget allocated by the National Treasury to the Department of Land Affairs. The budget for DLA in 2004–05 is R1.8 billion, up 9.1% compared to the previous year, as shown in Table 2. Of the two main land reform programmes, restitution has seen the greatest increase, up by 11% to R933 million. The allocation to Land Reform, which funds both redistribution and tenure reform, is R474 million, an increase of just 1.9% on the previous financial year. Of particular concern is a fall of 0.6% in the transfers and subsidies component of Land Reform, which funds the acquisition of land and related activities.

An acceleration in land transfers under redistribution during 2003–04 resulted in some provinces exhausting their budgets. This has led to cases

of DLA approving projects for which funds are not available, and being unable to process new projects. By February 2003, the total backlog of redistribution and tenure projects that had been approved, but for which no funding was yet available, amounted to R587 million. Thus, for the first time since 1994, budgetary constraints have become a real limitation on the land reform programme.

The 2004–05 budget also allocates funds to the national Department of Agriculture for a new Comprehensive Agricultural Support Package (CASP) to support newly-established farmers. The allocation to CASP for 2004–05 is R200 million, with somewhat larger sums to be made available in 2005–06 (R250 million) and 2006–07 (R300 million) – a total of R750 million over three years. CASP, and the promised reintroduction of the Agri-

cultural Credit Scheme, are important steps towards addressing the pressing need for post-transfer support to land reform beneficiaries.

Current budgetary trends suggest that official land reform targets cannot be met, and the failure to provide for any increase in the capital budget for purchase of land under the redistribution programme for 2004–05 is particularly significant. Failure to make specific allocations to various areas of tenure reform suggests that delivery in this key area will also continue to be hampered by lack of resources. Restitution is the exception to this trend, but the continued insistence of officials and politicians that this far-reaching programme can be brought to a conclusion by the end of 2005 is unrealistic and unhelpful when it comes to planning and resource allocation.

**Table 2: DLA Budget 2003–04 to 2006–07**

| Budget line           | 2003–04   | 2004–05   |                   | 2005–06     | 2006–07     |
|-----------------------|-----------|-----------|-------------------|-------------|-------------|
|                       | (actual)  | (actual)  | Annual increase % | (projected) | (projected) |
|                       | R million | R million |                   | R million   | R million   |
| LAND REFORM           | 465       | 474       | 1.9               | 619         | 801         |
| Transfers & subsidies | 311       | 309       | -0.6              | 445         | 616         |
| Current payments      | 152       | 164       | 7.9               | 174         | 184         |
| RESTITUTION           | 839       | 933       | 11.2              | 1 157       | 1 370       |
| Transfers & subsidies | 702       | 775       | 10.4              | 994         | 1 198       |
| Current payments      | 132       | 156       | 18.2              | 160         | 171         |
| TOTAL                 | 1 285     | 1 407     | 9.5               | 1 776       | 2 171       |
| TOTAL LAND AFFAIRS    | 1 639     | 1 788     | 9.1               | 2 180       | 2 598       |

Source: National Treasury 2004

# Restitution statistics

The Restitution programme allows for restoration of land rights to those unfairly dispossessed after 1913 as a result of racially discriminatory laws or practices. The Commission on Restitution of Land Rights is currently under immense pressure to conclude the restitution process by the end of 2005. Table 3 shows the total number of settled land restitution claims as at 29 February 2004, per province.

**Table 3: Settled land restitution claims, per province (29 February 2004)**

| Province      | Claims        | Households     | Hectares       | Land cost (R)        | Total award (R)      |
|---------------|---------------|----------------|----------------|----------------------|----------------------|
| Eastern Cape  | 12 943        | 26 742         | 28 338         | 198 226 881          | 700 718 857          |
| Free State    | 2 031         | 2 718          | 43 315         | 13 051 926           | 48 018 627           |
| Gauteng       | 9 312         | 9 304          | 3 453          | 30 285 287           | 413 607 585          |
| KwaZulu-Natal | 10 332        | 22 909         | 132 379        | 230 856 845          | 697 214 240          |
| Limpopo       | 1 209         | 12 722         | 54 575         | 129 502 792          | 205 305 629          |
| Mpumalanga    | 1 354         | 14 124         | 240 014        | 254 640 523          | 337 172 320          |
| North West    | 1 237         | 11 881         | 71 484         | 93 992 542           | 166 806 424          |
| Northern Cape | 1 501         | 5 273          | 233 634        | 69 753 602           | 136 938 547          |
| Western Cape  | 8 544         | 11 653         | 3 100          | 8 096 187            | 347 147 021          |
| <b>Total</b>  | <b>48 463</b> | <b>117 326</b> | <b>810 292</b> | <b>1 028 406 585</b> | <b>3 052 929 254</b> |

Source: CRLR 2004

## Key points

- Restitution awards have been heavily concentrated in the Eastern Cape and KwaZulu-Natal.
- Only one third of the total spending on restitution awards has gone towards the purchase of land. This is because most claims settled to date have been settled through cash compensation.
- Research by PLAAS in 2003 revealed a lack of clarity around rural claims. As at March of 2003 only 185 rural claims (as lodged) had been settled through restoration.
- Limpopo is probably the province with the greatest number of outstanding claims likely to be settled by means of land restoration, although detailed information on this is not available from the commission.
- The proportion of awards spent on land has increased substantially in the past year.
- Having lagged behind other provinces for many years, Mpumalanga has, in the past year, emerged as the province with the most land restored through restitution, and the greatest amount spent on land restoration.

## Recent court judgments

- **Mabaso Case 2004**, Thohoyandou Magistrates' Court. The court issued a 'protection order' in terms of the Domestic Violence Act, ordering Selinah Mabaso and her five children out of the house they occupied. An application lodged to set aside the 'protection order', also stopping the eviction until the application could be heard, failed and the Magistrate again confirmed the eviction.
- **Modder East Squatters**, Greater Benoni City Council and Modderklip Boerdery (Pty) Ltd, SCA 187/03, and the President of the Republic of South Africa, the Minister of Safety and Security, the Minister of Agriculture and Land Affairs, the National Commissioner of Police and Modderklip Boerdery (Pty) Ltd, SCA 213/03. On 27 May 2004, the Supreme Court of Appeal handed down judgment, finding that the state had breached its constitutional obligations to both the landowner and the unlawful occupiers in failing to provide alternate land for their occupation upon eviction. The state has since indicated its intention of appealing this judgment to the Constitutional Court.
- **Popela Community Land Claim**, Case No: LCC 52/2000. The claim (opposed by landowners) is based on the lost labour tenancy rights of the Popela community who were ancestral owners/occupiers of the land, but by 1913 had been reduced to labour tenants. The case was postponed until 16–18 August 2004.



## The Communal Land Rights Act: Likely to face constitutional challenge

Ben Cousins (PLAAS)

Parliamentary hearings on the Communal Land Rights Bill in November 2003 saw heated debates. A total of 34 submissions were made, and all but three of these called for the Bill to be withdrawn. Presentations by community groups and NGOs questioned both the content of the Bill and the non-consultative nature of the process through which it had been developed.

Legal opinions suggested that the Bill did not meet the requirements of Section 25(6) of the Constitution, in relation to the nature and content of communal land rights, the adequacy of measures to secure gender equality, the wide discretionary powers granted to the Minister, inadequate provisions for 'comparable redress', and the potential vulnerability of the property rights of groups who have received land through restitution or redistribution. Most controversial were clauses stating that land administration functions would be undertaken by 'traditional councils' (established through the Traditional Leadership and Governance Framework Act).

In response to critical submissions, DLA amended the Bill to address a number of issues. One amendment provides that 'old order rights' are deemed to be held by all spouses in a marriage, not by the husband alone. However, no provision is made for securing the current use and occupation rights of single women (widows or unmarried women).

Rewording of certain sections attempts to create greater certainty that Section

25(6) of the Bill of Rights (requiring clear definition of the extent and content of 'security of tenure') is being adhered to, but may still not be adequate. Amendments were also made in relation to decisions and determinations by the Minister. For example, a land rights enquiry must seek to establish the majority views of a community, and these must inform the making of community rules. However, there is still no requirement that majority consent is necessary for the decision to transfer title, or when a land administration committee is established, or prior to the Minister reserving part of communal land for state use. However, there is still no requirement that majority consent is necessary for the decision to transfer title, to establish a land administration committee or for the Minister to reserve part of communal land for state use.

The final version of the Bill also contains a definition of 'land administration committee' that avoids specifying that it will be a traditional council in all areas where these exist. However, the Bill still does not specify clearly that an alternative structure (such as an elected committee) may administer communal land, and is open to competing interpretations.

Departmental officials told the parliamentary portfolio committee in January 2004 that the real costs of implementing the law would probably be seven or eight times higher than the original estimate of R68 million, that is closer to R500 million, but could still

not provide a detailed breakdown of costs.

There was also controversy over whether or not the Bill should have been tagged as a Section 76 Bill, which would lead to further public hearings by the National Council of Provinces. The Constitution defines Section 76 laws as those laws affecting functional areas of 'concurrent competence' between national and provincial governments, which includes traditional leadership, but not land. In the end the Bill was not re-tagged, and in February 2004 the Bill was passed by both the National Assembly and the National Council of Provinces. It is now awaiting the signature of the President before it becomes law.

DLA is currently commissioning work on systems and procedures for implementing the Bill. However, it is likely that implementation will only begin in 2005, in part because provincial legislation needs to be amended to enable 'traditional councils' to be established.

Unprecedented public interest in the passage of the Bill in February 2004 saw wide media coverage, editorials calling for it to be scrapped or 'substantially amended', angry articles by gender activists, and a decision by the Commission for Gender Equality to challenge the constitutionality of the Bill. It appears likely that constitutional challenges to the law will also be mounted in due course by the Legal Resources Centre (LRC) acting on behalf of some of the communities that presented submissions to Parliament.

## Useful websites

- The **Government** website, [www.gov.za](http://www.gov.za), gives access to all departments, laws, bills, consultative documents, generic information and contact details.
- The **DLA** website, [land.pwv.gov.za](http://land.pwv.gov.za), includes news (it tends to be outdated at times), and speeches by the Minister. It is possible to navigate to the redistribution page and the restitution page. Unfortunately there is no tenure page.
- The webpage of the **National Treasury**, [www.treasury.gov.za](http://www.treasury.gov.za), includes accessible summaries that help to put the land affairs budget in context.
- The **National Land Committee** advocates for land and agrarian reform with rural communities across South Africa ([www.nlc.co.za](http://www.nlc.co.za)).
- The **Human Sciences Research Council (HSRC)** webpage provides a forum for public debate on poverty across the Southern African Development Community ([www.sarpn.org.za](http://www.sarpn.org.za)).
- The **Parliamentary Monitoring Group** website makes the minutes of the proceedings of South African parliamentary committees available to the broader public ([www.pmg.org.za](http://www.pmg.org.za)).
- The **Programme for Land and Agrarian Studies (PLAAS)** ([www.uwc.ac.za/plaas](http://www.uwc.ac.za/plaas)).

## Upcoming events

- UNISA and Queens University in Canada will host the '**Ten Years of Democracy in Southern Africa Conference**' in Pretoria, 23-25 August 2004. Contact Mary-Lynn Suttie, Unisa. Tel: +27 12 429 3098. E-mail: [suttim@unisa.ac.za](mailto:suttim@unisa.ac.za)
- A **Restitution Researchers' Forum** will meet directly after the UNISA/Queens Conference in Pretoria. Contact Cheryl Walker, HSRC. Tel: +27 31 273 1405. E-mail: [cwalker@hsrc.ac.za](mailto:cwalker@hsrc.ac.za)
- Nkuzi, the Makhado Municipality and the Landless People Movement of the area will hold a **Land Conference** in the Makhado Municipality, and invite stakeholders to discuss an integrated plan for land and agrarian reform in the area. The Minister for Land Affairs and Agriculture will be among the guests invited to the conference. August/September 2004. Contact Marc Wegerif, Nkuzi. Tel: +27 12 323 6417, +27 15 297 6972. E-mail: [marc@nkuzi.org.za](mailto:marc@nkuzi.org.za)

## Land-related research currently under way

- **Clarifying informal land rights on land held in undivided shares** – Melkkraal (Suid-Bokkeveld, Northern Cape) Surplus People Project (SPP), Legal Resources Centre (LRC) and Environmental Monitoring Group (EMG). Contact David Mayson, SPP. Tel: +27 21 448 5605. E-mail: [david@spp.org.za](mailto:david@spp.org.za)
- **Further assessment of joint ventures in land reform on agricultural land** – Human Sciences Research Council (HSRC) and SPP. Contact Prof Simpiwe Mini, HSRC. Tel: +27 12 302 2664. E-mail: [smini@hsrc.ac.za](mailto:smini@hsrc.ac.za)
- **South Africa's agricultural commodity markets** – Understanding the rules of the game in five commodity markets with the intention of creating opportunities for emerging farmers. SPP. Contact David Mayson, SPP. Tel: +27 21 448 5605. E-mail: [david@spp.org.za](mailto:david@spp.org.za)
- **Why do the landless remain landless?** – An examination of land acquisition and the extent to which the land market and land redistribution mechanisms serve the needs of land-seeking people – case studies from the Northern and Western Cape. SPP. Contact David Mayson, SPP. Tel: +27 21 448 5605. E-mail: [david@spp.org.za](mailto:david@spp.org.za)
- **Women's land rights in Namaqualand** – Identifying and understanding the land rights of women. Contact Karin Kleinbooi, PLAAS. Tel: +27 21 959 3733. E-mail: [kkleinbooi@uwc.ac.za](mailto:kkleinbooi@uwc.ac.za)
- **The scale and impact of farm evictions in South Africa** – Contact Marc Wegerif, Nkuzi. Tel: 27 12 323 6417, +27 15 297 6972. E-mail: [marc@nkuzi.org.za](mailto:marc@nkuzi.org.za)

\* Researchers are invited to announce their research projects here

## Sources

PLAAS obtained information from a wide range of sources, in addition to aggregate statistical information from the Department of Land Affairs: Excel spreadsheets obtained from the Monitoring and Evaluation Directorate, Pretoria, updated to 29 February 2004, obtained 5 April 2004; and the Commission on Restitution of Land Rights, restitution statistics, updated to 29 February 2004, <http://land.pwv.gov.za/restitution>, obtained 19 March 2004.

## Forward suggestions and comments on this publication to:

Karin Kleinbooi, 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 9593732 | E-mail: [kkleinbooi@uwc.ac.za](mailto:kkleinbooi@uwc.ac.za) Or visit our website: [www.uwc.ac.za/plaas](http://www.uwc.ac.za/plaas) | Editorial team: Karin Kleinbooi, Ruth Hall, Edward Lahiff