

Land Reform in South Africa: Constructive Aims and Positive Outcomes – Reflecting on Experiences on the Way to 2014

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South Africa

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Foreword

OVER THE PAST SEVEN YEARS THE KONRAD-ADENAUER-STIFTUNG (KAS) HAS MADE AVAILABLE substantial resources to facilitate research and discussion in the area of land reform. In 2002 KAS commissioned research on comparative experiences in land reform in South Africa, Zimbabwe, Namibia and Australia. This research culminated in a book entitled *Land Reform: Issues and Challenges* (De Villiers B, 2003).

Following the success of this publication and due to numerous requests, KAS subsequently decided to commission research on the experiences of a few successful land reform projects. The aim of that report was to provide an overview and brief analysis of the progress made and experience gained by those involved in the respective case studies (De Villiers B & Van den Berg M, *Land Reform: Trailblazers – Seven Successful Case Studies*, 2006).

Since ‘people and parks’ cannot be isolated from the wider debate on land reform in South Africa, KAS also funded research on projects where attention was paid to the economic empowerment of local communities residing close to protected areas (De Villiers B, *People and Parks: Sharing the Benefits*, 2008).

In 2008 KAS partnered with the Southern African Development Community Centre for Land-related, Regional and Development Law and Policy (CLRDP) at the University of Pretoria to host a conference entitled ‘Land reform in South Africa: Constructive aims and positive outcomes – reflecting on experiences on the way to 2014’.

The conference aimed to provide delegates with an integrated and substantive overview of the current realities facing the land reform programme in South Africa. The focus was on identifying the national land reform regulatory and policy framework, and practical case studies were highlighted to demonstrate issues, challenges and successes faced at the core of land reform. Delegates at the conference

specifically highlighted the urgent matter of post-settlement support and the need to form partnerships. The Department of Land Affairs also admitted at the conference that the target of completing the transfer of 30% of land to black people by 2014 was questionable.

By bringing together representatives from organised agriculture, diverse governmental, civil society and community backgrounds, the conference sought to address constructively specific land reform ‘problem’ areas, while developing positive, concrete and innovative solutions to land reform in South Africa.

By identifying current legal, political and grassroots impediments to land reform, and by developing a holistic approach to tackling these issues head on, this publication seeks to provide the building blocks necessary to unlock the potential of ordinary South Africans.

We trust that this publication will serve as a key tool in the continued effort to address the existing realities of our country’s land reform system in a forward-looking and positive manner.



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Abbreviations

AALS	Affirmative Action Loan Scheme
ABP	Area-based planning
Agribank	Agricultural Bank of Namibia
ANC	African National Congress
CFU	Commercial Farmers' Union
CIDA	Canadian International Development Agency
CLaRA	Communal Land Rights Act
CLB	Communal Land Board
CLLC	Chief Land Claims Commission
CLRDP	Centre for Land-related, Regional and Development Law and Policy
CPA	Communal property association
DFID	Department for International Development
DLA	Department of Land Affairs
ESAP	Economic structural adjustment programme
FLT	Flexible land tenure
GIS	Geographical information system
GoZ	Government of Zimbabwe
GTZ	German Agency for Technical Cooperation
HSRC	Human Sciences Research Council
IDP	Integrated development planning
IRLUP	Integrated regional land use plan
KFW	German Development Bank
KZN	KwaZulu-Natal
LRAC	Land Reform Advisory Commission
LRAD	Land Redistribution for Agricultural Development
LSCF	Large-scale commercial farms
LTSOP	Long-term strategic operational plan
MLR	Ministry of Lands and Resettlement
NGO	Non-governmental organisation
NRP	National Resettlement Programme
ODA	Overseas Development Agency
PGAC	Provincial Grant Approval Committee
PLAS	Proactive Land Acquisition Strategy
PTO	Permission to occupy
PTT	Permanent Technical Team (on Land Reform)
QOL	Quality of Life

RCS	Rural service centre
RLCC	Regional Land Claims Commission
RRC	Regional resettlement committee
SADC	Southern African Development Community
SANParks	South African National Parks
SLAG	Settlement/Land Acquisition Grant
SPP	Surplus People Project
SRS-SA	Sustainable Restitution Support – South Africa
SSCF	Small-scale commercial farm
UK	United Kingdom
WBWS	Willing buyer–willing seller
WTO	World Trade Organisation

Reflecting on experiences in land reform and proposals on alternatives

THEO DE JAGER

INTRODUCTION

After trying to motivate an old farmer to get involved in the land reform programme, and failing to answer a few questions relating to the implementation of numerous plans which the Department of Land Affairs (DLA) designed to achieve its goals, the old man told me that I remind him of the baboons in Du Toitskloof. When it is cold and rainy in the winter, he said, they all line up in a crack between the cliffs, each one hugging the baboon in front of him to protect them from the wind at their backs. It is only the last baboon in line, right at the top, who has no one to take care of him, and he bears the brunt of the storm on behalf of all of them. When his back freezes up and he can no longer endure the pain, he gets up, walks down the line and takes his place right at the front – and it's the next animal's turn to suffer for the whole pride. After a while he too will take up place in front, and so everyone gets a chance to offer his back to the terrible wind and cold. So they go to sleep in Du Toitskloof, but the next morning they wake up in Bainskoof, he said, making the argument that one should be aware of where one will wake up when the land reform process is complete.

Land reform is currently at the centre of such issues as rural tension, economic collapse, lower food production statistics, and local and international scepticism among investors in agriculture. A simple internet search on the media exposure of South African land reform issues reveals overwhelming negative public opinion both at national and international levels. Land reform has somehow lost the moral high ground, and we desperately need to address that.

South Africa has an excellent constitutional framework for land reform and one

of the best restitution acts in the world. The country's structures and procedures for the redistribution of land are well designed and well planned, and the process has the support of land owners, the beneficiaries of land reform and the international community. So what went wrong?

WHAT HAS GONE WRONG?

South Africa's problem is one of implementation. The tragedy with the story of land reform in South Africa is that the country does not have officials in the DLA who are capable of turning the legal framework, structures, plans and dreams into reality. Rather, their involvement had been destructive and has become an important source of conflict, polarisation, frustration and mistrust. I am afraid that the damage done to sensitive rural economies in KwaZulu-Natal, Limpopo, Mpumalanga and some areas in North West Province is already irreparable.

But I do not want to dwell on the horrors of slow, lazy, corrupt and incompetent officials: let's dream about the paradise in which we would like to wake up tomorrow. We need to live in South Africa in 2014 where at least 30% of agricultural land would have been transferred to black ownership. But after accomplishing only 4% in 14 years, we need to speed up to 26% in the next six years. In order to achieve this, the DLA puts all its hopes in the draconian new expropriation bill and blames its back-log on the willing seller principle. These officials will never admit that an average of 5% of all agricultural land exchanges hands every year and that competent involvement in the open market could already have driven us beyond 40% of transfers over the past eight years; or that Pam Golding and the Jigsaw group offered the DLA 10.5 million ha in October and December 2006, and both are still awaiting a response.

Owing to a 32% population growth since 1994 (excluding unregistered foreigners) and only a 9% increase in agriculture production, South Africa needs to produce at least 44% more food than that produced in 1994 – notwithstanding the 37% drop in production figures in the Northern Province. For that we need a comprehensive restructuring of the agricultural sector, with successful black commercial farmers making profits on their newly acquired land by producing competitive, quality food and fibre, and earning foreign currency from global exports.

This is a far cry from the total collapse and destruction seen on post-restitution farms today. After visiting the farm that I lost under restitution two-and-a-half years ago, renowned conflict journalist Neels Blom wrote in the *Business Day* that over the past three decades he has seen the world's greatest wars – Falklands, Sarajevo, Afghanistan, Bosnia, Iraq and Palestine – but nowhere has he seen the kind of destruction witnessed on restitution farms in Limpopo Province: no two bricks were left on top of each other, and all the mango and litchi orchards had been burnt down. Strangely, Blom writes, the destroyed assets belong to the destroyers themselves, and the destruction happened after the government bought them highly profitable farms.

We need to wake up in an environment where proper communication and inclusive buy-in in plans to reconstruct the agricultural sector lead to sound relations

between neighbours and the sharing of capacity, equipment, expertise and experience as exists in agriculture sectors throughout the world. In South Africa, however, the commercial farmers in Agri SA have met with the Regional Land Claims Commission (RLCC) once in the past four years, while we met with President Mbeki 11 times over the same period. At the last Limpopo Land Reform Forum at the end of 2007, a representative from the RLCC announced, and I quote from the minutes: 'I am not prepared to discuss any of the issues which Agri-Limpopo and TAU North have put on the agenda. I am here to make announcements on the issues which the RLCC has put on the agenda only.'

We need to live in rural areas that have a vibrant economy, growth in job opportunities and a quality of life for urban people to envy. But contrary to the DLA's promises that no one would lose their jobs with the transfer of land to beneficiaries, 12,500 jobs have been lost in Magoebaskloof, 530 jobs have been lost in Soekmekaar and 112 jobs have been lost in Phalaborwa. In Trichardsdal, 915 farmworkers lost their jobs for the 43 new jobs created, and in Letsitele Valley 1,150 jobs were destroyed to create five jobs for security guards, who have not been paid for a few months now.

I know no farmer who farms on a cash basis – we all offer our land as collateral to obtain production loans from banks. Over the past four years our land has already lost at least 40% of its collateral value, and we cannot get the loans needed to maintain the production levels of 2003/04. ABSA has already warned that the implementation of the new expropriation bill will change the very fibre of the banking system, and that property will no longer serve as collateral. Only people with money invested at a bank will be able to borrow money from a bank. Where will production capital in agriculture come from?

If you think that I cry wolf unnecessary, just check the reality on any restitution farm in South Africa. The beneficiaries are not allowed to tie up their property as collateral at a bank, neither may they sell it. While I understand the logic of limiting the risk for them to lose their land again, I believe that agriculture without that kind of risk is a contradiction in terms. However, the unintended results are that agribusinesses in small towns like Tzaneen, Hoedspruit, Hazyview and Louis Trichardt are going bankrupt at an alarming rate because no one can obtain financing to develop new orchards, pack houses, dams or infrastructure. And with the new expropriation bill looming, who would risk investing anything in farms?

Land claims commissioners only offer 55–75% of valuation to willing sellers in restitution, with the excuse that they take the history acquisition of the land into account. How they measure that in establishing an offer is yet to be explained. Commissioners in both the Limpopo and Mpumalanga provinces admitted that investment input since acquisition had not been taken into account. One can now understand why farmers would rather sit back and harvest only from what they already have instead of expanding, developing and farming with a vision.

If this loss could have been compensated for by the beneficiaries of land reform and if they were now expanding, developing and improving their newly acquired land, we

would have less reason to fear famine and rural economic decline. But alas, they are delivered to the very same officials who are knocking out white commercial agriculture.

The Sekororo community in Trichardtsdal waited 20 months for their post-settlement grants. By the time they were informed that their business plan was approved and that the grants were available, the community had lost interest as well as their joint venture partners. Eleven out of 13 farms in the area have since been completely destroyed.

An appropriate title for a book on land reform in South Africa would be 'The tragedy of unintended results'. These unintended results are the product of poor planning, poor execution of plans, poor management and a fundamental refusal by officials to engage with the sector which has done the job successfully for the past 200 years. It is in that sector where we see a dramatic increase in production statistics and in the number of willing sellers.

Farmers are running away. If the government wanted to scare experienced and competent commercial farmers off their land by introducing the draconian new expropriation act, tough labour laws, an overload of administration and red tape around permits and licenses, and by creating insecurity in the sector, it has certainly succeeded. But the most important reason why there is a dramatic increase in willing sellers is economic in nature: farmers are selling their farms because they are not making profits due the steep increases in the prices of diesel, fertilizer, seed and electricity.

CONCLUSION

Land affairs officials should be compelled to convince farmers that land beneficiaries will be able to take over the farm successfully and increase production. And if they don't – they become the focus point of criticism and blame. But beneficiaries are being set up for failure by poor planning, poor execution, poor service delivery and poor management in the DLA. There is only one alternative: we must recognise that successful land reform and agricultural development rests on at least three pillars: a public-private partnership between capital or funding; legitimacy; and expertise. One is moving towards sustainable land reform and agricultural development if a project is based on these three pillars and due processes and proper structures are established to facilitate that partnership.

To get there we will have to start off by establishing inclusive land reform and agricultural development forums at local level, preferably within the integrated development plans of fully functioning municipalities, coordinated at provincial and national levels. The consequence is that the ownership of land reform and agricultural development programmes would be shared by all stakeholders and would no longer be the exclusive domain of officials. The real issue at stake here is not the temporary careers and benefits of a few officials but rather the reconstruction of the agricultural sector in South Africa, as well as food security on a continent where the vast majority have forgotten what that means.

Land reform in South Africa: Successes, challenges and concrete proposals for the way forward¹

RUTH HALL

INTRODUCTION

Land reform is a political project that needs to clarify its economic rationale. Redistributive land reform in South Africa is premised on the need to bring about both direct benefits to beneficiaries and indirect benefits to the rural economy. According to the *White Paper on South African Land Policy*, redistributing access to and ownership of land to previously, and currently, disadvantaged South Africans should ‘reduce poverty and contribute to economic growth’.² It notes that:

Land reform aims to contribute to economic development, both by giving households the opportunity to engage in productive land use and by increasing employment opportunities through encouraging greater investment. We envisage a land reform which results in a rural landscape consisting of small, medium and large farms; one which promotes both equity and efficiency through a combined agrarian and industrial strategy in which land reform is a spark to the engine of growth.³

If land reform is to be a catalyst to structural changes in society and the economy then it needs to change patterns of investment (capital), productive land use (land) and employment (labour) – in other words, it needs to change the mix of factors of production and restructure farming systems. Where land is redistributed through land reform, agriculture is the dominant, but not the only, land use. However, up until now land reform policy has not envisaged what kinds of land uses are to be promoted

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through the process of reform, and therefore what kinds of structural changes in production, markets and settlement patterns are being pursued, alongside the deracialisation of ownership. This is the product of the longstanding failure to locate land reform within a wider framework of agrarian reform.

The growing debate on policy options for the future of land reform have instead focused on the question of how to get the land either through stimulating the supply of land on to the land market or directly acquiring specific land through negotiation or expropriation. The recent adoption of area-based planning (ABP) potentially provides a basis to decide who gets what land, and for what purpose, by assessing and prioritising different land needs. But this too is taking place in the absence of national level guidelines or priorities for the future of agriculture.

While land reform policy has had little to say about the types of land use to be promoted, and whether these should differ from existing patterns of land use in the commercial farming sector, this is now increasingly recognised as a crucial gap and an area in which new policy is needed. The report on economic transformation from the African National Congress's (ANC) National Policy Conference in June 2007 affirmed the ANC's commitment to:

a comprehensive and clear rural development strategy, which builds the potential for rural sustainable livelihoods, particularly for African women, as part of an overarching vision of rural development. Strong interventions in the private land market, combined with better use of state land for social and economic objectives, must *transform the patterns of land ownership and production*, with a view to restructuring and deracialising the agricultural sector. Our aim remains a fundamental redistribution of land ownership, and *a thorough transformation of land use patterns in a manner that balances social and economic needs of society*.⁴

PROGRESS AND OUTCOMES

This section briefly reviews available data on progress with the 'delivery' of land reform and what is known about the outcomes of land reform – on which very little data is available.

DELIVERY: PROGRESS WITH LAND REFORM

The quantitative measures of delivery are well known to commentators on land reform in South Africa. Approximately 5% of agricultural land had been transferred or earmarked for transfer by 2008, though this includes the disposal of state land as well as formerly white-owned agricultural land. In broad brush strokes, in order to reach the target of 30% by 2014 this total cumulative rate of transfer would need to be achieved *each year* from 2009 to 2014.

Less information is available on the beneficiaries of land reform partly because

available data is inconsistent in format and so not comparable over time. Even so it appears that about 300,000 beneficiaries/households have acquired land or rights in land or shares in landholding enterprises.

The spatial distribution of land transfers are fairly well documented, and from this it is clear that the first period of land reform saw by far the greatest areas of land being transferred in ownership in the Northern Cape Province; initially more than half of all transfers nationally were in that province. This picture has moderated somewhat since then with KwaZulu-Natal and the Eastern Cape becoming more significant, though it still appears that acquisition of high-value land in high rainfall areas remains a stumbling block – particularly in the redistribution as opposed to the restitution process – and that the market basis of the policy approach lends itself towards those wishing to offload marginal land through the market to land reform applicants.

DEVELOPMENT: OUTCOMES OF LAND REFORM

It is essential to understand how land use has impacted on the livelihoods of land reform beneficiaries; however, available information is neither comprehensive nor based on agreed indicators. The South African literature on land reform suggests that outcomes, or indicators, of success in land reform should include the following:

- *Improved food security:* Improved nutritional status from self-provisioning, also resulting in increased disposable cash income.
- *More income:* Increased regularity of income from marketed produce, wage employment and more egalitarian distribution of income.
- *Increased well-being:* Improved access to clean drinking water and sanitation, improved housing, ownership of household items and access to fuel for cooking.
- *Reduced vulnerability:* Improved access to social infrastructure like schools and clinics, increased mobility.
- *Sustainability:* More sustainable use of the natural resource base.⁵

The Quality of Life (QOL) surveys conducted by the Department of Land Affairs (DLA) have provided limited insight into the land uses and livelihoods of land reform beneficiaries. The QOL surveys were initially envisaged as annual surveys, later as biannual surveys. They have been published in 1998, 2000 and 2003, with results of the fourth survey (2007) expected to be available during 2008. The DLA commissioned the QOL surveys to investigate the extent to which the objectives of the land reform programme have been met. The surveys claim to provide ‘an account of the impact of land reform on the livelihoods of land reform beneficiaries’.⁶

The first survey was a small study conducted internally by the DLA's Monitoring and Evaluation Directorate and published as the 'Annual Quality of Life Report' in October 1998. This survey, conducted in 1997-98, 'was widely criticised for its limited scope, its questionable theoretical assumptions and its methodology'.⁷

An independent assessment of the report concluded that the study was not sufficiently detailed to permit the assessment that was required by DLA. The assessment also questioned the sampling procedures that were used, and the way in which these were implemented, raising the concern that the study may not be representative or sufficiently rigorous for the purposes of monitoring.⁸

The second survey attempted to assess the impact of reform on livelihoods, though this was shortly after transfer – more than half the projects had been transferred less than a year prior to the survey.⁹ The survey found widespread underutilisation of land both in the sense of land not being used at all, and that potentially arable land was being used for less intensive forms of production: 'much land remains under-utilised, with neither grazing nor cultivation occurring'; and 'the most common form of productive use is as grazing land'.¹⁰

The key findings on livelihood strategies from the second QOL survey were that:

beneficiary households have alarmingly high levels of poverty, with 78% falling below the expenditure poverty line of R476.30 per adult equivalent per month and 47% classed as ultra poor (less than half the poverty expenditure line).¹¹

As with the previous QOL survey, this finding would appear to refer to the position of beneficiaries at the time they joined the project rather than as a result of land reform, given that most projects surveyed were still at the inception stage. Nevertheless, there was substantial variation in beneficiaries' livelihood sources and strategies and, on aggregate, very low incomes.

The key findings of the second QOL survey on the livelihoods of land reform beneficiaries were as follows:

- Sixty-three percent of beneficiary households receive some form of waged income.
- Just under 20% of beneficiary households receive an income from both agricultural production and self-employment activities.
- Only 8% of households acknowledged transfer payments, though this low figure is probably related to the virtual absence of migrant household members in the sample.
- Thirty-eight percent of households were deriving income either from the sale or own consumption of agriculture and livestock, while 62% were not deriving income at all, indicating that livelihood impacts may be highly unequal across

households, even within the same project. The average household income from agricultural activities for the total sample was R1,146.00 per annum.¹²

The most common land uses were the extension of existing livestock herds and maize production for household consumption – two important inputs into the livelihoods of poor and vulnerable households.¹³ Even while most production on redistributed land was considered to be for ‘subsistence’, the survey found that among those cultivating most are both buying inputs and selling at least some of their produce, usually in very local markets – as is the norm for ‘subsistence’ producers in South Africa. The study found that land reform beneficiaries were better off than the rural population on average, but failed to demonstrate whether or not this was as a result of their improved access to land or whether this correlation was due to the ‘better off’ being more likely to be able to access the programme. As a result ‘the current data does not permit a detailed impact analysis of the land reform, and only tentative conclusions can be reached at this stage’.¹⁴

The third QOL survey conducted in 2002 and reported in 2003 encountered serious problems and discontinuities with previous surveys. It differed from its predecessors in terms of its sample, the design of the research instruments and analysis of the data. This report was never officially released. Despite, or perhaps in view of, the methodological problems encountered it provided important recommendations for future impact analysis, as follows:

- The DLA needs to integrate the collection of baseline household level information into its project cycles so that information on the quality of life of beneficiaries prior to the transfer of land is recorded. This is a basis for monitoring and evaluation. This will require improving the Landbase data system of M&E and capturing more extensive beneficiary and project information during the project approval stage.
- The DLA should produce QOL reports on an annual basis, using a standard set of survey instruments to reflect the impact of land reform over time. The reports should be extended to assessing the resources committed to the delivery of land reform, including staff capacity, capital and operating budgets, and contributions from other government departments, parastatal and local government institutions.
- The QOL survey should be extended to include a control group of rural households and communities that have not benefited from land reform. This will enable future reports to compare improvements in the quality of life of land reform participants to other rural populations.¹⁵

The QOL studies have shown that those in the programme are better off than the rural population as a whole: but are they better off because they are land reform beneficiaries or did they manage to become land reform beneficiaries because they are

better off? Those who are richer are more likely to have cattle: but are they richer because they have cattle or do they have cattle because they are richer? Redistribution policy, unlike restitution policy, is based on the presumption that the presence of an own contribution can have a positive impact on projects as a sign of commitment, but this proposition has not been empirically tested. As Murray observed in the Free State, those who are best placed to participate in the land reform programme, and who predominated in an early study of land reform, were those who were literate, had their own disposable resources with which to pursue their applications, had access to telecommunications, transport and officialdom, and had social and political networks.¹⁶

In summary, there remain both *technical and conceptual challenges* in determining livelihood impacts within the context of South Africa's land reform programme. Existing data from the QOL studies on the livelihoods of land reform beneficiaries demonstrate important correlations but on the whole fail to demonstrate causal relations that tell us something about the ability of land reform to improve people's livelihoods and lift them out of poverty.

In the absence of baseline data – that is, a profile of people entering the programme – subsequent surveys can only provide a snapshot of people's livelihoods and cannot explain how these have changed as a result of land reform. In addition to the 'before' and 'after' dimension, few if any studies have attempted to disentangle or even adequately conceptualise on-project livelihoods in relation to people's overall livelihood strategies – how land reform is one input into wider livelihood strategies – or to theorise the relationship between the two. As a result, impact studies, which would investigate changes over time and determine whether these can be attributed to land reform, have not been possible.

An audit of land reform projects in the North West Province by Kirsten and Machethe¹⁷ suggests that project failure can be largely ascribed not to operational problems but to inappropriate planning and the wider context. This review commissioned by the National Department of Agriculture assessed 'the extent to which land reform projects are meeting or not meeting the agrarian reform objective of *commercial viability*'.¹⁸ Its key findings were that of all the land reform projects in that province:

- one-third were locked in intractable conflict and, as a result, the majority of their members had lost interest in the project and had de facto exited;
- more than a quarter of projects had never produced anything since beneficiaries had taken ownership of their land; and
- 55% of projects had no implements for production and 27% had inadequate implements.¹⁹

Dysfunctional projects were those where most members were no longer involved, with the result that they are perpetually in contravention of their obligations and

cannot access the balance of the grant nor contract with outside parties. This has contributed to dysfunctional legal entities, and the need to bring legal and financial affairs in line with on-the-ground realities. However, other studies have pointed out that attrition of members is often the outcome rather than the cause of project plans not being realised.²⁰

Beneficiaries reported that they had drawn up their own business plan in just 11% of cases. In the bulk of cases a private service provider (consultant) or an official from the Department of Agriculture had drawn up the plan.²¹ Agents who draw up business plans have a limited role in implementation and follow-up, and therefore also limited accountability for the outcome of their plans. Kirsten and Machete²² found that while over a third (37%) of projects had the assistance of design agents in implementing their plans, business plans were in no way a reliable predictor of actual land uses in projects. In half the projects, leaders were aware of the contents of their business plans and a minority had access to the business plan, in hard copy, on the farm itself. Only 35% of projects reported that they were following the original business plan. The most striking finding of this study is that the more successful projects were *less likely* to be following the original business plan. Among these, 60% were making up their own plan as they went along and ignoring the paid-for plan, compared to 42% in the sample as a whole.²³

The findings of the study draw into question the quality and appropriateness of the type of business plans that form the basis for project approval – since these are widely ignored, and even where they are implemented correlate negatively with project success. The study found a direct relationship between provision of aftercare support and levels of production: yet nearly three-quarters of business plans did not make any provision for, or indicate the need for, aftercare to be provided.²⁴ Less than half of projects reported that the Department of Agriculture has provided advice to them and just 5% indicated that they receive support from the department.²⁵

Two points merit attention: first, these findings correspond strongly with those in the CASE study.²⁶ However, the emphasis in both studies on adherence to business plans, marketing of produce and profits obscures the non-monetised benefits that may have accrued to project members.

This raises the possibility that the contribution of land reform to livelihoods may have been *underestimated* in some of these studies – projects producing benefits may have ostensibly ‘failed’ in the sense that they have not realised the objectives of business plans.

Second, the reasons to which under-use of land and non-operational projects are attributed are focused on failures of the project members themselves (conflict, lack of skills, poor management, etc.) and the absence or inadequate support from government institutions, most notably the Department of Agriculture (lack of aftercare, training, extension advice, etc.). But the studies do not question the business plans themselves; they take as given that adherence to business plans is the optimal outcome even though, as shown in the North West study, there may in fact be a negative correlation between the two.

A further issue that merits attention is the wider economic context in which production takes place (or not). The issue of underutilisation of redistributed land has been framed in the public imagination and in the few review reports that have been written predominantly as a problem of production. This has fuelled (sometimes racially) caricatured notions of the limitations of poor black people as custodians of the land.²⁷ However, concerns about under-use of redistributed land are widely shared across the political spectrum.

Among official reviews, the dominant reason put forward for the failure to produce is the lack of skills for both cultivation and management, thus laying the blame squarely on beneficiaries themselves rather than on two other possible causes, namely: the inappropriateness of planned land uses; and a hostile policy and economic environment.²⁸

KEY CHALLENGES

This section explores key challenges under three themes: land use, production and livelihoods; targeting beneficiaries and responding to land demand; and land acquisition.

LAND USE, PRODUCTION AND LIVELIHOODS

Where land is transferred in full ownership, beneficiaries have a capital asset; however, it is the use of this land and the consumption and sale of its produce that brings about direct benefits to beneficiaries. So how is land being used in land reform projects? How is land use organised and is it having the desired effect?

Different models of organising land use have arisen due to a combination of factors: the land reform programme involved; the purpose of land acquisition; and the number of project members. Each model is characterised by different patterns of land use and different social arrangements of production. However, land reform projects to date may be broadly categorised into four main types:

- *Large groups obtaining farms and farming collectively as a single commercial entity.* This pattern is now discouraged but remains dominant in both restitution (due to community claims) and redistribution (due to the grant structure).
- *Large groups obtaining farms and farming individually or in smaller groups.* This pattern has emerged by design, but also by default, when group-based production has collapsed.
- *Individuals or small groups obtaining large farms and farming them as one commercial entity.* This is possible only with (a) substantial capital contributions and/or (b) high levels of initial debt, but is in practice accessible to a small proportion of applicants who are better-off. This pattern is now encouraged.

- *Joint ventures between land reform beneficiaries and private sector or state institutions*, such as strategic partnerships, equity schemes and contract farming. This is now encouraged.

These relatively limited options result from a combination of the market-based framework, reliance on grants that are small compared to the price of farmland, the failure to confront the structure of farm size holdings in the commercial farming areas through subdivision, and the emphasis in planning on the need to maintain production on commercial farms.

A national database of land reform projects, indicating in each case the project type, location, size, land and other costs, and membership, is maintained by the DLA but is not available for public scrutiny. Instead, summary cumulative data indicates only the hectares transferred for each project type²⁹ or, in the case of the DLA's annual report, data per province for a given financial year.³⁰ For this reason it is not possible to link national data to the typology above in order to determine the relative dominance of each project type. Nor is it possible to determine the geographical spread of different types of projects.

The four models discussed above may be distinguished by the different ways in which they combine factors of production – land, capital and labour. This can be considered the 'economic organisation of production'. But they also differ in their 'social organisation of production' – that is, the ways in which and terms on which land is held, labour and capital are supplied, and therefore how produce and profits are distributed. In group projects that are essentially production cooperatives, land and assets are co-owned, labour is pooled, capital (and debt) is co-owned and production is collectively managed. By contrast, in joint ventures ownership may be shared but labour need not be pooled (it can be brought in), and inputs of labour and management are usually separated as management is professionalised.

It should be acknowledged upfront that a range of different kinds of scales and production arrangements are needed in land reform to fit different needs and situations. However, what is striking from the South African experience is, on the one hand, the dominance of the group model of land ownership and use and, on the other hand, the marginalisation of individual or household options except for those with substantial own resources. Business plans often aim to curb rather than support efforts at self-provisioning by beneficiaries, while the grant system and farm sizes impede household-based ownership and production whether for consumption or sale.

Land use and production should in turn shape the configuration of rights among members to land and related resources, though land reform has typically entailed the securing of private ownership of an outer boundary of land by a legal entity, leaving the internal social arrangements and allocation of use rights to members of the group, and administration of this to a community property association committee or trustees. The patterns of land use in land reform projects are therefore partly determined by the land and other natural resources, but also substantially by choices made in business planning and the constraints of the market environment.

Land use and land rights differ across a number of dimensions. A tendency within policy has been to conflate these different dimensions. For instance, it is a peculiarity of group-based projects that the unit of ownership is usually the same as the unit of management and of use. While some projects involve separate business entities managing and using portions of the land, most involve 'whole farm' land use plans in which the legal entity that holds the land is also in charge of its management and use.

In contrast, the option of state or individual-level control has been marginalised. It is only in relatively few projects, usually where higher Land Redistribution for Agricultural Development (LRAD) grants are accessed, that individuals or households own, manage and use the land. Since land reform has been focused on the transfer of private land ownership, it is only in the context of municipal commonage that the state plays a role in the ownership and management of land. An advantage of this model is the provision of a public good on secure terms to poor land users and a continuing public function in the maintenance of infrastructure, especially water points and fencing.³¹

Settlement is a central component of land uses, particularly in restitution claims with many members and in existing redistribution projects where there are many members due to the grant system. In both, the imperative is to provide housing on the transferred land. The question of settlement has been addressed in three ways. Usually it has been a single closer settlement, which should in theory at least allow provision of infrastructure for the delivery of services like water and sanitation as part of the project plan. (At Algeria in the Cedarberg, for instance, this was taken a step further with the establishment of a small township). Less common has been in the form of a dispersed settlement pattern without public provision of infrastructure and services. A third response to resolving this tension between settlement and agricultural uses of land has been to avoid settlement altogether by prohibiting people from moving on to their land. Quite illogically, this has been seen in community claims in Limpopo where the provincial Department of Agriculture has instructed members not to move on to their land, necessitating costly commuting from their places of residence.³² Dikgolo project is an example where the insistence that new land owners not live on their land resulted in people having to commute to and from their homes in communal areas.³³

The question of settlement – or rather, non-settlement – on redistributed land has underpinned strategic partnership arrangements where commercial production on the land remains intact and where the new owners do not farm the land themselves but are shareholders in operating companies and, for the lucky few, may become employees.³⁴ Such partnerships have not to date made provision for the owners of the land to be able to settle on the land or to use any of it for their own purposes, alongside the commercial enterprise.

Land reform projects, then, typically emphasise whole-farm commercial enterprises, many of which are costly, complex, take time to deliver benefits, are often high-risk and seldom allow for multiple uses of farmland other than those undertaken by the commercial enterprise. On the other hand, smaller household-level

projects have been possible only where applicants are relatively well-off and can contribute their own resources, avoiding the need to inflate the group size to access further grant funding and instead registering each member of a household as a beneficiary to reduce the own-contribution to grant ratio. Between these two models is a third possibility: small-scale production by poor households on their own land, whether held in common or not. This is a crucial gap. Although this model is not being promoted at present, it is probably the most important area for the future of land reform if it is to address directly the situation of poor people living in rural areas.

TARGETING AND DEMAND

Land reform in South Africa is described in policy as a ‘demand-led’ programme. However, demand for land is not self-evident. Demand or need or desire for land is expressed in a variety of ways, many of which do not elicit effective responses from the state. This suggests that our conception of the demand for land must be problematised. How is demand expressed? How can policy respond to demand? In what way is it, or could it be, or should be, ‘demand-led’?

‘Demand’ is understood in the narrow, economic sense as those who are capable of articulating their demand and steering it through the market and bureaucratic hurdles. This can be contrasted with a ‘needs-based’ approach where the state would play a proactive role in identifying needs and translating these into specific proposals.

Evidence on access to information about land reform shows that articulated ‘demand’ is limited at least in part due to lack of awareness. A study published by the Human Sciences Research Council (HSRC) shows that awareness is highly determined by location and class position. Awareness was strongly correlated to levels of formal education and household income: only about 3% of respondents who were farmworkers living in communal areas or in urban formal or informal settlements were found to be well aware of what the land reform programme is about, compared to 75% of commercial farmers.³⁵

Even where ‘demand’ is expressed by would-be applicants approaching an office of the DLA or Department of Agriculture, there are few options for the state to respond to this demand and many who get as far as articulating demand in this way have been unsuccessful. There appears to be a range of falling-off points that prevent people from applying, or applying successfully. The causes of fall-off between application and approval are widely known but have not been documented; nor do records exist to show who falls out of the system because they cannot identify suitable land to meet their needs, because they cannot sustain the costs – financial and time – involved in applications, because they lose faith in the process, or because land available for sale cannot be found to meet their needs. Early studies of the pilot programme show that the process tends to privilege those with education, resources, transport and social networks.³⁶

Not only does ‘demand’ not necessarily lead to the supply of land to would-be beneficiaries, in many respects redistribution in South Africa is not led by demand. In

some instances the land is first identified and only then is an effort made to identify appropriate people to benefit from it, in sufficient numbers to make up the asking price of the land. Projects initiated by the state, landowners or private sector are prevalent in some areas, as seen with the introduction of the Proactive Land Acquisition Strategy (PLAS) in 2006. Far from being driven by demand, most equity schemes are initiated by landowners and in some cases the ‘applicants’ (usually farmworkers) have been unaware of the proposed project at the time the application was submitted to the Provincial Grant Approval Committee for approval. One such example is the Buffelsjag Project in the Overberg.³⁷

Contrary to policy pronouncements, not all projects are ‘demand led’. Instead there appear to be a wide variety of ways in which land reform projects are initiated, including:

- landowners approaching the state;
- landowners approaching applicants;
- the state approaching landowners; and
- applicants approaching the state.

What is missing from all this is a serious effort to match land to the real needs of applicants.

ACQUISITION

‘Willing buyer–willing seller’ (WBWS) loosely describes how land is identified and acquired for redistribution, and how land prices are determined within the current South African market-based land reform.³⁸ Its core elements are: non-interference with land markets and an unwillingness by the state to expropriate land for land reform purposes or, until recently, to enter the market as a market-player; reliance on landowners to make land available for sale; self-selection of beneficiaries; and the purchase of land at market price. Related features of the market-based approach are the preference for commercial forms of production and a prominent role for the private sector in services such as credit and extension to beneficiaries.³⁹ In short, WBWS has led to the state not taking responsibility for making a success of land reform.

This policy approach makes redistribution contingent on the willingness of landowners to sell and limits the choices available to applicants to that which is currently offered on the market, which may not be appropriate in terms of size, location and quality. Where landowners are willing to make suitable land available for sale, the main problem with the WBWS approach is the contradiction between three main elements, namely the:

- grant structure;
- cost of the land; and
- limits on group sizes.

The problem could be stated like this: where people are too poor to access LRAD grants above the entry level of R20,000 per person, the need to amass enough money to buy a farm offered for sale still prompts a 'rent-a-crowd' phenomenon, which was also witnessed under, and blamed for the poor performance of, the previous Settlement/Land Acquisition Grant (SLAG) programme. The failure to increase the grants over time while land prices have risen has only aggravated the problem. Furthermore, there is simply no means of making available small areas of land.

The absence of a proactive mechanism to subdivide land means that in most instances farms must be bought in their entirety, thereby forcing people who might have wanted a small amount of land for themselves to take on a whole farm with a group of co-applicants with whom they may have little in common, leading to problems of defining rights and of cooperation in use. Recognition of this led to the imposition of limits on group size – as low as five to ten members per project in some provinces.⁴⁰ This has meant that increasing the number of people is no longer allowed, effectively putting much land out of reach of would-be applicants who do not have their own capital, and mitigating against the poor being able to get access to land through land reform.

Two factors then – the grant structure and reliance on land being offered for sale – have led to a widely recognised mismatch between applicants' needs and the available land. This can lead either to projects not going ahead or applicants opting for land or group sizes inappropriate to their needs. Surplus People Project has, for instance, worked with a particular community that has repeatedly tried, and failed, to acquire land. In its most recent attempt the community tried to buy a farm near Aurora in the Western Cape but could not gather together sufficient applicants to make up the asking price of the whole farm. Although they did not want the whole farm, there was no mechanism to subdivide it into portions suited to their needs and capabilities.⁴¹ As a result, they remain landless.

The WBWS principle places voluntary land transactions at market price at the centre of redistribution policy and leaves key strategic decisions unresolved – which land will be acquired, how, for whom, how it will be allocated and for what purposes. A range of actors (government, social movements, non-governmental organisations [NGOs], activists and policy advisors) are now agreed on the need to expedite the redistribution of land and to search for alternatives to the current reliance on a WBWS approach. Alternatives need to be found if the land reform programme is to move beyond reliance on markets. Already, new approaches are being explored by government and others; however, there are few concrete proposals that can inform dialogue on policy alternatives.

A further result of the market-based approach is the dispersed pattern of redistribution in which individual properties are acquired one-by-one, requiring separate planning in each case. This precludes economies of scale in planning for whole areas where land could be redistributed, as well as the provision of infrastructure appropriate to new land users and uses. This may be characterised as a 'mosaic' pattern of redistribution which proceeds in an ad hoc manner. In contrast,

acquiring and allocating land at scale will require moving to acquire whole blocks of properties in areas of high demand in a ‘partition’ model. A combination of these may be needed, but partition approaches will be important in particular in the areas surrounding rural towns and around the edges of the communal areas. Planning for blocks of properties – as in Zimbabwe’s resettlement programme of the 1980s – would reduce planning costs, including those of land surveyors and conveyancers involved with subdivision and transfer (if land is to be transferred in private title).

While WBWS is widely understood as a non-coercive and non-disruptive means of acquiring land and compensating landowners, it also imposes the logic of the market on would-be beneficiaries who have to fit their expectations to what the market offers.

Two key lessons are the need to end the reliance on land being offered for sale, and the need for a mechanism to promote subdivision on a regular basis.

But changing the way that land is acquired does not by itself lay the basis for a new approach to land reform. While much attention in the plethora of policy initiatives since the Land Summit in 2005 has been focused on how land is acquired – WBWS, negotiation, expropriation – little has been focused on who is to benefit and therefore how land will be identified for redistribution.

Radical reform that might transform property relations and restructure the agricultural sector has been severely circumscribed in South Africa by a negotiated transition and broadly neo-liberal economic policy, specifically the deregulation of the agricultural sector that involved the removal of key state functions such as price controls, marketing and heavily subsidised credit. Moving beyond a market-based approach to land acquisition will need to be located within a wider policy shift.

PARADIGM CHOICES

At present, there is no vision for agrarian reform to guide land reform. Government policies and practices are at worst conservative, resisting change in the agrarian structure, and at best agnostic about what this process is to achieve beyond the quantitative target of 30% of white farmland. There is no specification, for instance, of whether reform is to alter the size distribution of land holdings, technologies of production or, indeed, what types of produce should be particularly supported. Future policy in this area will need to outline such a vision.

Four broad approaches or paradigms can be discerned from debates about future policy in this area and can be characterised as follows.

- *Market-based approach:* A focus on commercial production, reliance on the market to determine what is produced and a prominent role for the private sector in provision of support. Continuation of current trends and an unsupportive policy environment for agriculture lead to a growing gap between the structure of agricultural capital and land reform beneficiaries’ enterprises. This would likely see a two-track path of land reform: group-based and poorly resourced

commercial enterprises; and the growth of joint ventures and strategic partnerships as a dominant form.

- *Gearing up with the private sector:* Promotion of a range of types and scales of land use by improving resourcing for post-transfer support for production, from both public and private sectors, without extensive state intervention or restructuring of markets but through partnerships with the private sector for packaging and planning of projects and delivery of support, contributing to the de-racialisation of the existing farming structure to the benefit of a limited group of the better-off.
- *Developmental state:* Restructuring in favour of smallholder family farming through interventions in land, input supply and output markets, including through cooperatives, public investment in appropriate rural infrastructure and agro-industry, introduction of production subsidies, and a substantially enlarged extension service geared to smallholders, to create a mixed farming sector in which smallholder production is a substantial sector, dominating in certain commodities.
- *Radical restructuring:* Heavily punitive policy or legal measures to counteract the dominance of agribusiness and the conversion of the agricultural sector in one of two directions: one dominated by smallholder production without a core of commercial farming; or one dominated by state-controlled estate farming on nationalised land.

Deciding what is possible and where to focus policy proposals requires an assessment of the current political parameters and likely changes over the coming period. This is a complex matter. Four assertions are made as base assumptions for the purposes of debating which paradigm is to be pursued:

- First, the current impasse in land reform and its very limited contribution to poverty reduction and equitable development is a source of anger and frustration among the rural population in particular (but not only), a political embarrassment and poor investment from the perspective of the state, and a concern for agribusiness and the commercial farming sector, as well as other private sector actors.
- Second, the level of organisation and political voice of the rural poor is low, rural social movements are extremely weak and fragmented, and there has been a failure up to now to build strong alliances with the organised labour movement.
- Third, the established agricultural industry has expressed its vision for a deracialised but structurally intact sector in its strategic plan drawn together in the

Presidential Working Group, and there are clear moves in government towards greater reliance on the private sector to deliver land reform and to partner with new farmers, as well as to leverage this through AgriBEE (the broad-based black economic empowerment framework for agriculture), as part of its strategy to fast-track land reform.

- Fourth, the ANC is discussing the notion of a developmental state which would intervene more in the economy, spend more and expand the public service in order to transfer resources to the poor and to invest in areas of the economy considered as a catalyst for pro-poor growth. Agriculture is such a key area.

Some tentative conclusions follow. Only the most reactionary favour the current path of heavy reliance on markets without a greater role for the state or private sector – or argue that land reform should be abandoned. A paradigm of radical restructuring is politically unfeasible in the current period, in view of the weakness of rural social movements and the power held and positions taken by both the state and the private sector.

The argument for a stronger role for the private sector in shaping land reform and supporting production and marketing has gained ground through AgriBEE. But government is recognising the urgency to make land reform work and is considering various interventions to restructure the economy by investing more heavily in the ‘second economy’ in order to tackle poverty directly. It seems the paradigms of a developmental state and tweaking markets to leverage the private sector are dominant. Elements of these may not be mutually exclusive but policy will need to be clear on which approach government is to take. AgriBEE and various industry agreements are already confirming the role of the private sector and it is in the light of this that the argument can be made that what is needed now is policy for a developmental state.

What, then, would a developmental state do about land and agrarian reform?

CONCRETE PROPOSALS

This section presents some proposals for what a new direction for land and agrarian reform would involve with respect to the three key themes or questions that have structured this discussion, namely: land use, production and livelihoods (land reform for what?); demand and targeting (land reform for whom?); and acquisition (land reform how?).

LAND REFORM FOR WHAT?

Land reform should be a means to an end, and the ‘ends’ involved is agrarian restructuring. What distinguishes agrarian reform from land reform is that it goes well beyond the redistribution of land by restructuring production. The details of

such a reform still require elaboration but some preliminary elements can be identified. A developmental state aiming to embark on agrarian reform would need to:

- change the size distribution of landholdings in favour of smaller production units to cater for poor producers;
- support land tenure rights of those acquiring land through land reform as well as those living on land owned by others (commercial farms and communal areas), through ongoing land rights administration;
- support land uses for consumption as well as for sale, and promote low-risk production technologies through appropriate inputs and infrastructure;
- the labour regime to promote self-employment in agriculture and to encourage labour-intensive production where there is waged employment;
- build linkages into value-adding for small producers by prioritising cooperatives in agro-processing;
- provide opportunities for non-farm economic activities among small producers to strengthen diversified livelihood strategies and provide inputs into part-time farming;
- alter its spatial planning approach to settlement patterns to invest in settlement on redistributed land, allow more dispersed settlement on the urban fringe to support part-time farming and formalise small rural settlements; and
- change the policy environment in favour of new land users by revisiting key areas of agricultural policy.

In most of the above areas, land reform has had limited impact. The retention of existing farm boundaries and the priority placed on continuing existing land uses are key factors that shape the outcomes of land reform projects. A break from this, and an approach that privileges the needs of the poor, would in the first instance place priority on access to land for food production for household consumption with the aim of selling surplus and increasing the scale of production over time. This involves challenging ownership patterns but also the attachment to commercial and large-scale farming embedded in agriculture departments, financial institutions and elsewhere.

This need not be to the exclusion of options for black people to enter into medium- or large-scale farming, or to become partners with commercial farmers or shareholders in farming enterprises or agribusiness. This is clearly a necessary dimension of transformation and demands for such opportunities are likely to

increase over time with the growth of a black middle class. AgriBEE mechanisms to leverage concessions from the existing agricultural industry to respond to these needs must be strengthened and enforced. ‘Emerging’ farmers who show the potential (and the resources) to ‘emerge’ into commercial production are favoured by private sector institutions, which have an obvious preference for supporting black farmers who will become counterparts in a white-dominated commercial farming sector, rather than poor people whose interests in and use of land differ significantly from those of established farmers. This has been made explicit by the commercial farming establishment.

Agri SA has produced a four-fold typology or ‘continuum’ of land reform projects ranging from group-based and household labour-intensive production for livelihood purposes and small-scale marketing (such as commonage, smallholder cultivation, extensive livestock grazing), through to more risky and capital-intensive commercial production at a small scale by better-resourced groups, and highly commercial enterprises which it considers only feasible in the context of joint venture partnerships.⁴²

The impact of this more commercial end of land reform can be expected to have a much more limited impact on poverty reduction, and also to attract more support from the private sector than smallholder options.

What is needed, then, is the definition of a clear division of labour between the state and private sector in which the state prioritises small, resource-poor land users and supports their land use.

If this is to be the way forward, then alternative policy options must entail:

- the subdivision of farms to make possible smallholder units suited to the needs of poor land users;
- economies of scale in planning and infrastructure provision for small farmers by acquiring land, dividing and allocating at scale in areas of high demand;
- the increase in overall state support to the agricultural sector and, within this, a shift towards greater support for low-input, small-scale primary production;
- subsidised inputs into production, including seeds and implements;
- the promotion of and public investment in agricultural cooperatives for input supply, processing and marketing;
- sequencing interventions in input and output markets to support this type of production;
- investment in transport and storage infrastructure to support this type of production, as well as irrigation infrastructure; and

- subsidised interest rates with a no-repayment window for the first few years.

Two further points merit attention. First, an agrarian reform will also need to call into question the ‘rural’ identity of land reform given the important role that access to land for production plays in the livelihoods of poor people living on the edges of rural towns and even metropolitan cities. The economic value of such production, even at a micro scale, is routinely ignored, yet contributes to the livelihoods of some of the most poor and vulnerable households. Access to land for production by the poor on the urban fringe must constitute a focus of land reform and a key element in local economic development.

Second, with deregulation and concentration of ownership has come growing vertical integration of value chains, putting more power in the hands of major buyers, particularly supermarkets. This means that in agricultural markets private regulation has substituted for the now withdrawn public regulation.⁴³ Transforming agriculture therefore requires overcoming monopoly power in product markets and minimising exposure to risk due to fluctuations in input and output market prices. In the absence of the crucial role played by state-controlled agricultural marketing boards in the past, and presuming that these will not be reintroduced, the role of a developmental state would be to intervene in forms of *private regulation* of agricultural product markets that create barriers to entry for farmers who are poor, practising low-input forms of production or operating on a small scale.

LAND REFORM FOR WHOM?

Whether, or how, the state works with people’s land needs and facilitates their expression may elicit different kinds and different levels of demand. If real demand for land – in other words, land need – is to inform a planned and proactive approach to land reform, the state, NGOs and other agencies will need to explore more effective ways of understanding needs and eliciting demand. There have been some innovations in this direction.

The most direct way of supporting landless people to access land would be to insert a social obligations clause in the Constitution, as was done in Brazil, which affirms the right of landless people who openly occupy unused land for basic livelihood purposes. This would provide legal protection to occupiers instead of criminalising such actions.⁴⁴ Although this was a resolution of the Land Summit, this proposal has not been taken further by government. The clause in the Brazilian Constitution reads as follows:

The individual who, not being the owner of rural or urban property, holds as his own, for five uninterrupted years, without opposition, an area of land in the rural zone, not exceeding fifty hectares, making it productive with his labour or that of his family, and having his dwelling thereon, shall acquire ownership of the land.⁴⁵

Alongside, or pending, a social obligations clause, a range of ways of recognising and responding to land need or 'demand' will be required. Some positive examples of how this might be done are already evident, such as the introduction of area-based planning (ABP) in early 2007.

Working with Nkuzi Development Association and the Land Claims Commission, Makhado Local Municipality in Limpopo has mapped restitution claims in its jurisdiction using geographical information system (GIS) technology.⁴⁶ This provides an overall picture of where people have expressed demand for land by submitting land restitution claims or labour tenant applications. Motheo District Municipality in the Free State has similarly started to map out claims in its area as a starting point for negotiating with claimant communities about long-term development needs.⁴⁷

In the case of the Karoo-Hoogland District, the municipality would not deal with individuals expressing their land needs and so prompted people to form small-scale farmers' associations consisting mostly of people who have neither land nor livestock but use the term 'farmer' as an aspirational category as a basis on which to organise themselves. Membership of such an association was recognised as demand for land and Phuhlisani Solutions was employed to work with the members to assess the land need and report on the range of land needs and ways in which these needs could be met. GIS was also used to map priority areas of need. A participatory forerunner to ABP, this involved identifying the farms required to meet the specific needs of poor people wanting land for small-scale cultivation and grazing through to large-scale commercial farming.

This is now to be used by the municipality to negotiate with landowners to sell their land, and particularly to approach absentee landowners to negotiate lease and land-sharing agreements with small-scale livestock owners.⁴⁸ The result was a strategy to acquire further commonage land for the use of those wanting land for small-scale livestock grazing and cultivation, but also provided for people to scale up their production over time and to move from commonage on to privately owned land which has already been identified and is to be purchased. This is an unusual and positive example of really exploring needs as a basis for planning, and laying the foundation for a variety of land acquisition methods. However, the municipality has limited scope to act on its plan since land acquisition budgets and the delegated authority to acquire land is held by provincial offices of the DLA. Institutional cooperation, or restructuring, will be needed if the plan is to be implemented.

Land needs assessments have been widely discussed, but methodologies for conducting such assessments are not well developed. The ABP process currently underway shows that while it is agreed this is necessary, both government and its service providers have not found such a methodology and that this requirement has been waived in some of the ABP processes. Public meetings, sometimes held as part of integrated development planning consultations, have been considered to assess need. There is therefore a need for new methodologies to assess desires and needs for land. As one NGO worker said: 'You can't just have a questionnaire or have one meeting; we need to be developing a methodology for assessing demand. It is not

quick and easy. And it will be difficult to disentangle the demands for lands from demands for water, and so on.’

Some ways in which land needs assessment might be pursued at a local level could be:

- the calculation of categories of people with objective land needs (as described above);
- participatory planning with identified groups of people needing land (eg. small-scale farmers’ associations, commonage users, farm dwellers under threat of eviction);
- public meetings;
- attitudinal surveys; and
- permanent land boards to assess needs and integrate acquisition of land with the allocation and provision of relevant agricultural (and non-agricultural) development services.

Whatever the merits of assessing need, though, these methods may not capture the extent of demand, and the process is likely to remain messy and imperfect – and subject to ongoing contestation.

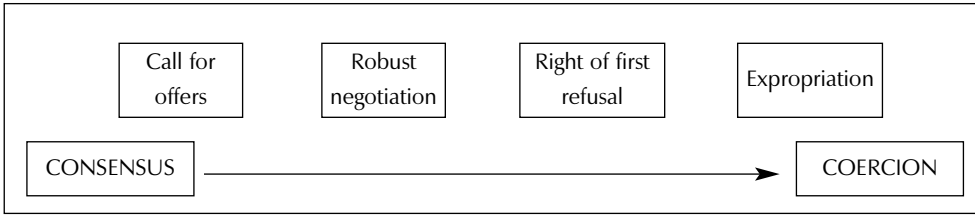
The option of inviting people to submit their names for land needs lists, indicating what they need land for and where, would be another way to clarify what land should be acquired. These needs could then be matched with land as it becomes available. However, reflecting on the experience of land restitution claims, labour tenant claims and the social housing lists, it is unlikely that a government would pursue this option as it could well solicit expectations that could not be met and would inevitably lead to a problem of ‘opening the floodgates’. But this could be tested in a pilot, and a coherent and well-communicated policy for prioritising land needs could make this approach much more manageable.

Land reform planning will ultimately need to be refined using maps. Lists (e.g. land needs lists) tend to indicate only what and who; maps have the advantage of saying where redistribution is to happen and how land use is to be changed.

Participatory processes will be needed in all the above processes to identify needs. These are not quick, easy or cheap but hold the promise of a clear and solid basis on which to drive forward with land reform that is appropriate and targets priority groups.

LAND REFORM HOW?

Working with land needs should result not only in an abstract list of needs but the mapping of these needs against the existing physical resource, taking into account

Figure 1: Consensus to coercion in land acquisition: a continuum of options

what land is good for, topography, soil, water, infrastructure and proximity to towns. This map of needs constitutes an area designated as a priority for land reform. Two approaches have been used elsewhere, both of which could be the outcome of ABP:

- either land meeting certain criteria in areas are prioritised; or
- specific properties are designated and owners informed that the state wishes to acquire their land (i.e. more similar to the restitution process).

Once either specific properties or a certain category of properties are identified as needed, a number of options exist to improve the supply of land. Some are confrontational methods, which could include both occupation of land (by the landless) and expropriation (by the state). These should be used where needed but should be complemented by consensual options. An important strategy to meet identified needs in a given area will be to explore what consensual methods can deliver, and where these do not produce results in a given timeframe to move to more coercive measures.

There are a variety of ways, beyond WBWS, in which the state can use the market and negotiate with particular landowners to address land needs – as well as non-consensual methods which are not confrontational, such as land taxes which squeeze landowners as a whole. An approach based on compulsion would involve foreclosure on indebted commercial farmers, expropriation and possible payment in government bonds, as was done in Latin America.

However, a cascading approach to acquisition which moves from consensual to coercive methods makes no sense unless there is a difference in price. This is the leverage that the state can use to engage seriously with owners. Consideration then will have to be given to offering at or near market prices when issuing a call on landowners to offer their land or instituting a right of first refusal, and offering compensation well below market price when expropriating.

Where planning has identified which land is needed for redistribution, the state is in a position to make a public call for land to be made available, indicating what land is needed and to invite offers from landowners. Following a general call, the state would need to enter into robust negotiations with landowners for the release of land identified for redistribution. This is the basis on which to see whether any workable

deal can be made between landowners (preferably organised as a group) and the state – essentially a form of social pacting. Backed with a credible threat of expropriation, focused negotiation with all landowners in an area designated for redistribution may yield substantial results, including agreements to below-market compensation or a combination of up-front payment and deferred compensation.

A right of first refusal for the state is a further option that has not been used in South Africa and would ensure that all land offered for sale could, hypothetically, be acquired for the purposes of redistribution. While this has merit it may pose an unwanted and unmanageable burden on the state. To avoid this, government would need to be able to routinely waive this right in areas where land is not needed and could issue ‘certificates of no present interest’, as in Zimbabwe from the 1980s. Such a right could not be acted upon, except where there are existing claims, until a thorough needs assessment process is complete. A right of first refusal only makes sense if it is known which land is needed – and therefore there will be a need to designate the priority areas in which land *is* needed (and these would be expanded over time as clarity emerges over land needs). The introduction of such a mechanism therefore need not be too cumbersome or place unfair burdens on either the state or landowners, and would only start to be acted upon as the outcome of planning becomes clear.

The state has the ultimate power to make land available to meet demand by using its power of ‘*eminent domain*’ and expropriating land. The state can seek to drive down levels of compensation instead of offering market prices. A common reason put forward for this is to save money; this is unlikely to be a major factor in reducing the cost to the state. However, a disincentive to hold on to land that may be expropriated is more important as a mechanism to induce owners to offer property for sale and to negotiate reasonable terms. Much of the benefit of expropriation is in its demonstration effect. This means that some land must be expropriated and compensation must be below-market price – otherwise there is no credible threat. This will be strengthened if there are clearly established conditions under which the state will move to expropriation, for example where farm dwellers or labour tenants have been illegally evicted or where land is unused or underutilised, or where refusal to sell has made a local plan for land reform unimplementable.

A possible ‘unintended consequence’ of designating land for sale, and of expropriating land, is the decay of fixed infrastructure on farms. To address the ‘transfer gap’, the state could impose personal fines (subtracted from compensation) on owners for asset stripping or non-maintenance of fixed infrastructure. It may be difficult, but not impossible, to take this into account in determining the price (compensation) to be paid.

Confiscation (compulsorily acquiring land without compensation) would be possible only with a constitutional amendment, which is not likely in the current political environment. The South African Constitution requires compensation that is ‘just and equitable’ taking into account various factors in section 25(3), namely: the current use of the property; the history of the acquisition and use of the property; the

market value 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.⁴⁹ Determining compensation for expropriated property still provides space for the state to bring down the cost of land reform in a variety of ways, including the following:

- Pay below-market compensation for expropriated properties but also use the constitutional criteria to drive down prices in negotiated sales of land.
- Use deferred payments so that landowners will be paid out compensation over a period of time.
- Pay in government bonds, which also defers to a future date the cost to the state of paying compensation.

Information about who owns what property is a precondition for these proactive ways of dealing with supply. Many municipalities have now conducted land audits to identify, in the first instance, what land they own and to clarify who is using this land on what terms – for instance, so that they can review long-term leases of municipal commonage to commercial farmers. Some other categories of state land have also been audited – for instance, land owned by the provinces and by national line departments – but at a national level very little is known about parastatal land.

There has, however, been silence on the issue of private land. Private land must also be audited to clarify who owns what, how it is being used, and to identify unused and underutilised land which could be prioritised for acquisition, where it is of adequate quality. Knowing what land is owned by whom is a crucial first step towards a proactive approach. This information needs to be made publicly available at a local level to communities who may have land needs and to municipalities.

Another option is for lists of land available for sale to be compiled so that it can be referred to when needs are identified. There have also been attempts in the Eastern Cape to maintain lists of farms offered for sale in order to match supply and demand, for instance by the USAID-funded Agri Link project in Cradock. In Limpopo the DLA invited farmers who wanted to sell their land to put their names and farm details in a database, but it seems this has not been used – which illustrates the limitations of planned approaches. Farmers in the Gariep District in the Free State have also reportedly offered to compile such a list. Lists offering farms for sale were compiled by the Commercial Farmers' Union of Zimbabwe during the 1980s. This model can obviously only work if the state is to offer market prices.

In order to identify land being offered for sale and to take advantage of opportunities where they exist, the DLA and NGOs in some provinces have attempted to build relations with farmers' associations and estate agents. These relationships assist in identifying farms that could be bought and provide specifications of the quality, size and general location of land required. In Limpopo,

Nkuzi managed to establish a relationship with an estate agent who was able to approach farmers to find out whether they would be willing to sell certain portions of their farms. They therefore did not rely on land being offered for sale but could in fact negotiate with owners to make land available for sale, though this still relied on the LRAD grant formula. Using the market in this way is essentially the approach taken by PLAS, which demonstrates the problems of using the market without having an overall assessment of needs, prioritising these and placing acquisition in a wider strategy for restructuring. The government is now challenged with trying to fit people to the land acquired. So while ‘using the market’ may yield results and could be tried before more coercive measures, it needs to be done on the basis of an existing plan.

At least one provincial director has also established agreements with auctioneers to allow the DLA to bid at farm auctions on behalf of beneficiaries who, by definition, could not have received land grants yet as these grants can only be disbursed once a provisional agreement of sale is concluded. Another untapped opportunity is to secure agreements with banks to make available repossessed properties, in the first instance, to potential land reform applicants.

A variety of opportunities also exist not only to use the land market but to shape it – as well as overriding it. The potential benefit of a land tax on farmland is the disincentive it creates for speculation. Further, the conventional neo-classical economic argument for levying taxes on agricultural land is to improve efficiency by introducing a cost to retaining ownership of un- or underutilised land. If, however, taxes are to be used in conjunction with proactive measures to promote the release of land, the Property Rates Act will need to be amended or regulations added to it to guide municipalities in a more prescriptive manner. At present its aim is to raise revenue, rather than to release land. The current approach does not serve to leverage land for land reform. If land taxes were to serve this purpose then the calculation of rates levied on agricultural land would need to be changed. Two options are to make these progressive (favouring small over large landowners) and/or to base rates on land utilisation (in order to punish underutilisers). The World Bank is perhaps the most vocal advocate in South Africa of the use of land taxes to regulate markets, preferring these indirect methods of increasing the supply and reducing the price of land.

Those opposing taxes on agricultural land argue that municipalities do not deliver services on agricultural land and that in order to be a disincentive for speculation the land tax would need to be set too high, thus endangering the profitability of productive uses of agricultural land. Agri SA argues that land taxes are a ‘blunt’ instrument to bring about redistribution in access to land,⁵⁰ and that since they reduce net income they also affect the market values of properties – which may reduce the cost of land reform, though this will not be substantial. However, a less discussed challenge is the impact land taxes may have in the future on land reform beneficiaries who are exempted in terms of the Property Rates Act for ten years, after which they would be affected as any other private property owner. A progressive land tax that exempted small properties from paying property rates would help smallholder farmers but would favour all smallholdings, which are typically more expensive per

hectare than larger properties. At the same time beneficiaries who obtain large properties and hold and operate these collectively will be liable for substantial taxes.⁵¹ Instead, it would appear that the issue of how the land is used would be an important element of regulations for land taxes. Overall, it seems clear that a land tax is likely to have beneficial effects but that by itself it will not address the problems of a market-reliant approach to acquisition, nor achieve the restructuring required in agriculture. It can only be considered as one small counterpart to more interventionist measures.

In conclusion, a strategic way to deal with supply of land clearly identified for redistribution is to open up opportunities for landowners to come to the table and engage with their offers, while having a clear sequence of strategies to pursue where this fails. Although expropriation is widely referred to as a mechanism of ‘last resort’ in South Africa’s land reform, in practice it has never been invoked in the interests of redistribution and no mechanisms currently exist that would indicate which property should be expropriated, where, why and for whom. This paper proposes a clear sequenced approach to acquiring land that both uses and overrides the market. Without a demonstrated willingness to act on a right of first refusal or to move to expropriation, however, other more consensual elements are unlikely to yield results.

CONCLUSION

In considering alternative policy options it is not enough to draw lessons from existing experiments. This requires a leap of imagination and thinking outside of the box. Taking the theme of needs as a starting point, the features of one kind of proactive land redistribution programme might include:

- participatory needs assessment at district level;
- prioritisation of women and the poor;
- mass-driven land audits to identify land to meet this demand;
- designation of priority areas for redistribution for a range of land uses;
- a right of first refusal for the state in designated areas;
- integration into local economic development and spatial planning;
- negotiated sales and expropriation as methods of land acquisition; and
- substantially increased institutional capacity and coordination.

Table 1 outlines how it would differ from the version of WBWS implemented to date in South Africa.

Demarcation of priority areas, like zoning, would allow long-term forward planning without the necessity of acquiring all the land initially, and can be expected to impact on land prices. Planned redistribution of contiguous land parcels could also have the benefit of bringing about economies of scale not in primary production but in planning, provision of agricultural support, marketing and infrastructure, as well as making possible equipment sharing and mutual support among neighbours.

Table 1: Needs-based proactive land acquisition versus willing buyer–willing seller

Aspect of land reform	WBWS	Proactive
Project initiation	Participants initiate (or sometimes landowners do) if aware of opportunities.	Participants initiate, but are assisted to formulate their demands within a wider district-based development strategy.
Land identification	Participants and the DLA, on the basis of publicly available information on land for sale.	Participants and various state agencies, on the basis of identified needs.
Acquisition	Contingent on willingness of owners to sell at prices offered; often delayed due to bureaucratic delays, sometimes leading to withdrawal of sellers.	Determined by planned priorities, targets and identified needs, and supported by a right of first refusal on land sales within designated areas. Not contingent on owners but negotiated where possible, with the option of expropriation being clearly communicated.
Transfer of title	Directly from seller to beneficiary.	Could either be directly from owner to beneficiary, or a state or parastatal institution may hold title in a transitional period.
Size of landholdings	No incentives or mechanisms to promote subdivision of land; size distribution unchanged.	Proactive subdivision to make appropriate parcels available to match needs.
Land use and business planning	Outsourced business planning of individual projects, based on inappropriate assumptions of large-scale farming as the model.	Based on participatory needs assessment and aspirations, supportive of small-scale farming and facilitated through revamped state agricultural institutions.
Pricing	Based on market valuations but negotiated with sellers.	Coordinated and aggressive negotiating in order to meet identified and agreed targets.
Spatial impact	Ad hoc and spatially scattered pattern of redistribution.	Large-scale redistribution in designated areas. Spatially coherent.
Post-transfer support	No consolidated approach possible; limited resources and ad hoc interventions by a range of agencies, leading to inadequate but also uneven levels of support and isolation from local development planning.	Integrated pre- and post-transfer support planning initiated from time of designation. Improved resourcing for agricultural and settlement support, including subsidies for production, and coordination of agencies through a one-stop shop at district level.

Local spatially-based plans for redistribution of land would need to set out a vision of an endpoint by answering the question: what would the outcome of transformation of land use in a particular region look like? This would involve making decisions about a pattern of alternative land use, reconfiguring boundaries and putting in place new infrastructure. Crucially, these plans would need to consider, on the basis of the new intended uses and users of land, whether farming units should be kept intact or whether subdivision should be used to create fairly uniform small- or medium-sized plots or retain the core of farming operations and create small plots adjacent to these. Such plans would need to take into account the need for, and the potential of, the resource (land and water in particular). Some areas may have little scope for structural transformation under current conditions, such as the wine industry; smallholdings in this sector would need a new institutional environment that would make small-scale production of high-value crops feasible – as is done in other parts of the world. Estate agriculture might lend itself to contract farming, while mixed farming areas might be more suited to subdivision into cultivated smallholdings and commonage for livestock.

On the basis of such a plan a range of methods could be employed to acquire the land: the state could institute a right of first refusal and purchase properties offered for sale, systematically approach landowners to negotiate transfers, and where these do not yield results, expropriate. A credible threat of expropriation would enable the state to set new norms around pricing, using the scope provided in section 25(3) of the Constitution to pay compensation based on criteria other than market value. Even the World Bank, while arguing against widespread use of expropriation, has proposed negotiated transfers, which would involve mediation, non-binding arbitration and binding arbitration in various forums from the local to the national level.⁵²

South Africa's land reform has been based on political imperatives to redress the injustice of forced removals and to broaden black ownership of land, and was bolstered by an economic argument that small farms would be more efficient than large ones. However, experience to date has shown that land reform has tended to reproduce the large-scale model of farming, with similar land uses but without the state support for new land users that originally brought this model into being. The economic argument in favour of land reform has been based on conditions that do not currently apply in South Africa. The pace and mechanisms for delivery must be changed, as well as the economic, institutional and policy environment.

If land reform is to address the political imperative of changing the racially skewed pattern of land ownership *and* the economic imperative of reducing poverty, it must both redistribute assets and not just maintain but *increase* production. Remarkably little attention has been given to the latter issue: what livelihoods can be created and therefore what kinds of land use must be promoted? What is now needed is agrarian policy that specifies society's and the state's intentions for the restructuring of agricultural production and its role in the rural economy, and therefore what kind of land reform is needed as one strategy to achieve this. This paper suggests that the

neglected option of smallholder production for consumption and for the market should be the priority. Radical reform that might transform property relations and restructure the agricultural sector has been severely circumscribed in South Africa by a negotiated transition and broadly neo-liberal economic policy, specifically the deregulation of the agricultural sector that involved the removal of key state functions such as price controls, marketing and heavily subsidised credit. Moving beyond a market-based approach to land acquisition will need to be located within a wider policy shift. To enable success in this type of land use, direct support for production as well as interventions in input supply, processing and output markets will be needed. This will require a developmental state.

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Practical experiences in land reform initiatives and recommendations for the future

HARRY MAY

INTRODUCTION

The Surplus People Project (SPP) is a non-governmental organisation (NGO) working on land reform in rural development in the Western and Northern Cape provinces. The SPP started off as a research project in the 1980s, documenting forced removals in the old four provinces of South Africa. South African police apparently referred to blacks from the Transkei and Ciskei who came to Cape Town, especially the elderly, women and children, as ‘surplus people’ whom they put on buses and sent back to the homelands. The SPP, which retained its name, has since that time been involved in urban housing issues but is now also involved in land reform and rural development along the west coast of the Western Cape and in two districts in the Northern Cape.

Since 2005 there has been an increase in focus in public debate on the contribution of land reform to agrarian reform. The biggest focus of this debate has been on the acceleration of land redistribution and looking at new ways to acquire land. From a civil society and NGO sector perspective, the SPP has been concerned about the slow pace of land reform.

At the end of 2007 the African National Congress (ANC) at its national conference in Polokwane adopted a resolution on rural development, land reform and agrarian change. It seems that land reform also received priority attention as one of the most important areas for the new ANC national executive committee.

The focus of this paper is on the successes, challenges and the way forward in terms of dealing with some of the practical issues in land reform.

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SUCCESS AND PROGRAMMES

The SPP was involved in the design and implementation of the first comprehensive 10-year reform process in terms of the transformation of certain rural areas acts in the six coloured rural areas of Namaqualand.

Area-based planning (ABP) involves all the municipalities and the people prioritising land needs and sequencing the acquisition of land to make sure that there is mutual agreement between the various parties. The state needs to provide the resources to do that.

The SPP was one of the organisations that championed the use of commonage as a redistribution mechanism for poor people. Commonage land is where a municipality would acquire land and make it available at reasonable prices to poor people within this particular municipality. As such, people would not own the land but would lease it from the municipality and in that way have access to land.

Most of the land transferred in the first year of the land reform process (1996–1997) was in the Namaqualand area in the Northern Cape. This land was transferred mainly as commonage land because the land claims of many of the people in those areas fell outside of the cut-off date for restitution.

The SPP was also involved in the Richtersveld Community Restitution Claim that was settled in 2007, although the community did not get what it had initially hoped for. This claim was part of ABP in that the SPP started looking at land reform at a district level and prioritised that particular claim.

Some other successes in both the Northern and Western Cape have been around water reform, with communities and groups getting access to water rights, and in particular water rights on the Orange River where 4,000 ha of water rights were allocated to historically disadvantaged communities.

The SPP has also been involved in trying to build capacity and mobilise people to be able to take forward their land rights. For example, people from the Southern Cape, Northern Cape and Western Cape will soon be meeting with the director general and minister about some issues pertaining to their land rights.

The key aspect for an organisation like the SPP is the resources required to do its work, but also allowing people to articulate their own needs and views and to put forward their own agendas.

The SPP has been engaged in popular education, teaching groups of people about the broader political and economical sphere they are a part of. The teaching extends beyond particular land and agricultural issues to include their relationships in terms of the World Trade Organisation (WTO) and other stumbling blocks they will need to engage with if they are involved in agricultural production.

Land reform beneficiaries have been involved in a campaign with the SPP around agrarian reform for food sovereignty so that people can secure their own food and determine what they want to do with it. This raises the issue of the interconnectedness of local production with regional markets, international markets, different rules and WTO rules.

The SPP believes in agro-ecological practices with a focus on environmental

sustainability as an alternative to the dominant farming model. It also looks at other alternatives, such as organic production – e.g. doing away with pesticides.

CHALLENGES

Challenges include the slow pace of land reform, which is still a serious issue, the question of groups or communities that have not received land, and issues around land acquisition. The SPP believes that the matter goes deeper than just acquiring land and also concerns the suitability of the land being offered, land prices, Department of Land Affairs (DLA) budget shortfalls as well as administrative issues around land acquisition.

A serious challenge over the past couple of years has been land use. The prescription from the DLA is if you acquire land, you need to use it with the same fixed boundaries it used to have, with an emphasis on producing for the market. For instance, in our context in Namaqualand where there is large and extensive farming land, if you acquire land as commonage land you need to have a management plan for that particular piece of land.

The DLA and the Department of Agriculture both emphasise producing for the market, although the objectives of people are sometimes varied and some may be more interested in subsistence production.

Issues have been raised in terms of inadequate post-settlement support, particularly with regard to credit, training, extension, transport, market excess, etc.

The SPP has raised the issue of extension with the Department of Agriculture as well as the kind of model it uses in this regard. Most of the extension offices in the area where we work know nothing about agro-ecological practices. They have been trained in chemical and industrial models and are knowledgeable about how to use pesticides and which pesticides to use, but they should be able to provide alternatives.

The SPP was involved in the first comprehensive tendering form process in the coloured rural areas in Namaqualand. A key challenge for the SPP is around support for rights administration. A meeting was held recently with the committees that are engaging with the municipality around the transfer of this land. The DLA minister seems interested in transferring the land, which we believe is ridiculous because we did the facilitation for the tendering form process. The principle recommendation was that the minister in the state should provide rights administrative support. We advised the minister against this, otherwise more disasters would be added to the list of communal property institutions in this country that are failing.

Other key issues and challenges are around land reform and the competing interests of conservation. There is no convincing argument that conservation would provide the same kind of livelihood opportunities as land reform in the West Coast and Namaqualand.

Conservation agencies have the ability to raise substantial amounts of money and to pay above market prices for land they wish to acquire for conservation purposes. One can clearly see the competing nature between land reform and conservation.

RECOMMENDATIONS

Below are some recommendations in terms of land reform based on 15 years' experience:

- Land acquisition should be done within the framework of ABP. The reasonable success in land reform in Namaqualand is because it was done at the district level, which means there are no competing claims by different communities or municipalities. All the stakeholders were involved, including the municipalities, and they all agreed to the process and the sequencing of that process.
- At a national level, there should be a framework from the government in terms of the prioritisation of land needs – do you have a Type A, Type B or Type C land need? The government needs to announce that it is going to address land needs in terms of priority – for example C, D and E land needs. Within the framework of ABP, one would therefore know how to sequence and address the different land needs.
- Over the years, land reform beneficiaries have stressed that people are interested in owning a small plot of land. The Commissioner raised the issue around 10-year reform, which has to do with security and which does not necessarily imply the need for title or ownership. If you have strong land rights it could be just as safe as having title.
- One mechanism for giving people smaller plots where they can produce food is to subdivide agricultural land. This should be seriously considered in cases where people have access to water and where it is feasible.
- Work needs to be done to integrate land reform and agricultural policy since there is a clear lack of communication and understanding between the DLA and the Department of Agriculture. There are, for example, cases where the DLA transfers land but where beneficiaries receive no support from the Department of Agriculture thereafter because the project was not budgeted for. Most of the land acquired is used for agricultural purposes: perhaps there should be a Ministry of Land *and* Agriculture with a single budget for an agrarian reform project.

Land reform in Zimbabwe: The first ten years

SAM MOYO

INTRODUCTION

Zimbabwe inherited a racially skewed agricultural land ownership pattern at independence in 1980. White, large-scale commercial farmers comprising less than 1% of the population occupied 45% of agricultural land, 75% of this in the high rainfall areas of Zimbabwe where the potential for agricultural production is high.¹ The land distribution pattern in Rhodesia was the product of a colonial strategy to empower white settlers at the expense of the indigenous people. Once it became apparent that the country did not possess mineral wealth to scale, the settlers focused on agriculture.² The colonial government employed policies and legislation designed to deprive the indigenous population of land and natural resource property rights. The Land Appointment Act of 1930, for example, partitioned all land into European and African reserves.³ The 1951 Native Land Husbandry Act imposed and enforced state-based conservation practices on land owned by blacks while the Land Tenure Act of 1969 confined the majority black population to infertile areas.

At least 70% of indigenous black people lacked control of the bulk of the nation's natural resources and lived in Zimbabwe's marginal rural lands, which were characterised by low fertile soils and unreliable rainfall.

A close analysis of land distribution by agro-ecological region and land-use category highlights some of the nuances in Zimbabwe's land problem. Almost 73.5% of the communal areas lie in regions IV and V, which are the least favourable for crop and livestock production. Communal lands are the most densely populated areas outside urban centres and are settled by farmers who do not have sufficient material resources for efficient management of land resources. Land is mainly used for rainfed

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Table 1: Land ownership patterns in Zimbabwe, 1980

Farm class	1980 (at independence)	
	<i>Number of families/farms</i>	<i>Hectares (million)</i>
Smallholder	700,000	14.4
Small- to medium-scale commercial	8,000	1.4
Large-scale commercial	6,000	15.5
State		6.1

Source: Moyo S, Emerging land tenure issues in Zimbabwe. Mimeo, 2007.

agriculture and grazing. Not only are communal farmers confined to the poorest land, but the size of land available to individual households is meagre. The average arable land holding per household is less than 2.5 ha. This puts great pressure on soil resources given that most peasant farmers cannot afford fertilizer or other inputs to maintain soil fertility.

In addition, the distribution of physical and social infrastructure and the provision of financial resources are such that communities residing in communal areas are firstly not well equipped to deal with environmental crises and secondly totally dependent upon the environment for survival.

Inequitable access to these resources means that a tiny white minority of large-scale farmers of European descent today dominate Zimbabwe's largely agrarian economy.⁴ Together with transnational capital, white agrarian interests control key sectors such as tourism, forestry, commodity exports and the narrow agro-industrial complex underlying its urban political economy. These imbalances dramatically skew Zimbabwe's income distribution structure, reflecting an unchanged legacy of colonial rule. Thus in spite of the liberation war, a narrow racial and class monopoly over land has for decades been consolidated through extra market repressive processes.

The economic structure undermined the growth of rural incomes and the expansion of domestic Zimbabwean markets such that over 60% of the rural people are poor and cannot afford basic health and educational services.⁵ Zimbabwe's human capital has thus been constrained by an inefficient economic structure which underutilised its people and degraded the quality of their life. The growth of poverty, unemployment and income disparities in the face of the underutilisation of substantial parts of Zimbabwe's land and natural resources, despite the continued significant growth in commercial agricultural production, is the main factor which fuels today's land question.

THE LAND QUESTION AND DEMANDS FOR REFORM

While historical grievances over land alienation are important, these tend to be subordinated to the more generalised demand for the redistribution of land for

productive uses by a variety of potential and actual small- and large-scale indigenous land users. The most visible demands for land – widespread grassroots land-bidding processes – are made by indigenous rural blacks. Based on historical and contemporary patterns of uneven economic development that relegated the majority

Table 2: Land demand, rights profile and land use

Category of demand	Sub-groups	Types of land use required
Youths	<ol style="list-style-type: none"> 1. Untrained / school leavers 2. Agriculture graduates 	<ul style="list-style-type: none"> • Communal crop land, resettlement land • Safaris and tourism opportunities
War veterans and ex-detainees	<ol style="list-style-type: none"> 1. War veterans 2. Collaborators 3. Spirit mediums, etc. 4. Detainees 	<ul style="list-style-type: none"> • Reclaim lost lands • Resettlement land • Commercial land
Communal households	<ol style="list-style-type: none"> 1. Landless and land-short 	<ul style="list-style-type: none"> • Resettlement land
Farm workers (proxy citizenship rights)	<ol style="list-style-type: none"> 1. Former farm managers 2. Former farmworkers 3. Children of farmworkers 	<ul style="list-style-type: none"> • Resettlement and leasehold land • Land rights to establish homes • Agricultural land in communal and resettlement areas
Black elites	<ol style="list-style-type: none"> 1. High income (civil servants, academics, private, etc.) 2. Middle income persons 	<ul style="list-style-type: none"> • Public leasehold • Safari/tourism land leasehold
Urban males	<ol style="list-style-type: none"> 1. Elites 2. Retrenched workers 3. Homeless urbanites 4. The aged/retired 	<ul style="list-style-type: none"> • Peri-urban farm plots • Small irrigation farmlands • Residential land • Land as collateral, social security
Women	<ol style="list-style-type: none"> 1. Elite women 2. Ordinary urban women 3. Poor rural women 	<ul style="list-style-type: none"> • Large farms, business plots, residential land • Residential, small business plots, urban farming • Rural croplands
Rural district councils, provincial structures, state agencies, NGOs	<ol style="list-style-type: none"> 1. District and regional development committees 2. Councillors/governors 3. Parastatals 	<ul style="list-style-type: none"> • Land for income-generating projects and for services (schools, clinics, housing) • Land for leasing out to investors • Land for commercial farming • Peri-urban land expansion
'Investors'	<ol style="list-style-type: none"> 1. Foreign and domestic (white) 	<ul style="list-style-type: none"> • Agriculture, tourism, industry

Source: Moyo S, The interaction of market and compulsory land acquisition processes with social action in Zimbabwe's land reform. In Mandaza I & Nabudere D (eds), Pan-Africanism and Integration in Africa, Harare: SAPES Books, 2003.

of the population to depend for their survival on land, there is a diverse range of differentiated demands and contestations over land, as outlined in Table 2.

One key problem is that most of the large landowners are not socially grounded in the land tenure value system of Zimbabwe and are remote from mainstream party politics.⁶ The non-Zimbabwean nationalities and physical absence of many of the large landowners and the increasing use of stockholding land tenure arrangements for the control of land, especially in the growing eco-tourist industry, increasingly globalised the fundamental interests of Zimbabwe's land question.⁷

Zimbabwe's peculiar racial and class basis of land policy-making and co-optation strategies were used by the state and markets to marginalise land reform. Until 1997, the conservative influences of international forces on domestic economic and land policy reconstructed the land question mainly through the legitimisation of market-based approaches to resolving the land question, in spite of the threats and piecemeal use of the compulsory land acquisition instrument by the state in 1993 and 1996. In an increasingly globalising world, the new political economy of land is therefore over the contestation of this development strategy and the continued inequitable land control that it has reinforced.

After more than 20 years' experience with land reform, the targets for land redistribution remained elusive partly due to the lack of resources to acquire land using the market-based principles of land acquisition, as conditioned by the Lancaster House Constitution of 1979. While the land question seemed to have lost political momentum in many developing countries, the Government of Zimbabwe (GoZ) in 1997 renewed its resolve to complete the land reform programme.⁸

Zimbabwe's land reform centred on land redistribution. Apart from catering for the needs of people displaced during the liberation war, land reform aimed to:

- redress the inequities in access and control of land;
- improve the base of productive agriculture;
- alleviate population pressure in communal areas;
- improve standards of living; and
- achieve national stability.

Land reform in Zimbabwe during the first ten years focused on the redistribution of land rather than on tenure reforms or direct restitution.

STATE-DRIVEN VS MARKET-LED LAND REFORM

MECHANISMS OF THE MARKET-DRIVEN LAND REDISTRIBUTION APPROACH

Land reform in Zimbabwe between 1980 and 1990 was pursued within a 'predominantly market-based' approach to land reform. The main mechanism of redistribution – land occupation – was conducted on a willing seller–willing buyer basis, as had been agreed to in the 1979 Lancaster House independence settlement. The state played a dominant role in acquiring land for the poor and supported

resettlement schemes. Alongside this, private agricultural land market transfers reallocated land to various new large-scale farmers (white and black), while land concentration among a few existing large landholders proceeded.⁹

The evidence suggests that the market mechanisms for land transfer limited the redistributive efforts in various ways. First, landowners led the identification and supply of land to be made available for resettlement, while central government was a reactive buyer choosing land on offer.¹⁰ Thus until 1996 Zimbabwe's land reform in terms of the amount, quality, location and cost of land acquired for redistribution was driven by landholders rather than the state or the beneficiaries in accordance with their needs and demands. The lowest quality land was redistributed.¹¹ Land prices grew dramatically throughout the period, given also the growth of demand for land by a burgeoning black elite. Black Zimbabweans also purchased farms on a willing seller-willing buyer basis, with some using credit offered by the Agricultural Finance Corporation. Not surprisingly few peasants or poor working-class families and women could afford this land.¹²

LAND IDENTIFICATION

Equally important as the mechanisms for the identification and selection of beneficiaries are those for the targeting of land. This starts with the definition of land eligibility criteria. During the 1980s the GoZ announced that it would expropriate only:

- derelict land;
- underutilised land;
- multiple-owned land;
- foreign-owned land; and
- land contiguous to communal areas.

There were, however, no clear-cut operational definitions of how these criteria were to be applied by the government appointed Land Acquisition Committee, nor was its order of priority in application established or the procedures to be used in identifying farms on the basis of combined criteria. Before the Fast Track Land Reform,¹³ the government had proposed various additional criteria for the identification of land to be acquired; however, these principles were never legally defined, while the absence of a land management information system severely limited land identification and acquisition. For instance, there was no comprehensive computer-based farm database which systematically defined farms' tenorial and productive features.

It is possible to evaluate the amount of land available for redistribution once land eligibility criteria have been defined. This was done during the 1980s in Zimbabwe through land-use studies. The government was at that time committed to redistributing land without reducing large-scale farm production. It thus

commissioned a study whereby large-scale commercial farming areas were rated across agro-ecological regions, and the amount of underutilised land that could be transferred from that sector without losing its strategic role in national agricultural production was estimated.

During the early 1980s the government adopted an approach that involved first estimating the number of households requiring land and then assessing the amount of land required. In that case, the type and amount of land required was defined on the basis of actual need. The findings of this study were publicly presented in the Riddell Report. It was initially estimated that 162,000 household beneficiaries would receive an average of six hectares as well as common areas for grazing. The specific land needs per settler were later expected to vary in scope depending on the degree to which water could be harnessed to intensify the land use, and in relation to more extensive livestock (perhaps even wildlife) land-use models based on the agro-ecological attributes of the land. For instance, the size of the irrigated plots was estimated at below one hectare.

BENEFICIARIES' ELIGIBILITY CRITERIA AND SELECTION PROCESS

Defining who benefits from land redistribution is a key principle and is linked to the objectives of reforms and available land. The issues are how fair and transparent the process is, and the need for accountability in the sense of regularly informing the public about the benefits of land reform. Settler selection principles in Southern Africa in terms of who benefits from redistribution converge around a two-pronged approach: transferring some land to competent farmers and some to the landless or poor in overcrowded areas. Most of the poorer beneficiaries are selected to include village schemes based on mixed and livestock farming, while the more 'competent' are selected to gain individual self-contained dryland or irrigated farms.

Several resettlement schemes targeting different beneficiaries coexisted in Zimbabwe. With the A1 models and its variants, the government targeted as the main beneficiaries poor families from overcrowded communal areas, displaced farmworkers, special groups such as women, ex-combatants, agricultural graduates, master farmers and persons with means and ability who intended to engage in agriculture. By contrast, the commercial farm scheme, or A2 scheme, was initially introduced for agricultural graduates and master farmers. They also had to be able to sustain themselves (as indicated by possession of cattle), be married or be widows with dependants and be unemployed. Finally, in the 1980s, the cooperative resettlement schemes were reserved mostly for young and unemployed people. But these schemes also benefited many ex-combatants and ex-farmworkers who the government believed could adapt to organised scientific farming on collective farms.

The implementation of the selection criteria – i.e. the fair management of the lists of those who apply to benefit – and the methods used to select those who finally benefit are controversial aspects of the land redistribution policy consensus-building. During the early stage of land reform (1980), schemes in Zimbabwe were publicly announced

in the media. Beneficiaries were identified in various other ways including the execution of desk planning work by the central government, the compilation of lists of potential settlers by traditional leaders' rural district councils and different government structures, as well as the organisation of field-based studies on congested areas. Local level authorities (village, ward assemblies, councillors and other stakeholders) were sensitised on settler selection criteria in order to increase the chances of reaching targeted beneficiaries. Registers for prioritising potential beneficiaries – notably the landless, war veterans and squatters – were sometimes compiled and the lists of beneficiaries displayed publicly. Those willing to participate in the scheme had to fill in and submit an application form, which meant they had to be literate and have access to printed media or at least to be assisted by local authorities. They also had to pay application fees. Some argued that this approach screened out many potential beneficiaries from applying, especially those in remote areas.

Candidates were then selected through a scoring system. More points were given for larger, unemployed, married families and then for gender disadvantages (e.g. widows), and in the commercial schemes for evidence of a farming track record and investible resources. Individuals between the ages of 25 and 50 and women scored higher, which meant in theory they had a higher chance of benefitting from the schemes. The short-listed candidates for the commercial model scheme were then interviewed.

SETTLEMENT SUPPORT

A major principle for successful post-settlement support is the coordination and mobilisation of funds for newly settled farmers. Various training institutions and financiers ranging from the government to the private sector, non-governmental organisations (NGOs), church organisations, farming organisations, local development associations and specialised commodity organisational parastatals are expected to be encouraged to play a greater role in post-settlement farming support in general across the region. There is, however, little evidence of best practice on this, besides the Zimbabwe experience of the 1980s when required services were delivered.

In Zimbabwe, the most effective way of delivering the required services was through partnerships with the private sector (seed, fertilizer companies), leading to the peasant boom from 1984. The Agricultural Finance Corporation provided credit during the early 1980s for development and working capital. Its Farm Input Credit Scheme and Resettlement Credit Scheme provided loans in the first year of settlement. Start-up grants to cover part of the initial production needs were also provided but these funds soon dried up by 1987. Private sector financial institutions were not keen to provide credit to settlers. Informal sector financial institutions that could act as rural financial intermediaries were hardly engaged. During the 1980s the government created an enabling environment for the marketing of agricultural commodities including access roads, depots and marketing information. The state

provided settlers with support to demarcate the plots according to a land-use zoning design and individual settler allotments of the model. Depending on the resources available to the relevant government department, the state then built roads, schools, clinics and other infrastructure mainly through the District Development Fund.

However, in the 1990s the government reduced its financial allocations to post-settlement support under the economic structural adjustment programme (ESAP). Extension and training packages developed during the 1980s to meet the specific needs of beneficiaries also diminished in quantity. Since 2000 the training needs of new settlers (such as agronomic and animal husbandry skills) have hardly been met. The beneficiaries of Model A2 were expected to have proven competency in farming and thus to be more self-reliant in mobilising their own financing and training as well as other service requirements, especially refresher courses to develop new enterprises and training in water and irrigation management. The problem is that given the mass beneficiary selection procedure followed from 2000, many new farmers do not have the experience and means expected.

Post-settlement social services support in Zimbabwe during the 1980s was also critical for improving beneficiaries' livelihoods. This was approached through the creation of rural service centres (RCSs). The plan was initially to build an RCS for each group of 500 families. Beneficiaries were to be provided with clinics and industrial, commercial and residential stands over a period of five years. RCSs acted as nuclei for off-farm employment and development through planned programmes for small- and medium-size enterprise development, and were also to provide for the residential needs of people who required homes and small gardens. In order to attract further investment, the centres were to have such facilities as telephones, electricity and reticulated water systems. The health, education and social services of the settlers were to be met by various government ministries and local authorities using programme funds.

The District Development Fund was to build its capacity to provide tillage and other mechanical services to farmers, while farmers or private operators were expected to establish tillage services for the benefit of settlers. In practice, these ideas were only partially and minimally implemented in Zimbabwe.

The provision of post-settlement support was planned as part of the design of resettlement models in Zimbabwe. The key principle of post-settlement support is to develop a more democratic, gender-, disability- and ex-farmworker-sensitive multiform regime that guarantees greater security for the ownership of a variety of interests in land. It should also encourage investment in land and generally facilitate the implementation of a wide range of land distribution models. Numerous policy statements and procedural guidelines and related legal instruments necessary to implement specific land tenure policy changes are required to promote this, as well as adequate resources.

The main policy issues of concern are both questions of principle and the effectiveness of current settlement support services approaches. Policy debates raise various questions:

- Taking into account the diminishing state subsidies to farming, how could governments provide beneficiaries with the bulk of adequate infrastructure and services cost-effectively and in time?
- Given the trend towards decentralisation, and although private investment in smallholder agriculture has been limited, how could community initiative, private-public partnerships and ‘outsourcing’ or sub-contractual approaches to infrastructure provision be more effective?
- Should communities be ‘allowed’ or required to be responsible for such services?
- Local capital and financial markets tend to be urban biased and donor dependence is high in most of the countries. How does one promote private sector and NGO stakeholder participation in infrastructure delivery, with facilitative technical and financial support from the government?
- How does one reduce the burden and cost on the government and encourage local initiative to enable speedier service provision?

It has been argued that promoting beneficiary and stakeholder participation in planning and improving the design of government resettlement models on each scheme would result in more beneficiary families gaining land by both reducing the grazing land allocations and promoting improved pasture management practices so as to increase the carrying capacity and through improved access to mechanical draught power. This was the case in Zimbabwe’s fast-track land reform where more beneficiaries gained land because occupiers and local planners reduced the sizes of plots accessed in opposition to the A1 and A2 farm size models, and this varied among different districts.

LAND OCCUPATIONS AND LAND ACQUISITION IN THE 1980S

The incidence of land occupations in the 1980s coincided in intensity with the period when most of the land in Zimbabwe was acquired on the market using the willing seller–willing buyer instrument. The state formalised land occupations in what it then called an ‘accelerated land reform programme’ as opposed to normal, intensive land reform. In other words, the pressures on the ground – no matter which social force and how they were organised – reflect the organic relationship that has existed between the ruling party, war veterans, local politicians and various rural communities. Occupations were a major impetus in the state’s negotiations for resources to finance market processes of land acquisition.

From the early years of independence to the 1990s, different patterns of local land occupation pressures have been evident in Zimbabwe.¹⁴ For instance, some liberation politicians were quite aggressive in their early years, which saw skirmishes that led to

violence on some farms. Another approach to land acquisition that emerged mainly during the first four years after independence can be referred to as the community-led occupation approach. Communities through 'squatting' led land identification, and central government came in to purchase the land at market prices in what was officially coined the Accelerated Resettlement Programme. Local 'squatter' communities made themselves beneficiaries by occupying mainly abandoned and underutilised land, most of which was in the liberation war frontier zone of the Eastern Highlands. The Zimbabwe government subsequently used forced evictions to restrain this approach. The community land occupation-led approach seemed to emerge again during 1998. Many farms that had been identified for compulsory acquisition were 'spontaneously' occupied by 'squatters'. The squatters later 'agreed' to 'wait' for their orderly resettlement by the government, but a new wave of land occupations occurred in 2000.

By 1986/87 the government moved to put a stop to what was deemed to be illegal occupations of commercial farms, communal lands, national parks, urban areas and state land, often through violent means. The brutality with which these evictions were carried out both by police and farmers was reminiscent of earlier evictions carried out in the decades prior to independence.¹⁵ Land occupations and the overall pace of land reform slowed down substantially after 1986.¹⁶ The incidence of land invasions began to increase at the beginning of 1997, and from February 2000 the number of land occupations increased exponentially.

Land occupations remained on the agenda for over 20 years although civil society, opposition political parties and the private sector paid scant attention to them. The first phase – from 1980–1985 – saw low-profile high-intensity occupations throughout the country, with a parallel process of land resettlement funded mainly by British funds.¹⁷ The period between 1985 and 1990 saw normal low-intensity occupation. Occupations took place in the context of dwindling resources for continued land resettlement and economic liberalisation, which resulted in many people losing their jobs in urban areas and at mines. During the 1990s landless communities increased 'illegal' land occupations and the poaching of natural resources in private, state and 'communally'-owned lands as well as in urban areas.¹⁸

In many circumstances the government had turned a blind eye to squatters, and indeed during the early 1980s the government formulated the Accelerated Resettlement Programme to accommodate squatters in a state-led land redistribution strategy.¹⁹ However the Zimbabwe government was at the time formally opposed to land 'invasions' or private occupations,²⁰ and encouraged the regular eviction of squatters through the law, court action and the police, in collaboration with large-scale commercial farmers and local authorities. Thus land 'self-provisioning' or popular struggles for land were circumscribed by the central government through its 'squatter policy', regular promises of land redistribution as well as through other forms of agricultural support schemes intended to improve the intensity of communal area land use *in situ* and returns.

Although the GoZ's squatter policy promised to evict squatters, it failed to stem squatting mainly because of legitimacy problems at the local level. Instead, demands

for land redistribution grew among the poor due to growing poverty and the retrenchment of workers, as well as among the wealthier due to their expanding focus on accumulating capital through emerging markets based on land and natural resource uses.

From the middle of the 1980s, the state itself increasingly began to evict, often in a violent fashion, those deemed to be occupying land illegally on commercial farms, communal lands, national parks, urban areas and state land.²¹ This was coupled with increasing violence taken by property owners (particularly white farmers) on illegal occupants, often with implicit or explicit state approval. Land occupancies slowed slightly in the late 1980s but increased from 1997 onwards, culminating in a more intense period (the high-profile high-intensive occupations)²² of land occupancies involving war veterans and rural peasants.

ALTERNATIVE OR COUNTER REFORMS

During the 1980s the GoZ emphasised agricultural and rural development within the peasant sector, based largely on raising productivity and improving inputs and commodity markets. Thus agricultural research, extension services, roads, marketing depots, education and health became the focus,²³ rather than the extensive redistribution of land and national agrarian restructuring.

LEGAL CONTEXT OF MARKET-BASED LAND ACQUISITION

The GoZ regarded the Lancaster House Constitution as a major hindrance to the resolution of the land question and in particular as a major constraint on the government's land reform and redistribution programme. Accordingly, after the entrenched provisions of the Lancaster House Constitution expired in 1990, the GoZ amended the Constitution to remove those aspects that it viewed as a barrier to the effective acquisition of land for redistribution. In this regard, the Constitution of Zimbabwe Amendment (No. 11) Act 30 of 1990 and the Constitution of Zimbabwe (No. 12) Act 4 of 1993 were enacted. These were followed by a new land acquisition framework embodying the new constitutional principles in the form of the Land Acquisition Act of 1992. These constitutional amendments and the accompanying Land Acquisition Act [Chapter 20:10] were highly contested both in the political and legal arenas as they were viewed by many – but in particular by the predominantly white commercial farming sector – as constituting a serious threat to the security of tenure and agricultural investment, as well as to the viability of commercial agriculture in the country.

Before the 11th Amendment to the Constitution in 1990, the compensation provision obliged the acquiring authority to 'pay promptly adequate compensation' for the acquisition, and such compensation was required to be paid in foreign currency in any country of the owner's choice whenever the owner so elected. It was this part of the Lancaster House Constitution that received the most severe criticism

Table 3: Key legislation for compulsory land acquisition

Year	Legislation	Key provisions
1979	Constitution of Zimbabwe (Section 16:1)	<ul style="list-style-type: none"> • Limits rights of compulsory acquisition • Willing seller–willing buyer framework
1981–1984	Land Acquisition Act (No. 21)	<ul style="list-style-type: none"> • Enforces the constitutional provision to acquire land for resettlement • Prompt payment of adequate ‘fair’ compensation
1985–1990	Land Acquisition Act, 1985 – Amendment	<ul style="list-style-type: none"> • Introduces certificate of no present interest or right of first refusal
1990	Constitutional Amendment Act 30 (11th Amendment)	<ul style="list-style-type: none"> • Enables state constitutionally to acquire land compulsorily

and was rightly seen as a major obstacle to land acquisition and redistribution. Not only did it mean that relatively high prices had to be paid for the land acquired, but also that the payments had to be made in scarce foreign currency. It was therefore not surprising that the 11th Amendment targeted mainly the compensation formula by doing away with the requirement to pay compensation in foreign currency, and the concomitant right of remittance thereof, in the hope that land for resettlement would thereafter become much more affordable to the state.

Second, the requirement to pay compensation was modified from the payment of prompt, adequate compensation to the payment of ‘fair compensation within a reasonable time’ from the time of acquisition. Third, the new laws sought to deny the courts power to declare unconstitutional any law that may be seen as fixing or providing for compensation which was not fair. However, the courts retained jurisdiction to determine the level of compensation where there was no agreement between the parties.

The third aspect of the 11th Amendment has received the most trenchant criticism because of its attempt to oust the jurisdiction of the courts in the invalidation of unfair compensation laws. Indeed, it is the main cause of the country’s bad image over the protection of landed property rights. The land acquisition framework established by the Constitution is not merely fairly rigorous and tight but clearly entrenches the judicial method of expropriation as against the administrative method, under which expropriation was carried out through purely administrative acts without judicial control or supervision.

Later, the constitutional amendment (2000) absolved the GoZ from compensating for land if it creates a fund in which the former colonial power may deposit requisite monies to compensate for the soil. The GoZ is only obliged to pay for improvements, and even here it may deduct from the sale price previous government subsidies which

accrued to landowners. The amendment also stipulates a variety of factors which may be considered in estimating the compensation value for improvements (for example, amounts paid to previous landowners by the current landholder, the value of investments, etc.).

The Land Acquisition Act was amended first to free the GoZ from any obligation to pay for unimproved land and to define the process and valuation of compensation for improvements. Second, the Land Acquisition Act (2000) streamlines the previous Act's dual route of compulsory acquisition by eliminating the designation route (which drags out the land acquisition process) and by retaining the direct acquisition route, but with more clearly defined procedures for compensation. Third, the Land Acquisition Act 2000 amendment removes numerous administrative and/or legal procedural encumbrances and time-consuming processes, which between 1993 and 1999 led to the mostly successful litigations against compulsory acquisition.

FINANCING LAND REFORM AND COLONIAL RESPONSIBILITY

The United Kingdom (UK) provided approximately £33 million (US\$44 million) during the 1980s for market land acquisition as well as for various resettlement inputs. This money – conceptualised as ‘aid’ rather than reparations – was provided as a matching grant to the GoZ's own financial inputs, and was disbursed as reimbursements for GoZ land purchases approved by the Overseas Development Agency (ODA) offices of the UK government. However, this aid mechanism experienced various bottlenecks and caused conflict between the donor and the GoZ.²⁴

During the 1980s various differences regularly arose over the financing of such land acquisitions. The British alleged that some farms which were purchased were not sold entirely voluntarily due to land occupations. Later on, the UK alleged that the GoZ had used some of the land purchased with UK monies for state farming (ARDA estates), and that such land was later given to black elite commercial farmers. In turn, the GoZ was unhappy that most of the land it ended up buying under this strict monitoring regime was marginal land off-loaded at exorbitant prices, which in turn diminished the opportunity cost of its own matching funds in the land acquisition and resettlement programme.

The ODA's monitoring system and other project conditions were resented by the GoZ, which later failed to match the British financial inputs, especially when fiscal deficits expanded from the late 1980s onwards. In the end the UK money was key to the purchase of the 3.1 million ha redistributed to about 70,000 families. However, £3 million of the first project agreement was not spent due to differences over some of the above issues, as well as other policy differences which emerged in the 1990s.

There was growing mistrust between the GoZ and the UK during the period 1989–1992 over the funding of land acquisition and the availability of appropriate land given the market's bias towards offering scattered, low-quality land. Differences between the Commercial Farmers' Union (CFU) and the GoZ over how to procure adequate land led to the latter promulgating the policy of compulsory land

acquisition beginning in 1990. This policy affected the UK–GoZ negotiations on new funding for land reform during the 1990s. The impasse worsened between 1996 and 2000 when the two governments disagreed over four key policy areas, namely:

- the extent to which land redistribution should include medium- and small-scale black capitalists rather than the small, poorest and landless farmers, and whether the UK even had a right to raise this and other objections given that the matter was one of repaying historical obligations rather than development assistance;
- the UK’s insistence on a gradual land redistribution programme targeted at acquiring approximately 50,000 ha per year to be redistributed to less than 3,000 families a year;
- the British ODA’s preference for market-based land acquisition (willing seller–willing buyer) approach rather than the compulsory acquisition approach; and
- that ODA support would be conditional on ‘demand driven’, decentralised and civil society–driven institutional approaches which limit the central government’s role.

Moreover, in 1997 the newly elected British Labour government proposed that the new Department for International Development’s (DFID) poverty-oriented development aid policy guides its support for Zimbabwe’s land reform. The Labour government also refused to admit that it had historic responsibility when it came to Zimbabwe land expropriation on grounds that its members were not of land-owning or settler stock. This new impasse was followed by a series of diplomatic conflicts that degenerated over the period 1997–2000.

When the GoZ and UK government re-engaged, the UK now premised the financing of land reform primarily on political issues such as the need for electoral monitoring, reducing electoral violence and enforcing the rule of law on farms. Key land reform principles and issues such as resources to compensate for land, the policy on black commercial farming and the role of land reform in poverty alleviation were side-lined. The UK emphasised the need for macroeconomic stability and governance reforms as a basis for offering money for land reform, while refusing to acknowledge its failure to act during the inception phase, immediately after the Donors Conference, in support of purchasing the 118 farms that had been on offer. The UK frequently reiterated the need to stick to the inception phase principles but failed to acknowledge that donors did not play their part.

THE MARKET-LED LAND REDISTRIBUTION OUTCOME

The pace of land reform from 1980–1990 was slow. Between 1980 and 1985 about 430,000 ha were acquired each year resulting in the acquisition of about 2.14 million

Table 4: Agricultural land distribution pattern in Zimbabwe (million ha)

Sector	1985	1989
Large-scale commercial farms	14.2	13.7
Small-scale commercial farms	1.4	1.4
Communal areas	16.4	16.4
Old resettlement	2.6	3.3
State land*	4.8	4.6
Total	39.4	39.4

* State lands includes the Commercial Farm Settlement Schemes, Agricultural and Rural Development Authority, Cold Storage Company, Forest Commission, all urban areas, mining settlements and growth points.

Source: Moyo S, *Emerging land tenure issues in Zimbabwe*, ISS book chapter, forthcoming, 2008.

ha over the period. This land was redistributed to about 40,000 families at the rate of 10,000 families a year. This included illegally occupied land abandoned by white farmers in the liberated zones during the war. The pace of acquisition fell to about 75,000 ha a year between 1985 and 1990. As a result only some 447,791 ha were acquired during this period. A total of 30,000 families were resettled at a rate of 5,000 families a year. Thus by 1990 about 3.3 million ha of land had been acquired, reducing the white commercial farming area from 15 million ha to 13.8 million ha. The large land holdings held the bulk of agricultural land, most of which was 'prime' land (see Table 4).

The acquired land comprised: large-scale commercial farms (LSCF) (2.7 million ha) purchased by the government from willing sellers; 2,247 ha of state land; and 541,770 ha of forfeited, derelict land. Only a small proportion of the new land acquired and resettled (19%) was in the prime agro-ecological regions, while 44% was in the arid natural regions IV and V, and 37% in natural region III. The market method thus seriously constrained the government from acquiring land suitable for its resettlement programmes, and there were inadequate resources as the state had to match funds provided by the British. It can be seen that less land was redistributed during the market liberalisation decade compared to the early transition period following independence.

Moreover, those on official 'waiting lists' for land far exceeded this target. The government provided land to beneficiaries selected mainly by its district officials under the direct supervision of central government officials. This meant that 'congested' communal areas stood little chance of getting relief from land assets. Some districts which were not near these commercial lands received less land. It became clear that land reform was not an event but a process that depended on the policy framework in use.

Also by the end of the market-based land reform in the late 1980s, black capital (8,000 black farmers) had established itself in large-scale commercial farming through

land purchases or leases on about 19% of large-scale commercial farmland. About 450 blacks had acquired LSCF by 1986. New private land bidding patterns also emerged during the period, as the prime lands were now a source of intra-capitalist (black and white) competition and inter-class conflicts. Aspiring black capital called for the state to 'set aside' commercial land for them in the interest of 'indigenisation', even as they were directly being co-opted by local white and transnational capital including through 'linkages' promoted by donor-funded 'enterprise development programmes'. While these pressures unfolded the 'squatter control' policy continued to be implemented, bringing about serial mass land evictions.²⁵

IMPACT OF MARKET-DRIVEN LAND REFORM

Scepticism reigned among key policymakers, stakeholders and civil society organisations about the desirability of extensive land redistribution and the efficacy of non-market approaches during the 1980s. But the adoption of the ESAP reined in the official drive for land redistribution and reduced agricultural support to small farmers, yielding negative effects for poverty reduction through land reform.

Some have argued that the Zimbabwean state lacked the political will or capacity to implement land reform prior to 2000, suggesting that constitutional and market constraints were not important. Yet the various administrative constraints imposed by the willing transactor principle had significantly affected the quality and pace of land redistributed, while imposing high financial costs on land reform.²⁶ The potential negative impact of extensive redistribution on development and agriculture²⁷ was the mantra touted by many policy analysts, to the neglect of the potential benefits of redistribution.²⁸

Empirical evidence²⁹ suggests that the majority of the few poor rural households who gained access to new land and related natural resource assets tended in the medium term to realise increased farm and woodland resources production, incomes and consumption benefits.

For example, a panel survey of resettlement households since 1983³⁰ demonstrates the various ways in which the households benefit.³¹ Over 20 years the land beneficiaries tripled their livestock wealth, their productivity increased substantially and their overall incomes were five times higher than those in agro-potentially similar communal areas.³² Although representing less than 5% of the peasant farmer population, the beneficiaries produced over 15% of market maize and cotton outputs while satisfying their own consumption needs.³³ Moreover this redistribution effort had not negatively affected the large-scale farm outputs, although this sector had high land underutilisation rates of over 40%.³⁴

This evidence contradicts the assertion³⁵ that resettlement farmers had the highest prevalence of poverty, largely because the survey data used had numerous computation problems. It reflected the immediate effects of the drought in the previous year in a resettlement situation where households rely less on non-farm employment than in communal areas. Moreover the evidence suggests that resettled

farmers' livelihoods improved after a transitional period of about five years,³⁶ but under stable macroeconomic conditions. Such conditions can also be reversed by the negative effects of weak macroeconomic policy and wider economic decline, as we argue later.

Indeed the neoliberal structural adjustment development strategy followed from 1990, accompanied by droughts, limited wider socio-economic and poverty reduction gains in general, and reduced state support to farm households to reduce poverty. This was exacerbated by the fact that landlessness had grown to around 30% by 1994.³⁷

Agrarian policies were also dramatically redirected by the ESAP, with far reaching effects on land use, land markets and the demand for land redistribution. Ultimately these land and agrarian policy effects were anti-poor. In the early 1990s the state retreated gradually from subsidising agriculture, as demanded by the ESAP and as supported by the CFU, which was a lesser target for many subsidies.³⁸ Marketing boards were commercialised (or privatised) and converted to 'purchasers of last resort', while private traders were allowed to compete, partly reversing the gains of the late-1980s' trends in smallholder profitability and relatively affordable food. In general this brought higher real prices for some crops such as maize and wheat, but not for beef and cotton,³⁹ which benefited mainly the large farms that could expand on the former crops. Moreover budget contraction led to reduced extension services, subsidies on inputs and credit for smallholders, which along with the depreciation of the Zimbabwean dollar eroded farm incomes. The contribution of the smallholder to total sales did not increase in the 1990s (the share in 1998 equalled that of 1984), and it remained regionally differentiated. At any rate, during the period market output among smallholders was effectively confined to 20% of the 'better-off' households in communal and resettlement areas.

Significantly, these developments dovetailed with job losses in the formal sector and the erosion of wages, which in turn had a significant impact on remittances from workers in the urban areas to their relatives in the rural areas. Many of the urban poor turned back to the land and land occupations (squatting) increased.

Further notable agrarian changes included the integration of smallholders into seed and fertilizer markets now controlled more by transnational corporations. The extension of peasant farming on marginal grazing lands increased, as did the intensification of women's casual farm labour, reflecting, among other problems, limited access to land. The upsurge of demand for land, the deepening of land markets and further social differentiation in communal areas led to the undermining of local government institutions.⁴⁰

But the most significant change that took place in the agrarian structure with regard to its effect on land rights and land use was the expansion of non-traditional export activities, specifically wildlife management, ostrich husbandry and horticulture. This reinforced the division of labour and income distribution between smallholders and large-scale farmers,⁴¹ while limiting the expansion of food production and undermining national food security. The large-scale farmers

expanded export operations while the smallholders remained in maize and cotton production, given that historical constraints (such as access to land, water, credit and infrastructure), compounded by the retrenched extension services, limited their 'responsiveness' to the ESAP agricultural market incentives. About 300 large-scale farmers had embraced ostrich husbandry, 31% of LSCF had come under wildlife, and 36% of LSCF were engaged in horticulture. In the communal areas, however, it is estimated that less than 10% of households became marginally involved in the new exports and land uses, thus limiting their income gains from ESAPs and other poverty reducing potentials.

Critically, the expansion of wildlife land use amounted to the compulsory conversion of some of the communal lands to exclusive commercial exploitation by private lessees, reducing the access by some poor rural households to natural resources used for various consumption needs. This was sacrificed in return for cash invested in social services with limited capacities vis-à-vis demand. In commercial areas, this trend justified pre-existing large-scale landholding in terms of the export and environmentalist values. Agricultural land use conversion to wildlife enterprises created new relationships between local agrarian and transnational capital (including regional), whereby 'conservancies' created private companies which held and managed groups of farms in one block, further restructuring, concentrating and de-personalising land ownership. This institution consolidated the land and development policy lobby power of large landowners, which together with the increasing demands of black elites to enter the LSCF, generated important contradictions in land reform policy and poverty reduction strategies.

The adoption of the ESAP in 1990 therefore reinforced the direct market approach to land reform by promoting the deregulation of land markets, including through increased land subdivisions and private sales that benefited the elite, while initiating policy discourses on communal area land titling.⁴² Improving exports within the existing land ownership structure was the preoccupation of ESAP.⁴³ The ESAP thus had extensive negative effects on land reform *per se*, as well as on poverty in general. It affected the agricultural output markets of the poor, deepened national and agricultural income and wealth inequalities, and set in de-industrialisation (including in the agro-industrial sector), which led to drastic employment and wage declines while blocking land-based livelihoods that could have emerged through land reform. This increased poverty in general. But one of the ESAP's 'unintended' consequences was to increase the scale and sources of demand for land through illegal occupations in communal areas among the urban retrenched and poor as well as among land-seeking indigenous elites.⁴⁴

The negative effects of ESAP policies on the labour market not only strained urban workers' incomes and consumption, but also limited the beneficial rural-urban linkages based on urban remittances used to boost rural community investment capacities, and the latter's supply of cheap foods. By 1995 20,000 workers lost their jobs in the public sector and 25,000 in the private sector. Real wages also declined such that by 1993 real average total wages stood at 61.9% of their 1980 level, down

from 103% in 1990.⁴⁵ In addition the share of wages and salaries in the national income stood at 40% in 1996, down from 64% a decade earlier, while the share of profits accruing to capital was at 60%, up from 37% over the same period.⁴⁶

Furthermore, since a significant share of rural incomes especially from petty agricultural sales is absorbed by direct and indirect expenditures on education and health services, the introduction under the ESAP of cost-recovery systems on social services increased the financial strain on the rural poor. The Social Development Fund did not ameliorate the situation adequately, since providing safety nets for the poor through social and agricultural facilities was fraught with bureaucratic bottlenecks and did not reach most of the vulnerable rural poor. In addition, direct government support to small-scale agricultural producers through crop pack subsidies had been phased out in the mid 1980s, only to be reintroduced during the 1991/92 droughts. Eventually the budget for these programmes was inadequate and did not reach most of the rural poor. Such crop production support was only reintroduced from 2002, although its coverage has been narrow given the limited fiscal capacity and economic decline. Thus the poverty reducing potential of the market-driven land reform programme was limited in general.

CONCLUSION

The attainment of targets was restricted by the scarcity of land, the rising prices of land placed on the market and the limited capacity of the government to pay. At the start of majority rule a number of settlers abandoned their farms and there were spontaneous occupations of such land. The progress in redistributing land slowed down considerably in the following ten years. When the Lancaster House constitutional safeguards for market-based land transfers expired in 1990, legal instruments for state land expropriation were introduced but not fully used. The implementation of the ESAP instead reinforced the market-based character of land reform, reduced state interventions in support of small farmers and perpetuated the unequal agrarian economy.

Five official and unofficial approaches to land transfer have been taken since the late 1990s. The first approach entailed using the market to purchase land on a willing-seller basis. This was the dominant method used in the 1980s. It is still strongly promoted by donors and commercial farmers but is resisted by the GoZ and other stakeholders. The second approach involved compulsory acquisition whereby the government gazetted land for acquisition and only paid for improvements to the land and not for the land itself. Under this approach the UK is obliged to pay for the land to compensate for its role in land expropriation during colonial times. This approach was favoured by government and by some segments of civil society but was opposed by the commercial farmers and donors. The third approach involved negotiated sales whereby individual farmers and the government negotiated a sale of land or a swap of one of their farms, but few farmers supported this approach. The fourth approach involved NGOs negotiating land acquisition and resettlement in

consultation with the government. The final approach involved land occupations whereby individuals and groups occupied private or state land and allocated themselves stands or plots. The state turned a blind eye, repressed or recognised the allocations.

The land reform process in Zimbabwe gained momentum in the late 1990s due to sustained political pressure from war veterans, peasants and the landless. This political pressure was brought to bear on land reform in spite of political contestation over the land. Most actors now see the need for land reform and for the implementation of a working land reform policy. Many stakeholders and actors are today focused on the need to move the process further through concrete actions.

Zimbabwe has had three streams of land reform, namely: the market; compulsory land acquisition; and negotiations, underlain by land occupations. The Zimbabwe experience with the market-based approach was that the amount, quality, location and cost of land acquired for redistribution was driven by landholders. Neither the GoZ as driver of the land acquisition policy nor the beneficiaries determined the process. Moreover since the state was a keen buyer of land on offer, this in itself conditioned the parameters of the land market in terms of land prices and access to land amenable to the GoZ's settlement planning.

Land reform in the 1990s therefore turned into a major site of political contestation and entailed challenging the property rights of the powerful, propertied classes. Land reform is not a technical issue or a development project that can be easily relegated to international donor technocracy.

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 - Multiple farm owners were able to select which farm they want to keep from among their multiple farms.
 - Indigenous (black)-owned farms will not in general be compulsorily acquired except in cases where multiple-owned farms are underutilised.
 - Farms owned by institutions such as NGOs, churches and trusts will not be compulsorily acquired.
 - Government-owned parastatal farms are not to be compulsorily acquired.
 - No farmers will be left without a residence and land for their commercial livelihood (if these are used productively).
 - Farms with a record of abusing farmworkers are likely to be more frequently targeted for compulsory acquisition.
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Namibian land reform experiences: 1990–2007

ERIC NDALA

HISTORICAL PERSPECTIVE

Land is the basis for human life and is a vital element in any nation's geography and identity. It is an integral resource for production and the sustenance of life on earth.

African tradition teaches that land is a God-given resource to be used by all. Pursuant to this belief, the use of land in years gone by was unrestricted and accessible to everyone who needed it. Traditional authorities served as the custodians of the land, to whom the right of usage would revert for reallocation to others.

Expropriation of land and the individualisation of land ownership began with the advent of colonialism. Landlessness, never before experienced on the continent, escalated. As such land became the source of protracted conflict throughout Africa.

At independence in 1990, Namibia inherited a racially skewed land distribution pattern – a legacy of past colonial policies. Of approximately 69.6 million ha available for agricultural purposes, some 36.2 million ha (or 52%) was deemed freehold land (loosely referred to as 'commercial land'). This land was occupied by some 4,200 (predominantly white) farming households. Conversely, some 33.4 million ha (48%) could be described as communal or 'non-freehold' land – this land supported some 70% of the Namibian population. The apartheid era left behind a complex and difficult legacy that may take years to be satisfactorily redressed.

In response to this, the Government of the Republic of Namibia initiated a land reform programme in 1990. The primary objectives of this programme are to:

- bring about a more equitable distribution and access to land;

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- promote sustainable economic growth;
- lower income inequalities; and
- reduce poverty.

POLICIES AND REGULATIONS

The following policies and legal instruments have been devised to guide the implementation of the programme and to ensure that land reform and resettlement takes place within the legal framework:

Table 1: Overview of land reform events since 1990

Year	Event
1990	A motion was introduced in the National Assembly proposing that the Office of the Prime Minister convene a conference on land.
1991	The National Conference on Land Reform and the Land Question took place.
1992	The Committee on Commercial Farmland made recommendations that were taken into account during the drafting of the Commercial Land Reform Act of 1995.
1992	The Affirmative Action Loan Scheme was established.
1994	A People's Land Conference was organised by civil society.
1995	The Commercial Land Reform Act was passed.
1996	The president declared a moratorium on illegal fencing in communal areas.
1997	The National Resettlement Policy was passed.
1998	The National Land Policy was adopted.
1999	The Communal Land Reform Bill was introduced in parliament.
2000	The Agricultural Commercial Land Reform Amendment Bill was introduced.
2001	The Communal Land Reform Act was re-introduced in parliament.
2001	The revision of the National Resettlement Policy took place.
2001	The Land Tax regulation was introduced.
2002	The Communal Land Reform Act was passed by parliament.
2002	The draft Land Tenure Policy advocated for group property management for communal grazing.
2002	Amendment Act No. 13 of 2002 of Agricultural Commercial Land Reform Act of 1995 provided for the establishment of the Lands Tribunal.
2003	Communal land boards were established in all 12 regions.
2003	Amendment Act No. 14 of 2003 to Commercial Land Reform Act of 1995.
2003	Establishment of the Permanent Technical Team (PTT) to evaluate land reform.
2004	Announcement of land expropriation programme.

Source: Permanent Technical Team Report, 2005

- Constitution of the Republic of Namibia, Article 16
- The Agricultural (Commercial) Land Reform Act, Act No. 6, of 1995 with its subsequent amendments
- The National Land Policy of 1998
- The National Resettlement Policy of 2001
- The Communal Land Reform Act No. 5 of 2002
- Land Survey Act 33 of 1993
- Deeds Registry Act No. 47 of 1937
- Deeds Registries Regulation
- Rehoboth Deeds Registry Act No. 93 of 1976
- Sectional Title Act No. 61 of 1971
- Flexible Land Tenure Bill

THE LAND REFORM AND RESETTLEMENT PROGRAMME

The land reform programme is built on four pillars, namely:

- re-distributive land reform (involving state acquisition according to the willing buyer–willing seller principle and expropriation);
- the Affirmative Action Loan Scheme administered by the Agricultural Bank of Namibia (Agribank);
- tenure reform; and
- the development of un- or underutilised non-freehold land.

REDISTRIBUTIVE LAND REFORM

The Ministry of Lands and Resettlement (MLR) through the redistributive land reform programme has since 1990 acquired 211 freehold farms (measuring 1.43 million ha) on behalf of the government using the willing buyer–willing seller principle for resettlement purposes (see Table 2, *next page*). The acquired farms were allocated to 1,887 beneficiaries from the previously disadvantaged Namibians, as outlined in the National Resettlement Programme (NRP).

NATIONAL RESETTLEMENT PROGRAMME

The NRP identifies different models of resettlement, which are specifically designed to cater for the different needs of the landless as follows:

- *Individual holdings*: This refers to a unit allocated to a family or individual. Ideally it should be a commercially/subsistence viable unit in any agro-ecological zone.

Table 2: Farms purchased by the Ministry of Lands and Resettlement through the willing buyer–willing selling principle, per region, 1990–July 2007

Region	Total hectares	Total farms acquired	Total amount (N\$)	Number of families resettled
Erongo	78,316	8	7,640,285.09	24
Hardap	223,179	35	16,574,453.76	154
Karas	510,748	52	13,245,299.75	117
Khomas	28,021	5	6,600,821.56	25
Kunene	116,400	20	12,581,667.02	173
Omaheke	228,949	44	37,754,995.84	497
Oshikoto	56,132	14	6,720,564.84	576
Otjozondjupa	162,009	33	26,389,383.09	103
TOTAL	1,403,754	211	127,507,471.95	1,669

- *Group holdings*: This refers to a formal or informal group, which consists of more than one person, that cannot form a cooperative but is interested in agricultural or related activities as a group.
- *Cooperative holdings and other legal entities*: This refers to duly registered legal entities, including companies and close corporations, which are dealt with in line with the provisions of the Agricultural (Commercial) Land Reform Act of 1995, (Act No. 6 of 1995).

The MLR had mainly followed the group resettlement and individual resettlement approaches to resettlement. The group or ‘project’ farms were generally unplanned resettlements, especially those preceding the implementation of the Act. Immediately after independence the MLR was confronted with large numbers of landless people, especially from the San communities, former farmworkers and ex-combatants who urgently needed support. These people were settled on farms inherited from other ministries, donated to the MLR by traditional authorities or purchased by the MLR.

In addition, some of the farms acquired for resettlement were used for drought relief efforts to provide people with emergency grazing for their livestock – but these people never left the farms. Project farms such as the Queen Sofia Project in Kunene region and Excelsior in Oshikoto region represented a more systematic and planned approach to group, or project, farming. The MLR records reflect some 42 project farms.

Resettlement has become more systematic and planned, focusing on resettling individual households on individually demarcated allotments. In essence this has meant that large farms are subdivided into smaller allotments, which are then given to individual households with exclusive rights to use the land. Land allocations have

been set by the Land Reform Advisory Commission (LRAC) at a minimum of 1,000 ha for the higher potential (north/northeast) areas and 3,000 ha for the medium potential (southern) areas. This approach has become the norm for the resettlement programme.

Some beneficiaries have managed to produce food for their own consumption and some have produced surplus for the market. Three resettled beneficiaries have graduated from this programme and have acquired their own freehold agricultural land. Transport to market is a constraint, and organised marketing strategies are still being worked out by the MLR and the Ministry of Agriculture, Water and Forestry.

THE AFFIRMATIVE ACTION LOAN SCHEME ADMINISTERED BY AGRIBANK

Concurrent to the state-led acquisition of freehold farms for resettlement purposes, the government in 1992 established an Affirmative Action Loan Scheme (AALS) that is implemented by Agribank. The main objective of this scheme is to encourage communal farmers to purchase commercial farms at a subsidised interest rate. This is intended to relieve grazing pressure in communal areas. To date, about 625 farmers have benefited from the scheme with a total land area of 3.44 million ha of freehold land.

TENURE REFORM

Tenure reform was introduced to give security of tenure to the rural and urban populations of Namibia and after the approval of the Communal Land Reform Act No. 5 of 2002.

Land rights allocation on communal areas

For the first time in the history of land administration and management in Namibia, the country now has a unified legal system for all communal areas. The Act provides for the allocation of rights in respect of communal land, the establishment of communal land boards, and powers for the chiefs and traditional authorities and Land Board in relation to communal land.

The 12 communal land boards (CLBs) established in the 12 regions where communal land is found have approved a total of 3,027 new customary rights, 7,025 existing customary rights, 1,057 new leasehold rights and 39 existing leasehold (permission to occupy [PTO]) rights since the enactment of the Communal Land Reform Act in 2002.

Successful implementation of this activity depends on the communities living in communal areas having an understanding of what is required of them according to the provisions of the Act. Many people have still not applied for their existing land rights because they do not understand what is required of them and due to the existence of unrecognised tribal chiefs in some communal areas. The other issue

hampering the CLB's activities is the lack of transport and technical capacity at MLR regional offices to assist with the verification of land parcels and to produce diagrams and certificates.

Flexible land tenure

While being very accurate and giving a high degree of security, the freehold system of land registration presently in use in Namibia is not easily accessible to the urban poor who usually find themselves in informal settlements. The flexible land tenure (FLT) project therefore aims at providing security of tenure rights for people living in urban informal settlements.

The FLT Bill is ready for presentation. The regulation has been drafted and a pilot project in Oshakati has been successfully executed. However, the delay in passing the bill is stalling the project's progress.

FLT will offer the urban poor security of occupation and will improve their access to financing at financial institutions.

THE DEVELOPMENT OF UN- OR UNDERUTILISED NON-FREEHOLD (COMMUNAL) LAND

The Namibian government, through the MLR, is implementing a project on the development of communal land. It is hoped that the development of the underutilised communal land into small-scale commercial farms will improve the living conditions of communities in these areas and ultimately lead to a reduction in poverty and the creation of employment opportunities.

The main aim of this project is to integrate communal subsistence farmers into the mainstream agricultural economy and increase agricultural productivity of land in those areas.

One way of doing this is by dividing and developing underutilised communal land into small-scale commercial farms. The impact of the programme is that once farms are developed, they are allocated to farmers from the overcrowded communal areas to relieve grazing pressure in communal areas.

Identification of underutilised communal land

A feasibility study by International Development Consultancy during the period 1999–2002 suggested that there are about 4 million ha of underutilised land in communal areas that could be developed to improve agricultural productivity in rural areas and could be an alternative solution in some areas to the problem of land demand for agriculture.

At the end, farmers shall be obliged to pay rental fees. Table 3 details the underutilised communal land by region. Further studies are planned to identify more underutilised communal land for the development of small-scale commercial farms (SSCF).

Table 3: Underutilised communal land by region

Region	Size (ha)
1. Kavango	1,076,000
2. Caprivi	110,000
3. Otjozondjupa & Omaheke	2,400,000
4. Oshikoto	820,000
5. Omusati	450,000
6. Ohangwena	62,100
7. Oshana	43,000
TOTAL	4,961,100

Surveying

Four hundred and fifty seven farming units have been surveyed in Kavango region, 75 in Caprivi region and 24 in Ohangwena region. The process is to continue in the Omusati, Oshikoto, Oshana, Omaheke and Otjozondjupa regions. Thirteen boreholes were drilled in the Kavango region and six in the Caprivi region. Some farming units have been allocated to beneficiaries by the CLBs in Kavango region.

An agreement was recently signed by the MLR and the German Development Bank (KfW) for the development of infrastructure on the farming units in communal areas in Namibia. An amount of N\$43 million was made available for infrastructure investment related to land reform in communal areas.

ACHIEVEMENTS

POLICIES AND LEGISLATIONS

- The enabling policies and legislative instruments outlined above were developed and are being implemented to facilitate acquisition, fair distribution and proper management and administration of land as a major natural resource.
- The Land Reform Advisory Commission (LRAC) was established as per the Agricultural (Commercial) Land Reform Act, 1995 (Act no.6 of 1995) and is instrumental in land acquisition and redistribution.
- Regional resettlement committees (RRCs) have been established in all 13 regions in order to ensure checks and balances. This is also aimed at ensuring regional balance in the reallocation of land for resettlement.
- CLBs were established and are functional in all 12 political regions, except Khomas region which is without communal land.

- The Lands Tribunal was established in Windhoek and is functional.

LAND ACQUISITION

Willing seller–willing buyer approach

Two hundred and thirty four commercial farms totalling 1.43 million ha (see Figure 1) were acquired through the willing seller–willing buyer approach. This was made possible by the government’s commitment to land reform through appropriation of N\$20 million annually (since 1995) for land purchase in commercial areas. This amount has since been increased to N\$50 million.

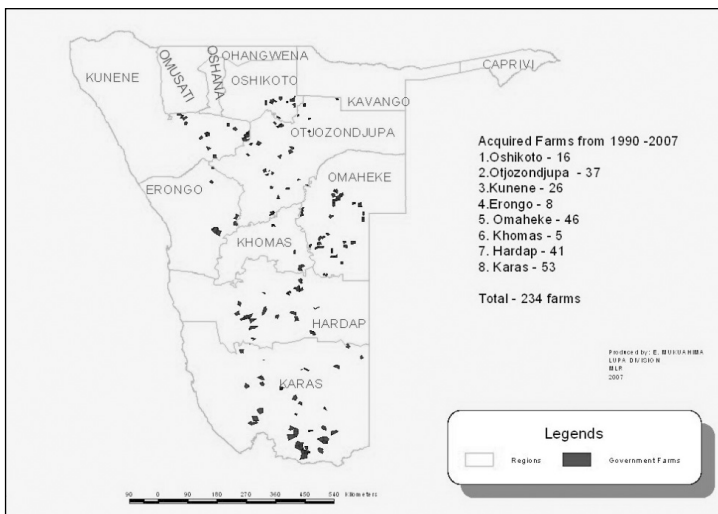
Expropriation approach

The willing seller–willing buyer approach proved to be very slow in delivering agricultural land. The government thus decided to introduce an expropriation method to speed up land acquisition.

The expropriation of agricultural land is a constitutional requirement and farmowners whose land will be acquired through this process will be fairly compensated.

Six commercial farms have so far been acquired through expropriation with fair compensation paid to the owners. A total of 1,373,705 ha of commercial land have thus been acquired through the willing seller–willing buyer and expropriation approaches. Seven farmers that were issued with expropriation notices have taken the MLR to court.

Figure 1: Map showing the location of farms acquired



RESETTLEMENT

The National Resettlement Programme dedicates its limited resources to resettling landless and destitute Namibians, and empowering the resettled beneficiaries to become self-sustainable in terms of production and food security.

A total of 2,040 families have been resettled so far. Resettled beneficiaries are expected to develop the land allocated to them. In order to achieve this, the MLR has provided emerging farmers with the following assistance:

- The provision of farm machinery and implements (e.g. tractors, disc ploughs and harrows) to resettlement projects.
- The provision of agricultural input such as seeds, fertilizer and diesel.
- The provision of 638 goats to 319 San families as seed capital at the Tsintsabis and Bravo resettlement projects.
- The drilling, installation, equipping and rehabilitation of boreholes on resettlement farms and projects.
- The provision of ploughing services to resettlement projects where no implements are available.
- The establishment of horticultural activities under irrigation systems at the San community projects in Okongo Constituency (mainly Ekoka, Eendobe and Onamatadiva Resettlement Projects) and providing the beneficiaries with training.
- The provision of raw materials and tools for income-generating activities (e.g. tailoring, blacksmith and crafts).
- The training of resettlement beneficiaries in the formation of water point committees in order to improve the management and maintenance of common resources on resettlement farms and projects.
- The construction of an office block and accommodation for the Bravo San Community project coordinator.
- The construction of an ablution block at Mangetti Dune San Community Project.
- The construction of 206 houses for beneficiaries at various resettlement projects.

IMPLEMENTATION OF LAND TAX

Property tax is one of the major sources of revenue for both central and local

Table 4: Summary of Namibia's resettlement scheme, 1990–2007

Model/scheme/category	Hectares of land	No. of beneficiaries
1. NRP individual (family) resettlement in freehold areas		
1.1 Categories: 1–3 (i.e. 0-0-0; 0-0-1; 0-1-1)	1,068,939	2,040
2. NRP group resettlement in freehold areas (projects/cooperatives)	±56,897.00	unknown
3. Land under other		
3.1 Land area still pending official allocation/actual resettlement*	287,556. 5309	–
3.2 Land area donated Unam and /used a cooperative	16,631	1
3.3 Land area uncounted for	13,896	-
TOTAL FREEHOLD RESETTLEMENT SCHEME (1+2+3)	1,443,919.50	2,041
4. NRP group resettlement in communal areas	Unknown	–
5. Land transferred from Ministry of Agriculture, Water and Forestry to MLR**	398,859.94	700
6. Land bought by AALS buyers	3,440,000	625
TOTAL	3,838,859.90	1,325
TOTAL NATIONAL FIGURE	5,282,779.40	3,366
Notes:		
*MLR has communal resettlement projects, however land in communal areas is not surveyed, thus hectareage cannot be confirmed.		
** Figures were derived from PTT report and MLR database		

governments around the world, and when implemented in accordance with the canons of taxation has the effect of equitable wealth distribution. Land tax on commercial agricultural land in Namibia is imposed on the basis of the unimproved site value. Valuation for land tax purposes is implemented in five-year cycles. The statute provides the stages to be followed in each cycle. The first valuation period which commenced in 2002 ends in April 2007 and coincides with the end of the validity of the first main valuation roll.

The objective of the programme is to impose a tax on commercial agricultural land for the benefit of the Land Acquisition and Development Fund and to introduce a punitive measure for those who hold agricultural land for speculative purposes through the imposition of a progressive rate of tax on the multiple ownership of commercial agricultural parcels. Land tax in Namibia represents a major source of

revenue for central government and benefits the land reform programme through land acquisition and the development of infrastructure on the land acquired.

Legal framework

Land tax is implemented in accordance with section 76 of the Agricultural (Commercial) Land Reform Act, Act No. 6 of 1995. The Act was amended in 2001 by Amendment Act 16 of 2001, to provide the formula for calculating land tax on each parcel of land. The Act was amended in 2003 (Amendment Act 19 of 2003) to provide for a differential rate of tax according to the category of land and the different categories of owners of agricultural land.

The 2003 amendment enabled the implementation of a dual rate of tax for two categories of owners of commercial agricultural land – i.e. a rate of 0.75% to be imposed on land owned by Namibian citizens and 1.75% to be imposed on land owned by foreign nationals.

The amendments of the Act were accompanied by the finalisation of the Land Valuation and Taxation Regulations, which is the key statutory instrument used in the administration of the land tax.

During the defence of the Main Valuation Roll in the Valuation Court, it was realised that the Land Valuation and Taxation Regulations are not adequate. The regulations have therefore been amended with the objective of strengthening a number of weak areas.

The layperson draft has been prepared and submitted to the Ministry of Justice for drafting and gazetting. The Land Valuation and Taxation Regulations are going to be finalised soon and are critical to the compilation of the second Main Valuation Roll for the period 2007–2012.

Table 5: Agricultural parcels by category of owner

Category of owner	Number of properties	Equivalency in hectares	Unimproved site value (N\$)
Government of the Republic of Namibia	807	6,124,549.8182	658,740,000
Namwater Corporation	108	31,763.2217	5,856,100
Nampower Corporation	24	22,271.2299	4,101,300
Registered farming close corporations	1,463	5,768,549.9707	698,759,100
Registered Pty Limiteds	1,129	5,784,389.2867	592,598,400
Registered trustees	100	497,101.3308	36,380,700
Other owners	8,764	25,139,430.5908	2,762,877,700
Totals	12,395	43,368,055.4487	4,759,313,300

Source: Directorate of Valuation and Estate Management- MLR, 2007

Collection of land tax

A total of N\$86 million was collected from the taxation of commercial agricultural land by applying the rates on the tax base during the 2004/5–2006/7 financial years. The potential amount collected is N\$93 million over the three-year collection period. This amount has been affected by exemptions applying to previously disadvantaged owners, churches, non-profit organisations, charities and the government. The government is 100% exempt from paying land tax while other owners are 85% exempt. A loss of 7.53% of revenue has been recorded over the three-year period (2004/2005, 2005/2006, 2006/2007).

The lack of a land tax reconciliation system has made it difficult to identify delinquent cases. The MLR hopes to have a reconciliation system in place soon at an estimated cost of N\$1 million. The system will increase efficiency of land tax collection by keeping track of all payments and identifying delinquent cases for collection purposes.

PRODUCTION OF THE INTEGRATED REGIONAL LAND USE PLANS

The use and quality of land must be managed carefully to ensure continuous use of land as a factor of production. This entails proper assessment of the capability and suitability of the land, and the integration of farmers' needs and aspirations as well as conservation measures. It is against this background that the MLR has embarked on the production of integrated regional land use plans (IRLUPs) to, among others:

- provide decision-makers with the necessary and essential support tools on which to base their development planning programmes;
- propose possible land use zones based on local land use practices and natural resource endowment, which will minimise land use conflicts among stakeholders while maximising the comparative advantage of available land use; and
- assist decision-makers to prioritise development and provide them with the framework for project formulation and development.

The MLR has so far produced IRLUPs for the Caprivi, Kunene, Ohangwena, Omusati, Oshana, Oshikoto, Otjozondjupa, Omaheke and Kavango regions. The MLR will produce plans for the remaining regions (Karas, Hardap, Erongo and Khomas) over the next few years and will update plans every five years.

THE PERMANENT TECHNICAL TEAM ON LAND REFORM

Sixteen years after the implementation of its land reform programme, the Namibian government felt the need to come up with a revised action plan on land reform, hence the establishment of the Permanent Technical Team (PTT) on Land Reform project

in the 2003/04 financial year. The PTT was tasked to take stock and evaluate Namibia's land policies, programmes and the entire process.

The stocktaking was meant to develop strategic options and recommendations and eventually come up with an action plan that would map out the future direction of land reform implementation in Namibia. In its endeavour to come up with an acceptable document, the PTT consulted a wide range of stakeholders including those that are directly or indirectly involved in land and the land question, as well as the few that have so far been resettled through the land reform programme. This process was completed in 2005 with two sets of documents, namely:

- 'Background Research Work and Findings of the PTT Studies'; and
- recommendations of the PTT Project Steering Committee to the Cabinet Ad Hoc Committee on Land Reform incorporating an Indicative Action Plan on Land Reform, which was subsequently approved by cabinet. This document is entitled 'Recommendations, Strategic Options and Action Plan on Land Reform in Namibia'.

DONOR SUPPORT TO LAND REFORM

The MLR continues to receive donor funding for implementation of the Land Reform and Resettlement programme. Financial support is sourced from various donor agencies, including the following:

- In 1994, the MLR entered into a project partnership with ITC/INSHURD for training technical staff, and in 1996 the Polytechnic of Namibia joined the partnership as a regional training provider.
- The Spanish government and its Spanish Agency for International Cooperation continues to support the resettlement programme. This support has had a positive impact in the lives of the resettled beneficiaries, especially those resettled at the Queen Sofia project in the Kunene region. Fifty households received houses with sanitation facilities, agricultural farming implements such as tractors, ploughs and hand hoes, cattle for animal husbandry as well as training in agricultural production. The Excelsior project in the Oshikoto region also benefited from this support.
- German development cooperation supports Namibian efforts at improved access to land and the sustainable use of natural resources. German technical support through the German Agency for Technical Cooperation (GTZ) supports secure land rights in communal areas and equitable access to commercial farmland through a relevant political and legislative framework. GTZ made a huge contribution to the work of the PTT during the period of its existence and

continuously supported the MLR in implementing its annual business plans. In 2006, the MLR signed a separate financial agreement with the German Development Bank (KfW) to support the development of SSCF units. The development of underutilised communal land into SSCF units required a huge capital investment in terms of cadastral surveying and infrastructural development of the allotments. More funds are still required to fully implement this project.

- The Namibia Nature Foundation provided tremendous input into the work of the PTT, especially through the funding of exposure trips which allowed the team to study the systems and land reform programmes undertaken in South Africa, Zimbabwe, Brazil, Botswana and Mozambique. The lessons learned from these countries impacted on some of the recommendations made, which were consequently approved.
- The European Union continues to support the land reform programme through the Rural Poverty Reduction Programme (RPRP). Its support is mainly in the areas of resettlement programmes, the registration of land rights in communal area projects, land valuation and mapping, and providing expert information and knowledge (e.g. information technology and training).

CHALLENGES

Land reform in Namibia faces a number of challenges, including the following:

- Some land is exchanging hands through dubious schemes.
- Foreigners own multiple farms. For example 65 farms are owned by foreign nationals in the Erongo Region, 31 farms are owned by foreign nationals in the Khomas Region, 19 farms are owned by foreign nationals in the Kunene Region, 22 farms are owned by foreign nationals in the Omaheke Region, 77 farms are owned by foreign nationals in the Otjozondjupa Region, 59 farms are owned by foreign nationals in the Hardpad Region and 75 farms are owned by foreign nationals in the Karas Region.
- Some farms offered are not suitable for resettlement purposes.
- In the case of compulsory acquisition, landowners have the right to appeal to the Lands Tribunal in the process of determining compensation and this leads to protracted court cases. The state may end up paying more if the court rules in favour of the landowners.
- Legal requirements have to be followed at every stage of land acquisition and allocation, and this makes the process longer than expected.

- The eviction and retrenchment of farmworkers puts pressure upon the MLR to make provision for such people.
- Institutional coordination and support to land reform is not properly managed due to the absence of buy-in from key stakeholders.
- The selection of beneficiaries is a cumbersome process, especially given the multitude of applications received per single advertisement.
- Implementation of the lease agreement coupled with the development and maintenance of farm infrastructure prior to signing the lease can be very costly.
- The provision of post-resettlement support to beneficiaries poses both skills and financial challenges to the MLR.
- The existence of unrecognised tribal chiefs hinders speedy implementation of the registration of communal land rights.
- Limited budgetary provision.

STRATEGIES AND RECOMMENDATIONS

The following strategies and recommendations can help to overcome the challenges:

- Provide post-resettlement support packages to resettlement farmers.
- Establish an integrated monitoring and evaluation system to monitor land reform performance.
- Conduct regular consultative workshops with key stakeholders in the land reform process.
- Intensify land acquisition by tightening (reviewing) existing policies and regulations – i.e. develop clear criteria for expropriation and review and consolidate the two land reform acts to benefit all.
- Decentralise functions to the regional councils.
- Develop clear and binding terms of reference or memoranda of understanding for the Technical Committee on Lands and Social Issues in order to make it more functional and responsive to the issues of land reform and resettlement.
- Revise and harmonise land-related policies and legislation. In other words,

consolidate the Commercial (Agricultural) Land Reform Act and the Communal Land Reform Act as one act so that both commercial and communal farmers can benefit from the land acquisition and development funds.

- Land reform is an expensive government undertaking that requires financial resources and qualified technical personnel. Development partners should be encouraged to support the land reform and resettlement programme.
- The MLR should receive support from all for its goals and objectives – namely to distribute land equitably and to make beneficiaries self-sustainable through increased production.

THE WAY FORWARD

Further needs of the MLR include the following:

- In order for the MLR to realise its goals and objectives, it requires additional funds to cover its high operating costs. Much of the work to be done is field related and staff need subsistence and travel allowances. The MLR's current operating budget is insufficient to cover all planned field trips for the year. In most cases these funds get depleted, which results in field trips having to be postponed.
- Transport is also a major problem that the MLR is faced with.
- As already stated, coordination of effort is critical for the success of land reform. Line ministries should provide services to resettled beneficiaries under their respective budgetary provisions, as applies to other activities.

People and parks: Challenges and opportunities¹

BERTUS DE VILLIERS

INTRODUCTION

The concept ‘people and parks’ has become a popular catchphrase to describe the day to day interaction between the conservation authorities and communities² living adjacent to protected areas (previously referred to as national parks and provincial reserves).³ Living together as parks and communities inevitably brings with it elements of competition and even conflict on issues such as conflicting land use, expansion of protected areas, damage caused by dangerous animals, land claims, resource use and commercial benefits arising from protected areas. Although the ideal is to harmonise the land use objectives of communities and conservation authorities, there are many instances, both locally and internationally, where seemingly intractable differences exist. Hence the many examples in the world of breaches of protected area boundaries for purposes of grazing, hunting, collecting medicinal plants and even for residential settlement.

The events in the previous century leading to the creation of many of South Africa’s protected areas were often characterised by black people being dispossessed and forcibly removed from their lands. Black people’s memories of protected areas are thus understandably often quite different from that of their white compatriots. It is therefore no surprise that concerted efforts are under way by conservation authorities at national and provincial spheres to win the hearts and minds of local people with regard to protected areas.

Bertus de Villiers has been involved in issues of land reform for more than 15 years. In his capacity as principal legal officer for South African National Parks (1996-1999), De Villiers was lead negotiator for the settlement of the Makuleke claim in the Kruger National Park. De Villiers is currently a member of the State Administrative Tribunal of Western Australia and a visiting fellow at the Law Faculty of the University of Western Australia.

The philosophy behind ‘people and parks’ seeks to emphasise a sustainable partnership between conservation authorities and local communities. It highlights the benefits and positive outcomes that communities may reap from the existence of protected areas in their midst rather than for them to view such areas as a threat.

Hidden within the nice-sounding phrase of ‘people and parks’ is a potential spider web of complexity, contradictions, diverse interests, competing expectations, differing agendas and sustainability issues. In some instances the relationship may best be described as ‘people *versus* parks’ rather than the ideal of ‘people *and* parks’. ‘People versus parks’ suggests competition, conflict and dominance with an ultimate winner, while ‘people and parks’ is characterised by cooperation, accommodation and multiple winners.

The sum total is that more than ever before the managers of protected areas in South Africa are under pressure to convince local communities of the benefits that such areas offer to the local economy and to socio-economic upliftment. The battle for land, especially in impoverished rural communities in such areas as the Lowveld, Limpopo, Eastern Cape and KwaZulu-Natal, is intense and protected areas will inevitably be under increasing pressure to ‘earn’ their survival. Many communities find themselves locked in a cycle of poverty and to them the cost benefit analysis between having land for farming and grazing or for conservation is a matter of survival and everyday needs.

There is consensus among policymakers and the broad conservation community of South Africa that protected area-based eco- and cultural tourism ventures present an excellent opportunity to stimulate local and regional economic growth, that it offers numerous small-scale, labour-intensive employment opportunities, and that the future of protected areas depends to a large extent on the exploitation of the direct and indirect commercial potential of such areas.

Environmental Affairs and Tourism deputy minister Rejoice Mabudafhasi recently described the political milieu within which protected areas previously existed (and continue to exist in some instances) as follows:

A major controversy surrounding the establishment of protected areas throughout the world is that communities who have been entirely dependent on natural resources have been systematically alienated from ownership, participation and control over these resources. This results in communities being denied sufficient access to resources such as fuel, fodder, medicinal plants, thatch, honey, grass and other basic resources for their livelihoods and cultural needs. The management of protected areas has effectively been centralised in the hands of the minority at the expense of the majority of our people especially rural communities. This approach was based on the very wrong assumption that local people are only helpful as labourers and viewed as destructive communities which should be removed from protected areas as soon as possible.⁴

The time has passed when the existence of protected areas is justified merely on

grounds of conservation objectives and when the areas are protected by the police powers of the state. Protected areas must now demonstrate not only that their existence is justified based on conservation principles but also that the benefits they offer to the local community outweigh the imposition the area causes due to land being excluded from other uses such as grazing, farming, mining or housing.

INTERNATIONAL DEVELOPMENTS – PEOPLE AND PARKS WORLD PARKS CONFERENCE

The policy drive to develop a cohesive and sustainable relationship between people and protected areas has been gaining momentum at local and international forums since the mid-1990s.

The 5th World Parks Conference which was held in South Africa in 2003 provided a major boost to people and parks programmes. Particular attention was given at the conference to ‘people and parks’ interaction and to the practical steps that could be taken to harmonise the relationship between parks and communities. Wide-ranging objectives were adopted at the conference to guide protected areas in establishing linkages and cooperation with local communities. However, the development and implementation of an overall policy framework to give practical effect to those lofty ideals remains elusive. It is therefore not surprising that a South African ‘people and parks’ workshop held in 2006 concluded on a critical note. The ‘lack of transparency and the non-involvement of land owners in the management of protected areas and non-involvement of local government in initiatives aimed at bettering the lives of communities’ was noted with concern.⁵

One of the reasons why the development and implementation of a comprehensive people and parks policy has been so difficult is that each protected area is unique and faces distinct challenges. An adequate response to park–community interaction therefore lies at many levels and with different permutations. No one-size-fits-all model can be implemented in each conservation area.

Conservation areas also face the reality of declining government subsidies and an increasing commercially competitive environment in which they have to generate their own income to supplement government grants. While protected areas are under pressure to maximise the use of their tourism potential, they are also required to outsource as many services as possible to neighbouring communities; however, not all protected areas are profitable. In fact, few would survive without government subsidies or cross-subsidisation from other protected areas. Notably the Kruger National Park, Kgalagadi Transfrontier Park, Table Mountain National Park and Hluhluwe-Umfolozu Reserve are required to subsidise other protected areas. By weakening the geese that lay the golden eggs, the other areas may suffer serious harm.

Protected areas are therefore squeezed between the social obligation to assist communities and the economic reality of maximising their own income through commercialisation. Protected areas – particularly national parks – are seen as economic generators that should stimulate regional growth and finance themselves. Although that may be the case, the imposition of socio-economic targets on parks

may reduce their flexibility to function competitively in the open market. Protected areas will therefore, for the foreseeable future, be at the cutting edge of maximising profitability, pursuing social objectives, assisting communities, outsourcing profitable services and attempting to strike a balance in people and park interaction. Park managers deserve support in meeting what appears to be competing objectives.

THE ELEPHANT IN THE ROOM: 'PEOPLE AND PARKS' AND LAND REFORM

'People and parks' cannot be isolated from the wider debate on land reform in South Africa. Land reform goes much further than the process of land claims. Although land claims and the acquisition of land for agricultural use by previously disadvantaged persons⁶ may not necessarily threaten the conservation estate, land reform has given rise to intense debate over the future use of the conservation estate under claim.

Much of South Africa's conservation estate has been impacted by land claims. The future expansion of parks and the proclamation of new parks will also be affected by land reform objectives. It is estimated that up to a third of the Kruger National Park is under claim, while many of the provincial reserves are claimed in part or in their entirety. Many of the provincial claims have been settled by the return of title to the claimant community subject to a land use agreement.

Even if a land claim has not been lodged on part of a protected area there may still be pressure to make land within the protected area available for alternative uses, particularly for grazing and other forms of natural resource use. The finalisation of the land claims process will therefore not necessarily mean that the pressure on protected areas is disposed of.

On the positive side, some local communities may be convinced to make their communal land available for inclusion in protected areas. Refer, for example, to discussions in this regard for the expansion of Madikwe Reserve, Hluhluwe-Umfolozi, Kruger National Park and Greater St Lucia Wetlands Park. The advantage of such an arrangement is that the local community may be allowed to erect a lodge on their land (which forms part of the protected area) or to conduct other tourism activities that may bring more benefits to the community than farming or grazing.

There are essentially four options available for the settlement of claims on conservation land, namely: restoration of title to the land; provision of alternative land; cash compensation; or a combination of the options. Many urban claims have been settled by means of cash compensation or the provision of alternative land. Some claims in the St Lucia Wetland Park have also been settled by cash compensation. Other claims have been settled through a restoration of the community's title subject to certain conditions, as in the case of the Makuleke claim. Most of the claims on the KwaZulu-Natal parks have now been settled by return of title subject to the endorsement of the conservation status of the land and a management agreement. The remainder of claims on the Kruger are still to be settled.

It seems as if government favours a Makuleke-type settlement of all claims affecting conservation areas. This would broadly be based on the following principles:

- Title to the claimed area is returned to the claimants.
- The land must be preserved in perpetuity for conservation.
- Some cash compensation or alternative land may be made available as part of the package due to the restrictions imposed on the title.
- The conservation management of the land must preferably be the responsibility of a government agency, although in the case of the Makuleke the community can decide after the initial 25 years if it wants to appoint its own conservation management or renew an arrangement with South African National Parks (SANParks).
- The commercial exploitation of the land falls within the discretion of the land owners subject to a management plan approved by the conservation agency.
- The area is co-managed by the conservation authority and the community through a joint management structure.

This model seems like a win-win situation but it is not without problems. Some of the potential problems will be examined later.

PROGRESS AND PRACTICAL EXPERIENCES IN 'PEOPLE AND PARKS' INTERACTION⁷

The complexity of issues that arise from the interaction between protected areas and communities requires the involvement of a wide range of government departments, conservation authorities, provincial and local authorities, and the private sector. Without effective intergovernmental relations and public-private partnerships, protected areas will continue to grapple in the dark.

Experience shows that regardless of the contribution that protected areas can make to the local economy, issues such as poverty, unemployment, training and housing within the local government must be addressed through an all-of-government approach. The ability of parks to turn around the socio-economic plight of communities is limited.

The experience in 'people and parks' interaction over the past decade has been varied. While some major forward leaps have been made there have also been failures and disappointments.

The past decade has been characterised by wide ranging efforts on the part of SANParks and provincial conservation authorities to involve communities more effectively in the affairs of South Africa's protected areas. The 2003 World Parks Conference gave important momentum, credibility and urgency to such efforts. Although the conference recommendations are not binding, member states will inevitably be required to evaluate themselves against the objectives set by the

conference. The South African government has also accepted the conference objectives as a benchmark against which progress in South Africa should be assessed.

This section will briefly summarise examples of the main initiatives that I have come across in my research on people and parks and will make final observations in the form of a ‘reality check’. Some of the projects discussed are ‘one-off’s’ and may be ready for application in other areas, while others are already being pursued in several protected areas. Some projects are already well established, while others are only in the beginner phase – together they form a collage that demonstrates promising progress on the way to meeting the challenges set by the World Parks Conference.

But first, a reality check:

REALITY CHECK

During my research I asked several interviewees to identify what they would regard as ‘reality checks’ in people and park interaction, especially with regard to commercial opportunities that may be pursued in protected areas. The interviewees responded on the basis of anonymity to ensure that none of the responses can be attributed to a specific person or a particular protected area. The following is a summary of their responses:

- Park management is often torn between social welfare and commercial objectives. This makes it difficult to be consistent with decisions, to budget properly or to plan for the future. The dual identity also impacts on the bottom line since the profitability of a protected area may be compromised in the endeavour to support community-driven projects. One line function manager described the situation as follows: ‘We are in a grey area where we have to support communities but we must also be profitable. I cannot see how we can succeed in both.’
- Each protected area must be evaluated in the context of its background, the area in which it is situated, its popularity among tourists, the number and size of communities living in its vicinity, tourism numbers and other factors that make it unique. A one-size-fits-all model will not work. It must also be taken into account that a few protected areas subsidise the others and that only a handful of parks (such as the Kruger, Kgalagadi, Table Mountain, Tsitsikamma and Hluhluwe-Umfolozi parks) are profitable. The remainder run at a loss and a drain in cross-subsidisation cannot be afforded.
- Care should be taken that protected areas do not outsource their most profitable projects (such as open drives, walks, luxury accommodation) and be left with only the unprofitable ones. The risk of external interests cherry picking the profitable products and the subsequent erosion of the commercial survival of some protected areas is real.

- The complexity of local politics within and between communities should not be underestimated. Each commercial decision that favours one person is likely to upset a few others. Such disappointment and possible conflict often requires attention and management by park staff. The politics of outsourcing is therefore time-consuming and sometimes debilitating.
- The time-lag between conceptualising projects and delivering benefits cause many communities to lose hope. Communities generally find the delay for projects to come off the ground frustrating and demotivating.
- Staff at ground level must be listened to when they explain the challenges faced in commercialisation, outsourcing and resource use. Senior management is often driven by unachievable or unrealistic objectives and ideals. This exhausts and demotivates staff and alienates communities when promises are not fulfilled.
- Be realistic and specific when setting goals. It is better to over-perform than to have to explain continuously to communities why projects do not deliver on time or why projects are not as profitable as they were made out to be at conception.
- Beware that new elites do not continue to exclude the poor. Black economic empowerment (BEE) compliance⁸ may be reached without anything changing in the economic plight of local communities.
- Beware that contracts are not taken up by BEE empowered city dwellers with few or little benefits going to the local community. BEE compliance does not necessarily equate to regional development. The challenge is to create a regional dynamic whereby contractors who deal with a protected area would also find business opportunities outside the protected area.
- An 'us' and 'them' culture exists in and around many protected areas and may take years to bridge. Despite the pleasant sounding 'people and parks' slogan, the reality is sometimes much more confrontational and a 'people *versus* parks' culture persists in some cases.
- Communities that are impoverished do not have the patience to receive benefits in a long, drawn-out way. While community-owned lodges may be to their long-term benefit, communities sometimes have difficulty in understanding that it might take years to pay off the construction costs of the lodge without any benefits flowing directly to the people. Several communities have used capital grants to make 'Christmas payments' in order to placate communities.
- Communities expect more direct and tangible benefits from the protected areas. Contracts and outsourcing usually benefit a few entrepreneurs but the wider

community may be better served by a form of community levy as pursued in KwaZulu-Natal. This levy is arguably the most effective cross-community project that has been implemented by any of the conservation authorities.

- Protected areas in rural areas are often dealing with people who have a very low skills base, and someone with potential is easily identified and enticed to the city as soon as training is complete. Role models are therefore always on the move and are not available to inspire young entrepreneurs in rural areas.
- The reality of dealing with land claimants as owners of the land (e.g. Hluhluwe-Umfoluzi) and the rest of the black community (who are not owners but who have an interest in the park) is complex and overwhelming. Working out the relationship between park forums (where all of the *community* is represented) and joint management bodies (where only *land owners* are represented) is stressful and may erode some of the progress that has been made.

PRACTICAL STEPS

What follows is a short summary and overview of some of the main projects in protected areas.

POVERTY RELIEF

The government-funded work for water, poverty relief, coast care and working for wetlands programmes have had a major impact on the creation of temporary employment in protected areas and surrounding communities. Thousands of people have been trained and employed and new infrastructure such as roads and tourism facilities have been created. Many practical examples can be shown of how relief funds have been used to create employment and contracting opportunities. The benefit of the works undertaken will be felt for years to come.

Unfortunately many conservation areas have made little progress with community economic activities outside the poverty relief projects. Some protected areas do not have any economic empowerment engagement with their communities other than the poverty relief projects. There is also the risk that those contractors that have been trained may find few if any opportunities outside the protected area to supply their services. The success of park training is therefore closely linked with wider regional economic growth.

The success with the poverty relief projects can easily blind an observer into believing that communities have been given access to major commercial contracts and ventures within protected areas. The reality, however, is that if the poverty relief projects are set aside, slow progress is being made to include communities in the economic benefits that protected areas offer. SANParks has, according to my understanding, lost most of this funding since it has been reallocated to local

governments. This means that the 'real' SANParks people and parks projects will now come under more intense scrutiny.

The slow progress may be understandable and caused by, for example, a lack of training, education, capacity and skills within local communities. Several staff members who deal with these matters at an operational level said they face enormous challenges in finding contractors who can deliver reliable services of a suitable standard. In many instances staff felt despondent and frustrated at what they perceive as a lack of understanding by senior management of the realities on the ground. I was given many examples where well-intended initiatives have failed.

The slow progress may, however, also be due to opportunities not pursued or taken up at an operational level by conservation authorities. What is needed in protected areas is a team of business 'creators' whose main task is to identify commercial opportunities for communities within parks and to pursue these with vigour. In many, if not all, instances black economic empowerment is subsumed in somebody's job description; for example, the person responsible for environmental education or community liaison may also be tasked with the economic empowerment function. Such people may not necessarily be trained in the field or have business acumen. These types of projects can only get off the ground if there are people dedicated to identifying economic opportunities, facilitating partnerships and removing obstacles.

Developing skills and finding suitable suppliers of goods and services is an arduous process that requires much time, commitment and energy. But most of all it requires patience, vision and a 'flag carrier'.

PARK FORUMS

It is now common practice, and also required by statute, for each protected area to have at least one forum where members of the community can make inputs regarding the management and control of protected areas. Although these forums may have no legally binding powers, their recommendations carry substantial weight and have a direct influence on the management of the protected area.

Funding of the forums – and particularly the working groups that report to the forums – require ongoing commitment to ensure sustainability of the interaction. It is unrealistic to expect protected areas to establish forums without providing for the necessary funding and administrative support for their effective functioning.

The Golden Gate Forum and forums around the Kruger and Table Mountain parks demonstrate how successful the interaction between park management and forums can be. It also highlights why funding and administrative support for the working groups especially is so important. The working groups are the 'engines' of the forums. In time the working groups may become involved in other socio-economic issues outside the protected area.

There is often confusion about the exact role of the forums in decision-making within a protected area. The terms 'consultation' and 'joint management' are often

used interchangeably and without recognition that they have fundamentally different meanings and legal arrangements.

Park forums in general are well suited for community ‘consultation’. Although much weight may be attached to the *advice* received, the forums do not have legal power to bind conservation authorities. Members need to be constantly reminded of the forum’s limited powers and especially that it cannot prescribe to park management. At the same time park management must be sensitive to recommendations made by a forum since completely disregarding its advice will inevitably weaken its credibility.

Joint management is normally associated with a legally enforceable arrangement whereby privately owned land forms part of a protected area. An agreement usually sets out the conditions whereupon the land is made available for conservation, the commercial exploitation of the land and particularly the responsibilities of the management authority. It is common for a joint structure to be set up where decisions affecting the land are made – hence the reference to ‘joint management’.

Effective joint management of a protected area has been attempted in only a few instances and has proved to be very complex. Examples include the Makuleke (Kruger National Park), San and Mier (Kgalagadi Transfrontier Park), Riemvasmaak (Augrabies National Park) and Richtersveld (Richtersveld National Park) communities. Joint management is not a panacea for dealing with local community demands and the complexity thereof must not be underestimated.

RESTORATION OF TITLE TO LAND

The process of finalising land claims in protected areas is ongoing. It will take some time to work out detailed arrangements in those instances where title has been restored without an agreement in place to set out the respective rights and responsibilities of the parties involved. The claims affecting South Africa’s premier national park, the Kruger, are the most notable that remain outstanding. In some instances, such as Itala and Hluhluwe-Umfolozi, details regarding management and commercial exploitation need to be worked out although title has already been restored.

There is substantial risk that the restoration of title without detailing the future management arrangements and restrictions the community might face in accessing and utilising their land, may lead to frustration and confusion on the part of the community and the conservation managers. In the case of the Makuleke and San land claim settlements, all legal arrangements were finalised as part of the settlement; and even in those cases it is taking time for parties to work out the finer details of their relationship. Restoring title without a formal management agreement has the potential for conflict.

It appears that the government’s desire to finalise all or most land claims by March 2008 has resulted in title being restored in some protected areas without the details of future arrangements necessarily being clear. Staff and communities at, among others, the Hluhluwe-Umfolozi, Itala, Pilansberg and Blyde River protected areas may

face challenging times ahead: legal ownership of land may have changed but the conditions of use and management arrangements are not yet in place. Several management and community representatives with whom I spoke expressed concern (on the condition of anonymity) that they have been kept in the dark as far as the land restoration process is concerned, even though they would ultimately be responsible for making it work on the ground.

Four options are essentially available for the settlement of land claims on conservation land, namely: restoration of title to the land; the provision of alternative land; cash compensation; or a combination of the options.

Claims in many urban areas have been settled by means of cash compensation or the provision of alternative land and there is no reason why claims on the conservation estate could not be resolved by means other than the automatic restoration of title. Some claims in the St Lucia Wetland Park, for example, have been settled by cash compensation. Time will tell if government should have pursued options other than restoration of title more vigorously and creatively.

In following the precedent of the Makuleke settlement, the government, conservation authorities and claim groups may have overlooked other options that might have led to better results for specific communities. Some disillusionment may, for example, be caused for the following reasons:

- Communities may in time find that they would have been better off economically with substantial tracts of alternative land for grazing or farming. The benefit of having alternative land is that communities receive it unencumbered and future generations may deal with it in their best interest. Even if alternative land was given to a community, arrangements could still be made for limited access rights for cultural or traditional purposes.
- Communities may at this stage accept the restoration of title to land only to find out in future that their rights of commercial use are severely curtailed or that their rights of access and ownership are subject to management decisions of the conservation authority or a management plan. In the excitement of having their land returned, communities often do not fully appreciate the nature and extent of limitations on their rights to make decisions regarding the land.
- The conservation authority may in due course find that its ability to plan for the future of a protected area and the expansion thereof, and to manage and control an area, is curtailed due to the state no longer being the owner of the land. Joint management of the Pafuri area with the Makuleke (which amounts to 25,000 ha out of 2 million ha) is entirely different in scale to jointly managing an entire protected area with one or more communities.
- Communities may find that the purported benefits arising from tourism activities within a protected area, such as the profitability of lodges or the provision of

goods and services, are not necessarily as high as they expected or as was envisaged by their consultants. The rush by communities to open luxury lodges is often fuelled by the expectation that such lodges would automatically employ large numbers of people and show high profits. The experiences of some of the newly privatised lodges in the southern part of the Kruger and Madikwe show that easy profits are not as simple as some may have thought.

- Communities may find themselves in a position where title to their land is returned but that due to the wilderness status of the land it may not be developed or the land may be unattractive for building tourist facilities. The lodge developed by SANParks and the San and Mier communities in the Kgalagadi Transfrontier Park is a case in point. The commercial viability of a lodge that is situated so far from established infrastructure has become an issue. The lodge was established in this location for non-commercial reasons. Even some of the most recently privatised bush camps in the Kruger Park have had to revisit original expectations of profitability.
- Non-owner communities that live adjacent to protected areas may be in conflict with owner-communities when it comes to the benefits and economic opportunities that may be derived from the protected area. Refer, for example, to the potential conflict between claimant communities around the Kruger Park and the wider black communities that also wish to benefit from the park. A practical question put to the author during interviews was whether the owners would receive preferential treatment in the allocation of contracts and how this would be accepted by the rest of the community. The interaction between the general communities through the park forums and the owner-communities through a joint management structure will bring unique and demanding challenges to the management of protected areas.

COMMUNITY LODGES

Several community-owned lodges have been erected over the past few years in, for example, the Madikwe, St Lucia and Makuleke areas. These lodges function on the following principles:

- The lodge is owned by the community.
- It is situated within a protected area.
- It is managed by an external operator.
- An annual rental is paid to the owner of the land, be it the community or the conservation authority.

- Preference is given to the employment and training of members of the community.
- Procurement preference is given to members of the community to provide goods and services.
- It is envisaged that the lodge would in due course be managed entirely by members of the community.
- Visitors to such lodges interact with members of the community to learn more about their culture.

The community lodges in Madikwe, Makuleke and Greater St Lucia show the important contribution that can be made by giving a community a stake in the eco-tourism industry. It must, however, also be borne in mind that an oversupply of such facilities or erecting facilities in areas that are not suited to tourism may cause frustration and disappointment within a community. As lucrative as tourism might be, it is not a quick recipe for wealth and is not precluded from failure.

Many factors impact on the profitability of a lodge and the mere fact that a community has a successful land claim does not automatically translate into a successful lodge. The senior community liaison officer of a conservation authority told me that many communities are one-track minded and think only of development without paying attention to profitability or sustainability.

It must also be taken into account that conservation authorities increasingly depend on their own resources to fund the management and control of the areas for which they are responsible. Without income from tourism activities such as accommodation, walking trails, open-vehicle drives and catering, conservation authorities will become cash strapped. If the quality of conservation suffers, the quality of the tourism product will inevitably suffer too.

MAINTENANCE OF INFRASTRUCTURE AND FENCES

Several protected areas have outsourced aspects of infrastructure maintenance (such as roads, water and fences) to contractors who were trained during the poverty relief projects. Some of the contractors have secured contracts to do similar work for private land owners or public authorities outside the protected area. There are good examples in the Addo, Kruger and Golden Gate national parks where contractors have become successful in securing contracts outside of the national park.

OPEN-VEHICLE DRIVES

Open-vehicle drives are a lucrative service offered in protected areas – especially if the drives are operated from the rest camps with little or no competition from external operators. Conservation authorities have been reluctant to let go of their

monopoly to offer the service from rest camps, but much success has been achieved in cases where black operators have been allowed into the market, such as at Pilansberg. The Kruger Park and Hluhluwe-Umfolozi rest camps are first prize for black-owned open-vehicle drive operations. Private operators in the Kruger run their services from the gates while the camps remain the exclusive domain of the park management.

It is puzzling that so few of the many open-drive vehicles active in the Kruger Park are black owned. Black ownership of a vehicle (refer to the experience in Pilansberg) or at least a partnership between an existing operator and a black entrepreneur should be facilitated. It must, however, be acknowledged that the Kruger depends on the income it derives from its monopoly on open-vehicle drives and any loss of money due to outsourcing the service would have to be made up by government in additional grants, which is unlikely.

HOP-ON GUIDES

The hop-on guides offered at Addo National Park is a unique service, and with proper training and marketing could become a standard feature of most protected areas. A hop-on guide is a member of the local community who is trained in tourism and nature conservation. The guide joins a private vehicle or bus for half a day or a full day to give visitors a firsthand account of the nature, environment and cultural issues.

There are many benefits to having a private guide from the local community, which is not on offer in standard tourism drives. The Addo National Park experience has, however, shown that it is essential for the hop-on services to be offered at the main tourist rest camps and not only at the entrance gates to the protected areas. Park management cannot leave the guides to their own devices to operate from outside the protected area; ongoing support, guidance and encouragement are required. Visitors to protected areas must be reminded of the service and must feel that they can participate in it from the safety of the protected area without having to go back to the entry gate in search of a guide.

CAR WASH

Several protected areas have outsourced car wash facilities at rest camps and entry gates to local black entrepreneurs. This is a great way to create employment and with proper advertising could expand further. The experiences at the Kruger Park and Pilansberg show that although small, these ventures create employment in a sustainable way, the cash flow and turnover is good and it may lead to other ventures in and outside the protected areas.

LAUNDRY

The outsourcing of laundry and ironing is being actively pursued by several protected

areas. This is a typical service that could be on offer in close proximity to a protected area and is ideal for a BEE partnership or full community member ownership. Protected areas that are situated close to towns may be able to forge partnerships between existing laundry operators and black entrepreneurs.

INTERIOR DECORATING

The services of community members are often used to refurbish and repaint existing facilities and to decorate new lodges. This gives a local touch to facilities and has proven to be popular with tourists. It is especially in the case of luxury bush lodges such as Singita, Madikwe, Golden Gate and other community-owned lodges that community members have benefited from undertaking interior decorating and providing curtains, linen and artefacts. The experience at Golden Gate in furnishing the entire new Mountain Retreat rest camp with locally produced furniture and linen shows what can be done. In that case the suppliers have now expanded into the national market.

COMMUNITY LEVY

The community levy introduced in KwaZulu-Natal Province in the late 1990s is arguably the single programme undertaken by any conservation authority that offers the most direct benefits to communities. Aspects of the programme may be open to criticism, but over the past decade it has made a huge contribution to communities around reserves and even in the cities of KwaZulu-Natal.

Communities in other parts of South Africa will likely agitate for similar levies to be introduced in the light of the time required to get economic empowerment projects under way and the complexities faced by the communities and management of protected areas. There is a strong case to be made for introducing community levies in all protected areas since a levy has wide application and benefits more than a few entrepreneurs only.

GATES AS NODAL/BUSINESS POINTS

The entry gates to protected areas are ideal nodal or business points from which to base community initiatives. The gates are usually close to community living areas, which makes the transport of people and products to the point of business cheaper.

Typical activities offered at entry gates could include, among others: selling refreshments and curios; booking accommodation; boarding open vehicle and night drives; hop-on guides; and learning about cultural-tourism services on offer within the community. Communities can also make overnight bed and breakfast facilities available to visitors.

The new entry gate to the Kruger Park at Phalaborwa and the existing activities such as Punda Maria and Mankwe Safaris at Pilansberg are examples of how multiple

community businesses and enterprises can be structured around a focal point. The Twee Rivieren rest camp in the Kgalagadi Transfrontier Park provides an ideal opportunity for the marketing of the San community's products and services.

DAY VISITOR FACILITIES

The trend in protected areas is to separate day visitor facilities from those of overnight guests. Day visitor facilities are often situated closer to the entry gates to facilitate community involvement and also to reduce the infrastructure that has to be created to support such facilities.

The experience at Pilansberg and Skukuza of outsourcing day visitor facilities and refreshment stores, as is the case with services at entry gates, offers local communities an accessible and captive clientele.

CATERING

Community members can provide various types of catering, for example: special dishes at certain events; tearooms close to or within the protected area; refreshments (tea, coffee, cake) at meetings; typical African meals for special events or as part of the set menu at restaurants; and visits to a community to eat with the members. Various references are made in the report to how aspects of catering have been outsourced. If the experience of bed and breakfast establishments in urban townships is anything to go by, a similar service linked with a visit to a protected area could bring great benefits.

VEGETABLE AND FRUIT GARDENS

Vegetable and fruit gardens bring employment to communities as well as giving members an opportunity to provide for their own needs and to compete for contracts in the hospitality industry. Vegetable and fruit gardens also give rise to secondary businesses such as packaging and transport. Refer, for example, to the experiences at Tsitsikamma National Park and the Makuleke community's newly established gardens. Local and provincial authorities may, in consultation with protected area management, assist local communities to establish vegetable and fruit gardens in close proximity to protected areas, similar to that undertaken in the Makuleke community.

The same principles and benefits may apply to the livestock industry, although the supply of meat, poultry and fish is subject to more regulations and health requirements than is the case with vegetables and fruit.

TRANSPORTATION OF STAFF

Transporting staff from villages to rest camps or places of employment is a niche function that lends itself to outsourcing. It may also open up opportunities for the

operator to provide a similar service to other businesses. The experience at Singita in the Kruger Park may be useful to pursue in other protected areas.

ENVIRONMENTAL TRAINING AND EDUCATION

While environmental training and education does not create employment opportunities as such, it opens the eyes of the community to the benefits that eco-tourism can offer. Staff at several protected areas commented on how community members became keen to pursue business opportunities in eco-tourism after attending environmental training and education programmes. The training and education, or parts thereof, may in due course be outsourced to community members. All the interviewees spoke about the long-term benefits that flow from the respective training and education programmes.

COLLECTING FIREWOOD

The management at several protected areas use local contractors to collect and sell firewood to visitors. The wood may be collected in or outside the protected area. The trend nowadays is for firewood to be sourced from areas other than the reserve.

The examples of Madikwe, Kruger Park and St Lucia show that collecting and selling firewood is labour intensive, brings with it good cash flow and gives rise to secondary enterprises such as packaging and transport. It could open contracts in urban areas and other tourism establishments around protected areas.

REFUSE REMOVAL

Several protected areas have outsourced their refuse removal to local contractors. Refuse removal can be left to a local entrepreneur particularly in instances where camps and picnic facilities are close to the entrance gates of protected areas.

CURIOS AND ARTEFACTS

Selling locally made curios and artefacts is the main income-generating activity for communities. Protected areas have adopted various strategies to enhance the benefits that communities can draw from selling curios, for example: making space available for artists to work at entrance gates to enable tourists to see how they work; requiring shop operators to stock a percentage of curios from local artists; offering training to artists to learn new techniques; using artists to make products for tourism facilities in the protected area; and facilitating contact between artists and professional interior decorators to expand the range of products on offer in cities.

OUTSOURCING CURIO AND REFRESHMENT SHOPS

Outsourcing smaller curio and refreshment shops is an ideal way to bring community

operators into the commercial realm of a protected area. Some larger shops within protected areas may set aside an area within the shop for trading by a community operator.

Communities usually feature shops ranging from small tuckshops to supermarkets, and the owners of such shops should not find the transition to operating in a protected area too challenging. The camping site tuckshop in the Pilansberg has been outsourced to the operator who runs the day visitor shop, resulting in economies of scale for the owner. The outsourcing of picnic spots in the Kruger is also a good example.

RESOURCE USE

Resource use within protected areas requires further development and fresh ideas. It must be acknowledged that many tourism activities undertaken today in protected areas were seen as sacrilege a decade or two ago. Examples of resource use in protected areas include the harvesting of thatch, making animal parts available to communities and limited hunting.

Pressure on the conservation estate to maximise resource use will come from two directions: the communities; and from the challenge to find new sources of income in the light of declining government subsidies.

Two land claim settlements within national parks have put the issue of resource use firmly on the agenda. In the case of the Makuleke, hunting for commercial purposes was allowed for a short period but it has been discontinued. There is no provision for resource use by the community within the Makuleke area. In the case of the San it is recognised that some resource use within the Kgalagadi Transfrontier Park should be allowed, but the exact details and the area within which the use can occur must still be finalised.

CONCLUSION

‘People and parks’ signifies both partnership and conflict. It is inevitable that competition for land in South Africa will challenge the system of protected areas, but it also brings opportunities for local communities.

Protected areas will increasingly be required to ‘justify’ their survival on ecological grounds and, importantly, will have to pay their own way. If a protected area cannot demonstrate its practical benefits to the local community, it may become the victim of competition from other land use options.

Compared to a decade ago, major progress has been made to involve communities in protected areas; however, given the challenges that exist, much remains to be done before protected areas can rest in peace.

ENDNOTES

- 1 This paper is based on the report De Villiers B, *People and Parks Sharing the Benefits*. Johannesburg: KAS, 2008.
- 2 'Local community' is defined as 'any community of people living or having rights or interests in a distinct geographical area' (s1 Definitions of the Protected Areas Act 2004).
- 3 S9 of the Protected Areas Act defines what areas fall within the classification of a 'protected area'. For purposes of this paper it refers to what was previously known as national parks and provincial reserves.
- 4 Mabudafhasi R, 'Conservation for the People by the People'. Speech delivered at the second People and Parks workshop, Beaufort West, 29-31 October 2006.
- 5 'People and parks workshop concerned about slow transformation within environment sector'. Media release issued by the Chief Directorate: Communications, Department of Environmental Affairs and Tourism, 1 November 2006.
- 6 The government's target is to redistribute 30% of agricultural land by 2014. This can only be done by large-scale acquisition of land from private land owners and making available state-owned land where possible. It is estimated that at least 2 million ha (the size of the Kruger National Park) would have to be acquired per year to meet the target. For an overview of the land reform process refer to De Villiers B, *Land Reform – A Commentary*. KAS Policy Paper No 4, January 2008.
- 7 The author conducted wide-ranging interviews over the past two years with management and stakeholders in some of South Africa's premier national parks and provincial reserves. While it is not possible to summarise all the views here I will reflect on some of the general themes that came out of the interviews.
- 8 According to the Black Empowerment Act 2003, 'black' people include African, Indian and coloured South Africans.

Coordinated governance support and training: The Sustainable Restitution Support – South Africa programme

CANNY GEYER AND ANSULETTE VAN ROOYEN

BACKGROUND

Land reform is critical in addressing the racial legacy and concomitant skewed land distribution patterns of South Africa's past, and is also an indispensable strategic intervention for economic growth and development. South Africa's land reform programme is delivered through three mechanisms, namely:

- land restitution;
- land redistribution; and
- land tenure.

The government of South Africa has settled approximately 90% of all land claims lodged since the programme's inception in 1994. In President Mbeki's 2005 State of the Nation address, the government declared that all outstanding land claims would be processed by March 2008; however, this deadline has been extended a number of times and the current thinking is that the land transfer process will be finalised between 2012 and 2015. There are growing concerns that the land restitution process has focused primarily on the transfer of land as opposed to the quality of transfer and the success of restitution beneficiaries to maintain a commercial operation and to develop new enterprises.

In October 2003 the Regional Land Claims Commission (RLCC) in Limpopo established the Partnership for Sustainable Land Reform Development, which

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comprises a diverse group of strategic partners. Funding was sought and obtained from the Development Bank of Southern Africa, the Canadian International Development Agency (CIDA) and the Southern African Development Community (SADC) Centre for Land-related, Regional and Development Law and Policy (CLRDP) based at the University of Pretoria. The World Bank made technical assistance available. The output from this initiative was a publication entitled the *Operational Framework for Post-Settlement Support Interventions*.

The SADC CLRDP in South Africa (funded by CIDA), with the assistance of South African experts and a number of Canadian experts (coordinated by the Centre for Property Studies in New Brunswick, Canada), implemented and tested the *Operational Framework* in three restitution communities, namely: the Mashishimale community in Limpopo Province, just outside Phalaborwa; the Nkumbuleni community situated near Pietermaritzburg in KwaZulu-Natal; and the Ebenhaeser community located near Vredendal in the Western Cape.

These provinces were chosen as being representative of South Africa's geographic and demographic land restitution profile. Outstanding claims in these particular provinces are primarily related to lands that have successful commercial farming enterprises currently operating. The Sustainable Restitution Support – South Africa (SRS-SA) programme provided a model that can be scaled-up as the pace of required land restitution support increases in the coming years.

This pilot programme addressed the efficacy, efficiency and effectiveness of providing coordinated governance post-settlement support to the beneficiaries of land reform. Lessons learned from this process are currently incorporated into an upgraded edition of the *Operational Framework*, the *Operational Strategy*, which could be implemented across all restitution communities in South Africa and adapted later for application to redistribution and tenure reform communities. Furthermore, it is believed that this programme can serve as a model for application across all of Southern Africa.

A critical issue identified by the *Operational Framework* is the importance of both the pre-settlement and post-settlement periods in preparing a community and government for the settlement process, and for ensuring that the enterprise operations remain intact and viable. Thus the programme emphasises the importance of addressing these issues in terms of maximising the probability for success, or ensuring sustainable livelihoods for the beneficiaries, and maintaining agricultural or other enterprise production for the public good.

POST-SETTLEMENT CHALLENGES

Research during the drafting process of the *Operational Framework*¹ indicated that a distinction needs to be made between challenges at governance level and those at project level, the most important of which are set out in Table 1:

In order to address these divergent and sometimes complex issues, the SRS-SA set out to:

Table 1: Post-settlement challenges at governance and project level

Post-settlement challenges at governance level	Post-settlement challenges at project level
Insufficient emphasis on post-settlement and lack of an existing comprehensive post-settlement strategy at national level.	Absence of effective social facilitation in pre- and post-settlement to prepare beneficiaries for responsibilities/realities pertaining to land ownership. Settlement support staff at the RLCC are inadequately trained in social facilitation to deal with and contain complex community dynamics affecting governance and project development, and preparing reality checks for beneficiaries.
Inadequate institutional links between pre-settlement planning and post-settlement implementation.	Lack of consistent, integrated project development in terms of a broader economic, social and environmental sustainability context.
Lack of institutional awareness about the potential impact of land reform projects on local and provincial socio-economic development.	Varied quality of completed business plans (if available) and poor adherence to business plans by communities.
Ad hoc decentralisation and poor integration of land reform projects in provincial and local planning and budgets (in concrete terms and deliverables).	Lack of continuous and relationship-based advisory services (e.g. single-use, in-and-out consultants, service providers and government interventions).
Absence of customised (needs specific) post-settlement support mechanisms at local (community) level.	Inadequate project management capacity and relevant technical skills among beneficiaries to start up desired income-generating projects.
Random cooperative governance and inter-departmental coordination at project level.	Ad hoc provisioning of capacity-building and training programme beneficiaries.
Poor communication, data and information sharing among stakeholders involved in post-settlement implementation and support intervention.	Inadequate capital/resources, infrastructure within communities to start up projects.
Poor monitoring and evaluation systems in place to oversee projects' restitution progress.	Insufficient provision of relevant capacity-building and training programmes to beneficiaries.
Administrative constraints: lack of human resources/capacity, high staff turnover rate and cumbersome procurement procedures at RLCCs.	Insufficient monitoring and evaluation of project developments in resettled communities. Unrealistic community expectations linked to lack of economic and feasibility assessments of selected projects and community-centred approaches in pre-settlement planning.
	Complex community dynamics and governance deadlocks stalling development and land use initiatives.

- support equitable access and participation of men and women in sustainable rural development through improved governance of the land restitution programme;
- ensure that the benefits of restitution are enjoyed by the community as a whole;
- ensure that land acquired through restitution remains a productive asset, to generate income as well as to support improved and sustainable livelihoods;
- create employment opportunities;
- eradicate poverty; and
- implement a replicable service delivery model.

SRD-SA FOCUS AREAS

The main focus of the SRS-SA programme was to strengthen governance within the respective restitution communities and within the government departments working with and responsible for the provisioning of post-settlement support services.

It was found in previous research² that restitution communities which receive agricultural and other enterprises as part of their restitution claim are confronted with two main challenges, namely: access to sufficient and timeous finance; and a lack of appropriate governance capacity to manage the intricacies of project level challenges.

Governance comprises more than management and refers more to the process of governing, or the interrelated sets of actions and principles required to make governing or management work. As was found in the work of Tomkova et al,³ the lack of a proper understanding of what actions and principles are required for effective project implementation led to a situation where the management of the projects by the community governance structures and a provisioning of appropriate support by the relevant external stakeholders were not possible. Overarching areas that were neglected from the community's perspective were an understanding of business principles and the larger land reform process, and a lack of information provided to the larger community regarding the specific restitution claims process. It was also found that in general the various government departments and other providers of land reform services lacked capacity in the areas of project management, governance, an understanding of government financial principles, monitoring and evaluation, management, intergovernmental relations and business principles as they relate to restitution.

In order to address these areas from a community perspective, the SRS-SA developed a range of modules to train community facilitators and the executives of the community's governance structures. Fifteen facilitators from each community were trained in:

- facilitation;
- governance;
- financial planning;
- business management;
- entrepreneurship;
- land reform;
- sustainable agricultural development;
- conflict and conflict resolution;
- alternative dispute resolution;
- monitoring and evaluation; and
- resource mobilisation.

These facilitators were subsequently contracted by the SRS-SA to ‘spread the word’ in the communities. Over a period of three months the facilitators visited various households and made presentations at community gatherings, informing those they spoke to about how the restitution process works and is affecting their community. The facilitators also acted as the mouthpiece for the executives, providing feedback to the community regarding the progress of the claim and/or information pertaining to the business ventures being established on restituted land. Feedback received from the facilitators indicated that the wide scope of training assisted them significantly in discussing difficult topics and providing the communities with relevant information. A shared opinion in all the communities was that the facilitators played a critical role in creating an understanding of the communities’ developmental goals and improved trust regarding the role and work of the executives.

A professional development course is currently being developed based on the outcomes of the SRS-SA programme and inputs received from all stakeholders. This course aims to provide the practitioners of land reform (government, civil society and the private sector) with a broader understanding of the context of land reform, insight into the challenges faced by government, communities and civil society (agricultural unions, non-governmental organisations [NGOs] and commodity groups), and training in the provisioning of integrated post-settlement support implementation.

In order to ensure an understanding of how to access and maintain funding streams, a number of capacity-building courses were developed to introduce executives of the communal property associations and trusts to the concepts of enterprise management. Although the communities have access to a variety of government grants, these are:

- subject to a lengthy process to access;
- one off; and
- usually not sufficient to cover all expenses that the restitution community would incur.

It is therefore vital that the enterprise which forms part of the claim remains active or that activities on the enterprise resume as soon as possible after the community gets access to the land. It is furthermore critical that the members of the executive are exposed to a focused interpretation of how business operates and the challenges and opportunities they will face while the enterprise is operating. Ultimately it is the enterprise that will have to generate enough income to support itself and, importantly, additional income to enable the beneficiary communities to attain their development goals.

STRATEGIC OPERATIONAL PLANS

One of the SRS-SA's main deliverables to the communities was long-term strategic operational plans (LTSOPs). The goal of these plans was to assist a community to determine longer-term objectives regarding the development of the community, in relation to the business enterprise that forms part of the claim, and realistic expectations on the returns the enterprise would yield.

A key requirement of the RLCC and SRS-SA for the identification of pilot communities was that the enterprise on the farms was a going concern. The SRS-SA intended to provide governance support to the communities based on the assumption that business activities on the farms would continue and thereby provide some level of financial support to the governance structures. Erroneously, it was anticipated that through the support received from the RLCCs, the communities would be in a position to enter into the necessary arrangements to maintain production on the farms. Although such arrangements were in progress by the time the SRS-SA entered into the picture, due to a lack of support given to the executives of the communities regarding governance, these arrangements were to a large extent superficial and not necessarily fully understood. Having said this, it must be noted that the Nkumbuleni and Mashishimale communities did make significant progress in this regard and opted for two very different solutions to the problem of continuing farming activities. This aspect will be described in more detail later.

It became apparent during the initial implementation stages of the SRS-SA programme at the community level that the communities were having difficulty accessing the various grants they were entitled to under the restitution process. In order for the RLCC to release funds, it requires a clear plan of how these funds would be utilised. The communities, however, were not in a position to develop such plans as funding is required to hire a service provider to produce the plans. These plans are not intended to describe in detail the developmental plans of the communities but rather to provide a framework, linked to specific actions and cash flows, of how the enterprise will operate.

An interim business plan was compiled and drafted for each community according to the specific needs and requirements of the enterprises. The main aim of these business plans was to assist communities in accessing their grants and to do preliminary planning for the activities that are to take place on each farm.

The LTSOPs were compiled and drafted to address each community's goals and objectives for the next ten to 20 years. The plans further addressed how the objectives would be reached as well as components on the monitoring and evaluation thereof. The LTSOPs were drafted by way of inclusive community consultation and the participation of all the relevant stakeholders in each community.

As both the interim business plans and LTSOPs required input and understanding from the communities' governance structures, additional training was provided to the communal property association (CPA) and executive trust members on basic business management concepts, human resources issues and directorship. Such training was intended to assist the governing bodies of each community to manage and execute their duties more effectively. The sustainability of long-term planning was complemented by additional entrepreneurship training (funded by the Umsobomvu Youth Fund) for the youth members of each community. This training was specifically linked to the outcomes of the LTSOPs in order for youth members to understand the longer-term objectives of the community and to identify possible opportunities for them and the community to benefit financially by establishing enterprises linked to the community's objectives.

RESULTS AND BENEFITS OF THE PROJECT

The main output of the SRS-SA is the updated *Operational Framework* which proposes a tested model for the provision of pre- and post-settlement support activities for land restitution. The framework can also be adapted to serve as a model for the two other land reform programmes, namely redistribution and tenure reform. The model is applicable to land reform initiatives in other countries in the SADC region as well as in East Africa. These areas are undergoing massive land reform, which in turn requires appropriate pre- and post-settlement support.

It is believed that through the implementation of the SRS-SA, the following benefits have accrued or are accruing for the country and the pilot communities. This list is not exhaustive but captures the main benefits as interpreted by the SRS-SA and its partners.

FOR THE COUNTRY

South Africa as a country will benefit from the implementation of the SRS-SA programme because:

- it is not a duplication of other initiatives but aims to contribute and give effect to other post-settlement support models such as sustainable integrated support and area-based planning;
- it is aligned with other models that are being developed once they are off the ground;

- the availability of a replicable delivery model will ensure the sustainable settlement of land restitution beneficiaries based on lessons learnt for integrated planning;
- it provides a gap analysis of areas that need to be addressed for the successful provisioning of pre- and post-settlement support services; and
- it provides an audit of government capacity in the three pilot areas vis-à-vis government's ability to manage and coordinate services for restitution beneficiaries.

FOR THE COMMUNITIES

The three restitution communities (and, eventually, all restitution communities) have benefited from:

- the skills development and training for CPA members and facilitators;
- assessment on the capacity of the farm(s);
- access to reports on their communities and farm(s);
- a comprehensive LTSOP based on the capacity and requirements of the community and the farm; and
- linking the communities with the appropriate national and provincial government departments, as well as with the relevant district and local municipalities.

LESSONS LEARNT AND CONCLUSION

The lessons learnt listed below comprise only a small number of the total best practices which emerged from the SRS-SA programme and should be seen as a mid-term review. Once the programme has been completed in 2009, the full compliment will be included in the updated version of the *Operational Framework*.

GOVERNMENT BUY-IN

It became apparent with the implementation of the SRS-SA programme that the role of the Chief Land Claims Commission is essential, as is its support of and assistance with the programme. The programme has been well received by senior officials and their buy-in and support for the programme has been fundamental to the positive progress made thus far. In addition there are great supporters of the programme within the RLCCs who have devoted much of their time and effort to ensure its successful and smooth implementation.

DECENTRALISATION

The decentralised approach to project implementation has proved to be critical to the programme's success. Provincial offices were established to attend primarily to the issues in each community and to analyse and work within the communities' unique dynamics. This has proved to be a good approach for attaining the specific project deliverables as undertaken by the SRS-SA programme implementers to the relevant beneficiaries, the applicable stakeholders and our partners.

INFORMATION DISSEMINATION

The community facilitators played a positive role and assisted greatly in the implementation of the project. Their assistance made it possible to disseminate information to the community and ensured that such information was filtered through to every community member. This also created better relationships between conflicting community members and their understanding of the land claims process, the restitution process and the role of the SRS-SA project within their communities.

STRENGTHENING OF GOVERNANCE STRUCTURES

Capacity building of CPA and trust executives is essential for the successful management of the beneficiated land and the relevant activities that take place on each farm. By providing the governing bodies of these communities with basic and advanced training, they have been capacitated to make improved business discussions, conduct effective negotiations and do better management planning. Training on especially enterprise management and related subjects seems to have had a substantial benefit to the communities and their governing abilities.

ACCESS TO FINANCE

The importance of timeous access to grants has been highlighted on many occasions. A community's access to grants, information on how to obtain these grants as well as the amount of time that lapses before grants are paid out in many cases determines the success or failure of a farm's activities, its productivity and ultimately the survival of the community as a whole.

RESPECT FOR COMMUNITY CHOICES

In too many initiatives, suggestions on how to engage with and manage partners are forced upon communities. A key lesson learnt was around understanding the processes which led to the selection of business partners by the Nkumbuleni and Mashishimale communities. Faced with a shortage of finance and receiving a farm in a state of degradation, the Nkumbuleni community followed a consultative 'open-market' approach of identifying a strategic partner. Although the partner has good

intentions and has provided a significant financial boost to the project, the community remains (if only in their own perception) the junior party. The community is not always familiar with decisions taken and relies to a large extent on the benevolence of the partner.

The Mashishimale community, which faced similar challenges, decided to interview prospective farm managers and appointed a chief executive officer who is responsible for managing the farms and reporting back to the governance structure on progress. Evolving systems and processes for managing this exceptional relationship are being developed. A key difference between the two systems is that the community remains the ultimate decision-makers regarding the use of their land.

The Ebenhaeser community has for a number of reasons not moved as far as the other two communities in receiving the land they are entitled to. The SRS-SA sees this as an opportunity for proper planning to be done in consultation with the community in terms of the systems and procedures that need to be put in place. A combination of the two approaches together with mentorship will probably be followed at Ebenhaeser.

The integrated nature of the programme has led to a plethora of innovative ideas and lessons learnt. Many of these are unintended outcomes of the programme and substantially deepened the understanding of the challenges faced by government, beneficiary communities and civil society regarding post-settlement support services. The research emerging from the implementation of the *Operational Framework* through the SRS-SA will be compiled in an updated version of the document to be published in 2009.

This research will lay the foundation for a continuation of capacity building within government and civil society through a professional development course that incorporates lessons learnt and innovative solutions to the complex land reform questions faced in South Africa.

ENDNOTES

- 1 Tomkova J, Olivier NJJ, Myakayaka A, Steyn G, Geyer C & Nkwae B, *Operational Framework for Post-Settlement Support Interventions*. SADC Centre for Land-related, Regional and Development Law and Policy, University of Pretoria Pretoria, 2005.
- 2 Geyer JL, 'Scenario Forecasting as Planning Tool for Restitution Communities in South Africa'. Master's dissertation, University of Göttingen, Germany, 2006.
- 3 Tomkova et al, op cit.

Post-settlement support at the Nkumbuleni pilot project in KwaZulu-Natal

DOLLY GULE

INTRODUCTION

This paper focuses on the Nkumbuleni Restitution Project in KwaZulu-Natal (KZN), which is one of three pilot projects in South Africa run by the University of Pretoria under the broader umbrella of Sustainable Restitution Support (SRS). The project is housed at the Inkezo Land Company in KZN.

The paper outlines the background to the project, objectives, consultative process, implementation process, outcomes, challenges, recommendations and lessons learnt.

BACKGROUND TO THE PROJECT

Nkumbuleni was settled on as a pilot project in KZN after consultation with the KZN Regional Land Claims Commission (RLCC). The community of Nkumbuleni comprises 250 households that were forcibly removed in 1930; however, during the restitution process, only 211 households were verified. A total of 25,000 ha of land was claimed by the Nkumbuleni community but so far only 800.66 ha have been restituted, namely:

- Tala Valley (308.25 ha) comprising 39,000 Eureka lemon trees and 36,000 oranges trees (all neglected); and
- Leeupoort (492.41 ha) comprising neglected sugar cane fields and timber farms.

Dolly Gule is involved with the Nkumbuleni pilot project.

The claimants do not currently reside on the farm: two-thirds live 20–30 km away at Sankotshe near Georgedale, and the remainder are scattered among four locations – Hammersdale, Kwa-Ximba and within and around the cities of Pietermaritzburg and Durban.

Since the Nkumbuleni community does not reside on or near the farm, the farm is managed by farmworkers who used to work on the farm. Community members that are interested in the farming operations would have to commute daily, and there is no reliable transport. A member of the trust has volunteered to work on the farm and is acquiring managerial skills. He is joined by five young people during the citrus harvesting season.

OBJECTIVES OF THE SRS PROGRAMME

The purpose of the project was to:

- build capacity of the established legal entity and some community members;
- assist in the development of a business plan for a commercially viable sustainable business entity;
- link the community with relevant departments; and
- create employment opportunities.

PHASES OF THE PROGRAMME

CONSULTATION PROCESS

The consultation process started with the not-for-profit Inkezo Land Company, which requested to house the SRS-SA project in KZN. This was followed by meetings with the provincial RLCC and the Nkumbuleni trustees and the identification of relevant stakeholders.

Project steering committee

Relevant stakeholders, identified based on the nature of the land that had been acquired, comprise the project steering committee. These are the Nkumbuleni trustees, NCT Forest Corporation (because of the timber), the South African Sugar Research Institute, Tongaat Hullett, Illovo Milling (because of the sugar cane), the Citrus Growers' Association, Ithala Limited Bank (which disperses grants to beneficiaries), Inkezo Land Company (which houses the SRS-SA project), the Department of Agriculture and Environmental Affairs, the Department of Land Affairs, the Umkhambathini local municipality (where the farm is located) and Durban Metro (where the beneficiaries reside).

The SRS-SA team gave a brief presentation of the pilot project and addressed any questions. The whole group then visited the three farms to assess their condition. It was necessary to explore various developmental and sustainable models due to the neglected state of the farms concerned and because the beneficiary community had no resources or skills to manage the acquired land. The meeting was followed by an invitation to companies, businesses, individuals and other parties interested in doing business with the Nkumbuleni community. Terms of reference were drawn up and criteria were set to identify a suitable partner or manager.

Stakeholders' workshop

The purpose of the workshop was to create an environment for companies, businesses and individuals to express their interest in managing the farm or forming a partnership with the Nkumbuleni community. The role of the stakeholders was to assist the RLCC in identifying a suitable business partner. The RLCC project officer outlined principles guiding the post-settlement support process, namely that restitution projects:

- should be economically viable;
- should be sustainable;
- should be developmental in approach; and
- should impart skills that would lead to real ownership.

Four companies and two individuals gave presentations on how they would jointly manage the farm and form partnerships with the community. Two presentations were from citrus exporting companies that were interested in packaging and exporting the fruit but which gave no indication of how they would revive the farms. The option of a partnership seemed feasible and Stuart Hilcove was identified as a strategic partner.

PROGRAMME IMPLEMENTATION

Governance and structures

The legal entity Nkumbuleni Community Trust had been registered prior to SRS-SA involvement. The Nkumbuleni Trust comprises 13 trustees, three of whom are women. The trust presides over project meetings and its operations have improved due to interventions by various service providers from the University of Pretoria and the coordination of the project. The trust is now able to preside over meetings with confidence and hold quarterly feedback sessions with the wider community on the project's progress. This ensures that unrealistic expectations are monitored and managed. The trust registered Tala Citrus Estate Pty Ltd. The company has three directors from the community and two from the strategic partner. Tala Citrus Estate has leased the farm from the Nkumbuleni trustees and lease agreements have been

entered into on the sugar cane farm as well. The identification of a lessee and drafting of the lease contract was done by the trustees, with advise from the project implementing committee.

Farming interventions

The land (citrus, sugar cane and timber) handed back to the Nkumbuleni community was neglected and overgrown with weeds and citrus trees. Since the community had no resources except for the land, a decision was taken to concentrate on the citrus farm. A model of identifying an expert strategic partner was initially pursued to help revive the citrus farm. There was urgency in getting the farm operational and the following activities were implemented:

- A physical audit of the citrus farm and its current status (equipment, number of citrus trees and their value).
- Identifying and costing resources needed to get the farm operational.
- Setting up a framework for skills development and transfer.

The RLCC had to formally introduce the trustees to the strategic partner and outline and discuss conditions of the partnership. An agreement was drafted and legal support was sought from the University of Pretoria before signing. A rescue plan was developed at a one-day workshop which was attended by all trustees, six of the stakeholders, members of the University of Pretoria's Business Enterprise Management unit, which provided technical support, and agricultural specialists. This was followed by a two-day participative workshop to come up with an interim business plan. The interim business plan was distributed to all stakeholders that monitor the project, document milestones and lessons learnt, and intervene when necessary.

Implementation of the rescue plan involved evaluating the trees, ascertaining the existence of any diseases in the neglected trees and treating the diseases, removing weeds, and pruning, fertilizing and watering the orchards. The process started in November 2007 and harvesting commenced mid June 2008. The citrus fruit is being packed at a nearby pack house, with some 40% of the produce going to the international market and 60% to the local market.

CAPACITY BUILDING

COMMUNITY CONSULTATION

Consultations and interviews with various focus groups were conducted by Canadian and University of Pretoria specialists. The data collection process culminated in the 11 modules used to train community facilitators.

Focus group interviews

The focus groups that were interviewed comprised women, men and youth groupings, councillors from Mkhambathini and Durban Metro, ward committees, tribal authorities and traditional leaders, traditional healers, health workers, one local non-governmental organisation and Nkumbuleni trustees.

- *Women's forum:* Discussions were held with women aged 38-70 years about understanding their role as women and issues of concern within the community. They stated that their traditional roles have not changed, but that they are now also swamped with the responsibilities of tending to the elderly and sick, and providing for their nuclear and extended families (unemployed children, grandchildren, parents, etc). This is due to a lack of economic opportunities, HIV/Aids, older people living longer with chronic illnesses, and violence and abuse, especially by children and husbands who abuse alcohol and drugs.
- *Men's forum:* Only six men aged 48-70+ years were available for interviews. Their main concerns were unemployment and that opportunities are usually given to women. Women were thus perceived as having the upper hand and the men felt undermined in their role as provider. Another concern was lack of grazing land for their cattle. The men said they would move in and work on the farms as soon as the land was made available. Their wish was to spend their last days on the farm tilling the land.
- *Youth forum:* About 30-40 young people attended the forum. Some were there to be interviewed and others to be trained as community facilitators. The issues of concern raised were unemployment, lack of job opportunities, lack of tertiary education opportunities, lack of recreational facilities, and the challenges of teenage pregnancy, drugs and alcohol abuse. Many of the youths did not see themselves working on the farm; however, there was a youth cooperative that was doing poultry and piggery and whose members wished to work on the farm.
- *Health workers:* The forum comprised women who had been volunteering for the past three years, providing services to HIV/Aids sufferers. The women said that while many people are infected, most do not seek help. They added that they do not have the necessary equipment such as gloves and disinfectant to attend to the sick. Local health officials were approached to deal with this challenge and the women have been provided with the relevant training, equipment and supplies.
- *Municipalities:* It was necessary to meet with councillors and officials from both the Durban Metro and Mkhambathini municipalities because the Nkumbuleni farm falls under Mkhambathini but the beneficiaries reside in Durban Metro. The integrated development plans for Mkhambathini do not have a land use management strategy, yet 95% of the land is under claim. A strategy for engaging

the district municipality is needed so that resources can be made available to prioritise pre- and post-settlement facilitation.

- *Traditional healers:* Two traditional healers were consulted at Kwa-Ximba, where one-third of the beneficiaries reside. The healers said they provide traditional medicines especially to those who have consulted doctors without success. The healers do give traditional medicine to HIV/Aids sufferers but encourage the patients to continue taking antiretroviral medication.
- *Traditional leaders:* The local *inkosi* (who is an attorney) and the *induna* (who is a trustee of Nkumbuleni trust) were also interviewed. They reported that the tribal system of conflict resolution is preferred and is still being used. They do refer some cases to the police, to be dealt with by the courts of law.
- *Lily of the Valley (HIV/Aids orphanage):* The Department of Housing, Health and Agriculture provided resources to establish the Lilly of the Valley organisation, which houses Aids orphans and other abandoned children. There are 12 cottages on the property and each cottage has a house mother who is a surrogate parent to the children. It is a well run service with a resident social worker and provides employment for the local community. The Department of Agriculture provided tunnels in which vegetables are grown for consumption by the children and employees, and the surplus is sold. There is also a bakery that supplies bread and cakes on a small scale.
- *Nkumbuleni trustees:* The trustees that were interviewed said they are old and do not have the capacity to run the farm. They have thus delegated the task to the younger generation, but these beneficiaries have no skills to attend to the affairs of the acquired land. Managing and operating the farm would be a challenge for the trustees as they have no experience in running a farming business of that magnitude.

Workshop for developing training modules

A two-day workshop was held at the University of Pretoria, at which specialists from Canada and the University of Pretoria presented their findings. Discussions were held, which culminated in the development of 11 modules for the training of community facilitators. These modules deal with social facilitation, land reform, basic governance concepts, entrepreneurship, conflict and conflict resolution, alternative dispute resolution, business management, resource mobilisation, sustainable agricultural development, financial planning, and motivation and evaluation.

CAPACITY BUILDING

- *Training of community facilitators:* Out of the 29 young people that turned up,

15 facilitators were successfully interviewed for training. Accredited service providers specialising in training delivered the 11 modules. The facilitators are presently involved in one-on-one consultation sessions to disseminate information to the beneficiaries on such topics as restitution, general experiences, exploring opportunities for entrepreneurship and development of a community profile. The trust also uses the facilitators to assist with fundraising activities such as raffles and to disseminate information from the trustees to the beneficiaries. The facilitators have been able to identify orphans who do not have birth certificates and to refer them to social workers so that they can access social security grants.

- *Training the trustees:* The trust executive and some of the trustees have been trained on basic management principles, human resources and governance.
- *Interim business plan and long-term resource allocation plan:* An interim business plan was developed by the University of Pretoria's Business Enterprise Management unit, with the participation of the trustees and stakeholders that comprise the project steering committee. Workshops were held at various intervals with the trustees and other stakeholders. A draft interim business plan, which took six months to complete, was presented to the trustees for their suggestions and amendments. Copies of the final interim business plan were distributed to the trust executive, the RLCC, the strategic partner and the Department of Agriculture. The interim business plan is a tool to monitor the enterprise and can be used to get more resources for the project. The process of developing the business plan was preceded by visits to the farms in order to come up with a plan that could be phased in and to prioritise rehabilitation of the three parts of the land acquired (citrus, sugar cane and timber). There was continuous consultation and engagement during the development of the plan. Community expectations were addressed and it was explained that the project would yield benefits only over the long term and through sustained effort. The enterprise would be run like a business by employees and not by the beneficiaries, and it was made clear that once the employment route is chosen there is no preferential treatment for the beneficiaries.

CHALLENGES

The following challenges were encountered:

- It is difficult to reconcile beneficiaries' feelings that come with receiving their ancestors land versus viewing the land as an asset that can be used for production, with its potential to enhance the beneficiaries' economic status.
- Beneficiaries' unrealistic expectations of returning to the land and receiving the same financial and material benefits as the previous owner (house, car, number of

employees, equipment, etc.). The beneficiaries did not take into account that the previous owner is an individual and that they are a group of 211 households.

- Limited institutional and business capacity to run the acquired asset.
- Limited capacity of the local municipality (Mkhambathini municipality) to deal with land reform projects; 95% of the land in Mkhambathini (where Nkumbuleni falls) is under claim.
- Delays in disbursing grants that are meant to assist the beneficiaries.
- Lack of tangible support from the Department of Agriculture and Environmental Affairs.
- The fact that beneficiaries reside 25–30 km away from the farms and lack reliable transport could impact on their perceived commitment.

LESSONS LEARNT

GOVERNANCE

- It is essential that some members of the executive understand business principles.
- Continuous and sustained community facilitation is required; coaching of the legal entity builds their confidence.
- Continuous feedback to beneficiaries on the project's progress enables them to understand the business operations of the acquired asset.
- Exposure to training enhances confidence and results in employment opportunities.
- The community members need to be continuously exposed to the farming environment (in this case sugar, timber and citrus) so that they understand the importance of making business decisions at a specific period. The beneficiaries can be taught to take calculated risks, as in the case of the citrus rescue plan which led to a potential yield within six months.
- Monthly progress monitoring and evaluation of project meetings held on the farm has provided valuable lessons, especially from the technical team and strategic partner, on topics such as drawing up a lease contract, diseases on the citrus farm, financial management and the importance of recording resolutions appropriately.
- It is important to guard against community dependence and to allow community

members to guide and lead the processes, e.g. opening their own bank account, collecting money from the community to pay for travel expenses to meetings, etc.

PROJECT LEVEL

- There is need from the outset to align pre- and post-settlement involvement of the departments of Land Affairs and Agriculture and Environmental Affairs.
- The timing of processes in farming is important for sustainability, which was evident in the citrus farm rescue plan.
- A project steering committee enhances decision making and enriches discussions.
- Desktop business plans to expedite funding are remote and detached from beneficiaries. Although lengthy, the participatory process of resource allocation and the development of the interim business plans assisted the beneficiaries and helped them to understand their business enterprise (ownership). It also enables an informed monitoring and evaluation of the project and business enterprise.
- It is important to ensure that the previous owner is not indebted prior to transferring the land and that labour tenants are catered for within the prescribed legislation as these issues can delay a project's progress.
- A management plan is needed to expedite funds from the RLCC, as failure to do so could ruin relationships and impact negatively on sustainability.
- It is important for communities to have ownership and engagement. Preparing beneficiaries through capacity building should start during the pre-settlement phase. Two-year support is inadequate for sustainability.
- Social facilitation and coordination is essential in the land restitution project because land is given to beneficiaries who usually do not have adequate skills to operate the asset in a sustainable manner.
- Not all claimants may be business minded or have a potential that can be developed, some claimants may also not be interested in farming activities.
- Some previous land owners are willing to assist the new owners as they do not wish to see the farms deteriorate after transfer.

CONCLUSION

Post-settlement in restituted communities is new and unfamiliar territory for all the

practitioners involved. However, new land owners (beneficiaries) often find that they have been thrown in the deep end after being given back their land; there is minimal planning for these projects even when the new owners have never run a farm or business enterprise before.

The Nkumbuleni community was fortunate to be involved in a pilot project and therefore received much support from SRS-SA and other stakeholders within the project implementing committee who continue to give valuable advice. The speedy transfer of acquired land is essential. If this is not possible, the land can be left in the hands of a responsible manager so that operations continue and all assets are accounted for. Bottlenecks in the disbursement of grants should be ironed out to enable beneficiaries to continue with business operations.

Facilitation and coordination of the post-settlement process requires a neutral and balanced practitioner in dealing with sensitive land issues. The feelings of both the claimants and land owners should be managed in such a way that relationships between the parties are maintained. There is a tendency to be vindictive or confrontational instead of building relationships that could benefit both parties. The Nkumbuleni project has provided valuable lessons that can be replicated in many other restitution projects.

Post-settlement support at the Ebenhaeser pilot project in Vredendal

RICADO JACOBS

INTRODUCTION

It would be a grave error to locate restitution outside of broader reform because after the land has been restored, people have to enter into the normal relations of agriculture, trade and support. The land itself is not ‘restored’ land in perpetuity.

Land reform in this context has to address the widening gap between the rich and the poor in South Africa; the inequalities, rural poverty and underdevelopment. We must also look at the history of dispossession of land as a productive asset, which dislocates it from the emotive view that people sometimes have. In essence, land was dispossessed as a productive asset and not as an emotional asset.

In addition, restitution should be linked to broader agricultural transformation as well as to the restructuring in agriculture that has been happening over the past ten year, both internationally and in South Africa, in terms of deregulation. Post-settlement support has to be located within these broad areas of agrarian reform.

BACKGROUND

Ebenhaeser – which is located near the Olifants River and is part of the broader Olifants Doring Water Management area – was dispossessed in 1925 in order to settle poor, white farmers along the banks of the river. The community was forced to accept unproductive land in exchange for the dispossessed land. Part of the community was dispersed across the urban centres of the Western Cape, while others remained on the alternative land offered by the state, which is located at the bottom end of the canal system in that area.

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These points are important in understanding the division within the community which emerged when the claim was lodged between those who remained on the unproductive land at Ebenhaeser and those who moved to the urban centres.

The cumulative effect of the disposition is that it resulted in socio-economic decline within the community and particularly among those who remained on Ebenhaeser. What is also significant is that a portion of the land was trust land, which is the old coloured rural reserve where the ministers held the land in trust. This is significant in the context of Ebenhaeser because it means that there are two land reform processes currently under way. The transformation of certain rural areas and restitution makes this a difficult and challenging process.

The land that is under claim involves 53 white farmers with land in excess of 1,500 ha. The dominant land use is wine farming and vegetable production. The claim was lodged in May 1996 and a settlement agreement was entered into in 2005, which outlines the type of settlement package and the process to restore land.

CONFLICT

Most communities are, arguably, riddled with conflict and disagreement, particularly over who should be a claimant or beneficiary. The key issue centres around who comprises the community – and this is particularly relevant in the case of Ebenhaeser. Those who remained on Ebenhaeser, as it is now, define the ‘community’ as the descendants of the dispossessed, including those who later became part of the community. In their view this is a community claim.

On the other side of this conflict is the Ebenhaeser Action Committee. Most of the members of this committee are located within the urban centre and represent those who did not settle on the remainder of Ebenhaeser after the dispossession. Their argument is that only those who are descendants should be beneficiaries of the claim. This is where the tension is really mounting.

The divisions also take on political forms because the members of the Action Committee are mostly Independent Democrats while the Ebenhaeser Land Claims Committee comprises mostly African National Congress members.

A settlement framework agreement was signed by the Minister of Land Affairs and the Ebenhaeser Land Claims Committee, which was supposed to set out a process for acquiring land and coming up with a community development plan. The state acquired six farms, although the planning has not happened under the proactive land acquisition strategy, which would be transferred to the Department of Land Affairs with a lease agreement. This process was, however, done without any community consultation.

POST SETTLEMENT

In terms of implementation of the settlement agreement, the government has set up the Ebenhaeser Steering Committee, which is a multilevel stakeholder forum at

project level. It comprises the Regional Land Claims Commission (RLCC), the Ebenhaeser Land Claims Committee, the Department of Agriculture, the Department of Local Government and Housing, Agri SA, landowners that would be dispossessed and the Matsikama Municipality. This is a planning forum where terms of reference are developed for a community development plan and a land acquisition plan. The structure now has a constitution (with assistance from Sustainable Restitution Support – South Africa which provided a generic constitution) and a mechanism for resolving disputes.

The forum is basically consensus driven and, importantly, comprises all the main stakeholders – that is, the landowners, Agri SA and the community and its support institutions (for example, the community receives legal assistance from a non-governmental organisation). This is how agreements are reached in terms of the impact on the development of the corridor and also in terms of broader planning in the area.

The other institution of government at a community level is the Ebenhaeser Land Claims Committee that is composed of the different wards within the community. This structure has collapsed over time: it used to be a broader structure but now some five or six people seem to be driving the process. No legal entity currently exists.

And finally there is the Due Diligence team, which is a sub-committee of the Steering Committee. This team's task is to develop terms of reference for the appointment of service providers and to look at the interim management of the six farms that the state has acquired. The Due Diligence team comprises the RLCC, the Department of Agriculture and the Department of Local Government and Housing.

In the Western Cape the Department of Local Government and Housing has opposed the restitution support unit that just looks at restitution because of developments like District 6 and others. The Ebenhaeser Action Committee is trying to muster support so that the terms of the claim change.

A thorough process of consultation with the community took place before implementation of the project. The programme and its purpose were explained, and open-day sessions and community meetings were held. This allowed the specialists and those assisting them to explain what they are doing, or going to do, and why.

Initially the concept of a specialist was met with disapproval and scepticism since the older members remembered how a 'specialist' had come to their land in 1925 to make an 'assessment', and that this had resulted in the community being dispossessed.

There was consultation with all local level departments, water management institutions, other sectors including the local wine industry players and with the Steering Committee. This is in line with the RLCC's aim that programmes have co-ownership and the buy-in of all relevant stakeholders. This ensures that all understand the process and are on board. Consultations were also held with support institutions in the community, such as the legal resource centre. It is important to consult with service providers that support a community so that these institutions do not feel their work is being overridden. The service provider at Ebenhaeser has been working with the community since 1995 and also plays a gate-keeping role.

In terms of the pre-settlement rollout, a gap analysis was undertaken in the form of a baseline survey that looked at the demographic profile, social life and economic activity in the community, as well as the agricultural skills required. Community members were trained to conduct the baseline survey; even those without a Grade 12 were given the opportunity to be a numerator.

The focus at the first couple of workshops was on understanding the different types of community property institutions and the various legal entity options. Capacity building was also looked at in terms of training community facilitators from within the community. This focused predominantly on the youth, although others were also afforded an opportunity. The community facilitators worked for four months assisting with facilitation. Another focus was on developing a long-term strategic plan for Ebenhaeser, looking at the community's vision for the farm.

The youth were encouraged to participate in the process as much as possible since Ebenhaeser is generation structured and only the older generation have the opportunity to be in leadership or governance positions. The aim was to create awareness among the older generation of the centrality of youth in the whole process, to the point where they are included in the governance institutions.

KEY LESSONS

The following are some important lessons learned from the Ebenhaeser pilot project:

- It is important during the pre-settlement phase to have a project-level steering committee with all relevant stakeholders where people commit themselves and know what their roles will be before restoration of the land. The steering committee must be a mechanism for planning and forging consensus with all the different role-players.
- The approach currently is to have mediation with the two parties. This shows the importance of including the broader spectrum of the community and of the need for social facilitation, particularly in communities riddled with conflict.
- The clarification of rights is important.
- If two land reform processes are running concurrently, these should be managed separately but integrated, particularly when they include the same number of beneficiaries.
- Gender should be mainstreamed into the activities and planning during the pre-settlement phases, particularly focusing on women within male-dominated settlements, which is the case at Ebenhaeser.
- A critical mass is needed within the community itself that can assist with the

community's social facilitation process. Roles and responsibilities in this regard should be clarified.

- An often neglected aspect is the psychological and subjective element of the dispossessed. There are also deep levels of mistrust between the landowners and the communities. The psychological dimension of dispossession and the dehumanisation of people are not sufficiently addressed during the pre-settlement phase and attention needs to be given to the subjective and psychological aspects of the issue.

Overview of CLaRA regulatory framework and implications

SIPHO SIBANDA

INTRODUCTION

Although I am not presently in the Department of Land Affairs (DLA) and am on secondment to the Department of Provincial and Local Government (DPLG) for the next 24 months, I am responsible for the Constitutional Court case involving challenges to the Communal Land Rights Act (CLaRA). The legal issues and constitutionality of CLaRA are also affected by, and effect, the Traditional Leadership and Framework Governance Act.

The three broad legal arguments from those opposing CLaRA are that:

- CLaRA does not provide security of tenure to people who are entitled to such secure tenure;
- if CLaRA is read together with the Traditional Leadership and Framework Governance Act, a fourth sea of governance is created which is not sanctioned by the South African Constitution; and
- women's rights are not protected in CLaRA.

The DLA and DPLG are defending the legality of CLaRa and the Traditional Leadership and Framework Governance Act. We feel that Cabinet, parliament and the statutory advisors could not have been so unwise as to pass an unconstitutional law, and we are ready to defend what is in front of us. Both departments are prepared

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to make amendments if these are required, but we stand firm as to the constitutionality of the two pieces of legislation.

WHERE DOES CLARA APPLY?

CLaRA applies to the former homelands and the former South African development trust areas where about 20 million people reside. Most tenure rights in these former homeland areas exist by virtue of the customary law allocation of rights. A few hold permission to occupy (PTO), which is a semi-formal right that can be withdrawn at any time and is not a secure right. These two types of rights are not recognised in South Africa's legal system; they have been operating on the periphery in the sense that one cannot use customary rights for any commercial transactions.

PTO has been used as a right only in KwaZulu-Natal, while the former homeland region that is now Ithala has recognised PTO as a means of collateral. Thus in terms of our legal system, the majority of South Africans have insecure forms of tenure.

A major objective of CLaRA is to provide legally secure tenure rights. How does CLaRA do that? Section 4 of CLaRA reiterates section 25(6) of the Constitution which states that if one's tenure of land is legally insecure one is entitled, subject to availability of resources, to a tenure right that is legally secure.

The security that comes from CLaRA comes in a number of ways: first, by conversion of that informal land right, whether the customary or PTO, into full ownership. One has to go through a process for the conversion. For example, if I hold a PTO I will have to go to my community and request an upgrade of that PTO to a fully recognised tenure right. Once that PTO has been upgraded to full ownership, I will be excised by the rest of the community. But the community reserves the right to purchase that land in future should I wish to dispose of it. It is a conditional upgrading of that right in such a way that if I wish to dispose of the right, I can only give the community the right to buy the land from me.

Second, rights that emanate from CLaRA can be registered in the deeds office. At the individual level, if I have an informal right (an old-order right) which has been converted into freehold ownership and confirmed as a new-order right in terms of CLaRA, that right will be registered in the central registry system within the period that is prescribed by the CLaRA registry procedures. At the community level, however, CLaRA provides for the transfer.

CLaRA also provides for instances where, for example, the 'Sibanda' community's land which is currently being occupied and used has been held in trust for the Sibanda community (because the community bought the land) but due to past racially discriminatory laws that land could not be registered in the community's name. The state must divest itself of that trusteeship so that land is transferred to the Sibanda family in title. The outer boundary will bear the name of the Sibanda community, but individuals within the Sibanda community will hold various rights. For example, one can continue with the community tenure system subject to the provisions of CLaRA, which means that the various tenure rights that one occupies will have a new-order

right that is upgradeable to full ownership. If an individual wishes to upgrade that new-order right to full ownership, the request would go through the traditional community/council or a communal property association. Each member will then have that right upgraded. Individuals can, however, also choose to maintain customary land rights – that is, that which is given to you, you will maintain. The Sibanda community can also choose to stay in the residential areas – that is, the community will subdivide and register full title and then keep certain areas to be held in common. CLaRA thus provides for a tenure system of individual and collective ownership: at the individual level it provides for the registration of rights and at the community level it provides for the registration of communal land in title for that particular community, which is not the case at present.

Many of these types of areas currently belong to the state and people have only the informal rights of occupation and use. If any business activity is being planned, the community, developer and the Minister of Land Affairs need to enter into an arrangement. The community makes the decision to bring in an investor, but the minister must approve the community's decision if the investment or development is to go ahead. Under CLaRA, however, the role of the minister will no longer be necessary and the community will make full decisions as owner of the land. The intention of CLaRA is to make communities owners in their own right so that they can make decisions like any other free owner in South Africa.

Another important issue that CLaRA raises is the question of vesting: if this is community land, where does ownership vest? According to CLaRA, ownership does not vest with the institution of governance, like a traditional council or restitution committee, but with the community itself – that is, with those who use and occupy the land. This is a departure from what has been happening. CLaRA removes the trusteeship relationship – whether it is the minister, a state functionary, a chief or a traditional council – thereby enhancing the security of the people who can now make their own decisions. Furthermore, their land is registered in a secure registration system, providing clarity as to who owns what.

CLaRA also provides for recognition of the rights of vulnerable groups such as women. It is one of the few pieces of legislation in the past 14 years to recognise owners' rights. Section 4(2) of CLaRA brings women's rights to the same level as men's rights, either in a woman's own right or together with her husband if she is married. There are some 14 instances in the CLaRA provisions that deal with women's access to rights.

To summarise, CLaRA provides for legally secure tenure via the conversion of old-order rights into new-order rights and the registration of these new-order rights in the land title systems and their conversion into free-owned ownership. This is unprecedented in the South African political economy.

DEMOCRATISATION OF THE LAND ADMINISTRATION SYSTEM

Importantly, CLaRA brings about the democratisation of the land administration

system in the former homelands. While the sole authority to issue PTOs currently rests with the Minister of Land Affairs, a number of structures and individuals, even the DLA's own department officials, have been allocating land rights without the authority to do so. This affects all the provinces except KwaZulu-Natal, which since 1998 has been allowed to allocate PTOs. CLaRA will bring an end to this by setting up a rationalised land administration system that will enable the allocation of people's rights in a rational and clear manner. A traditional community can choose to bring on board a traditional council for the allocation of land or a communal land administration system if the traditional council route is rejected.

CLaRA provides people with the right to choose which structure will administer communal land on a day to day basis. This has been a subject of much debate as section 21(2) of CLaRA states that if a community has a recognised traditional council, such council *may* perform the functions of a communal property association. Traditional leaders believe, however, that the phrasing should be changed to *must* – that is, that it should be mandatory for traditional councils to allocate rights in traditional communities. By that phrasing, however, the government is saying that in a democratic society, communities themselves should have the discretion to decide who comes on board and who does not.

The way section 21 is structured aligns well with various provisions of the Traditional Leaders Framework Act. The challenge would be in the DLA's implementation of CLaRA and in terms of how the department would facilitate people making choices, particularly in traditional communities with deeply-entrenched ways of doing things. It is not going to be easy to bring about a democratic change, which is what CLaRA is really all about. The DLA needs to put in place institutional arrangements for the implementation of CLaRA, but the DLA alone cannot be responsible for CLaRA because it is a mammoth task. If CLaRA is implemented as a project, it is bound to fail. Resources, budget and skills need to be made available and the DLA's institutional arrangement must be such that it draws from the private sector, civil society and government itself for the implementation of CLaRA. It will take years to implement CLaRA and finish the job of transferring land to the various communities that need land transfer. CLaRA must therefore be sustainable.

OTHER CHALLENGES

Another challenge facing government is that most of the land affected by CLaRA has not been surveyed, particularly in the Eastern Cape. KwaZulu-Natal, however, would be the first province to get started in the implementation of CLaRA because most of the land in that province has been surveyed over the past 15–20 years. Skills shortages and high staff turnover within the DLA is a further challenge. The department will therefore need to create various partnerships to implement CLaRA.

Additionally, CLaRA cannot be implemented in the period of five years because of the disputes between and within communities that arise. Many communities do not

recognise their current legal boundaries. When they talk of their land, they think of historical boundaries that often do not match with today's demarcations.

For example, I have been dealing with a boundary dispute in Ladysmith that involves six chiefs. One chief claims on historical grounds the land that another chief is occupying, although the former is historically incorrect. These types of disputes are very difficult to resolve and will prolong the resolution of the land issue in the former homelands.

CLaRA does provide an instrument for dealing with such disputes in that an inquiry is required prior to the confirmation of rights and in order to determine the transition from old-order to new-order rights: you need to unscramble the egg.

COMPARABLE REDRESS

Last but not least, people have been asking about CLaRA's redistributive potential given that the act deals with only 13% of the land in South Africa. CLaRA was not really designed to deal with land disputes because there is already an act dealing with the redistribution of land. So why duplicate? There is, however, a provision in CLaRA called comparable redress. In the resolution of disputes between Mr A and Mr B, in the unscrambling of the egg, someone will be confirmed as owner of a particular piece of land and the 'loser' will get comparable redress. Where will that land come from? The DLA will need to negotiate with white commercial farmers to purchase land to meet the comparable redress need. Currently this is based on the willing seller-willing buyer principle, but the Minister of Land Affairs is empowered by CLaRA to expropriate land in order to meet comparable redress needs.

Comparable redress thus meets the needs of redistribution to the extent that it helps to expand the frontiers so that people are not confined to 13% of the land. It provides for additional land purchased from white commercial farmers to expand the frontiers of communal land areas.

The Communal Land Rights Act (CLaRA) baseline study in three South African provinces: Free State, Mpumalanga and North West

CHARLES MACHETHE

INTRODUCTION

Traditional systems of land tenure in Africa have been considered to be a major constraint on development. These systems are often criticised for failing to provide secure rights to land and for discriminating against certain members of the community considered to be vulnerable, such as women and youth, in terms of access to land. Hence, many countries in an effort to promote development have attempted either to modify these systems or to replace them.

The communal system of land tenure in South Africa has been in existence for many decades in the former homeland areas. The Native Administration Act of 1927 (Act No 38/1927) introduced a separate administration system for blacks and provided for the recognition of traditional leaders (chiefs) and traditional legal systems. In terms of the Native Administration Act of 1927 and the Bantu Authorities Act of 1951, traditional authorities, traditional leaders (chiefs) and ward headmen were officially recognised as being responsible for the administration of land in communal areas.

Like other traditional systems of land tenure/ownership, the communal land tenure system in the communal areas of South Africa has not escaped criticism. The system has been criticised for its failure to promote rural development in the former homelands by ensuring both secure property rights and equity in land ownership based on gender. The introduction of measures such as the Communal Land Rights Act (CLaRA) is meant to overcome many of the perceived shortcomings of the communal land tenure system.

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In 2003, the National Department of Land Affairs (DLA) commissioned a baseline study in five provinces, namely, the Free State, Limpopo, KwaZulu-Natal, Mpumalanga and North West. The scope of the baseline study was later broadened to include the Eastern Cape. The University of Pretoria, through the Postgraduate School of Agriculture and Rural Development, implemented the baseline study in the Free State, Mpumalanga and North West. This paper presents an overview of the baseline study and its results in the three provinces.

LAND REFORM AND DEVELOPMENT: WHY LAND REFORM?

Land reform is considered essential in many developing countries because of its importance for development. The significance of secure rights in land for (rural) development has been highlighted in numerous studies;¹ hence, land reform in many developing countries aims to provide these rights.

It has been documented in the literature on development that secure property rights and economic growth are positively correlated. Secure property rights may promote economic growth in a number of ways. They may:

- provide incentives for households to invest in land and enable them to access credit; and
- facilitate equal distribution of land and thus promote productivity.

According to Deininger:² ‘... [S]ecure and well-defined land rights are key for households’ asset ownership, productive development, and factor market functioning.’ Secure property rights play a significant role in poverty reduction in developing countries. For many poor rural households, land is the main source of livelihood and means for investing, accumulating wealth and transferring it between generations. Owing to its large share in the asset portfolio of many rural households, providing secure rights in land they already possess can significantly increase households’ net wealth.³

It has long been recognised (by researchers) that ‘providing poor people with access to land and improving their ability to make effective use of the land they occupy is central to reducing poverty and empowering poor people and communities’.⁴

WHY THE BASELINE STUDY?

The DLA requires baseline information prior to the implementation of a programme that will give effect to CLaRA. The baseline study was aimed at gathering data required by the DLA to:

- refine the strategy for implementing a programme that will give effect to CLaRA; and

- assess the long-term impact of the implementation of CLaRA.

Therefore, data collected covered aspects such as existing land administration structure, land tenure systems, levels of socio-economic development, land use and degradation.

METHODS AND PROCEDURES

The methods and procedures for the baseline study comprised the following:

- A household survey based on representative samples of households selected randomly from traditional authority areas.
- Key informant interviews of selected traditional authorities and local municipalities by means of an interview schedule.
- A community audit conducted in traditional authority areas to establish traditional authority boundaries and disputes over land.
- A land cover and use study to establish land use and land degradation in communal areas.

Table 1 provides information on the sample sizes in the three provinces.

Key informant interviews and the land cover and use study were undertaken in the same communal areas from which household survey data was collected.

RESULTS

The results of the baseline study presented in this section encompass issues such as socio-economic characteristics of the sampled population, development (including aspects of economic growth and access to basic services), access to land and natural resources, land acquisition and tenure status, land administration, land degradation, and security of tenure and land-related conflicts.

Table 1: Sample sizes

Province	Number of traditional authorities	Number of households
Free State	6	199
Mpumalanga	17	362
North West	28	432

Table 2: Average household size

Province	Household size (no. of people)
Free State	5.2
Mpumalanga	7.2
North West	6.3

*SOCIAL CHARACTERISTICS**Household size, age and composition*

The average household size in the three provinces ranged from 5.2 to 7.2 persons (see Table 2). The majority of household members were children of the household heads while 16–20% of the household members were grandchildren of household heads. The average age of the household head was between 52 and 58 years. More than 90% of the household heads were 35 years of age or older. Sixty-five percent of members of the sampled households fall within the economically active age group of 15–65 years. Children below the age of 15 years constituted 29% of the sampled population. More than 50% of the household members were female.

Education

Between 77% and 85% of the sampled population in all three provinces have received some formal education (see Table 3). However, only 4% of the sampled population have attained tertiary education qualifications. These figures suggest that although the majority of the sampled population are literate, their level of education is relatively low.

An analysis of the education level of the sampled population in terms of gender suggests there is no significant difference between males and females. Historical differences in education levels between men and women seem to have been levelled, with more females receiving education than before. In fact more women have progressed to tertiary education than men.

Table 3: Education levels

Province	Percentage of sample population with formal education	Percentage of sample population with tertiary education
Free State	85	4
Mpumalanga	77	4
North West	80	4

Table 4: Employment

Province	Percentage of economically active population employed
Free State	22
Mpumalanga	31
North West	80

Employment

Employment levels among the sampled population are low. Between 5% and 17% of the sampled population were in employment. Of the economically active population, between 22% and 26% indicated that they were employed, suggesting that the proportion of unemployed persons among those that are economically active is more than 70%. The most important ‘occupation’ for those that are ‘employed’ is pensioner/retiree.

Self-employment in agriculture and business does not seem to be an important source of employment and income as only 3–12% of the households indicated that it was their main occupation. The majority (58%) of the unemployed are women. Unemployment among the youth is also high, with 31% of those who have completed Grade 12 and 21% of those with tertiary qualifications unemployed. Reasons for unemployment included lack of job opportunities and disability or illness. Unavailability of job opportunities, both locally and outside the local area, was given as the main reason for unemployment.

Income and expenditure

Most households included in the study in the Free State Province may be described as poor as the majority of them earn between R101 and R1,100 a month. Only 4% of the households earned more than R5,000 a month. Old-age pension and welfare grants were the main sources of household income for more than 60% of the households. Agriculture and microenterprises played a minor role as sources of household income. Food is the most important expenditure item as it accounted for 68% of total monthly expenditure. Other important expenditure items included clothing, vehicles and school fees.

In North West Province, household income ranged from R100 to more than R10,000 a month, with about 38% of the households falling within the income category of R1,300 to R5,000 per month. An analysis of the data on household income suggests that at least 37% of the households may be described as poor. The main sources of household income were old-age pensions and social grants. Education and clothing are the most significant expenditure items accounting for more than 60% of total household expenditure.

In Mpumalanga, households derive income from: permanent, temporary or casual employment (76%); grants (35%); pension and welfare grants (30%); self-employment (19%); and subsistence livestock or crop production (2%). About 57% of the sampled population's average monthly income is below the minimum farmworker wage for Mpumalanga of R1,100 a month and 80% of the sampled households may be classified as living below the poverty line.

DEVELOPMENT

Economic activity

In terms of the involvement of households in economic activities in Free State Province, only 6% of the households indicated that they were engaged in agricultural production activities while only 21% of the households were engaged in some non-agricultural businesses. Shopkeeping, hawking and sewing and selling clothes are the most common non-agricultural business activities.

The level of economic activity – as measured by the number of households engaged in agricultural and other business activities in the study areas of North West Province – may be described as low. Within agriculture, there seems to be more activity in crop production than in animal production. However, only a small number of households were engaged in these activities. Only about 7% of the households were engaged in some non-agricultural business activities, including sewing and selling clothes, shopkeeping, traditional healing, taxi ownership, welding and tavern ownership. Shopkeeping and sewing and selling clothes were the most important business activities for about 30% of the households.

While commercial agriculture's contribution to economic growth in Mpumalanga is significant, the contribution of communal areas to the province's agricultural output is insignificant. The small commercial agricultural projects scattered across the communal areas struggle to survive. Although some small farmers have advanced beyond mere subsistence, their contribution to commercial production remains minimal. The Nkomazi small sugarcane growers are an exception as they produce 20% of the sugarcane milled at the Malelane and Komati mills.

The implementation of development projects in the Nkomazi Local Municipality provides a sense of development in the communal areas of Mpumalanga. The Department of Local Government and Housing implemented housing development projects in all eight traditional authorities. Enhlanzeni District Municipality, the Department of Minerals and Energy and Eskom implemented settlement infrastructure projects in all the Nkomazi traditional authorities. The departments of Education, Health and Social Welfare, and Sports, Arts and Culture implemented social infrastructure projects in seven of the eight traditional authorities. Tourism and conservation development projects were implemented in only four traditional authorities. Councillors were, however, not informed on the implementation of industrial and commercial development projects.

The integration of development initiatives is a basic condition for the successful

implementation of CLaRA. To this effect cooperation between traditional leaders and local municipality councillors is imperative. It is the general view that traditional leaders control the land and local municipalities develop the land. However, traditional leaders claim that they are not informed of development projects planned for or implemented in their areas. Almost no cooperation exists between traditional leaders and municipal councillors.

Access to basic services

The percentages of households with access to basic services in Free State Province were as follows: electricity (100%); piped water (90%); pit latrines (87%); health services within a 20-minute walking distance (26%); and refuse removal by local authority (7%). The above statistics suggest that significant progress has been achieved in terms of providing access to basic services such as piped water and electricity; however, more needs to be done to address issues of access to other basic services such as sanitation, refuse removal and health.

In North West Province, between 59% and 96% of the households sampled have access to piped water, electricity, health services and primary school education. However, access to transport (tarred roads), street lighting, secondary education and police services seems to be problematic with only 11–43% confirming access to the services. Although most households indicated that they had access to sanitation, the majority (89%) of the households depended on pit latrines. Only 20% of the households indicated that refuse removal is done by local authorities and for more than 70% of the households, refuse was either burned or thrown into a dump pit.

In Mpumalanga, access to basic services at village and household level has improved significantly over the past ten years. More than 70% of the 170 villages have access to electricity, a police station within 20 km of the village and a primary school in the village. More than 60% of the villages have piped water to most homesteads, and a local store or shop; 53% are within 10 km of a health facility or clinic; 55% have access to tarred roads and 59% have secondary or high schools.

Most households (59%) in Mpumalanga have access to piped water either in their dwellings or on their residential stands, 8% collect their domestic water from communal standpipes and about 12% use rivers or streams and wells as sources of drinking water. Most households (50%) use pit latrines, 25% have VIPs and 20% have no sanitation facilities on their residential stands. Most households are responsible for their own refuse disposal as local authorities' refuse removal services are available to only 11% of sampled households.

ACCESS TO LAND AND NATURAL RESOURCES

Free State

Only 12% of the households indicated that they had access to arable land. Interviews with key informants indicated that arable land was still available in Thaba Nchu but

in short supply in the former homeland area of Qwaqwa. Grazing land is in short supply in both Thaba Nchu and Qwaqwa. Access to land for residential purposes does not seem to be a problem in Thaba Nchu but residential land is no longer available in some of the traditional authority areas in Qwaqwa.

In terms of access to natural resources, the majority of the households harvest/collect and use natural resources without any payment. The percentages of households that do not pay for harvesting and using the various natural resources are as follows: wild fruits (100%); medicinal plants (96%); reeds (90%); livestock grazing (87%); grass (83%); vegetables (82%); and firewood (50%). Natural resources that are sometimes paid for include firewood (50%), poles (57%), vegetables (18%) and grass (17%).

There seems to be low awareness of existing regulations governing the harvesting of natural resources. The enforcement of rules and regulations is also low especially in the case of grazing land. Despite the existence of land degradation confirmed by the results of both key informant interviews and the land cover and use study, the perception of most households is that the availability of natural resources is not threatened.

North West

Although only a small number of households were engaged in agricultural activities, access to arable land is not considered to be a problem. With regard to residential land, household survey results suggest that there is little demand for land based on the number of applications for residential land. Traditional leaders also seem to subscribe to the view that the availability of residential land is not a constraint. However, local councillors believe that in most of the traditional authorities, residential land is oversubscribed. The availability of grazing land has become a problem in most traditional authority areas as there are no measures to control the number of animals each household is entitled to own. There does not seem to be a constraint on access regarding land for business.

Access to natural resources is largely free of charge. The most commonly harvested natural resources include firewood, poles, wild vegetables, medicinal plants and wild fruits. Most households are not aware of existing rules and regulations governing the harvesting of natural resources and do not consider their natural resource base to be at risk. However, the results of the land cover study suggest an increase in the amount of land under dryland production and degraded natural vegetation. Soil erosion is considered by most households to be the main cause of deterioration in the natural resource base.

Mpumalanga

Access to residential land depends on both the *availability* of and the *need* for residential land. Although 99.5% of sampled households 'own' their residential

stands and some have more than one stand, traditional leaders indicated that in 51% of villages, residential land is in short supply.

The need for land in communal areas is exacerbated by the fact that 41% of the sampled households do not originally come from the communal areas where they are currently living. Households of 'foreign origin' outnumber households originating from home villages or the same traditional authority areas. This suggests that communal areas have provided refuge to the displaced, the 'homeless' and the 'landless' over the years. The combined impact of population growth and population inflow has put pressure on land resources and affects the availability of residential land.

Only 26% of the sampled households have access to agricultural land. The average arable land holding is 2.7 ha per household. About 50% of households with access to arable land obtained their land in the 20 years between 1970 and 1990. Allocation of agricultural land declined sharply since 2001. The decline in land allocation in the last 20 years, especially since 2001, confirms the scarcity of arable land.

Unregulated access to land increases the pressure on land resources. Eight percent of sampled households' residential land has 'no legal status' and 34% of households with arable land (i.e. 8% of sampled households) have 'no legal status'. This indicates that unregulated access to land in communal areas is a growing problem facing those that deal with land at community level. Traditional leaders who assessed informal settlement at village level identified informal settlement as a problem in 70% of the 105 villages. In fact, traditional authorities troubled by illegal occupation of land believe it is out of control and cannot be stopped.

Regarding the natural resource base, the continued availability of firewood is seriously threatened and the impact of the occasional use of poles on the availability of poles could be severe as whole trees are often cut for a few straight poles or logs to fence a yard or small field. Most medicinal plant resources are endangered species. Although only 17% of the households use medicinal plants, it can have a significant impact on the limited, and in some cases endangered, species of medicinal plant populations. Grazing will remain under pressure and grazing areas could become more degraded as long as communal areas remain largely overstocked and rotational grazing systems cannot be implemented.

LAND ADMINISTRATION

Free State

The majority of households (52%) considered chiefs and local headmen to be in control of land allocation, while 30% of households considered local municipalities to be in control. Regarding who should control land allocation, 42% of the households believe that local municipalities should be in control while the proportion for chiefs and local headmen was 37%. In reality, land allocation is the responsibility of local headmen, and chiefs only become directly involved when there are problems. Local municipalities only get involved in the allocation of land for the establishment of social facilities.

The procedures for land allocation in both Thaba Nchu and Qwaqwa are basically the same except for a few variations. In general, the principle of one residential stand per family applies but there may be exceptions to accommodate situations in which a man has more than one wife. The same application procedure applies to both locals and non-residents except that the latter need to submit a recommendation from the administrative structures they are emigrating from. Women are involved in the allocation of land either as headwomen or as members of traditional councils. Households in Thaba Nchu are generally happier with the current system of land administration than those in Qwaqwa.

North West

In terms of land administration, chiefs and headmen are considered by most households (more than 70%) to be in control of land allocation. Local municipalities play a major role insofar as land for development purposes is concerned. About 80% of the households believe that chiefs and local headmen should control and administer all types of land in communal areas. Between 54% and 76% of the households either agreed or strongly agreed that the current system of land administration was fair and worked well. The households seem to be evenly split between those that would like to see a change in the current system of land administration and those that would like the status quo to remain.

In terms of access to land based on gender, more than 60% of the households believe that the current system of land administration provides same access rights to all regardless of gender. Rules for land allocation generally apply equally to both locals and new arrivals, although the latter need to submit a letter of transfer (testimonial) from their traditional authorities. Illegal occupation of land has been mentioned as the most important problem encountered by traditional authorities in land administration and allocation. Traditional authorities seem to accept that there is little they can do to resolve the problem without the involvement of other role players such as local municipalities and government departments.

Mpumalanga

Traditional leaders believe that land allocation is the responsibility of traditional authorities and local headmen as representatives of chiefs. Local councillors support the view that chiefs own the land, and the rule that traditional authorities allocate residential and arable land is observed by 87% and 59% of sampled households, respectively.

Although the sampled households are aware that no tenure system can guarantee tenure security, 51% of them agree that 'old order rights' provide secure tenure. The fact that only 8% of the sampled households are aware of community members that had lost residential or arable land indicates a low incidence of land loss. According to traditional leaders, the security of tenure that 'old order' rights provide is in the

interest of communities, and although they believe that a title deed would provide more security, it would at the same time increase households' risk of losing their properties.

The most common land administration problems according to traditional leaders are growing informal settlements, land invasions and illegal settlements. They are, however, divided on how to address the problems. Some are confident and see no reason to involve any other institutions or structures in the administration of communal land. Others have a more realistic view and support a collective approach with due recognition of their role as 'owners of the land' to address the problems. Though most recognise the need to work with local municipalities in resolving land conflict and disputes, the history of cooperation between these institutions of local governance has not been too positive and traditional authorities seem to be fairly cynical about future cooperation with local municipalities.

LAND USE

Free State

The majority of households (81%) use their main homestead plot for residential purposes and only 6% use it for both residential and farming purposes. There is virtually no difference between Thaba Nchu and Qwaqwa regarding land use for the main homestead. Arable land is not fully utilised as only 8% of those cultivating crops used all their land in the previous season (see Table 5). Lack of rain is given as the main reason for the underutilisation of arable land. Crop production is mainly for home consumption, although most of those that produced vegetables indicated that they were doing so mainly for sale purposes.

North West

The most important crops cultivated by households are maize, sorghum, vegetables and pumpkins. Home consumption is the main reason for crop cultivation and little use is made of modern technology involving improved seed and fertilizer. Arable land is generally underutilised, with only 60% of those engaged in agricultural production utilising all available land for crop production (see Table 5). Lack of rain is given as

Table 5: Percentage of households utilising all arable land

Province	Percentage of households using all arable land (%)
Free State	8
Mpumalanga	48
North West	60

the main reason for arable land underutilisation. Livestock owned by most households include cattle and pigs. These are followed by goats and donkeys, with poultry playing a less important role. Animal herd sizes are generally small, ranging from 1–20 animals for cattle and goats. Cattle and goat ownership serve as insurance for most households.

Mpumalanga

The majority (64%) of the sampled households use their residential plot only for accommodation; 40% of households use residential properties to produce crops and 56% of the microenterprises owned by the sampled population are operated from residential stands.

The average arable plot size is 2.7 ha. Only 48% of the households with dryland fields used all their land for crop production in the last production season (see Table 5). Only 58% of the available dryland was used – as much as 40% of dryland fields could therefore be lying unused.

LAND-RELATED CONFLICT

Free State

Land-related conflict involving households does not seem to be a problem as only one household reported the existence of a land-related conflict. At the level of traditional authorities, all chiefs agreed with the official boundaries of their areas (see Table 6).

North West

Less than 5% of the households reported being involved in some land-related disputes and most of these were resolved either by the families or traditional authorities.

At traditional authority level, more than 60% of the traditional authorities included in the community audit agreed with the boundaries as indicated on the maps of their areas (see Table 6). This suggests that land-related conflicts are more common at traditional authority level than at village level.

Table 6: Land-related conflicts and disputes

Province	Percentage of traditional authorities with land-related conflict	Percentage of households with land-related conflict
Free State	0	0.5
Mpumalanga	50+	...
North West	40	5

Mpumalanga

Land-related conflicts and disputes are widespread and revolve around problems of legitimacy, territory and history. The conflict and disputes occur at traditional authority level. The community audit which covered 77% of traditional authorities in Mpumalanga established that more than half of these were involved in land-related conflict and boundary disputes (see Table 6). This suggests that the implementation of CLARA would require land rights enquiries in the majority of traditional authorities. The DLA would therefore need to allocate a significant amount of resources to conduct the necessary land rights inquiries.

LAND DEGRADATION

Free State

There have been no major changes in the built-up environment in Barolong Boo Seleka (Thaba Nchu) since 2000. Major changes are in dryland agriculture, which has increased greatly since 2000. Although a portion of that increase is due to a reclassification of what the image classification software categorised as degraded vegetation in 2000 to a human classification of subsistence dryland in 2006, the degraded vegetation has also increased.

Dongas and gullies were also largely misclassified because some of them have little grass resulting in the classification techniques categorising them as degraded vegetation or thicket. Some thicket has been reclassified as grassland and some as agriculture, as is the case with wetlands and water areas. It may therefore be concluded that some land degradation has taken place between 2000 and 2006 in the area.

The communal areas of Qwaqwa have lost a lot of grassland, but the huge increase in bare rock and soil could be partly due to previous misclassification. The other changes in land cover do not seem significant. As in Thaba Nchu, land degradation has occurred in Qwaqwa between 2000 and 2007.

Mpumalanga

About 10% of communal land is classified as degraded vegetation. Thicket is associated with bush encroachment as a result of overgrazing and 26% of communal land in Mpumalanga is classified as thicket. More than 35% of communal land in Mpumalanga could therefore be classified as degraded land, while only some 30% of communal land classified as natural woodland and natural grassland would not be degraded. Land degradation is increasing, as is evident in the decrease of 3% in natural woodland and 2% in natural grassland between 2000 and 2007.

North West

The results of the land cover study show that notable changes have occurred in the

areas of land under thicket, subsistence dryland farming, natural woodland, built-up areas and townships, and degraded vegetation between 2000 and 2007. The area under degraded vegetation has increased by more than 3% between 2000 and 2007. This suggests that land degradation has increased during the period in the traditional authority areas covered in the study. However, it should also be noted that the area under thicket decreased by about 12%, suggesting that there may have been a decrease in the area that may be described as degraded between 2000 and 2007.

SUMMARY AND CONCLUSION

Traditional systems of land tenure/ownership in African countries have come under attack for retarding rural development. In particular, these systems have been criticised for not ensuring secure property rights and for promoting inequities in land access. These criticisms have resulted in some African countries engaging in processes aimed at either modifying or replacing their traditional systems of land tenure/ownership. In South Africa, CLaRA is aimed at addressing the perceived shortcomings of the communal land tenure systems found in the former homeland areas.

Baseline information is required prior to the implementation of a programme that will give effect to CLaRA. This has necessitated the implementation of a baseline study in six provinces of South Africa. This paper reports on the results of the baseline study as implemented in the three provinces of Free State, Mpumalanga and North West. Some of the results are as follows:

- Unemployment levels in the communal areas are generally high, with self-employment in agriculture and microenterprises playing a limited role in providing employment opportunities and income.
- A large majority of people in communal areas have received some formal education, suggesting a high level of literacy; however, only a small proportion of these people have acquired tertiary qualifications.
- Access to basic services in the communal areas has improved significantly over the past decade. More than 90% of households in the Free State and Mpumalanga have gained access to electricity and piped water.
- Access to arable land does not seem to be a problem for most households in communal areas; however, most households do not fully utilise the available arable land.
- Unregulated access to land seems to be increasing in some of the communal areas and some traditional authorities do not have a solution to the problem.
- Despite the criticisms levelled against the communal land tenure system in South

Africa, many households seem to be satisfied with the system. Traditional leaders and headmen are still considered to be the appropriate persons to administer land in communal areas.

- Land-related conflicts and disputes are widespread in some of the provinces (North West and Mpumalanga) and occur mainly at traditional authority level. These involve mainly disagreements about traditional authority boundaries.
- Land degradation is a major problem in most communal areas and significant changes in land cover have occurred over the period 2000–2007.

The implementation of CLaRA could assist in addressing some of the factors retarding rural development. This is especially true in situations where insecurity of property rights is a major development constraint. The results of the baseline study, however, do not provide any evidence of a widespread existence of insecure property rights that may be attributable to the communal land tenure system. It is also noteworthy to mention that the majority of the households included in the baseline study are generally happy with the current system of land administration.

Given that South Africa's communal areas are predominantly rural, the development of these areas will largely depend on progress achieved in enhancing the contribution of agriculture and micro-enterprises to employment and income. The fact that agriculture and micro-enterprises contribute minimally to rural development in the communal areas is particularly worrisome. An important measure of the impact of CLaRA on rural development in communal areas should therefore be the contribution it makes to the enhancement of the contribution of agriculture and micro-enterprises to employment and income.

An important implication of the results of the baseline study is that significant resources will need to be allocated to conduct a land rights inquiry, given the existence of widespread land-related conflicts and disputes in communal areas.

ENDNOTES

- 1 Place F, Roth M & Hazell P, Land tenure security and agricultural performance in Africa: Overview of research methodology. In Bruce JW & Migot-Adholla SE (eds), *Proceedings of the 11th International Farm Management Congress*, Vol. 1. Alberta, Canada: International Farm Management Association and the Canadian Farm Business Management Council, 1994, pp 245-56; Feder G, Onchan T, Chalamueng Y & Honglardaran C, *Land Policies and Farm Productivity in Thailand*. Baltimore: The Johns Hopkins University Press, 1998.
- 2 Deininger K, *Land Policies for Growth and Poverty Reduction*. Washington: The World Bank, 2003, p xix.
- 3 Ibid, p xx.
- 4 Ibid.

Conference summary

NIC OLIVIER

Day 1, 26 August 2008

SESSION 1: KEYNOTE ADDRESS

Land and agrarian reform in South Africa and its challenges

Presented by Acting Chief Land Claims Commissioner Blessing Mphela on behalf of Department of Land Affairs Director-General Thozì Gwanyà

The paper focused on:

- Overview of the current South African land regulatory framework and policy system
- Recent national policy developments
- Lessons learnt from the process
- Plan of action for 2008–2014

Some of the key challenges identified in the paper were:

- Fast-tracking land reform delivery by using tools such as expropriation, in line with the provisions of the Constitution
- Speeding up formulation of policy and legislation to regulate access to and ownership of land by foreigners
- Development of policy and legislation to implement recommendations relating to the review of willing buyer–willing seller
- Development and implementation of plan for an effective settlement and implementation strategy, thereby providing comprehensive support to land reform beneficiaries
- Working towards effective management control and administration of state land

- Insufficient funding and capacity for the transfer of 30% of agricultural land will halt land reform implementation. If the current budget allocation stays the same, the 30% target is likely to be achieved only in 2025
- Some 95% of lodged restitution claims have been settled with about 4,900 complex rural land claims outstanding
- We need to ensure that in the process we do not lose agricultural production, labour and markets (national and international)
- Strategic partners: enabling environment
- Identify sector needs that may unite the sector
- Agree to disagree on specific issues
- Agree on strategy to address the needs and differences
- Regular focus sessions to be on the same page (shared understanding and approach)
- Reviews and assessment
- Support to Ministerial Advisory Council
- Priorities in the new dispensation: ASGISA objectives. Economic growth and stability; job creation; poverty alleviation; transformation. Redistributive processes are not going to be dealt with unless the country has a proper understanding thereof
- Dialogue and negotiations are still very important, as is skills development and a collective effort from government and sector partners
- Need to develop a very clear agricultural policy to address the relationship between land reform and agricultural policy
- Government to encourage people to start planting

Challenges occur on both the supply side and the demand side as well as in the business environment.

SESSION 2: PRACTICAL EXPERIENCES IN LAND REFORM INITIATIVES AND RECOMMENDATIONS FOR THE FUTURE

The papers dealt with the successes and challenges of land reform initiatives, as well as concrete proposals for the way forward.

Organised agriculture

Reflecting on experiences in land reform and proposals on alternatives
Theo de Jager, Agri SA

Key challenges identified:

- Very little communication between the stakeholders especially at local and provincial levels

- Land has lost 40% of its collateral value
- Farmers increasingly decide to invest in neighbouring countries
- Information and communication problems
- Relationship between beneficiary farmers and traditional leaders

Key solutions identified:

- Public-private partnership involving capital funding legitimacy and expertise
- Inclusive land reform forums are needed where partners can work together on agricultural projects with the purpose of sustainable land reform and agricultural development

Civil society

Land reform in South Africa: Successes, challenges and concrete proposals for the way forward

Ruth Hall, Institute for Poverty, Land and Agrarian Studies, University of the Western Cape

The paper focused on successes, challenges and concrete proposals for the way forward.

Key challenges identified:

- The economic case for land reform should be about restructuring the patterns of production and accumulation
- There is no clear policy direction as to who should or will benefit
- Willing buyer–willing seller: non-interference with land markets; unwillingness by state to expropriate land for land reform purposes; reliance of landowners to make land available for sale; self selection of beneficiaries; the purchase of land at market prices
- Paradigm choices include:
 - *Market-based approach*: Commercial production, no change in state role, continuation of current trends
 - *Gearing up with private sector*: The role of the Department of Land Affairs (DLA) somewhat diminished. Limited process of deracialising
 - *Developmental state*: Interventions in input supply, credit and output markets. Investment in extension, infrastructure and production subsidies; growth of a smallholder sector
 - *Radical restructuring*: Substantial legal and economic measures to counter the dominance of agribusiness
- How are smallholdings going to succeed now if they did not succeed in the past?
- Three perspectives: social, economic and political
- There is an argument that the problem of poverty will be solved with land reform and restitution; however, it actually has the opposite effect

Key solutions identified:

- An agenda for agrarian reform
- A vision of supporting land uses of the poor would need to include:
 - Change of the size of landholdings distributed
 - Support land use
 - Change the labour regime
 - Build linkages into value-adding for small producers
 - Provide opportunities for non-farm economic activities (land reform has lost its context of rural development)
 - Alter spatial approach to settlement patterns

Conclusions:

- Land reform is a political project yet to define its economic rationale
- Need for agrarian policy which specifies the kind of restructuring that satisfies the political demands for land reform
- Direct support of production and interventions in input supply, processing and output markets needed
- This will require a developmental state
- Possibility of agricultural villages

Practical experiences in land reform initiatives and recommendations for the future
 Harry May, *Surplus People Project*

Key challenges identified:

- Area-based reform
- Water reform
- Social mobilisation and movement building
- Resources are required
- Popular education and teaching groups of people on land reform and agricultural production
- Agrarian reform for food sovereignty
- Slow pace of land reform
- Administrative factors
- Project design and land use
- Post-settlement support: Inadequate support regarding credit, market access, extension, transport and training
- Ensuring adequate support for tenure rights administration
- Land reform and the competing interests of conservation

Key solutions identified:

- Land acquisition should be done within the framework of area-based planning
- All potential beneficiaries and stakeholders should participate

- National framework for prioritisation of land needs required
- Project design and land use: ways should be devised to assist poor people in obtaining smaller plots for food production
- The subdivision of agricultural land should be post-settlement support: in terms of the integration of land reform and the agricultural policy
- A junction exists between what the Department of Agriculture and the DLA does. Comprehensive support for agricultural production and group administration will be pivotal for the future
- There should perhaps be a ministry of land *and* agriculture where there is a single budget for agrarian reform since the two separate departments create a formal distinction between subsistence farmers and commercial farmers
- Post-settlement support in particular is not a one-off thing

SESSION 3: OVERVIEW OF LAND REFORM INITIATIVES IN SOUTHERN AFRICA – SUCCESSES, CHALLENGES AND THE WAY FORWARD

Land reform in Zimbabwe: The first ten years Sam Moyo, African Institute for Agrarian Studies

Key challenges identified:

- Agricultural model for small farming which was structured around a plan to improve small farms
- The small farm sector as a whole became a focus of agricultural and rural development support
- Land reform policy: clear that there were many displacements. Rehabilitation and reintegration was an objective. Productive and promising farmers were another objective
- Bulk purchase
- More activism and demands for land mobilised from very small historical groups (different from the warlords role later on)
- Active state in buying land and also active state in supporting the selection of people, settling and moving them and providing infrastructure
- Selection system
- Land delivery was not enough to meet the demand and problems in financing the land

Namibian land reform experiences: 1990–2007

Eric Ndala, Director for Development Planning and Research, Namibian Ministry of Lands and Resettlement

Key challenges identified:

- The Land Question conference: 1990 Political independence under democratic

government takes over the land issue: equal access, fair distribution, etc.; gross economic inequalities not conducive to sustainable development. 1991 National Land Conference – consensus reached that the wrongs of colonial dispossession must be addressed, corrected, etc

- Consensus and resolutions: Find solution; open-door policy to foreign investment; land tax as a form of revenue for the state and a means of encouraging productive use of land; land in communal areas retained and developed to sustain the majority poor communal peasants; restitution of ancestral land claims not possible; evaluation of legal options on possible forms of land tenure; role of traditional leaders in allocating communal land recognised and defined under the law
- Vision and mission: Vision 2030 recognises land productivity as a major factor challenging overall land-based economies to reduce poverty. Land is used appropriately and equitably, contributing significantly towards food security at household and national levels
- Programmes: land acquisition; resettlement; and survey and mapping
- The liberal approach to expropriation is being implemented
- Willing buyer–willing seller approach does not deliver effectively as the law prescribes how this should be done
- Assessment, development and administration of land in communal areas in order to remove the concentration of support in communal areas
- Challenges: Willing sellers not compelled by law to offer suitable agricultural land to the state for resettlement; the concept of willing seller and the payment of market-related prices fully protects the interests of existing landowners; shortage of professionally qualified Namibian land surveyors, etc.; most offered farm land too small; legal requirements have to be followed at every stage; evictions and retrenchment of farm workers is another challenge to land reform; economic pressures

Key solutions identified:

- Strategies: PPTT Report of 2005; 5 year strategic plan; MLR Annual (Business) Plan; platforms for active participation and cooperation with all relevant key stakeholders and development partners which support land reform; Agricultural Extension Services etc.
- 2000 NDP2 need for statistics to determine the number of people who need land
- Targets to be set to resettle a number of families every year
- Post-settlement support is provided but not systematic
- Pre-settlement support must be dealt with
- Land tax based on the value of the land; does not apply to communal areas

Day 2, 27 August 2008

SESSION 1: COMMUNITY OWNERSHIP AND MANAGEMENT OF PROTECTED AREAS

People and parks: Challenges and opportunities

Bertus de Villiers, member of the State Administrative Tribunal of Western Australia and a visiting fellow at the Law Faculty of the University of Western Australia

The paper focused on:

- Land claims and protected areas
- Sharing the benefits of conservation areas
- Building alliances around the Kruger National Park

Key challenges:

- International framework
- South Africa's unique features
- SANParks – obligation to three layers of communities: black communities; claimants; and the wider country
- Advanced set of policies
- Not yet high value of turnover benefiting communities
- Profitability or welfare objectives
- Consultation and joint management: most cases consultation
- Impact of land claims (e.g. one third of Kruger, most of KwaZulu-Natal, 99% of Limpopo and Mpumalanga) – policy not yet finalised
- Makuleke type – restore title and then negotiate terms of management: BUT
 - Doesn't fit all
 - Risk of confusing ideas on part of community
 - Risk of high commercial expectations
 - Risk of frustration due to environmental conservation on new developments
 - Risk of instability in long-term conservation estate
- Impact on adjacent area
 - Overgrazing
 - Cutting of fences
 - Lack of cooperation between government departments
- Grazing rights in parks
- Communal conservancies – major source of income = trophy hunting

Key solutions identified:

- Peoples and Parks
 - Restore land
 - Alternative land: for more turnover + profit

- Cash compensation: more turnover + profit
- Access to park for cultural purposes
- Contribution
- Replication of success stories
 - Joint management not a panacea , other options must be discussed
 - Small family projects work much better than a community project
 - Be clear about management
 - Glamorous projects hard to sustain
 - Ongoing support and training
 - Guard against cherry-picking
 - Project identification in each park
 - Forum for discussion of issues relating to people and parks issues needs to be established
 - Conservation estate will only survive if there are commercial benefits for community
 - Wider negative implications of land reform fails on conservation areas
 - Coordination of land reform at national and provincial level
 - Some resource use in conservation areas should be considered (but be very careful as regards grazing)
 - Funding cycles and need for post-settlement support must be synchronised

SESSION 2: POST-SETTLEMENT SUPPORT

Coordinated governance support and training: The Sustainable Restitution Support – South Africa programme

Canny Geyer, programme manager: rural development at the SADC Centre for Land-related, Regional and Development Law and Policy, University of Pretoria; Ansuette van Rooyen, project administrator at the SADC Centre

The paper focused on:

- SADC Centre overview of post-settlement support in South Africa
- SRS-SA overview of three post-settlement South African pilot projects
 - Presentation of Mashisaimale (Phalaborwa) pilot project – Mr G Mamabolo
 - Presentation of Nkumbuleni (Pietermaritzburg) pilot project – Ms D Gule
 - Presentation of Ebenhaeser (Vredendal) pilot project – Mr R Jacobs

Key challenges identified:

- Governance level
 - Inadequate links between pre- and post-settlement support
 - Insufficient integration of government activities
 - Lack of cooperative governance
 - Poor communication between stakeholders

- Project level
 - Complex community dynamics
 - Absence of effective social facilities
 - Lack of integrated business plans
 - Lack of relationship-based advisory services
 - Inadequate project management
 - Insufficient capacity-building programmes
 - Unrealistic community expectations

Key solutions identified:

- Well-designed project; based on clear objectives, participatory framework, internal and external governance structures and systems, allocation of roles, etc, also to be aligned to the generic model for post-settlement support
- Governance and implementation: two key issues
 - Governance: enterprise management
 - Capacity-building
- Framework containing minimum norms and standards
- Benefits for
 - Community
 - Country (and other SADC + other countries)
- Requirements
 - Role of CLCC
 - Co-ownership of officials
 - Champions within RLCC + CLCC
 - Decentralised project implementation critical – provincial offices
 - Positive ideas of community facilitating
 - Capacity building of CPA/Trust
 - Enterprise management
 - Importance of timeous grants
 - Role of strategic partners
 - Uniqueness of each project
 - Community to have a positive attitude
- Profits to be used on community projects
- Obtain support from traditional governance entities
- Ensure stakeholder participation
- Well-planned consultation process
- Appropriate assessment processes
- Determine most appropriate management model
- Determine most appropriate business enterprise model
- Establishment of inclusive project steering committee
- Training needs to be addressed
- Participative interim business plan
- Longer-term business enterprise plan

- Understanding of roles
- Disbursement of grants
- Obtain early involvement and tangible support from DLA and DoA
- Alignment of pre- and post-settlement community intervention
- Monthly progress monitoring and evaluation
- Transparency on activities
- Timing of farming processes
- Key role of community facilitation
- Value of community exchanges
- Interconnectedness of restitution and broader agrarian reform
- Importance of pre-implementation engagement
- Mainstream gender
- Integration of land reform processes (not separate)
- Three models to be finalised by government:
 - Beneficiation of beneficiaries
 - Beneficiation
 - Distribution of benefits amongst beneficiaries

SESSION 3: COMMUNAL TENURE REFORM

Overview of the CLaRA regulatory framework and implications

Dr Siphso Sibanda, Department of Land Affairs

The paper focused on an overview of the CLaRA regulatory framework and implications

Key challenges identified:

- Constitutional challenge to CLaRA (3 arguments)
- CLaRA applies to former homelands and SADT areas
- Tenure forms PTOs and Quitrent – operate on periphery of legal system (only KFC, now Ithala, has recognised PTOs for security)
- Security:
 - At individual level: Conversion to full ownerships – preemptive right of community to such land if land becomes available; CLaRA rights are registrable
 - At community level: State to divest itself of its trusteeship – registration in name of community options: communal (new order) registrable rights
 - upgradeable by individuals to full ownership through LAC
 - maintain customary tenure
 - choice: residential area subdivide, and return remainder in communal tenure
 - ownership vests within community – not TL or TC

- all decisions by community
- CLaRA provides for rights of marginalised groups, e.g. women's rights
- authority issue PTOs vests in DLA Minister; only delegated to KZN – all other entities issuing PTOs are doing so without any legal basis
- surveying in all provinces
- challenge i.r.o. skills in Dept – we need partnerships
- disputes between and within communities (i.a. legal boundaries)
- Differences between RSA + Namibia: Namibia took on Botswana model, and in Namibia no freehold titles possible (e.g. costs of surveying)
- Botswana: Land boards have taken over functions of traditional leadership (in RSA – TL much stronger compared to Botswana)
- Namibia: LRBs advisory role to Minister and to community, and when TC wants to sell part of land, LRB can override
- Botswana: leaseholds (99) – Mozambique: socialist approach – RSA: should be uniform all over SA. Nothing in CLaRA prevents leaseholds.
- CLaRA: 3 forms of tenure (18(3)(a))
 - Customary tenure
 - Outer boundaries surveyed
 - Internal divisions remain as is
 - Individuals may request TAC for excision of land parcel in order to obtain full ownership (surveying etc. of this individual land parcel will be for the cost of the individual concerned)
 - Wholesale individualisation
 - Heartbreak System – individual + communal tenure (mixture of first two options)
- Survey issue is complex – last 4 years in EC not completed – expensive and time-consuming, if subdivide – government will not pay for survey thereof. ± 600 000 subdivisions in actual fact in KZN (± R5000)
- CPAs – complex problems inherent in current CPAs. Consultants use on average 9 hours to finalise constitution and establish a CPA. In addition, the required level of expertise of many CPA executive committees is lacking
- Section 19 – community rules to be clear
- Timelines:
 - April 2009 in KZN consultations and tabling of regulations in Parliament
 - 2006 – DLA completed National Implementation Framework for CLaRA; provinces have not completed theirs – still outstanding
 - No concrete plans for implementation
 - Regulations only now completed
 - Lack of capacity
- Namibia:
 - Training and information strategy to inform TLs that their power has not been diminished

The Communal Land Rights Act (CLaRA) baseline study in three South African provinces: Free State, Mpumalanga and North West

Charles Machethe

The paper focused on an overview of the University of Pretoria and Department of Land Affairs CLaRA implementation pilot project.

Key challenges identified:

- Socio-economic characteristics
- Development aspects
- Land access and use
 - Land for grazing
 - Unregulated access to land
 - Arable land not used by communities (underutilisation of arable land in former homelands)
- Land degradation has increased from 2000–2007
- Land administration:
 - TKs to remain responsible
 - Common problems:
 - informal settlement
 - Land invasion
 - Illegal settlement
- Land related conflict
 - Mainly between communities (40–50%)
 - Conflict between families very few, and solved by TC

Conference programme

Day 1, 26 AUGUST 2008

10:00-11:00 **Registration**

11:00-12:30 **SESSION 1: OPENING: SETTING THE SCENE,
EXPERIENCES AND THE WAY AHEAD**

Chair: Prof Nic Olivier

- Overview of the current South African land regulatory framework and policy system
- Focus on recent national policy developments
- Lessons learnt from the process
- Plan of action for 2008 to 2014
- Open discussion

Mr T Gwanya

12:30-13:30 **Lunch**

13:30-15:30 **SESSION 2: PRACTICAL EXPERIENCES IN LAND REFORM
INITIATIVES AND RECOMMENDATIONS FOR THE
FUTURE**

Chair: Dr Bertus de Villiers

- Organised agriculture presentation on successes, challenges, and concrete proposals on the way forward
 - NAFU (15 minutes)
*Motsepe Mokoene**
 - Agri-SA (15 minutes)
Dr Theo de Jager
 - Commentary & open discussion (30 minutes)
- Civil society presentation on successes, challenges and concrete proposals on the way forward
 - PLAAS (15 minutes)
Ruth Hall

- SPP (15 minutes)

Harry May

Commentary & open discussion (30 minutes)

15:30-16:00 Tea break

16:00-18:15 **SESSION 3: OVERVIEW OF LAND REFORM INITIATIVES IN SOUTHERN AFRICA: SUCCESSES, CHALLENGES AND THE WAY FORWARD**

Chair: Dr Rama Naidu

- The First Ten Years in Zimbabwe (30 minutes)
Prof Sam Moyo
- Open discussion (10 minutes)
- Land Reform in Kenya (30 minutes)
*Prof O Ogendo**
- Open discussion (10 minutes)
- Land reform progress and issues in Namibia (30 minutes)
Eric Ndala
- Open discussion (10 minutes)

19:00-21:00 **Dinner and KAS programme introduction**

- Introduction and conference welcome
Dr W Böhler, KAS resident representative

21:00 Day closes

Day 2, 27 August 2008

08:30-09:45 **SESSION 1: COMMUNITY OWNERSHIP AND MANAGEMENT OF PROTECTED AREAS**

Chair: Mr Livingston Maluleke

- Land claims and protected areas: (SANParks Executive Director: Conservation Services) (15 minutes)
*Dr H Magome**
- People and Parks: Sharing the benefits (15 minutes)
Dr Bertus de Villiers
- Building alliances around the Kruger National Park (15 minutes) (Head: People and Conservation KNP)
*Ms H Mmethi-Nobela**
- Open discussion (30 minutes)

09:45-11:15 **SESSION 2: POST-SETTLEMENT SUPPORT**

Chair: Dr Rama Naidu

- SADC Centre overview of post-settlement support in South Africa (15 minutes)
Mr C Geyer
- SRS-SA overview of three post-settlement South African pilot projects
 - presentation of Mashisaimale (Phalaborwa) pilot project (15 minutes)
*Mr G Mamabolo**
 - presentation of Nkumbuleni (Pietermaritzburg) pilot project (15 minutes)
Ms D Gule
 - presentation of Ebenhaeser (Vredendal) pilot project (15 minutes)
Mr R Jacobs
- Open discussion (30 minutes)

11:15-11:45 Tea break

11:45-12:45 **SESSION 3: COMMUNAL TENURE REFORM**

Chair: Dr Bertus de Villiers

- Overview of CLaRA regulatory framework and implications (20 minutes)
Dr S Sibanda
- Overview of UP/DLA CLaRA implementation pilot project (20 minutes)
Prof. C Machethe
- Open discussion (20 minutes)

12:45-13:15 **Session 4: CONFERENCE SUMMARY**

- Overview of the conference focus areas
- Overview of identified success, challenges and outstanding issues
- Presentation of possible options for the way forward (based on inputs made during the conference)
Prof Nic Olivier

13:15 **Lunch and departure**

* These speakers did not attend

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Occasional papers

- *The Politics of State Resources: Party Funding in South Africa*, Khabele Matlosa (ed) (2004)
- *Composers, Conductors and Players: Harmony and Discord in South African Foreign Policy Making*, Tim Hughes (2004)
- *The Place and Role of Local Government in Federal Systems*, Nico Steytler (ed) (2005)
- *Financial Constitutional Law: A Comparison between Germany and South Africa*, Dirk Brand (2006)
- *Review of Provinces and Local Governments in South Africa: Building on the Past for the Future*, Bertus de Villiers (ed) (2008)
- *Values and Democracy in South Africa: Comparing Elite and Public Values*, Hennie Kotzé and Cindy Lee Steenekamp (2009)
- *Crossing the Line: Dealing with Cross-Border Communities*, Bertus de Villiers (ed) (2009)

Seminar reports

- *Political Culture in the New South Africa*, 7 September 2005
- *Challenges to Democracy by One-Party Dominance: A Comparative Assessment*, 10 October 2005
- *Electoral Models for South Africa: Reflections and Options—Electoral Task Team Review Roundtable*, 9–10 September 2002, second edition
- *The Impact of Floor Crossing on Party Systems and Representative Democracy*, 15 November 2006, Vineyard

Policy papers

- *Financial Intergovernmental Relations in South Africa*, Dirk Brand (2007)
- *The Future of Provinces in South Africa – The Debate Continues*, Bertus de Villiers (2007)
- *Electoral System and Accountability: Options for Electoral Reform in South Africa*, Bertha Chiroro (2008)
- *Land Reform – A Commentary*, Bertus de Villiers (2008)
- *Democratic Consolidation in South Africa: Comparing Elite and Public Values*, Hennie Kotzé and Cindy Lee Steenekamp (2008)

Other publications

- *The Politics of Party Coalitions in Africa*, Denis Kadima (ed) (2006)
- *Land Reform: Trailblazers – Seven Successful Case Studies*, Bertus de Villiers and Marlize Van den Berg (2006)
- *People and Parks: Sharing the Benefits*, Bertus de Villiers (2008)