Department of Rural Development and Land Reform

- GREEN PAPER -

RURAL DEVELOPMENT AND LAND REFORM

Continuity and Change

FINAL DRAFT 2 - 16 september 2010

'Tears are very close to my eyes,' says Bhonco, son of Ximiya. 'Not for pain…no… I do not cry because of pain. I cry only because of beautiful things.' And he cries often. Sometimes just a sniffle. Or a single tear down his cheek. As a result he carries a white handkerchief all the time, especially these days when peace has returned to the land and there is enough happiness to go around. It is shared like pinches of snuff. Rivers of salt. They furrow the aged face [Zakes Mda (2002). The Heart of Redness].

The day rural people would 'cry only because of beautiful things' is the day and moment when we would be satisfied that, indeed, the ANC government would have delivered on the promise of 'A Better Life For All!'

FOREWORD

The resolution of the 52nd National Conference of the African National Congress (ANC) (December 2007) on agrarian change, land reform and rural development, confirmed the ANC's acute awareness and sensitivity to the centrality of land (the land question) as a fundamental element in the resolution of the race, gender and class contradictions in South Africa. National sovereignty is defined in terms of land. Even without it being enshrined in the country's supreme law, the Constitution, land is a national asset.

This is where the debate about agrarian change, land reform and rural development should, appropriately, begin. Without this fundamental assumption, talk of land reform and food security is superfluous! We must, and shall, fundamentally review the current land tenure system during this Medium Term Strategic Framework period. This we shall do through rigorous engagement with all South Africans, so that we should emerge with a tenure system which will satisfy the aspirations of all South Africans, irrespective of race, gender and class.

It is therefore fitting and appropriate, that the strategy of the Department of Rural Development and Land Reform is agrarian transformation – interpreted to denote **'**a rapid and fundamental change in the relations (systems and patterns of ownership and control) of land, livestock, cropping and community.' The objective of the strategy is 'social cohesion and development.' All anti-colonial struggles are at the core about two things, repossession of lost land and restoring the centrality of indigenous culture.

To deepen one's appreciation of this statement, one has to look in-depth at colonialist use of land, to subdue conquered populations and the use of tribal or ethnic subcultures to submerge the cross-cutting culture, which characterises all tribal or ethnic groups – **Ubuntu** or human solidarity in the case of Africans. The super-profiling of ethnic or tribal subcultures by colonialists is deliberately meant to create competition and conflict amongst them – the divide and rule tactic generally used to deepen subjugation. Ubuntu, the over-arching African way of life, is integrally linked to land. Any attempt to restore Ubuntu without a concomitant land restoration is futile.

Social cohesion is a direct function of the restoration of land and indigenous culture. It is not just about allegiance to national symbols, e.g. the National Anthem and Flag, important as they are. Social cohesion is built around a people's culture. In multi-cultural societies it is built around recognition of cultural diversity as strength and using such diversity to build social cohesion. Despite cultural differences, members of communities generally share the same values and taboos and tend to use those values and taboos to develop hybrid or subcultures which combine to hold people together.

People often attend the same churches, schools and play for the same clubs and become members of the same stokvels, societies, trade unions, business organisations, political parties, co-operatives etc. These institutions create subcultures which bind them together. In rural communities relationships are much deeper as they tend to be historical and inter-generational. Mutuality is a way of life which would have evolved organically, nourished and cemented by shared hard and good times. In African societies these relational virtues are captured in one word: Ubuntu. This is the bedrock of African culture. Colonialism and Apartheid sought at all times, and by all means to destroy it. Of all such means, the Natives Land Act, 1913 (Act No. 27 of 1913) and the migrant

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labour system are the ones which wreaked the most havoc in African rural communities, seriously undermining the virtues of Ubuntu as people lost their basic expression of Ubuntu – the ability to give or *izinwe*, which disappeared with the loss of their land; they could no longer produce enough food to feed themselves; they could not keep livestock; they had to survive on meagre wages, which could hardly meet their family needs, let alone be generous and share with neighbours.

Colonialism and apartheid brutalised black people, turning them into hostages to perennial hunger, related diseases and social strife and disorders. Rural development and land reform must be the catalyst in the ANC government's mission to reverse this situation. It took centuries to inflict it on black people and it is going to take quite a while to address it, but it shall be done. That long road necessarily starts with the crafting of a new pragmatic but fundamentally altered land tenure system for the country. Any other option will perpetuate social fragmentation and underdevelopment.

Development and its corollary, underdevelopment as outcomes, are a function of certain political choices and decisions as well as certain administrative actions, processes, procedures and institutions. Defined in this context, development denotes 'social, cultural and economic progress brought about through certain political choices and decisions and realised through certain administrative actions, processes, procedures and institutions.' The key parameters for measuring development therefore, are social, political, administrative, cultural, institutional and economic. Depending on the type of political choices and decisions and administrative actions, processes, procedures and institutions put in place, there will be progress (development) or stagnation (under-development). In short, depending on the type of political choices we make, and the decisions we take now; and, the type of administrative actions we take, the processes, procedures and institutions we put in place, we will either bring about the desired social cohesion and development or we will perpetuate the colonial-apartheid's social fragmentation and underdevelopment.

For the sake of clarity, 'development' indicators in this Green Paper are 'shared growth and prosperity, full employment, relative income equality and cultural progress and those for 'underdevelopment' are 'poverty, unemployment, inequality and cultural backwardness'. It is submitted here that the two opposing socio-economic pillars, development and underdevelopment, are functions of certain political choices and decisions, as well as certain administrative actions, processes, procedures and institutions; not just any political choice or decision, nor any administrative action, process, procedure or institution. They distinguish one ideological perspective from the other.

Apartheid was an outcome of particular political choices and decisions which were executed through a plethora of oppressive policies and laws, which were carefully crafted to achieve the set outcome. Consider the following passage from Maurice Evans, on the reduction in the Natal land quota for black people in this regard: *"Yet even this will mean an average of 156 acres per head of European population, and 6.8 acres for every native, while, 'the land which will fall within the European areas is infinitely healthier, more fertile, and altogether more desirable, than either present locations or the areas recommended by the Beaumont Commission". (M Lacey: Working for Boroko, 1981)*

This was not an isolated case. It was the South African story in the systematic denudation and impoverishment of black people. Our effort to bring about the corrective measures necessary to tone down the anger, bitterness and pain of those who were subjected to this brutal treatment must be collective. The Truth and Reconciliation Commission has adequately demonstrated the capacity of black South Africans to forgive. BUT we should not take this goodwill for granted, because it is not inexhaustible. Working together we must build our collective future on this critical social asset.

Mr G E Nkwinti (MP)
Minister of Rural Development and Land Reform

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GLOSSARY

ABPs	Area Based Plans
AFAP	Agricultural Financial Assistance Policy
ANC	African National Congress
BATAT	Broadening of Access to Agriculture Thrust
BBBEE	Broad Based Black Economic Empowerment
CAADP	Comprehensive Africa Agricultural Development Programme
CASP	Comprehensive Agricultural Support Programme
CBOs	Community Based Organisations
CDWs	Community Development Workers
COS	Council of Stakeholders
CRDP	Comprehensive Rural Development Programme
CSI	Corporate Social Investment
DFA	Development Facilitation Act, 1995 (Act No.67 of 1995)
DRDLR	Department of Rural Development and Land Reform
EPWP	Expanded Public Works Programme
ESTA	Extension of Security of Tenure Act, 1997 (Act No.62 of 1997)
GEAR	Growth, Employment and Redistribution
GNU	Government of National Unity
IDPs	Integrated Development Plans
IPAP	Industrial Policy Action Plan
ISRDP/S	Integrated Sustainable Rural Development Programme/Strategy
JPoI	Johannesburg Plan of Implementation
LEFTEA	Less Formal Township Establishment Act, 1991 (Act No.113 of 1991)
LMC	Land Management Commission
LRAD	Land Redistribution for Agricultural Development
LTA	Land Reform (Labour Tenants), 1996 (Act No. 31 of 1996)
NAMC	National Agricultural Marketing Council
NEPAD	New Partnership for Africa's Development
NGOs	Non Governmental Organisations
NARYSEC	National Rural Youth Service Corps
NSFAS	National Student Financial Aid Scheme

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NSNP	National School Nutrition Programme
PGDSs	Provincial Growth and Development Strategies
PPP	Public Private Partnerships
RDA	Rural Development Agency
RDF	Rural Development Framework
RDM	Rural Development Monitors
RADP	Recapitalisation and Development Programme
RDP	Reconstruction and Development Programme
RDS	Rural Development Strategy
SA	South Africa
SLAG	Settlement Land Acquisition Grant
SOEs	State Owned Enterprises
StatsSA	Statistics South Africa
ULTRA	Upgrading of Land Tenure Rights, 1991 (Act No. 112 of 1991)

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EXECUTIVE SUMMARY

The theme "Continuity and Change" is central to the Green Paper on Rural Development and Land Reform. It builds on those efforts of the governments of our democratic era to address and redress landlessness, land restitution, rural development and poverty, while learning from experience and anecdotal evidence to suggest alternative strategies to meet these objectives in a more efficient, effective and economical way.

In Part A, the Green Paper asks and answers the question 'why continuity and change?' It also outlines the current challenges facing rural areas and what led the current government into rethinking and reshaping its development policies towards those areas. It discusses the rationale for change and asserts that the Freedom Charter (1955), the Constitution of the Republic of South Africa, 1996 ("the Constitution") and the Reconstruction and Development Programme (RDP) give content and direction to all ANC governments in pursuit of this national agenda. Chapter 1 discusses key strategies and programmes developed and implemented since 1994. In the arguments for the rationale for change, the White Paper on South African Land Policy and its related programmes and some key international obligations such as the Millennium Development Goals and Comprehensive Africa Agricultural Development Programme are also outlined.

Part B provides a scholarly discussion on the lack of a proper definition of rural or rural areas but goes further to define rurality as referring to a way of life and a state of mind as a culture which revolves around land, livestock, cropping and community. Chapter 3 describes the missing links to rural development and provides the imperatives and drivers for change. Chapter 4 of Part B thereafter discusses the Comprehensive Rural Development Programme (CRDP) and its main pillars: The CRDP concept, the job creation and skills training model and the management system. Finally it introduces the CRDP's institutional support mechanisms.

Part C deals specifically with Land Reform and Rural Development in South Africa and around the world. It discusses the reasons for countries embarking on land reform and rural development.

It provides a brief history of land reform in South Africa. It grounds the political economy of these reforms on the creation of a capitalist economy supporting major industries and benefiting the white commercial farming sector.

It also explores some international case studies while noting the inherent risk in drawing conclusions from one country and applying them to another without taking adequate account of the specific context and peculiarities that enabled such initiatives to be realised. China, India, Brazil, Mexico, Chile, Egypt and Malawi were selected as case studies.

Key lessons for South Africa are drawn out.

Part D deals with agrarian transformation, strategic land reform interventions and restitution.

It provides a case for more radical reforms. The new land tenure system linked to agrarian transformation is also unveiled. This system is underpinned by the following principles:

- Deracialisation of the rural economy for shared and sustained growth;
- democratic and equitable land allocation and use across gender, race and class; and
- strict production discipline for guaranteed national food security.

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This section makes proposals for a new land tenure system - a three tier system dealing specifically with the following:

- **State Land**: Leasehold
- **Private Land**: Freehold with limited extent
- **Foreign ownership**: Precarious Tenure

To address the institutional weaknesses in land management policy, land administration and the fragmented land legislation, a Land Management Commission (LMC) is proposed. A new policy and legislative environment that will support the three-tier system is also discussed. The proposals for the LMC will have to be supported by an aligned cadastre system. There are also two approaches proposed to reduce the costs of land acquisition and thus expand the amount of land acquired for land reform in relation to the 3 tier system:

- multi-tier pricing regime (which is a combination of the willing seller-willing buyer model, capped land prices linked to just and equitable compensation for land reform transactions and land tax); and
- new valuation regime.

Without extending the cut-off date or reopening the restitution process, the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994) provides the Minister of Rural Development and Land Reform with discretionary powers to grant special dispensation to pre-1913 dispossessions and those falling within the betterment schemes that were originally dismissed because of poor research or failure to comply with the restitution processes. The vibrancy of restitution projects is also critical and a more developmental approach is being adopted. Alternative restoration models that contribute to the broader development of rural areas are being explored. It is also important to acknowledge that rural restitution claims are complex and that legal remedies may only offer a partial solution while social and administrative solutions should also be pursued to break any deadlocks.

In respect of food security, the Green Paper introduces the Recapitalisation and Development Programme. These are part of a package of new strategic interventions aimed primarily at ensuring that land acquired through the land reform programme (all three legs) since 1994, produces food for the country and improves the lot of not only those who benefited as new land owners, but also those who are employed on those farms. The core principles of the Recapitalisation and Development Programme are mentorship, co-management and share equity. Rural Development Monitors will also be employed to monitor local development in their areas as well as play an instrumental role in natural resource management.

Part E provides the way forward, summary and conclusion.

It provides an outline of how the new policy and legislative proposals will be taken forward and other implementation modalities.

Chapter 11 emphasises the need for continuity and change and summarises the key policy and legislative proposals contained in the Green paper. It concludes by pointing out that the dual mandates of rural development and land reform will be better implemented if the Department of Rural Development and Land Reform were reconfigured and adequately resourced. The chapter

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also emphatically confirms the current Administration's commitment to address rural poverty, equitable and sustainable land reform and to enhance productivity in rural areas.

Figure 1: Agrarian Transformation System

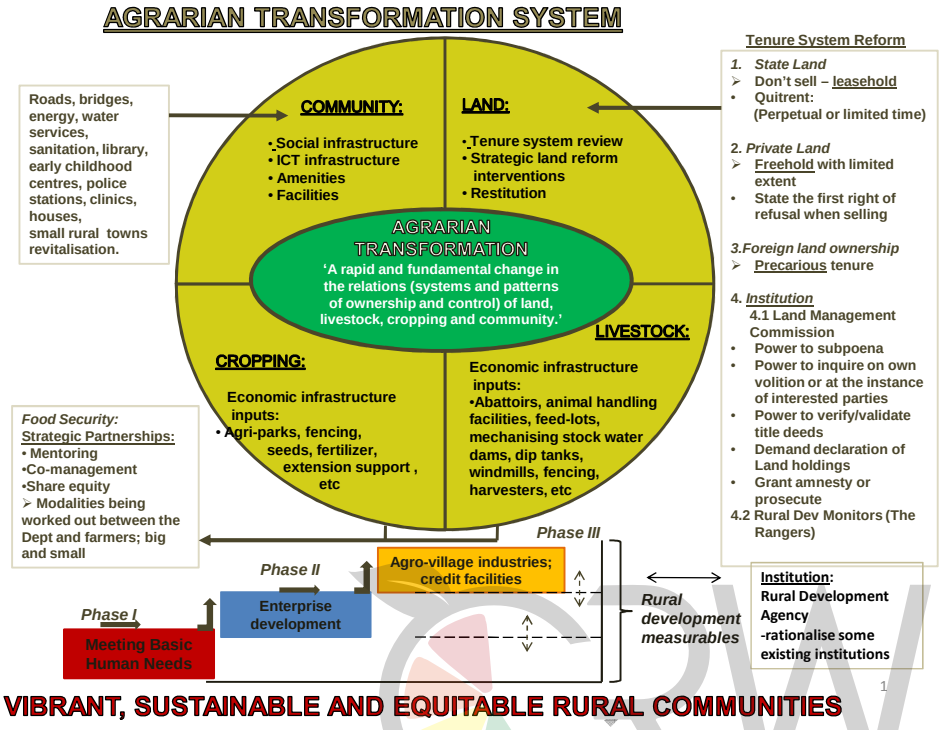

Figure 1 reflects the centrality of agrarian transformation, as the cutting edge to both rural development and land reform. This diagram represents a holistic view of the new Department of Rural Development and Land Reform. The comprehensive and cross-cutting nature of the mandate of the Department is well illustrated; the key elements of land reform and their support institutions are there for readers to see; and, rural development measures and their support institutions are there to enable effective analysis of progress or lack thereof.

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PART A: CONTINUITY AND CHANGE

CHAPTER 1: CONTINUITY

1.1 Introduction

Since the advent of democracy in 1994 the White Paper on South African Land Policy (1997) has been the guiding policy framework for land reform. This Chapter attempts to answer the following question: Why continuity?

The following sections discuss strategies and programmes which were put in place in pursuit of land reform as well as their achievements and shortcomings.

The White Paper on South African Land Policy was the culmination of an intensive process of consultation with all parties concerned with land reform, as well as three years of experience in implementing new policies and programmes. The document sets out the vision and implementation strategy for South Africa's land policy dealing with redressing the injustices of apartheid, fostering national reconciliation and stability, underpinning economic growth, improving household welfare and alleviating poverty, both in urban and rural environments.

The content of the White Paper ranges from general statements of principle to detailed information on state financial assistance programmes which made it possible to broaden the base of land ownership. It includes programmes to provide security of tenure to people who are vulnerable and to prevent unfair evictions. A central concern has been to translate the government's commitment to social justice and the alleviation of poverty into a set of concrete land reform and land development legislative programmes and procedures.

1.2. Rationale for continuity

The ANC's liberation struggle hero, and first Minister of Housing under President Mandela, the late Minister Joe Slovo, characterised the mode of transfer of state power from the minority Nationalist Party regime to the people, led by the ANC, as a 'constitutional revolution'. This suggests an on-going social transformation constrained and facilitated by the Constitution. The execution of the national democratic revolution, therefore, is both facilitated and constrained by the Constitution of the Republic.

The fundamental mission of the African National Congress (ANC) is twofold: to unite all South Africans and to remove the legacy of apartheid in all its forms. The ANC's South African vision is that of a national democratic society characterised by national unity, non-racialism, non-sexism, democracy and shared prosperity. The Freedom Charter (1955), the Constitution and the RDP give content and strategic direction to all ANC governments in pursuit of this national agenda. The Charter sets out the socio-economic pillars which would anchor such a national democratic society. It is a vital reference to evaluate progress and guide future trajectories on land and agrarian reform in South Africa. In this context, the Charter states:

> *The Land Shall Be Shared Among Those Who Work It!*
>
> *Restrictions of land ownership on a racial basis shall be ended, and all the land re-divided amongst those who work it to banish famine and land hunger;*

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The state shall help the peasants with implements, seed, tractors and dams to save the soil and assist the tillers;

Freedom of movement shall be guaranteed to all who work on the land;

All shall have the right to occupy land wherever they choose;

People shall not be robbed of their cattle, and forced labour and farm prisons shall be abolished.

The Constitution of our new democracy was adopted in 1996. Section 25 addresses the question of property:

(1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.

(2) Property may be expropriated only in terms of law of general application:

a. For a public purpose or in the public interest; and,

b. Subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to those affected or decided or approved by a court.

(3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest of those affected, having regard to all relevant circumstances, including:

a. The current use of property;

b. The history of the acquisition and use of the property;

c. The market value of the property;

d. The extent of direct state investment and subsidy in the acquisition and benefit capital improvement of the property; and,

e. The purpose of the expropriation.

(4) For the purposes of this section:

a. The public interest includes the nation's commitments to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and,

b. Property is not limited to land.

(5) The state must take reasonable legislative and other measures, with its valuable resources, to foster conditions which enable citizens to gain access to land on an equitable basis.

(6) A person or a community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.

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(7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.

(8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provision of section 36(1).

Section 36 addresses the limitations of rights:

(1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including:

the nature of the right;

a. the importance of the purpose of the limitation;

b. the nature and extent of the limitation;

c. the relation between the limitation and its purpose; and

d. less destructive means to achieve the purpose.

(2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

The Constitution has won international praise for the inclusion of a number of justifiable socio-economic rights within the Bill of Rights, included as Chapter Two of the Constitution. While the Bill of Rights does not guarantee a specific level of income for any person, nor importantly, the right to a job or paid employment, it does address a number of domains that relate to people's well-being. In particular there are rights to adequate housing, to health care, to sufficient food and water and to social security, including social assistance, and to education.[1] In addition, children's rights to basic nutrition, shelter, health care and social services are specifically guaranteed**.**

The state has a positive obligation in terms of section 7(2) of the Constitution to realise these rights. While the state's obligation in terms of sections 25, 26 and 27 is subject to progressive realisation within the state's available resources, the Constitutional Court has ruled that for the realisation of each of these rights, the state needs to be able to demonstrate that it has adopted a reasonable plan for the realisation of these rights - both in its planning and implementation.[2]

In addition, the Constitutional Court has ruled that an element of reasonableness is to ensure that the state must make short term provision for people:

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[1] Studies in Poverty and Inequality Institute, 2007, *The Measurement of Poverty in South Africa Project: Key issues*, Studies in Poverty and Inequality Institute, Johannesburg

[2] Liebenberg, S. "*The Interpretation of socio-economic rights*" in Constitutional Law in South Africa, Ed. Cheadle, M.H. et al, Juta, Second Edition, 2005.

- who are living in intolerable circumstances (*Government of the Republic of South Africa and others vs Grootboom and others, 2000 (11) BCLR 1169 (CC)*); or

- who face irreparable harm to their health or lives (*Minister of Health and Others vs Treatment Action Campaign and Others (1) 2002 (10) BCLR 1033 (CC)*); or

- who would face destitution without state assistance (*Khosa and others vs Minister of Social Development and others; Mahlaule and another vs Minister of Social Development and others, 2004 (6) BCLR 569 (CC)*).[3]

In order for the state and society to know whether progress is being made towards the full realisation of these rights, comprehensive and accessible measures of poverty are vital.

The RDP was developed as a blueprint for turning the principles of the Freedom Charter and the Constitution into real targets for growth and development. The RDP has five pillars:

- meeting basic human needs;
- developing human resources;
- building the economy;
- democratising the state and society; and
- implementing the RDP.

1.3. Key strategies, programmes and legislation of the democratic government

1.3.1 Key Strategies

1.3.1.1 The Strauss Commission

The initial post-1994 attempts at dealing with rural poverty were predicated on the social and political goals of general reduction in poverty and inequality. A Presidential Commission of Enquiry into the Provision of Rural Financial Services (the Strauss Commission) was established in 1995 to make recommendations on what reforms would be needed to create an enabling environment for the provision of rural financial services to formerly disadvantaged people.

The *key recommendations* of the Commission were:

- **The need for small, timeous and efficient dispensing:** Equally, the challenge to rural financial institutions is to be able to make smaller quantities of working capital available efficiently without incurring overwhelming transaction costs.
- **Information needs**: The Strauss Commission found that the non-availability of information was a critical impediment to rural development at different levels.

[3] Ibid.

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- **Support for outreach:** The web of formal financial institutions thins out dramatically as it spreads from rural service towns deeper into the rural areas which are less populated and less well served with infrastructure. The Commission proposed that the state should take responsibility to foster a greater number of rural financial institutions such as NGOs, community banks and village banks as well as make existing resources work more effectively, for example develop the delivery potential of the Post Office and create incentives for private sector banks.
- **The private sector and agency agreements**: One incentive for the private sector to engage more fully would be for the proposed financial package to be available to them and not only to parastatals and NGOs.
- **The role of parastatals:** It was recommended that state responsibility to co-ordinate the provision of a balanced range of trustworthy financial services, especially in the context of land and agricultural finance, would be through the appointment of a commercially oriented parastatal institution to champion the cause of rural communities. It was therefore duly recommended that the Land and Agricultural Bank be suitably transformed to provide both land acquisition mortgage finance as well as finance for agriculturally related activities.
- **A cautious approach to subsidised credit**: Land Reform beneficiaries have expected the government to come up with subsidised finance, especially interest rate subsidies, as this form of support was commonly made to farmers by past governments.
- **A state-supported financial package for land reform beneficiaries**: The Strauss Commission recommended (i) state funding of a risk-sharing agreement and (ii) a set of `sunrise' subsidies. The intention of a risk-sharing agreement, successfully pursued in other countries, is that the state provides a fund which acts as both an incentive and a safety net to financial institutions which begin to lend to a newly targeted clientele. The state undertakes to underwrite a percentage of the loan in the event of non-repayment. The Strauss Commission proposed the order of 80:20. The Sunrise subsidies have evolved into the current CASP funding.

The Strauss Commission's recommendations found expression in agriculture and land policies from 1997, but these policies were not coordinated to provide holistic development solutions to the plight of the rural poor. These efforts were also generally less focused on the spatial focus or geographical expression of poverty until the development of the ISRDS in 2000 marked a move towards spatial concepts of nodes, corridors and infrastructure strategies.

1.3.1.2 Broadening of Access to Agriculture Thrust (BATAT)

The principles of the White Paper on Agriculture, released in 1995, were taken further in the BATAT as an implementation strategy of the RDP within the former Department of Agriculture. The design process of BATAT had five groups which focused on the following subjects: agricultural finance, marketing, human resource development, delivery systems and technology development. A new Agricultural Financial Assistance Policy (AFAP) was proposed as a basis for strategies to improve access to financial services. The aims of AFAP were to facilitate the provision of financial services for new entrants to agriculture. Although AFAP was targeted at broadening efficient agricultural financial services to the lower end of the market which has been previously disadvantaged in terms of access to services, the Department had the responsibility of applying the principles contained in the White Paper on Agriculture to promote national growth and employment.

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The dual and strategic role that agriculture had within the broader RDP goals therefore, called for rethinking on the existing strategies and government support programmes which could support economic growth and support food security. Underlying this strategy was the recognition that the engine of growth would be the new entrants who had managerial skills, access to information and sufficient resources to start a farming enterprise. In designing schemes aimed at broadening access to agriculture therefore, the balance between development and growth always had to be maintained. This could be facilitated by meeting the needs of a broad spectrum of farmers with different kinds of instruments.

The BATAT strategy also recognised that the role of government or its institutions was mainly to provide incentives and instruments to private based actors in the market to change their behaviour and or adjust their activities towards the policy objectives of government.

1.3.1.3 National Spatial Development Perspective (NSDP)

The NSDP was released in June 2007. It was intended to focus government action and provide a platform for greater alignment and coordination across the three spheres of government. The NSDP is based on the following assumptions:

- location is critical for the poor to exploit opportunities for growth;
- the poor, concentrated around economic centres have greater opportunity to gain from economic growth;
- areas with demonstrated economic potential provide greater protection due to greater diversity of income sources;
- areas with demonstrated economic potential are most favourable for overcoming poverty; and
- the poor are making rational choices about relocating to areas of opportunity.

NSDP Principles include the following:

i. Government has a constitutional obligation to provide basic services to all citizens (e.g. water, energy, health and educational facilities) wherever they reside. Beyond the constitutional obligation identified earlier, government spending on fixed investment should be focused on localities of economic growth and/or economic potential in order to:
   - gear up the private sector investment;
   - stimulate sustainable economic activities; and
   - create long-term employment opportunities.

ii. Efforts to address past and current social inequalities should focus on people not places:
   - In localities where there are both high levels of poverty and development potential, this could include fixed capital investment beyond basic services to exploit the potential of those localities; and
   - in localities with low development potential, Government spending should focus on providing social transfers, human resource development and labour market intelligence which would enable people to become more mobile and migrate to

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localities that are more likely to provide sustainable employment or other economic opportunities.

iii. In order to overcome the spatial distortions of apartheid, future settlement and economic development opportunities should be channelled into activity corridors and nodes that are adjacent to or link to the main growth centres. Infrastructure investment should primarily support localities that will become major growth nodes in South Africa and the Southern African Development Corporation (SADC) region to create regional gateways to the global economy.

1.3.2 Key Programmes

The White Paper on South African Land Reform gave rise to a three-pronged land reform programme:

1.3.2.1 Tenure Reform

The tenure reform programme seeks to validate and harmonise forms of land ownership that evolved during colonialism and apartheid. It is an attempt to redress the dual system of land administration where whites owned land as private property as opposed to communal land allocation among African people. The majority of rural African people lived and still reside on communal land that is registered as the property of the state under the erstwhile South African Development Trust, Trust land and other forms of state land. Poor records were kept by the various successive colonial and apartheid regimes and the homeland administrations where the majority of Africans lived. However there was meticulous recording of rights in the Deeds Offices for apartheid South Africa.

Various authorities from colonial governors to apartheid magistrates were given the responsibility of land administration in communal areas without a clearly defined system to record the rights of the various affected communities and individuals. This ultimately made it difficult to determine land rights in most of the communal areas. Today, the democratic government faces a policy conundrum in terms of land administration in these areas. One of the challenges relates to the need to clearly determine the relationship between various institutions that also had, and still continue to have a responsibility in communal land administration. These institutions are traditional leadership authorities, elected local government, Common Property Institutions (CPI) such as syndicates, trusts and most recently Communal Property Associations (CPA). In addition, legislation enacted for this purpose by the colonial and apartheid governments and in some instances the former homeland administrations, remain on our statute books. Emanating from the White Paper on South African Land Policy in 1997, a green paper on tenure reform was to have been developed to address the dual land administration system but this never materialised. The Communal Land Rights Act, 2004 (Act No. 11 of 2004) was an attempt by the democratic government to regularise land administration in communal areas. However, the legislation was subsequently declared unconstitutional in 2010.

In addition to people living with insecure tenure in communal areas, there are approximately 2.8 million people living under insecure tenure on commercial farms in South Africa. There has been no comprehensive tenure reform policy adopted since 1994. Instead, several pieces of legislation (see legislation table 1 below) have either been enacted after 1994 such as the Land Reform (Labour

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Tenant Act), 1996 (Act No.3 of 1996) and the Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997). Various studies indicate that this group continues to be vulnerable and their living conditions have not improved since the advent of democracy. However, a separate policy and draft Bill has been developed in 2010 to address the lack of policy and weaknesses in the current legislation.

1.3.2.2 Restitution

Land restitution forms the second pillar of the land reform programme. It aims to redress the imbalances in land ownership that were created by draconian policies and legislation of forced removals such as the infamous Natives Land Act, 1913 (Act No. 27 of 1913). The nature of restitution is informed by three broad categories of the effects of land dispossession, namely, dispossession leading to landlessness, inadequate compensation for the value of the property, and hardships that cannot be measured in financial or material terms. Some communities through the restitution process gained land rights in protected conservation areas that are now embracing tourism development strategies and other co-management models.

1.3.2.3 Redistribution

Land redistribution was conceived of as a means of opening up productive land for residential and agricultural development. The government set itself a target of redistributing 30% of the country's commercial agricultural land (about 24 million hectares) over a five-year period from 1994 to 1999. This target has been extended since the review of the programme in 2000 to the redistribution of 30% of agricultural land by the year 2014 and encompasses all agricultural land redistributed through all three programmes. The primary legislation through which redistribution products are implemented is the Land Reform: Provision of Land and Assistance Act, 1993 (Act No. 126 of 1993). Several grant-based products have been developed since 1994.

Table 1 below provides an overview, successes and challenges of **some** of the key programmes that have been implemented in pursuit of agrarian change.

Table 1: Overview of Programmes

Programme	Overview	Successes	Challenges
GRANT PROGRAMMES			
The Land Reform Programme	The land reform programme sought to address the tenure insecurity of rural farm-dwellers, eliminate overcrowding and provide residential and productive land to the poorest sections of the rural population. A three-pronged market-assisted land reform programme aiming at tenure reform, restitution and land redistribution, was launched in 1994,	• Programme was rights-based and development focused. • Approximately 7 million hectares of land redistributed through all three programmes. • Projects were coordinated at district-level and officials from municipalities (district/local) and Provincial Departments of Agriculture participated in these fora. • Some targeted efforts	• Lack of clear analysis of the demands and needs of the beneficiaries within the groups that may be applying for or acquiring land. • Insufficient or inappropriate design of the initiatives, enterprise or projects on land acquired. • Lack of support once people have acquired land. • Legislation offered minimal protection to farm-workers and labour

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Programme	Overview	Successes	Challenges
	introducing: • Land redistribution; • Land restitution; and • Tenure reform	to integrate vulnerable groups into projects. • Legislation developed to protect rights of farm-workers and labour tenants. • Area based planning methodology and Settlement Implementation Support Strategy developed.	tenants. • Area based planning methodology and Settlement Implementation Support Strategy not rolled out. • 49% failure rate of implemented land reform projects; however a full economic assessment has never been done to determine contribution of the 51% successful projects.
Land and Agriculture Reform Project (LARP)	LARP provided a framework for delivery and collaboration on land reform and agricultural support to accelerate the rate and sustainability of transformation through aligned and joint action by all involved stakeholders	Attempted to create "One-Stop Shop" service centres located close to farming and rural beneficiaries. LARP tried to create a delivery paradigm based on the following principles: • Focus areas to concentrate service delivery in order to better exploit synergies between land redistribution, restitution and tenure reform, agrarian and business development; • Align comprehensive support package to cater for the inherently multi-sectoral requirements to make sustainable production and business development a success. • Apply a cooperative government approach by establishing joint planning, budgeting, approval and implementation procedures between various government departments and programmes.	• Lacked clear focus given the current mandate of government. • Unsuccessfully tried to balance the interests of commercial farming sector with small-scale farming sector involved in the land reform agenda. • Did not take into account the rights-based approaches advocated by the Land Reform Programme.

Programme	Overview	Successes	Challenges
The Comprehensive Agriculture Support Programme (CASP)	The aim of CASP is to enhance the provision of support services to beneficiaries of the land and agrarian reforms in order to promote and facilitate agricultural development	• Development of a mentorship programme for small scale and emerging black farmers. • Provision of grant financing to aid in the purchase of farm implements and inputs • Channelled funding to both commercial and small scale initiatives • Linked other types of finance for agricultural development such as MAFISA.	• Unrealistic target setting because of diverse and disparate initiatives and players active in the field of agriculture. • Failed to comprehensively support land reform beneficiaries. • Did not provide a comprehensive service to farmers and focused only on certain pillars, primarily infrastructure and inputs.
SERVICES PROGRAMMES			
Rural Transport	Rural Transport Development provides guideline linking the rural roads and transport planning processes with the emphasis on special rural transport initiatives such as intermediate means of transport, animal drawn carts and other low technology transport solutions (links also to infrastructure).	• Non-motorised transportation such as bicycle (Shova Kalula) and pedestrian walkways and bridges are promoted. • Learner Transport provided free to those learners who live far from schools in some provinces.	• Not fully integrated into comprehensive rural development because of different competencies and planning cycles • Funding constraints
Rural Housing	The main objective of this programme is to facilitate project based housing development on communal land for the benefit of beneficiaries of both old order and new order land tenure rights in communal areas	• Encourages community planning together with traditional authorities and local government. • Traditional forms of housing encouraged rather than standard RDP housing. • Roll-out of ABET and early childhood development programmes.	• Not fully integrated into comprehensive rural development because of different competencies and planning cycles. • Funding constraints. • Housing subsidy programme too urban-focused.
Rural Sanitation	Provides guidelines on good sanitation practices including appropriate health and hygiene awareness and behavior, and acceptable, affordable and sustainable sanitation services in rural areas.	• Encourages community participation and the use of local building material and local resources in the programme. • Development of skills to build the sanitation infrastructure and facilitate the health and	• Not fully integrated into comprehensive rural development because of different competencies and planning cycles • Funding constraints • Incomplete structures in some areas

Programme	Overview	Successes	Challenges
		hygiene promotion. • Upgrading of facilities to ensure that they are safe and hygienic- relevant to households that have built their own traditional houses.	
Rural Education	No approved comprehensive policy for rural education but appears in different policies such as Early Childhood Development, ABET, etc. Teacher and Education development, No-fee schools, etc.	• No-fee Schools Policy including rural and farm schools. • National School Nutrition Programme which provides one meal a day to learners in the poorest schools. • National Students Financial Aid Scheme aimed at widening access to higher education by disadvantaged students from rural areas.	• Not fully integrated into comprehensive rural development because of different competencies and planning cycles. • Funding constraints. • Nutrition programmes not linked to self-development programmes such as community gardens/school gardens. • Poorly skilled teachers. • High teacher-learner ratio. • Inadequate facilities. • Long distances to schools.
Rural Health	The goals for the Rural Health Service are: • Strengthening district health plans; • Revising the service delivery platforms for each rural area; • Providing emergency medical service; • Deployment of adequately trained health personnel and provide district and sub-district management teams; and • Establishment of a functional referral system.	• Efficient roll-out of communicable diseases prevention and treatment including ARVs. • Roll-out of programme to minimise infant mortality. • Immunisation programme available free. • Some effort towards development of clinics that are staffed permanently and on a 24 hour basis.	• Poor to non-existent health service infrastructure such as clinics and hospitals. • Understaffed health care facilities. • Emphasis on preventative programmes instead of holistic health services. • Not fully integrated into comprehensive rural development because of different competencies and planning cycles. • Funding constraints but generally receive far less per capita on primary health care than urban areas. • 21.3% of households in metropolitan areas belong to a medical aid,

Programme	Overview	Successes	Challenges
			but only 5.4% of households in rural districts.
Community Policing	• Community policing fora were introduced on the premise that success in fighting crime depends on cooperation of the community with the police. The forums work with local government to implement crime prevention policies.	• Improved relationship between the police service and the communities they serve.	• Not fully integrated into comprehensive rural development because of different competencies and planning cycles. • Funding constraints. • Poor commitment on the part of members because it is voluntary.
INFRASTRUCTURE PROGRAMMES			
Expanded Public Works Programme	• The EPWP is the flagship public employment programme that creates temporary work opportunities with on-the-job training to improve participants' chances of sustainable employment.	• Temporary work opportunities offering a stipend to unskilled labour force. • Creation of a skilled labour pool in various aspects of construction.	• Not fully integrated into comprehensive rural development because of different competencies and planning cycle. • Currently urban-focused.
Community Works Programme	• The Community Works Programme is included as a new element of the EPWP Phase II. The CWP is expected to contribute to government's ambitious targets to scale up EPWP.	• Creation of a skilled labour pool in various aspects of construction.	

1.4 Key legislation

The following table provides an overview of the key legislation promulgated for the implementation of the various rural development programmes. This table excludes provincial legislation and municipal by-laws and is by no means exhaustive[4].

Table 2: Overview of Key Legislation

Document / Legislation/ Title	Date Of Publication / Enactment
Old order tenure related legislation, including Proclamation R293 of 1962 and Proclamation R188 of 1969, Black Communities Development Act, 1984 (Act No. 4 of 1984), Conversion of Certain Rights to Leasehold and Freehold Act, 1988 (Act No. 81 of 1988), etc.	
Deeds Registries Act, 1937 (Act No. 47 of 1937)	1937
State Land Disposal Act, 1961 (Act No. 48 of 1961)	1961
Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970)	1970
Upgrading of Land Tenure Rights Act, 1991 (Act No. 112 of 1991)	1991
Less Formal Township Establishment Act, 1991 (Act No.113 of 1991)	1991
Abolition of Racially Based Land Measures Act, 1991 (Act No.108 of 1991)	1991
Land Reform: Provision of Land and Assistance Act, 1993 (Act No.126 of 1993)	1993
Restitution of Land Rights Act, 1994 (Act No. 22 of 1994)	1994
Development Facilitation Act, 1995 (Act No. 67 of 1995)	1995
Interim Protection of Informal Land Rights Act, 1996 (Act No. 31 of 1996)	1996
Constitution of the Republic of South Africa, 1996	1996
Communal Property Associations Act , 1996 (Act No. 28 of 1996)	1996
Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998)	1998 & 2000
Housing Act, 1997 (Act No. 107 0f 1997)	1997
Land Survey Act, 1997 (Act No. 8 of 1997)	1997
National Environmental Management Act, 1998 (Act No. 107 of 1998)	1998

[4] The Extension of Security of Tenure Act, 1997, and the Land Reform (Labour Tenants) Act, 1996, will be dealt with in terms of the proposed Land Tenure Security Bill, 2010 (see Chapter 3).

Document / Legislation/ Title	Date Of Publication / Enactment
National Water Act, 1998 (Act No. 36 of 1998)	1998
Transformation of Certain Rural Areas Act, 1998 (Act No. 94 of 1998)	1998
Public Finance Management Act, 1999 (Act No. 1 of 1999)	1999
National Land Transport Transition Act, 2000 (Act No. 22 of 2000)	2000
Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003)	2003
Communal Land Rights Act, 2004 (Act No. 11 of 2004)	2004
Municipal Property Rates Act, 2004 (Act No. 6 of 2004)	2004

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CHAPTER 2: CHANGE

2.1 Introduction

Why change? What are the current challenges facing rural areas which led to the current administration rethinking and reshaping its development policies towards those areas? There can be no doubt that the democratic government's rural development programmes have made progress.

The transformation of apartheid geography and the equitable distribution of economic benefits among its citizens remain as top priorities for the current Administration. This commitment to drive change was reaffirmed during the Land Summit of 2005. A panel of experts was appointed to provide recommendations for the development of policy regarding land ownership by foreigners in South Africa. Firm policy statements made at the ANC's 52nd National Conference held in Polokwane in 2007, the ANC's 2009 Election Manifesto and the Medium Term Strategic Framework adopted in 2009 also endorsed the need to reshape land reform and rural development policies and programmes.

2.2 Imperatives for change

2.2.1 The realities of apartheid geography

The demand for an integrated rural development strategy arises out of the realities of apartheid geography. Apartheid effectively defined three kinds of spaces in South Africa, each supposedly with its own political, social and economic systems: the major urban areas; the commercial farming regions and associated small towns; and, the so-called homelands. In the former homelands, 61% of households survived on less than the international poverty line of USD2/day, or about R1600 a month for the average household of four. In the commercial farming regions, the figure was 45% and in the urban areas, 38%.[5]

The immediate cause of rural poverty is the combination of extraordinarily low levels of employment in the former homelands combined with low incomes for farmworkers and other employed people in both the former homelands and the commercial farming areas. These patterns, in turn, derive from the way apartheid shaped the rural economy and society.

The homeland system was used in large part to legitimise the failure to provide basic economic and social services to Africans. With few exceptions, the homeland administrations had virtually no resource base of their own, but the central state provided them with very limited subsidies. In consequence, the homeland regions ended up with too few educators, police and health workers, many of whom were under-qualified. They also suffered from severe underinvestment in both economic and social infrastructure.

The homeland system also had far-reaching political and social implications. The apartheid state aimed to rule indirectly through handpicked leaders. In the process, it sponsored socio-political systems that were profoundly corrupt as well as highly oppressive to women and youth. At the same time, the homeland states were defined in ethnic terms in an effort to divide and rule the majority in particular and South Africans in general.

The system of rural towns in the former white areas was characterised by profound segregation. Political power rested with the small white minorities, while black people were excluded from the local economies as well as most municipal and social services. This exclusion was symbolised by the location of townships inevitably some way from the small town centres.

The poverty of the rural areas in South Africa today can only be understood as a result of the way apartheid shaped access to economic opportunities and government services through rigidly

[5] *Source:* Calculated from variables on household income in Community Household Survey 2007. Database downloaded from www.statssa.gov.za in October 2009.

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enforced tenure, settlement and labour policies. A rural development strategy must address the special challenges found in the farming and former homeland regions. A rural development strategy must bridge the gap between the so-called first and second economies. The so-called 'first' and 'second' economies represent two ends of the spectrum within South Africa's highly unequal economy, with wealth and resources concentrated at one end, and poverty and disadvantage at the other. This inequality is a core legacy of apartheid. The question remains as to why this legacy has proven so stubborn since the transition to democracy despite the valiant attempts of the successive post-apartheid administrations since 1994?

Even after the elimination of openly racist laws, the systemic deprivation and exclusion of the majority of rural people meant that, in the absence of sufficiently vigorous, resourced and coordinated state action, a vicious cycle of poverty has remained. Less than one in three working-age adults in the former homeland regions said they had income-earning employment in 2007, compared to just under half of those in the rest of the country. That compares with the international norm, according to the International Labour Organisation, of almost two thirds. Even if rural people have gainful employment, their incomes tend to be very low. In the former homelands and commercial farming regions in 2008, half of the employed people earned under R1000 a month, compared to a fifth in the major urban areas. In 2008, 58% of farm-workers in the formal sector earned under R1000 a month, compared to just 10% of workers in the rest of the formal sector.[6] Figure 2[7] illustrates that in five provinces (KwaZulu-Natal, Mpumalanga, Limpopo, Eastern Cape and North West) large sections of their populations survive on a per capita income of less than R400 per month. This should not be surprising as these provinces played host to former homelands.

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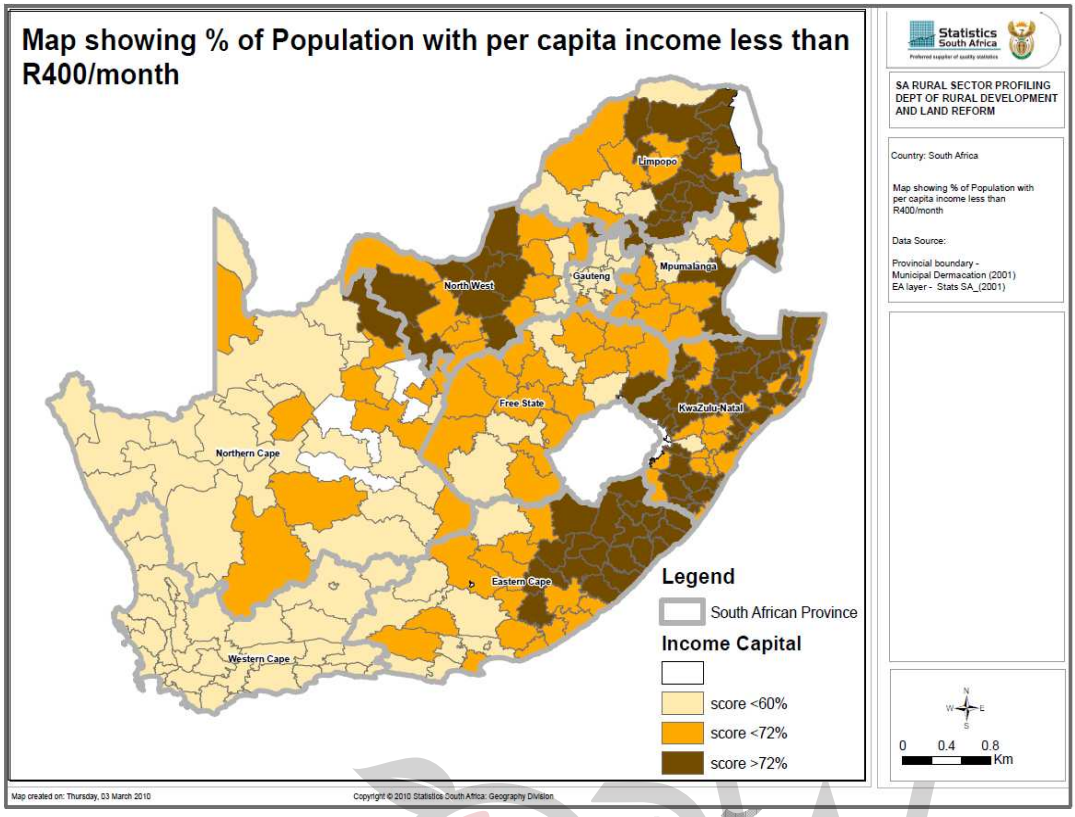
Figure 2: Map showing % of Population with per capita income less than R400/month

[6] Ibid.

[7] This map is part of a rural sector profiling exercise that is currently being undertaken by the Department of Rural Development and Land Reform, StatsSA and the World Bank.



Low incomes combined with low levels of employment leave rural households heavily dependent on government grants and remittances by family members working in urban areas and white commercial farms. In 2007 over half of households in the former homelands said they relied primarily on government grants or remittances to survive. That compares with under a quarter of households in the rest of the country.

While government grants are critical for alleviating poverty, they can never fully compensate for the lack of sustainable economic activities. Table 3[8] shows the percentage of people per province since 1995 that have obtained some form of social grant assistance. Surprising in the most economically active province and least rural (Gauteng), only 6% of the population benefited from social grants but on average this translates to R2091 spend per person. Mpumalanga and KZN have the least amount of spend per person despite having large numbers of people who earn less than R400 per capita income per month.

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Table 3: Social grant assistance per province

[8] These results form part of a rural sector profiling exercise that is currently being undertaken by the Department of Rural Development and Land Reform, StatsSA and the World Bank.

Poverty line=R 283 in 2008 constant price

	% of pop. Living below R283/m			Social grant at 2009		
Province	1995	2005	2008	social grant (in 1000)	grant/persor	grant/poor
Eastern Cape	50	29	29	2325456	356	1228
Free State	45	16	16	752694	271	1696
Gauteng	7	7	6	1530018	146	2091
KwaZulu-Natal	31	33	33	3302953	322	976
Limpopo	41	34	34	1905435	364	1070
Mpumalanga	34	28	28	974645	268	955
North West	40	28	27	1020906	312	1114
Northern Cape	34	24	23	329367	311	1297
Western Cape	9	10	9	884630	168	1676
Total	31	23	22	13026104	269	1168

The following passage from a book by Stephen Lewis, Jnr (The Economics of Apartheid, 1990) adequately sums up the drivers of land reform in SA:

Some of the problems which will, inevitably, face a post-apartheid government, given the historical evolution, structure and performance of the South African economy are outlined. Lewis (1990) further postulates on what could be the value of using the post-apartheid economy 'as a dynamic in the process of eliminating apartheid.' He assumes that a post-apartheid government would commit to 'basic political and economic reforms to remove preferential access to rights based on race, and to make accessible, through any of several possible means, a markedly larger share in the economic cake for those denied it in the past. The assumption is that it would be interested in measurable and sustainable results and it would want to face its problems and opportunities realistically.' Correctly, he postulates that the most obvious and politically charged economic policy question revolves around 'the distribution of economic benefits among citizens.' The passage below summarises his view:

The highly unequal distribution of the ownership of private assets, the greatly skewed distribution of income among citizens, the unequal distribution of employment opportunities in all sectors, and the inequality in access to social services mean that distributional issues will be high on the list of concerns for any post-apartheid government just as they were for the National party when it came to power in 1948.

What then would be the key elements of that distribution? One of the most visible ones is land, particularly because of the historical and deliberate denial of access to blacks for both agricultural use and for urban residential purposes. The land question in SA is quite complex because contrary to the situation in Zimbabwe where widespread, small-scale agricultural activity among black people is common, almost every black person is 'part of the wage economy.' A major question is how to redistribute the ownership of agricultural land in such a way that it contributes to the incomes of black South Africans who wish to earn a living by farming, without creating significant adverse consequences for the total level of agricultural production.

2.2.2 Land Summit 2005

The Land Summit affirmed several issues which Government and other stakeholders had begun to flag as areas needing a rethink by both policy makers and implementers of land and agrarian reform. Prior to the Land Summit, the 10-year review of land and agrarian reform implementation pointed to a number of gaps in the policy and legislative framework. Most of the gaps were echoed by the Land Summit participants. The following is a summary of the main areas of resolution and recommendations which emerged from the Land Summit:

- Commitment by all to the redistribution of at least 30% of white owned agricultural land by the year 2014.

- Government aims to reduce poverty and unemployment by half over the next decade. It was clear from the summit that there is a strong association between a more equitable distribution of land and higher living standards, lower levels of rural poverty, stronger growth performance and a more equal distribution of the national income. Therefore, land reform is necessary not only to undo the injustices of the past but also to contribute towards economic transformation, and towards the achievement of accelerated and shared growth.

- Current approaches are not delivering land at the scale required to achieve this target and are also not realising the full potential of developmental benefits associated with land reform. The need to change the approach in order to deliver land at scale although in an orderly manner cannot be over-emphasised.

- The state needs to assume a proactive and leading role in ensuring accelerated and sustainable land and agrarian reform. Markets alone will not achieve the kind of structural change required.

- Reform should aim to restructure the dominant models of land use and agricultural production. Fundamental changes to the patterns of land ownership are required. This includes support for small-scale agriculture, the active promotion of sub-division of agricultural land and the need to reverse the growing concentration of land holdings, and changing the current farm size culture.

- The principle of willing seller-willing buyer as the basis for land reform was overwhelmingly rejected. Market-based land acquisitions entail reliance on the existing land market system which is characterised by a number of distortions and imperfections, such as restrictions on land subdivisions, the absence of an effective land tax, unequal access to capital markets and information, as well as contradictory requirements in respect of municipal zoning regulations. The free market mechanism is also open to abuse through price inflation. The state needs to review its market driven approach with a view to establishing alternative land acquisition instruments such as expropriation, land ceilings, land tax and the state's right of first refusal in all land transactions.

- To meet the obligation for accelerated land redistribution, the state's capacity and resources need to be substantially enhanced in all three spheres of government.

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- Government needs to be capacitated to target beneficiaries, to identify and acquire land for redistribution and to support beneficiaries with a range of mechanisms that enable them to become independent.

- Furthermore the achievement of this target requires strategic partnerships, in which government, landless people, farming communities and other components of civil society act together for sustainable land and agrarian reform. In particular stronger collaborative relationships need to be built between the state, social movements and other stakeholders at a local level.

- There has been little real change in the lives of people living and working on commercial farms. The new approach to land reform must also ensure that farm-dwellers derive benefits from land reform and the scale of evictions and the ongoing violation of human rights on farms must receive urgent attention.

- Key principles underlying implementation of the land and agrarian reform should include the decentralisation of the land reform process, participatory and people-centered methods which are area-based, and the integration of land and agrarian transformation into wider development priorities, particularly through the Integrated Development Plans (IDPs) of local and district municipalities. Land reform should promote sustainable development by providing land for production and settlement, in both rural and urban areas.

- The state needs to conduct a land audit on private and state land and make this information publicly available.

- The state must regulate the ownership of land by foreigners to contribute to increased access to productive land for land reform purposes.

2.2.3 Recommendations on the development of policy regarding land ownership by foreigners

A Panel of Experts was appointed in 2007 to examine the question of foreign ownership of land in South Africa. The countries surveyed by the Panel included countries in Africa (Malawi, Nigeria, Zambia and Zimbabwe), the Middle East (Jordan, Iran and Israel), Western Europe and the Nordic countries (Austria, France, Norway, Switzerland, Turkey, Spain, Sweden, Denmark, Finland, Greece, Ireland and Portugal), Eastern and Central Europe (Lithuania, Slovakia, Poland, Czech Republic and Hungary), North America (Canada and the United States of America), Asia and the Pacific (India, Japan, South Korea, Thailand, Singapore, Indonesia, Australia and New Zealand), Latin America (Colombia, Brazil, Mexico and Chile). Moreover, in order to advise government whether, and how, it should monitor and intervene by policy, legislative or other means in preventing any possible negative consequence of land acquisition /use by non-South African citizens, the panel investigated:

- the nature, extent, trends and impact of the acquisition and use of, and investment in land in South Africa by non-citizens; and

- the extent to which the current lack of a comprehensive policy and legislative framework contributes to the acquisition, use and investment in land by foreigners.

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Ownership by foreign natural persons of farmland is 0.55% by number of properties, 0.15% by value, and 0.07% by area. For 'agricultural holdings' (i.e. generally residential smallholdings around some large towns), the figures were 1.79%, 1.75%, and 1.98%, respectively.[9] The concern is that these figures may not reveal the full extent of foreign ownership; as the Panel's Report makes clear, a large share of farmland is held by 'corporate entities', for which the current deeds system does not indicate the extent of foreign ownership. 'Corporate ownership' includes close corporations, trusts, and companies, and according to the report, owned 27% of all farm properties, 34% of all farmland by area, and *78% by value*.[10] What this means is that, to the extent foreigners own a large stake in corporate entities that hold land, then foreigners control a great deal of land. However, we have no statistical information to this effect.[11]

The following recommendations were proposed to restrict the ownership of productive land by foreigners but were never implemented:

- Compulsory disclosure of nationality, race, gender and other information.
- A moratorium prohibiting the disposal of state land to foreigners and, in limited cases, to nationals who do not qualify for redress under the national land reform policies and legislation, must be put in place.
- Medium and long term leases of all productive land as a viable mechanism for future acquisition of land and interests in land by foreigners.
- The effecting of enabling omnibus legislative amendments giving effect to some of the recommendations through a comprehensive General Laws or Land Matters Amendment Bill, similar to Judicial Matters Amendment Bills that the Department of Justice and Constitutional Development use, should be prioritised.
- The inclusion of measures in any policy formulation to deal with the problem of fronting where consideration may be given to various sanctions, including assets forfeiture.
- Imposing land ceilings but not the same as for citizens, coupled with the right of first refusal instrument for surplus land and expropriation.
- Placing a moratorium on further sales of productive land to foreigners but foreigners will be able to lease land on a medium to long term basis and form sustainable partnerships with citizens in terms of the utilisation of the productive land.

2.2.4 ANC (Polokwane) 52nd National Conference Resolutions – 2007

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[9] The report notes: "The only conclusion drawn from these data is that individual foreigners appear to be more interested in urban residential land. Their strongest presence is in the category of sectional title owners" (p.21).

[10] The very high share of ownership by value probably relates to the fact that some properties that are designated as "farmland" in the cadastre are primarily used for mining, and have values that reflect that use.

[11] There is reason to doubt that foreigners employ a strategy of hiding behind legal entities in order to acquire land in South Africa, because there has been no particular reason up to now to do so. Moreover, while foreign investment in farmland is rampant in some parts of Europe (e.g. in recent years in the UK, foreigners have accounted for 10% to 20% of farmland purchases), companies that facilitate such investment report that South Africa is, relatively speaking, not an attractive destination (see e.g. Savills, 2009).

The 2007 ANC National Policy Conference identified rural development, land reform and agrarian change as critical pillars of South Africa's programme of economic transformation. The policy conference moreover acknowledged that programmes of rural development, land reform and agrarian change must be integrated into a clear strategy that seeks to empower the poor, particularly those who already derive all or part of their livelihood from the exploitation of productive land.

The proposals tabled at the ANC Policy Conference were reaffirmed at the ANC National Conference held in Polokwane, and developed further. The Polokwane resolutions are as follows:

i. To embark on an integrated programme of rural development, land reform and agrarian change based on the following pillars:

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

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

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

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

ii. To strengthen the voice of rural South Africans, empower poor communities and build the momentum behind agrarian change and land reform by supporting the self-organisation of rural people, working together with progressive movements and organisations, and building forums and structures through which rural people can articulate their demands and interests. ANC branches together with alliance partners will assist in the organisation, unionisation and empowerment of farm-workers.

iii. To build stronger state capacity and devote greater resources to the challenges of rural development, land reform and agrarian change. In particular to:

    a) Create an over-arching authority with the resources and authority to drive and coordinate an integrated programme of rural development, land reform and agrarian change.

    b) Implement the Freedom Charter's call to help those working the land with implements, seed, tractors, infrastructure for irrigation and other forms of material support.

    c) Implement large-scale programmes to establish new smallholders and improve the productivity of existing small-scale and subsistence farmers, and to integrate smallholders into formal value chains and link them with markets.

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d) Build dedicated state and private institutions that are accountable to their users for the effective and directed support to land reform beneficiaries in general and smallholder agriculture and family farms in particular, including through financial support, research and extension, the provision of tools and equipment and the facilitation of market access and cooperation.

e) Review the mandate, capacity and operations of institutions such as the Land Bank in order to ensure that the state is able to provide directed credit and capital for investment in support of a transformed agricultural sector and rural economy.

f) Improve the ability of government to take the lead in innovation, research and development and extension services appropriate to the development of a smallholder farming sector.

g) Build the capacity of rural local governments to lead the processes of development, land reform and agrarian change including through the leadership of decentralised, participatory and people-centred programmes that are linked with wider development priorities, particularly through the Integrated Development Plans of municipalities.

h) Improve the capacity of the state to monitor and collect information on the use of land, including through the conduct and publication of regular land audits.

i) Ensure that the state regulates the land market effectively with a view to promoting the goals of rural development and agrarian change, limiting the unsustainable use of land for elite purposes (such as the conversion of prime agricultural land to golf estates) and ensuring that land remains predominantly in the hands of South African residents. To this end the management and control of state land must be consolidated under one roof.

iv. To review and change all institutional, legislative, regulatory and tax-related policies that create a bias in favour of large-scale, capital intensive, environmentally damaging agriculture and under-utilisation of land and which constrain the emergence of a vibrant, pro-poor rural economy, including in particular:

a) Repeal any legislation which prevents the subdivision of land and other policies which promote the concentration of ownership in land and the under-utilisation of land.

b) Introduce a special land tax and other progressive tax measures with the aim of creating incentives for the disposal of under-utilised land and the de-concentration of land ownership, and act urgently to remove biases that currently exist in the tax system that provide incentives for the ownership of large tracts of land, capital intensity and the under-utilisation of agricultural land.

c) Revisit national agricultural policies, particularly in respect of subsidies, tariffs and marketing institutions, and the relationship between these and our objectives in respect of rural development, land reform and agrarian change as well as food security and inflation.

d) Combat monopolistic practices in the markets for agricultural land, inputs, finance and outputs.

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v. To, where appropriate, work together with commercial agricultural and the private farming sector to promote black economic empowerment, create partnerships between emerging and established farmers, create linkages between large and small farmers including through procurement and 'contracting-out' and build institutions to contribute towards more equitable structures of production and ownership in rural South Africa, including through collective ownership, employment equity, skills development and support for new enterprises in the agricultural sector.

vi. To support the growth of rural market institutions including through the provision of infrastructure and by helping rural communities and small farmers to build organisations which help them to access markets, build links with formal sector value chains and coordinate their activities to realise economies of scale. Such organisations may include producer co-operatives, smallholder associations, input supply co-ops, marketing co-ops and/or state regulated institutions designed to support and promote market access and collective action amongst small rural producers. Special attention will be given to the empowerment of women in co-operatives.

vii. To, where necessary, expropriate property in the public interest or for public purpose in accordance with the Constitution to achieve equity, redress, social justice and sustainable development. All legislation pertaining to expropriation must be aligned with the Constitution.

viii. To ensure adequate resources are available for the creation of agricultural colleges and extension services specialising in the tasks of rural development, land reform and agrarian change. Community Development Workers in rural areas must be inducted properly on land and rural development issues in order to support an accelerated land reform programme and to ensure compliance with laws affecting farm-workers.

ix. ANC branches will work together with the progressive trade union movement, particularly the Food and Agricultural Workers Union, government agencies and civil society to build national organisations for farm-workers and farm-dwellers dedicated to the realisation of their rights, combating human rights abuses and super-exploitation, and the provision of support and advice to communities living on farms. Furthermore, to ensure the vigorous implementation of laws that protects farm-workers and farm-dwellers by strengthening the capacity, resources and resolve of government to protect and advance their interest. This will include the review and strengthening of relevant legislation.

x. To ensure that the allocation of customary land be democratised in a manner which empowers rural women and supports the building of democratic community structures at village level, capable of driving and coordinating local development processes. The ANC will further engage with traditional leaders, including Contralesa, to ensure that disposal of land without proper consultation with communities and local government is discontinued.

xi. To integrate land rights and water rights into a common programme.

xii. To find ways to stabilise food prices in order to prevent inflationary surges, protect food security and combat hunger.

xiii. To accelerate the roll-out of rural infrastructure, particularly roads but also other services including potable water, electricity and irrigation and ensuring in particular that the former homeland areas are properly provisioned with an infrastructural base for economic and social development, and that farm-dwellers, like all South Africans benefit from universal access to free basic services. In this regard, the ANC reaffirms our objective of realising

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universal access to free basic water, electricity and sanitation before the centenary of the ANC and recognises that the bulk of this challenge is in rural South Africa.

xiv. To improve the coordination and synergy between departments and all levels of government to ensure an integrated approach to land reform and rural development.

These resolutions from the Polokwane Conference formed the basis for the ANC's 2009 Election Manifesto, with regard to rural development, land reform and agrarian change.

2.2.5 2009 Elections Manifesto of the ANC: 5 Priorities

The ANC has identified five priority areas for the next five years:

- Creation of decent work and sustainable livelihoods:

  Decent work is the foundation of the fight against poverty and inequality and its promotion should be the cornerstone of all our efforts. Decent work embraces both the need for more jobs and for better quality jobs.

- Education:

  Education is a means of promoting good citizenship as well as preparing for the needs of a modern economy and a democratic society.

- Health:

  There have been many achievements in improving access to health care, however much more still needs to be done in terms of quality of care, making services available to all South Africans and ensuring better health outcomes.

- Rural development, food security and land reform:

  Despite significant progress made over the last 15 years, people living in rural areas continue to face the harshest conditions of poverty, lack of access to land and basic services.

- The fight against crime and corruption:

  Fighting crime and fighting the causes of crime is a priority and there is a need to overhaul the justice system to ensure that the levels of crime are drastically reduced.

2.2.6 Medium Term Strategic Framework (MTSF)

The MTSF for 2009-2014 serves as the principal guide to planning and resource allocation across all spheres of government. In this regard, focus areas and targets highlighted in the MTSF inform the core elements of the budgetary submissions that national departments make to the government's budgeting process. Similarly, Integrated Development Plans of municipalities and the Provincial Growth and Development Strategies of provinces will need to take into account the

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priorities identified in the MTSF, thus bringing us closer to the ideal of integrated and aligned planning across the three spheres of government.

In terms of the rural development priority focus, the overall objective is to develop and implement a comprehensive strategy of rural development that is aimed at improving the quality of life of rural households, enhancing the country's food security through a broader base of agricultural production, and exploiting the varied economic potential that each region of the country enjoys. This comprehensive rural development programme will include the following elements:

- Aggressive implementation of land reform policies to ensure that land reform is coherently linked to livelihood creation for the poor, and that strategically located land is released for appropriate activities without delay. In addition, water allocation reforms must be undertaken to ensure water allocation is linked to land release processes. These measures will promote expansion of small-scale agriculture and other economic activities, and increase housing delivery and reduce the cost of basic service delivery. The overall impact of this intervention will be more efficient use of land as a critical input into the development process thereby making comprehensive rural development an integral part of the MTSF priority area relating to economic growth and employment and livelihood creation.

- Stimulate agricultural production with a view to contributing to food security through focusing on institutional support that creates economies of scale and facilitates access to business services and markets. Complementing this will be infrastructure delivery. Moreover, government will also support the provisioning of implements and agricultural inputs to emerging farmers and households, as well as fencing, agricultural extension services and agricultural loans. In addition government will implement an *Education and Training Strategy for Agriculture and Rural Development*. To this end, in the medium term government pledges R2.6 billion in conditional grants for infrastructure, training and advisory services, marketing, and upgrading of agricultural colleges. The medium term aim is to bring about a measurable increase in agricultural production.

- Rural livelihoods and food security through an intensification of the Illima/Letsema campaign to enhance household food security. In addition, agricultural starter packs are to be made available to 140 000 households per annum. Additional measures to be considered are:

    - shielding valuable agricultural land from other developments;

    - the provision of support to communities to grow their own food; and

    - protection of the poor from rising food prices.

Through the following interventions, rural households should be able to procure 60% of their food from own production within the MTSF timeframe:

- Improve service delivery to ensure quality of life through increased government investment in service delivery in rural areas, using appropriate technologies to overcome physical and other impediments. Departments responsible for service delivery will develop spatially targeted strategies to address the diverse needs of rural households and residents.

- Improved rural transport through intensifying the implementation of the Rural Transport Development Programme which aims to promote rural transport infrastructure and services. The objective is to improve mobility and access in order to enhance socio-economic activities and quality of life in rural areas.

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- Skills development through recapitalising agricultural training colleges to develop and run appropriate training programmes to support rural economies. This will enhance access by emerging farmers to professional mentoring services, and will also make skills development and training services available to farm-workers.

- Revitalisation of rural towns through spatially targeted grants such as the Neighbourhood Development Grant which will be made available for revitalisation and development of rural towns to serve as service centres for rural economies. Investments will be guided by the potential of each area to ensure maximum economic and social returns.

- Explore and support non-farm economic activities to identify other sources of potential in rural areas including tourism, light industries, cultural activities to ensure that rural areas fully utilise their unique assets, potential and opportunities.

- Institutional capacity development in order to ensure an integrated approach in which sector initiatives and activities are coordinated. To this end government will adopt a regional approach with rural, urban and anti-poverty strategies as key elements. To achieve better development outcomes, alignment between local, provincial and national government and other public agencies is required.

- Cooperative development to enhance the role of agricultural cooperatives in the value chain. In addition, government will establish one-stop shops where cooperatives and farmers can access marketing and other information relating to agriculture as well as to access government services including extension and finance.

2.2.7 International Obligations

There are a number of international covenants and treaties that South Africa has signed which commit signatory states to the advancement of the socio-economic rights of their inhabitants which have a direct bearing on people's state of well-being or impoverishment. These include, but are not limited to, the International Covenant on Economic, Social and Cultural Rights, the African Charter on Human and Peoples Rights, the African Charter on the Rights and Welfare of the Child, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination and the Commission on Sustainable Development.

South Africa is also a signatory to the 1995 Copenhagen Declaration which emerged from the United Nations World Summit on Social Development. In terms of this Declaration, signatories undertook to develop a country specific measure of poverty by 1996. South Africa also has obligations in terms of the United Nations Millennium Development Goals to halve poverty and unemployment by 2015. In fact, South Africa has committed to reaching these goals by 2014. While the default Millennium Development Goals uses a poverty line of $1 per day, countries have been encouraged to use their own national poverty measures. The UN Millennium Development Goals are as follows:

- eradicate extreme poverty and hunger;
- achieve universal primary education;
- promote gender equality and empower women;
- reduce child mortality rate;
- improve maternal health;

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- combat HIV/AIDS, malaria, and other diseases;
- ensure environmental sustainability; and
- develop a global partnership for development.

The democratic government has developed programmes since 1994 to deal with the above-mentioned goals, some of which are cross-cutting e.g. gender equality and empowerment of women are cornerstones of housing, land reform, health, water and education programmes.

The Johannesburg Plan of Implementation (JPoI) implemented after the World Summit on Sustainable Development in 2003 called for the building of rural infrastructure, diversify the rural economy and improve transportation and access to markets, market information and credit for the rural poor to support sustainable agriculture and rural development. The JPoI also recognised that agriculture plays a crucial role in addressing the needs of the growing global population and is inextricably linked to poverty eradication, especially in developing countries. Sustainable agriculture and rural development are essential to the implementation of an integrated approach to increasing food production and enhancing food security and food safety in an environmentally sustainable way.

Through the New Partnership for Africa's Development (NEPAD), Africa's heads of state and government developed and endorsed the Comprehensive Africa Agricultural Development Programme (CAADP) as a framework for the restoration of agricultural growth, food security and rural development in Africa. The primary CAADP goal is agriculture-led development that eliminates hunger, reduces poverty and food insecurity, opening the way for export expansion. The CAADP has the following specific targets for achievement by the year 2015:

- improve the productivity of agriculture to attain an average annual growth rate of six percent, with particular attention to small-scale farmers, especially focusing on women;

  have dynamic agricultural markets within countries and between regions;

- have integrated farmers into the market economy and have improved access to markets to become a net exporter of agricultural products;

- achieved a more equitable distribution of wealth;

- be a strategic player in agricultural science and technology development and

- practice environmentally sound production methods and have a culture of sustainable management of the natural resource base.

Four specific thrusts for improving Africa's agriculture that are outlined by the CAADP:

- extending the area under sustainable land management and reliable water control systems;

- improving rural infrastructure and trade related capacities for market access;

- increasing food supply, reduce hunger, and improve responses to food emergency crises; and

- improving agricultural research, technology dissemination and adoption.

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In addition, there are two clusters of critical issues that cut across the four CAADP pillars and which need to be addressed as part of the implementation process. These are:

- capacity strengthening for agriculture and agribusiness: academic and professional training; and
- information for agricultural strategy formulation and implementation.

All of these international agreements do not bind countries to direct resources to rural areas and there are no punitive measures for non-compliance. It should also be noted that communities are rarely active participants in driving the development and finalisation of these treaties and conventions.

2.2.8 New Economic Growth Path

The Minister of Finance, during the Budget Speech of 2010, announced that South Africa has set a new trajectory in terms of economic growth as articulated in the New Growth Path for South Africa. Economies across the globe were affected by the recent economic downturn; as such, it is imperative for South Africa to find lasting solutions that will ensure growth in all sectors. Key challenges facing us are job creation, poverty reduction and faster economic growth. Our economy needs to be transformed to meet the needs of all of our people, growth on its own is insufficient to solve our unemployment problem. There is a need to expand the capacity of the economy to grow sustainably and more labour absorbing growth is needed. The main elements for a new growth path for our country are:

- a concerted effort to reduce joblessness among young people;
- support for labour-intensive industries through industrial policy interventions, skills development, public employment programmes and a rural development strategy;
- sustaining high levels of public and private investment and raising our savings level;
- improving the performance and effectiveness of the state, especially the provision of quality education and training at all levels;
- reforms to increase inclusion and participation in the labour market, alongside efforts to improve competition in product markets;
- keeping inflation low, striving for a stable and competitive exchange rate, and providing a buffer against global volatility; and
- raising productivity and competitiveness, opening up the economy to investment and trade opportunities that can boost exports. There is a need to produce goods and services that other people desire to have that can be exported to the rest of the world.

The approach to employment creation includes measures to encourage industries and services that have significant jobs potential, stepped up implementation of the Expanded Public Works Programme, investment in further education and skills development, encouragement of small business development and entrepreneurship and a new focus on promoting youth employment.

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Employment of rural youth, especially in the small and medium enterprises is imperative in order to stimulate growth in rural economies. Turning an economy around and achieving the kind of transformation required to draw in the millions of unemployed people into the economy is not an easy task. Government will require a concerted effort from all sectors to achieve the objectives of the New Growth Path; rural development and land reform will be fundamental in this regard.

It would be unrealistic to assume that all jobs and opportunities will be created through the CRDP initiatives. The success of the model will depend on public-private partnerships. The question to stakeholders (government and private sector) will be "how many employment opportunities will be created through the planned interventions and how many of the planned interventions and jobs are targeted to the identified rural spaces and beneficiaries?"

The main changes after 1994 involved the effort to restructure government support systems toward African smallholders and away from the narrow focus on commercial farms. At the same time, government had to maintain support for commercial farming, which remains the main source of agricultural production for both domestic use and for exports.

While agriculture is one of the main drivers of the rural economy, empirical evidence suggests that opportunities are also created in tourism; government services; construction; manufacturing and mining in selected locations and retail. In some rural areas, tourism can be one of the few non-farm sectors offering competitive advantage. In its Economic Sector and Employment Cluster Programme of Action, dated November 2009, government has placed emphasis on employment creation and decent work while continuing to lay the basis for long-term competitive growth. The interventions include supporting labour-absorbing sectors (agricultural value chain, tourism, public sector etc.) geared more to domestic and regional markets as central to expanding employment; continuing to support dynamic industries and economic diversification including knowledge intensive and green industries; greater mobilisation of domestic resources for developmental aims, with reduced dependence on short-term capital inflows to fund investment; implementing the CRDP that encompasses support for rural development in economic and social terms and increasing investment in human capital particularly through education, skills development and health care. All spheres of government as well as state-owned enterprises and Development Finance Institutions (DFIs) are obliged to support these aims consistently and strongly.

In February 2010 government approved the second Industrial Policy Action Plan (IPAP2) (Government of South Africa, 2010). Its purpose is to expand production in value-added sectors with high employment and growth multipliers that compete in export markets as well as in the domestic market against imports. The action plan also places emphasis on more labour absorbing production and services sectors. The increased participation of historically disadvantaged people in the economy will facilitate, in the medium term, South Africa's contribution to industrial development in Africa.

Procurement legislation, regulations and practices will be revised in order to enable the designation of large, strategic and repeat or 'fleet' procurements in a range of sectors. The objective is to sequentially increase competitive local procurement and supplier development opportunities, minimise 'leakages' from the domestic economy and support meaningful BBBEE in all three spheres of government and in State-owned Enterprises (SoEs).

Sectors such as metals fabrication, capital and transport equipment, green and energy saving industries and agro-processing, will be qualitatively new areas of focus of industrial policy. The plan will also build on and broaden interventions in sectors such as automotives and components, medium and heavy vehicles, plastics, pharmaceuticals and chemicals, clothing, textiles, footwear and leather, bio-fuels, forestry, paper, pulp and furniture, cultural industries and tourism and business process services (or call centres). It is estimated that the IPAP 2 will result in the creation of 2 477 000 direct and

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indirect decent jobs over the next 10 years. Additional interventions include leveraging the public sector for employment creation and strengthening and diversifying the tourism sector to be competitive and support creation of decent work.

The development and maintenance of school and community gardens will create additional jobs for adult community members but more importantly provide much needed nutrition and contribute to increasing food security initiatives. The school gardens programme has the potential to lead to other livelihood opportunities such as the production of seeds, seedlings and manure as well as mentorship opportunities.

2.2.9 Green Economy

One of the focus areas of rural development is environmental and natural resource conservation. This however calls for taking actions to protect nature and encourage the positive co-existence of both humans and nature. Emphasis is placed on creating value through quality rather than on accumulating material items and money. The developing Green Economy presents a huge opportunity to positively affect the socio-economics of rural areas.

Growth in green jobs is an integral part of the strategy to reinvest and rebuild the economy. In addition to renewable energy development, energy conservation, and green-product development, the green economy must support rural jobs that restore forests, rangelands and watersheds. Rural communities reside on state land, and rural communities own productive farms and the landscapes, in which they are situated, are fundamental energy, water, food, and natural resource security. These communities responsible land management practices help protect and restore environmental quality, while sustainably realising the economic potential of natural resources.

Rural green jobs not only help local economies recover, but also create a durable entrepreneurial workforce. They expand local value-added businesses and industries, which improve product worth and worker skills. In addition to direct employment benefits, green rural jobs generate high positive multiplier effects in rural communities. These include economic activities that maintain or enhance essential local businesses, such as hardware stores, sawmills, feed stores and, by extension, schools and hospitals. High quality, living-wage green jobs in rural areas allow business owners and workers to secure stable employment close to their families and communities. They can provide safe and dignified working conditions and generate sustained benefits for rural areas.

Taking advantage of these opportunities can provide rural communities with new pathways to sustainable growth, entrepreneurship and workforce development, while simultaneously enhancing the health of forests, rangelands and watersheds. Programmes that support green economic development needs to foster economic opportunities that will ensure high-quality jobs, wealth creation and retention, and local ecological and community benefits in rural areas.

Rural green jobs provide high quality, living-wage employment as well as protecting and restoring environmental quality. They include jobs that restore and maintain ecosystem functions and services, such as clean air, clean water, forest and rangeland health and biodiversity, as well as those that reduce energy, material, and water consumption and move towards a low-carbon economy.

The Green Economy and green jobs include a broad array of activities designed to improve the environment while creating economic opportunity. The restoration and stewardship of the ecological infrastructure (its watersheds, air shed forests and grasslands) is one key component. Rural green

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jobs that restore and maintain ecological infrastructure consist of work in the following three dimensions:

- On-the-ground restoration activities on public and private land that improve ecological conditions and facilitate climate change adaptation and mitigation;
- utilisation of the by-products of forest restoration to create renewable value-added wood products, heat and electricity; and
- payments for ecosystem services such as carbon sequestration, wetlands restoration, clean air and water, and biodiversity through incentives, certification, and markets.

Energy and climate change legislation should include incentives for sustainable land management and associated rural green jobs in forest and wood processing activities, including value-added wood products and wood to energy as well as to:

- Ensure that rural communities can access the benefits of emerging markets for ecosystem services. Climate change legislation should include worker training and business assistance to help residents of rural communities to: (a) participate in emerging carbon markets, including assistance to small, private landowners for carbon sequestration to offset registration and marketing, and worker education in verifying climate change mitigation projects, and (b) understand and address the potential impacts of climate change through adaptation plans and activities.
- Include renewable biomass from public and state land in national energy policy. When developing national renewable energy policy, use a definition of renewable biomass that includes material derived in an ecologically sustainable manner from private and public land, including national forest system land, to ensure that rural communities can benefit from woody biomass utilisation thereby creating job opportunities.
- A comprehensive Green Economy Plan that would go beyond consideration of the net jobs created to also consider the jobs protected (particularly in resource-dependent and export-based industries) by improving national resource competitiveness and industry development (e.g. carbon, energy and water efficiency) and the livelihoods created (especially by generating incomes, services and wealth for the rural poor).
- Adopt resource efficient production practices and progressively restructure away from energy intensive industries towards new green industries, which are financially viable and internationally competitive in the long run. A move to a more sustainable development path will create new green jobs, which may help to offset employment losses experienced in key rural sectors such as agriculture and mining.

How can rural communities benefit from the Green Economy Plan?

- Increase access to capital. Interest from investors is generally lacking because the capital needs appear to be smaller in rural areas than elsewhere. One potential area of interest to investors could be community infrastructure. The developed and developing countries endorsed a Clean Technology Fund (CTF) funding envelope of USD500 million for South Africa's CTF Investment Plan (IP). In support of the government's strategies, the CTF co-financed IP will focus on scaling up grid-connected solar thermal power, utility-scale wind power development, solar water heaters, and demand-side energy efficiency. A Phase 2 of the IP is expected to include substantial investment in low carbon transport, on the basis of a transport sector greenhouse gas inventory that the government is undertaking.

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- Through the development of rural workforce training in new skills related to new green industries especially in construction efforts through programmes such as the Expanded Public Works and Community Works Programmes.

- Through the development of low-tech employment opportunities in green industries for entry-level employees or youth and women employed as part of the NARYSEC and through the job creation model of the CRDP.

- Through the development of community training programmes as part of the social facilitation function of the DRDLR that focuses on resource conservation and management and sustainable waste management practices. Rural communities should be taught successful waste minimisation and composting strategies.

- Through the creation of green jobs: Green jobs can be defined as work in: Agricultural, manufacturing, research and development, administrative and service activities that contribute substantially to preserving or restoring environmental quality. Specifically, but not exclusively, this includes jobs that help to protect ecosystems and biodiversity; reduce energy, materials and water consumption through high efficiency strategies; de-carbonise the economy; and minimise or altogether avoid generation of all forms of waste and pollution. Green jobs span a wide array of skills, educational backgrounds, and occupational profiles.

In relation to land and agricultural reform projects, integrated water and land resources management should be adopted as a model framework for the sound and equitable allocation of water as a public good among all users to be implemented in a sustainable way at all levels, including catchments. Support programmes to ensure protection of agricultural land, sustained food security and local economic development, should be developed.

2.3. Principles underlying change

As stated in paragraph 2.1 above change is underpinned by the need to: (a) unite all South Africans and (b) to eradicate the legacy of apartheid in all its forms. These principles cut across geo-spatial, gender and class divides. They inform the three land reform objectives: de-racialising the rural economy, democratic and equitable allocation and utilisation of land and production discipline. The new agrarian transformation strategy as illustrated in Figure 1 is the key strategy of the DRDLR to achieve the outcome of vibrant, equitable and sustainable rural communities and food security for all. Agrarian transformation refers to the 'rapid and fundamental change in the relations (systems and patterns of ownership and control) of land, livestock, cropping and community.' The first part of the strategy deals with building the person, the household and the community. This focuses primarily on dealing with basic human needs and providing the required social infrastructure for improved access to services. This part of the strategy also includes community building, organisational and skills development initiatives.

The issue of land forms the basis of development in many rural areas as well as commercial farmland in South Africa and therefore an essential part of the strategy includes the implementation of an improved land tenure system. The other two components of the strategy dealing with livestock and cropping are directly linked to the growth of the rural economy and focuses on the provision of the required economic infrastructure as well as development of entrepreneurs and improved market access. In addition these two components also deal with the recapitalisation of all farms acquired through land reform so as to ensure improved food security for South Africa.

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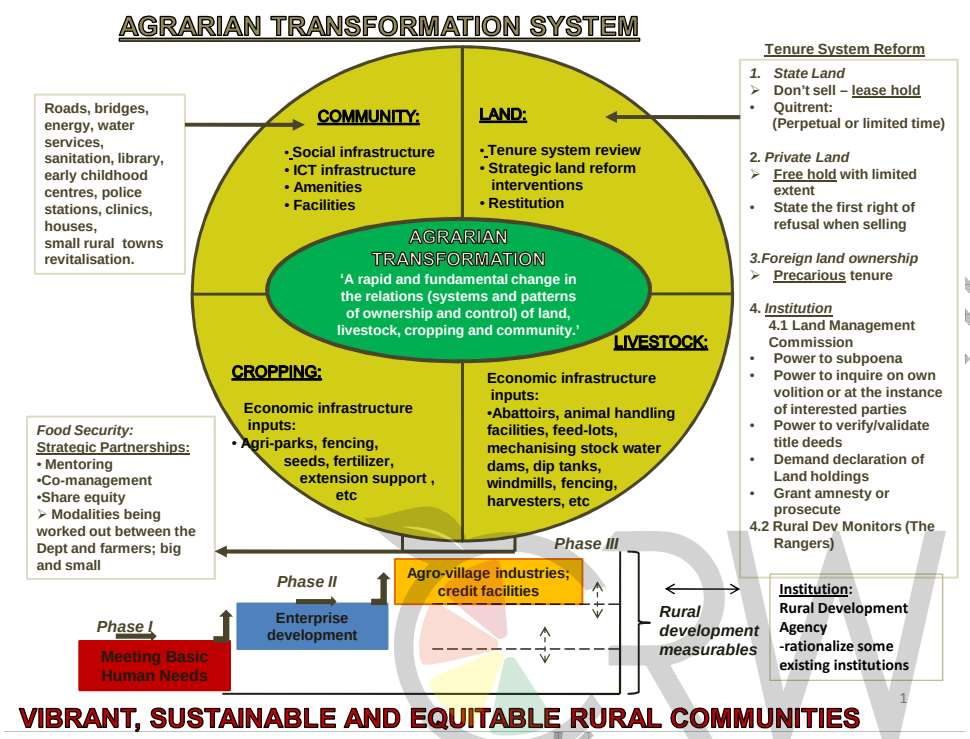
All of the components of the strategy link directly with the phases of the CRDP that deals with meeting basic human needs in the first phase and moves in subsequent phases to focusing on the establishment of rural business initiatives, agro-industries, co-operatives, cultural initiatives and vibrant local markets in rural settings as well as the empowerment of rural people and communities (especially women and youth).

Figure 1: Agrarian transformation system



This diagram represents a holistic view of the DRDLR. The comprehensive and cross-cutting nature of the mandate of the Department is well illustrated; the key elements of land reform and their support institutions are there for readers to see; and, rural development measures and their support institutions are there to enable effective analysis of progress or lack thereof.

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PART B: RURAL DEVELOPMENT

CHAPTER 3: PERSPECTIVES AND PRACTICES: SHAPING A NEW THINKING

3.1 Introduction

The Polokwane resolutions and the MTSF gave rise to the development of an integrated programme for rural development, land reform and agrarian change in 2009. The CRDP seeks to bridge the false dichotomy between the urban and rural spaces. It also seeks to empower vulnerable groups (rural people, women, youth, the unemployed, people living with HIV/AIDS, people living with disabilities, child-headed households and older persons).

The CRDP concept goes beyond the traditional narrow focus on land reform and agriculture. In terms of this conceptualisation, rural development includes a strong focus on rural credit facilities, food security, rural infrastructure (social, economic and ICT) and service delivery, the identification and exploitation of other non-farm economic opportunities including light industry, particularly agro-processing, cultural development and tourism, skills development, and institutional and technical capacity development. In practice this would represent a build-up on the preceding period.

3.2 Theoretical Perspectives

The Rural Development Framework Strategy (RDFS) released in 1997 defines rural areas as the sparsely populated areas in which people farm or depend on natural resources, including the villages and small towns that are dispersed through these areas. In addition, the RDFS' definition includes the large settlements in the former homelands, created by the apartheid removals, which depend on migratory labour and remittances for their survival. The RDF's definition is favoured and can be extended to include areas of high poverty, low levels of infrastructure and limited capacity. According to Statistics South Africa, in 2001 43% of the population of South Africa was living in rural areas. The provinces with the highest rural populations were Limpopo (87%), Eastern Cape (61%), North-West and Mpumalanga (58%) and KwaZulu-Natal (54%). Free State had 27% living in rural areas. Rurality refers to a state of mind and a way of life; to a culture, which revolves around land, livestock, cropping and community.

The reproduction of high levels of poverty in the rural areas largely arises from the way apartheid laws entrenched economic and social systems that marginalised the majority and, in particular, the rural people. But it also reflects constraints on the democratic government's programmes to address the problem, above all the fragmentation created by the apartheid state and the sheer cost of overcoming the backlogs and deprivation it left behind in the rural areas. The democratic dispensation aimed explicitly at reshaping the apartheid geography by consolidating the former homelands into the broader government system of municipalities and provinces, creating a unitary state.

Rural-urban linkages are necessary for the CRDP to succeed as it plays an important role in the ways in which livelihoods are constructed. However, while rural and urban relations should be seen as mutually reinforcing, generalisations on the nature of rural-urban linkages across different locations and in terms of how they affect different groups must be avoided. Within specific provincial and local contexts, while there is potential for rural-urban linkages to contribute to poverty reduction, this will only occur in a climate in which policies, social relations, institutions and incentives allow an equitable access to the assets (physical, natural, social and financial) necessary to support sustainable livelihoods in South Africa's rural areas.

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3.3 New Strategic Approaches

The attainment of democracy in 1994 brought the possibility for South Africa to address poverty and inequality and to restore the dignity of citizens. Several strategies, programmes, legislation and international conventions were developed and agreed to but, have not brought comprehensive development to rural areas.

The following strategies focusing on rural development were developed between 1994 and 2001:

- National Rural Development Strategy, developed by President Mandela's Government of National Unity;
- The Rural Development Framework, developed by a task team appointed by President Mandela and the former Department of Land Affairs but never officially adopted as a strategy;
- The ISRDS, developed by President Mbeki's Administration under the auspices of the former Department of Provincial and Local Government;
- Broadening of Access to Agriculture Thrust (BATAT); and
- The National Spatial Development Perspective.

The following section will briefly explain the relevance of the abovementioned strategies to rural development and land reform:

3.4 National Rural Development Strategy

In 1995, a National Rural Development Strategy (NRDS) was drafted and became the first plan for rural areas under the Government of National Unity (GNU). The NRDS had planned a 25-year vision for rural areas (until 2020). The 11 point vision proposed:

By the year 2020 in the South African countryside, we would like to see (Government of South Africa,1995:2):

- *Freedom from poverty;*
- *Full and productive employment that enriches the lives of rural people;*
- *A more diverse agriculture, with farms of many sizes providing incomes (or part incomes) to many more people;*
- *More diverse commercial and service sectors in country towns and the countryside, and greater integration between towns and the rural areas, especially on market days;*
- *Much greater access by rural people to government support and information, and to commercial services, with a more logical spatial network of towns, services, roads and transport systems;*
- *Close availability to water and sanitation and to fuel sources, giving everyone more time and more health for economic productivity;*
- *Local government structures to which everyone has easy access, and within which women play an equal and active role;*
- *Close links of local government with organs of civil society and business through which are expressed the needs and priorities of different groups of rural people;*

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- *Dignity, safety, and security of access for all, including women, to useful employment, housing, and land, with people able to exercise control over their society, community and personal lives, and to plan for the future;*
- *Fewer, healthier, safe, well-nourished children, with access to well-resourced schools; and*
- *A healthy and productive environment capable of sustaining the biological components upon which the many agricultural, social and cultural activities depend.*

The NRDS however ignored local issues such as the uncertain role granted to traditional authorities and weak local transitional municipalities. It did not address the key issue of the actual potential of the rural economy in areas left under-developed by the previous apartheid regime. Finally, it adopted contradictory stances; on the one hand a rights-based and welfarist approach to development, and on the other hand, an approach based upon productivity, economic efficiency, and cost recovery.

3.5 Rural Development Framework (RDF) 1997

In 1997, a revised RDF (drafted after the NRDS) was proposed. When the RDP was decentralised, the rights-based welfarist principles of the RDF took a backseat to the Growth, Employment and Redistribution (GEAR) macro-economic framework. A Rural Development Framework was compiled by the Department of Land Affairs and published in May 1997. It was based on the Green Paper that was published in 1995. While its title implies broad coverage, in reality the document focused on rural infrastructure, public administration, local government and rural non-farm employment. The document, however, drew attention to the need for the co-ordination of rural development. This discussion document was not confirmed as the government strategy for rural development. As a result, the range of initiatives that emerged from the different government departments were not based on a specific set of targets or common indicators, but nevertheless addressed important elements of rural development.

3.6 Integrated Sustainable Rural Development Strategy (ISRDS)

The government attempted to build on six years of experience with its own rural programmes and similar efforts worldwide. The resulting “Integrated and Sustainable Rural Development Strategy” was idealistic in its vision and potentially practical in its focus on mechanisms of implementation. It was designed to realise a vision that would *“attain socially cohesive and stable rural communities with viable institutions, sustainable economies and universal access to social amenities, able to attract and retain skilled and knowledgeable people, who were equipped to contribute to growth and development”*. The approach outlined in the strategy was applicable and viable for the entire country but looked toward a medium term vision of 10 years (from 2000-2010).

The ISRDS spawned the Integrated Sustainable Rural Development Programme (ISRDP). The ISRDP was designed to build socially cohesive and stable rural communities with viable institutions and sustainable economies, offering universal access to social amenities and able to attract and retain skilled and knowledgeable people who could contribute to growth and development.

The key success factors of the programme included:

- Inter-sectoral, inter-sphere, and inter-cluster planning and coordination;

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- addressing the local needs and priorities through the alignment of the Integrated Development Plans (IDPs) and Provincial Growth and Development Strategies (PGDS);
- implementing socio-economic programmes;
- strengthening the capacity of the municipalities to deliver services;
- channeling resources and funding from all three spheres of government and external stakeholders to the nodes (stakeholder mobilisation);
- benefit to the poor and vulnerable groups, including women, youth and disabled persons; and
- empowering communities to participate in government programmes.

When the ISRDP was launched in 2001, the preference was not to establish a dedicated fund for the programme. For the success of the ISRDP, plans and budgets of the three spheres should have had a spatial component and would be funded from existing grant making programmes. In addition the programme had to mobilise resources from both internal (government) and external stakeholders (SoEs, business, donors etc). It is also important to note that in 3 surveys carried out in the ISRDP nodes between 2001 and 2008, it was found that the levels of poverty had actually declined.

3.7 What are the missing links in rural development?

As stated earlier, notable progress has been made since 1994 but why are rural areas still underdeveloped. Clearly there are missing links:

Firstly, there appears to be a lack of a common definition of what rural development is. Indicators such as deprivation or poor access to services are used to attempt to define what is needed in rural areas. Some even attempt to "rurbanise" rural areas (define development of rural areas in urban terms). A rural sector profiling will help to develop a common understanding of rural development and rurality.

Secondly, budgets for, and planning of, these programmes cut across the different government departments. There appears to be no incentive for seamless budgeting and planning for rural development across the different spheres of government. The core challenge is the reprioritisation of funds to rural areas through a single budgetary and planning cycle. There also appears to be no punitive measures for non-compliance in joint/coordination programmes of government.

Thirdly, linkages between platforms that promote participatory democracy and the extent to which members of representative bodies, such as ward committees, are linked in practice to the rural communities they serve are questionable. The number of people per ward and the geographic size of the wards are factors that influence democratic representation and participation. Active community participation in planning for their own development can only have positive outcomes for rural areas. Government programmes are also easier to implement in communities that are mobilised for development. Social mobilisation and facilitation therefore becomes critical. Equipping community members with the skills, information and other support systems (training, seed funding, marketing support) to grow entrepreneurs into viable businesses are also important.

Fourthly, very few of these programmes, especially the service delivery programmes, have fully decentralised service points. In the case of free basic services for example it was found that the

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token collection rate was low due to the fact that the cost of the token is far lower than the cost of travelling to the token collection point.

What is therefore needed to make these programmes effective is coordination and alignment. The CRDP management system is a mechanism that provides a coordinated approach – this will be discussed more fully in Chapter 4.

In contrast to the NSDP, the CRDP vision for rural areas suggests that:

- Areas identified within the NSDP as having "low development potential" are considered to be areas of high development potential within the CRDP.
- Comprehensive development initiatives implemented in rural areas will create opportunities and improved access that will lessen the current migration trends.
- The CRDP emphasises the importance of linking activity corridors and nodes that are adjacent to or within main growth centres.
- The CRDP focuses on people being the centre of their own development.

It is therefore proposed that the NSDP be reviewed in light of the new rural development mandate which affirms that development should take place where people reside, inclusive of villages. Mahatma Gandhi stated that "India lives in its villages",' so does South Africa!

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CHAPTER 4: THE COMPREHENSIVE RURAL DEVELOPMENT PROGRAMME (CRDP)

4.1 Introduction

The vision of the CRDP is "Vibrant, equitable and sustainable rural communities." Agrarian transformation is seen as the 'rapid fundamental change in the relations (systems and patterns of ownership and control) of land, livestock, cropping and community'.

The Department's role in rural development is, fundamentally, four-fold: it is an **initiator, facilitator, coordinator and catalyst.**

- **Initiator:** The Department will initiate interventions/strategies in rural areas as part of an integrated approach.
- **Facilitator:** The Department will play an active role in the facilitation of communities and will also facilitate interventions in areas where the Department has no expertise/funding but has identified other sector departments/stakeholders to contribute to the CRDP vision for that area/province.
- **Coordinator**: The department will coordinate strategies, policies and mobilise resources from stakeholders to contribute to the objectives of the rural development programme.
- **Catalyst:** The Department will play a change agent role and assist in the complete transformation of the rural space in terms of policies, programmes and projects for the ultimate aim of achieving vibrant and sustainable rural communities. Catalytic projects will also be used to kick-start economic development.

The implementation approach is predicated on coordinated social and technical planning as well as improved household profiling to establish a social and economic baseline that will fit in with the IDPs and ABPs.

Rural development focuses on, but is not limited to, the establishment of light rural business initiatives, agro-industries, co-operatives, cultural initiatives and vibrant local markets; the empowerment of rural people, and communities (especially women and youth) and, the revitilisation and revamping and creation of new, economic, social, and information and communication infrastructure, public amenities and facilities in villages, and small rural towns, taking into account special needs such as the needs of people with disabilities and the elderly.

A new "higher-impact" IPAP has also been completed by the Department of Trade and Industry and approved by Cabinet. The new plan seeks to deepen South Africa's manufacturing base. The National Industrial Policy Framework and IPAP1, which were released together in 2007, selected four 'lead' sectors for specific support, including the automotive and components industries; the metals, capital- and transport-goods sector; the forest-products industry; and the chemicals industry. IPAP2 commits to giving greater priority to the agro-processing sectors. This is of particular importance to job creation and enterprise development.

Part of the CRDP effort is to facilitate and coordinate the provision of ICT infrastructure in rural areas. An information society is a prerequisite for a knowledge economy where the generation and exploitation of knowledge play a key role in the generation and distribution of sustainable growth. The three key pillars required to enable this vision is *connectivity, access and systems*. Africa is lagging behind the rest of the world, including other developing countries, with regards to the

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proliferation of affordable broadband connectivity. Although South Africa enjoys more resources in this space than the rest of Africa, these resources are confined to only the affluent, industrialised regions, leaving the remainder of our rural based population isolated from global socio-economic activities.

Currently around 4.6 million people have access to the internet in South Africa. Conventional access using desktop computers is limited. This is especially prevalent in poorer, rural based communities. Cellular telephones are however widely used; even in poor communities. The potential this presents is obviously promising, but the cost of access is still very prohibitive. A further challenge is the low level of e-literacy and the inadequate use of internet technology. There are also socio economic, language and cultural challenges given that the internet is predominantly in English and reflective of American culture. The provision of access to rural communities is therefore another key pillar of the ICT for the rural development strategy.

4.2 Main Pillars of the CRDP

The CRDP rests on three strategic pillars, namely:

- CRDP facilitation and implementation concept;
- The Job Creation and Skills development Model; and
- The CRDP Management System.

Built into the CRDP concept are the rural development measurables, that is, the three phases of the Programme:

THREE PHASES OF THE CRDP

Phase I: Meeting Basic Human Needs;

Phase II: Enterprise Development; and,

Phase III: Light agro industries and credit facilities.

The CRDP emphasises in all phases the importance of developing the person, the household and the community. To ensure that there is holistic development, Phase I deals with the basic needs of people which include among others proper access to government services, improved access to clean water, decent housing, proper sanitation, education, etc. Essentially therefore the first phase consists of a detailed analysis of the rural space including the settlement patterns and livelihood patterns of the community. This is combined with a social facilitation process that provides an in-depth understanding of the needs of the people. Together these profiles provide the basis for infrastructure development that is tailored to the needs and characteristics of the community. This phase will contribute significantly to food security, dignity and an improved quality of life for each rural household.

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The logic of the methodology followed points to the fact that empowered people whose basic needs have been dealt with are better able to take charge of their destiny and participate more sustainably in enterprise development.

Phase II is regarded as the entrepreneurial development stage which deals with the establishment of small enterprises including rural business initiatives, agro industries, cooperatives and cultural initiatives. This phase is driven largely by the revitalisation of old and revamping of new economic and ICT infrastructure thereby facilitating the operation of vibrant local markets. Linked to the above, communities will be encouraged to participate in related livestock, cropping and value chain development.

It is anticipated that through Phases I and II, the economic growth of the rural area would have been stimulated. The focus of Phase III would be the development of larger agro-processing plants and other rural enterprises including agri-parks. Given the anticipated growth and investment in the area, it is envisaged that the financial sector institutions would be playing an important role in contributing to wealth and asset creation.

Through Phases II and III the industrial strategy should find expression, creating the necessary linkages between the rural and urban sectors of the economy.

The implementation approach is predicted on coordinated social, institutional and technical planning as well as improved household and community profiling to establish social, institutional and economic baselines which should fit in with the IDPs and area-based plans of local and district municipalities, respectively.

Essentially, this is the ideology of the CRDP. While the CRDP rests on the three pillars (mentioned earlier), each pillar represents a system of functions, structures and institutions. Figures 3 to 5 below represent the CRDP Concept in its structural, functional and institutional forms. It is important to emphasise at this point: each figure represents a system. Essentially, this is the theoretical framework of the CRDP.

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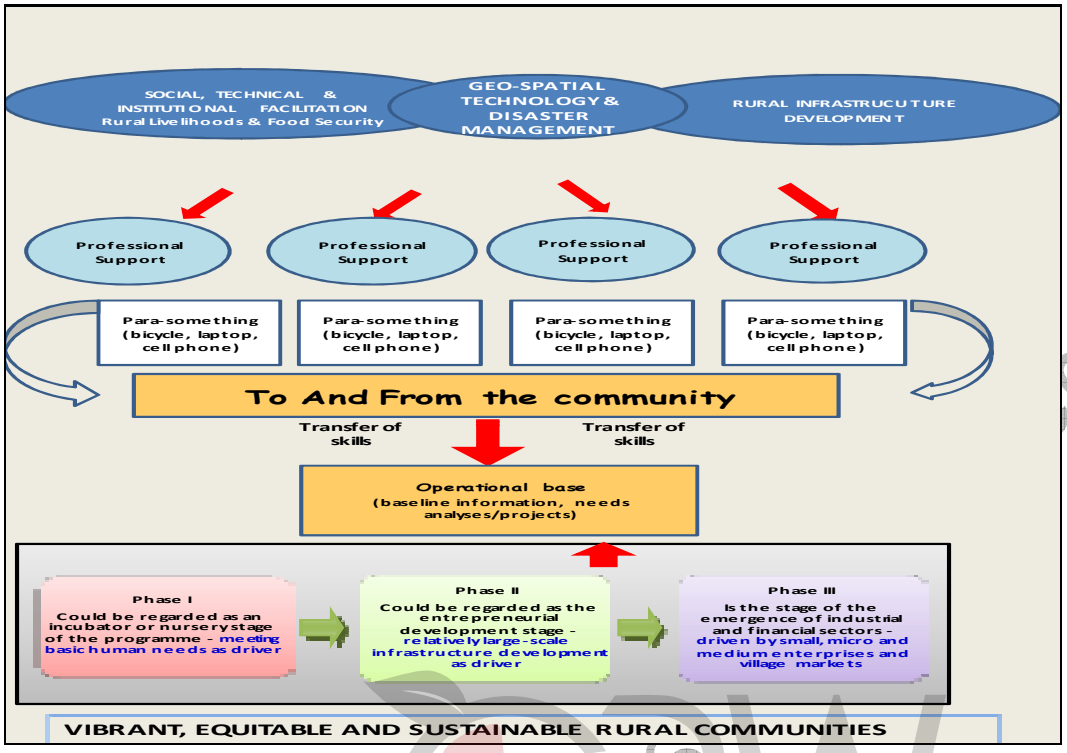
4.2.1 CRDP Facilitation and Implementation

Figure 3: CRDP Facilitation and Implementation Concept



The CRDP has the following key elements:

- Development Facilitation;
- Geo-spatial Services, Technology Research and Development, and Disaster Management; and
- Rural Infrastructure Development.

Development facilitation has already been dealt with in some detail, except for rural livelihoods. Homestead gardens are going to play a critical role in this regard. This is part of Phase I of the rural development measurable. In his State of the Nation on February, 2010 the President tasked the DRDLR with the responsibility of ensuring that 60% of rural households eke out their living from their own homestead gardens by 2014.

Geo-spatial Services, Technology Research and Development, and Disaster Management: Infrastructure for disaster management is very important because rural communities are extremely vulnerable to natural disasters. The capacity of municipalities, working together with the Department of Co-operative Governance and Traditional Affairs, will have to be strengthened in this regard. Technology Research and Development will play a major role in terms of innovation and advancement.

Rural infrastructure Development: Social, economic, ICT, amenities and facilities is critical for attracting professional and investment into, and retaining energetic and productive young people in, rural areas. Water and sanitation, roads network, ICT, energy, decent accommodation and cohesive, crime-free communities will receive priority treatment.

4.2.2 Job creation and skills development model

Central to the CRDP is the job creation model and skills development. The rural job creation and skills development model is intended to bring stability and skills to rural households. It will create employment opportunities at ward level linked to skills development. Community members will be employed for a minimum of two years using the Expanded Public Works Programme principles.

The job creation model is intended to create at least 1 job per household. One of the conditions of this employment is that each of the contractees shares 50% of her/his wages with her/his household. This model is being tested in the various pilot sites with a view to replicating it, with or without amendments, during the roll-out. (See Figure 4 below):

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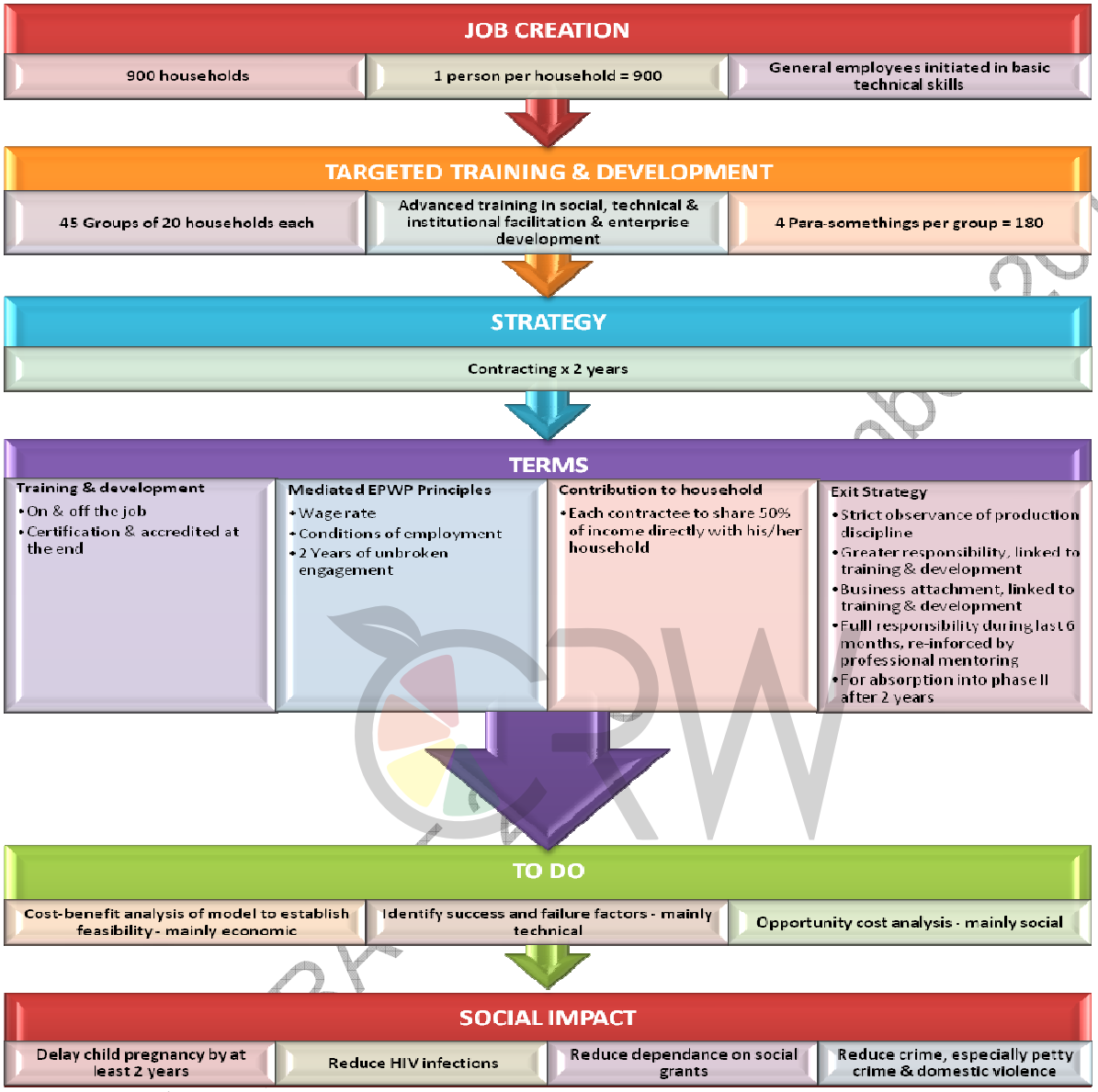
Figure 4: Job creation and skills development model



Para-professionals

One of the key features of this model is the creation of 'para-professionals'. The intention of the establishment of development para-professionals at ward level is to train individuals who will work in, and with, communities, government and non-governmental organisations to identify, and take advantage of, economic, cultural and social opportunities.

- **Targeted training and development**

  The para-professionals, who will be aged 40 and below, will receive advanced training in social-, technical and institution-building facilitation skills and enterprise development skills.

Two initiatives are already under way in this regard, involving the Department of Higher Education and Training, Universities of Technology, Further Education and Training Colleges, the Human Sciences Research Council, Agri-Seta and an agricultural school in Richmond, KwaZulu Natal.

- **Strategy**

  The model is household-based. It is intended to have an impact in the basic social unit. These individuals will be contracted for a minimum of two years of on-the-job training based on the principles of the Expanded Public Works Programme, will contribute 50% of their small income to their households and are expected to form the core of future rural entrepreneurs (Phases II and III of the development measurable).

- **Social Impact**

  As could be seen from the model, four impact areas are intended: delaying teenage pregnancy by at least two years, reduction in HIV infections as young people increase the use of condoms to remain on the job and, later on, their enterprises, reduction in dependence on social grants and, reduction in crime, especially petty crime and domestic violence. These are lofty ideals, but they are achievable.

4.2.3 The CRDP Management System

Figure 5 below represents a framework for institutional and social engagement, because co-ordination and collaboration are critical features of the CRDP. This type of collaborative mechanism has been missing in all previous attempts at rural development. The centrepiece of this system is the Council of Stakeholders (COS), because it is grounded in the communities. All decisions are either taken here or are sanctioned by this organ of civil society. The COS is at the cutting edge of attempts at fostering social cohesion and development.

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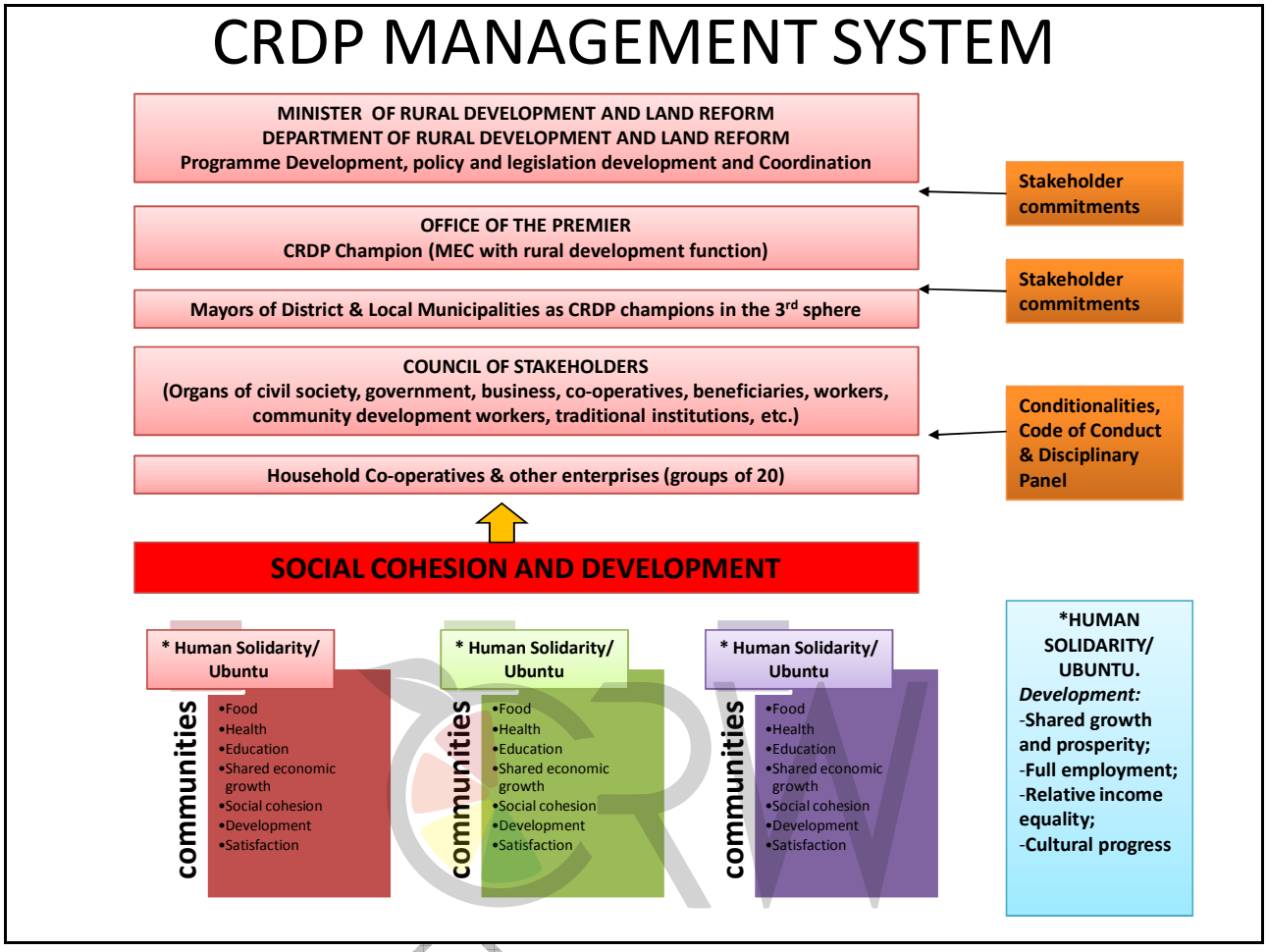
Figure 5: CRDP Management System



4.3 Stakeholder roles and responsibilities

4.3.1 Political Champions

The political champions will provide strategic direction and perform an oversight function. The Minister of Rural Development and Land Reform is the national political champion of the CRDP. At provincial level the Premier is the CRDP champion. The Premier may appoint an MEC with a rural development function to be the driver of the CRDP in the province. The Premier shall assist the DRDLR in getting the commitment of all stakeholders in the province so that we can get the desired results from the integrated implementation of the CRDP. Other stakeholders include local and district municipality mayors (See **Figure 5**). At district and local levels, district and local municipal mayors should play the role of political champions. This is critical because all projects take place at that level and both levels should benefit from institutional and technical support. All the political champions, however, have to respect the Council of Stakeholders as the centre-piece of the CRDP. Without this, social cohesion will not be achieved.

4.3.2 Council of Stakeholders (COS)

An inclusive CRDP stakeholder participation model has been developed with the COS functioning as the planning, implementation and monitoring body. A COS consists of members of community-based organisations and forums, traditional leaders, school governing bodies, government (national, provincial and local), community policing fora, ward committees, etc are established in all CRDP sites taking into consideration preexisting structures on the ground. The COS must, *inter alia*:

- establish production groups according to identified needs in the community and household profiles;
- develop norms and standards of productive conduct;
- develop mechanisms to enforce such norms and standards;
- establish a Code of Conduct for all participants in the CRDP;
- create a mechanism to manage the observance of such a Code;
- engage with partners in identifying community needs and initiating project plans and priorities;
- identify and select task leaders and candidates for para-professionals; and
- play an oversight and monitoring role during implementation.

Traditional councils also play an important oversight role and unresolved issues of the COS can be dealt with at this level.

4.3.3 Producers and Consumers Co-operatives

These economic units are essential for fostering social cohesion. They are progressive with the spirit of both ubuntu and human solidarity. Co-operatives however, are not to taken for granted. A lot of work needs to be done to make them sustainable, fundamental to that work is the shifting paradigms and changing mindsets, social mobilisation and re-orientation, technical training and organisation development which will play a critical role in this regard.

4.4 Implementing the CRDP

Piloting for evidenced-based policy-making

Effective evidence-based policy-making requires that every stage of the policy development process is informed by evidence. Collecting data, investing in research, ensuring that policy-makers have the appropriate skills to discriminate between evidence which is reliable and useful, and that which is not, all are essential tools in devising sound evidence-based policy. Evidence should also be open to rigorous public and professional debate and independent evaluation. In addition to validating evidence, transparency can help the government to gauge community reaction to ideas in their

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formative stages and therefore better anticipate the likely consequences of pursuing different courses of action.

The initial area chosen for piloting the CRDP is Muyexe Village in the Greater Giyani Local Municipality Limpopo Province. Further pilot sites were subsequently selected in all provinces. The approach followed in the pilot projects has been the War on Poverty approach. The War on Poverty approach utilises household and community profiling methods to create baseline information about the community's and household's interests/development needs. The information generated is then used towards project planning, other development interventions, and programme designs. The *Community Profiling Framework* for the *War on Poverty* states that "a community profile provides an overall understanding of the structure, history, institutions, resource base and quality and quantity of infrastructure and services that shape the livelihoods of households in a given community. Specifically, a community profile will comprise:

- the major patterns of resource use in the community, illustrated by maps;
- the settlement patterns of the community;
- the major livelihood patterns of the community and which groups of households are engaged in those patterns, illustrated by maps, rankings and seasonal calendars;
- the main visible, formal and traditional institutions presented in the community;
- the importance and accessibility of services in the community; and
- a historical profile of the community, different groups within the community and resources and resource use over time, illustrated by timelines."[12]

The understanding provided by these profiles can assist in the development of a community engagement strategy and lead to more effective programmes and projects as they are tailored to the needs and characteristics of the people involved. The first two pilot sites, Muyexe Village in Greater Giyani, Limpopo and Riemvasmaak in the Northern Cape used the above-mentioned methods.

4.5. Institutional support

4.5.1 National Rural Youth Services Corps (NARYSEC)

The NARYSEC is an initiative aimed at recruiting and developing persons aged between 18 to 35 years to be para-professionals who will be trained to perform community service within their communities.

The DRDLR intends to gradually implement this programme in all rural wards beginning in 2010. The appointment of the youth must be in accordance with the principles of the CRDP. The focus of this programme is developmental in nature, centered in rural areas and needs to address challenges of skills development and unemployment.

[12] War on Poverty Campaign, *Community Profiling Framework for the War room on Poverty, July 2009,* unpublished document

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The DRDLR has developed a process to manage the employment of the youth per province and set up implementation structures in each of the nine provinces to manage and implement the process.

The DRDLR has further entered into strategic partnerships with the Department of Higher Education and Training, who will oversee institutions of Higher Education and Learning, and the Department of Public Works who is managing the Expanded Public Works Programme in order for the youth who are employed in rural areas to undergo intensive training. In addition the South African National Defence Force will also play a critical role in the skilling of the rural youth.

NARYSEC Objectives

- To recruit unemployed youth in rural areas.
- To train the appointed youth through Further Education and Training programmes linked to the identified developmental community projects in rural areas.
- To develop youth with multi-disciplinary skills through civic education.
- To equip youth with basic concepts, methods, techniques and practical application on training needs identified.
- To provide youth with knowledge and skills on areas of training identified.
- To capacitate youth in retaining knowledge and technical skills acquired during training.
- To increase the number of rural communities receiving support in their self-development through the CRDP.

4.5.2 Rural Development Agency (RDA)

The ANC's 52nd National Conference in 2007 resolved, among other things, that the government should establish an appropriate institution with the resources and authority to drive and coordinate an integrated programme of rural development, land reform and agrarian change.

The RDA would be established nationally. There are broadly speaking, two options in this regard:

a) Create a new entity or,

b) rationalise existing entities with development content.

There are currently three state agencies that finance and implement different aspects of rural development: The Independent Development Trust, the Land Reform Empowerment Facility (housed within Khula Enterprises Limited), and the National Development Agency. It is the view of the Department that option (b) be adopted i.e. rationalise existing entities with development content. These existing entities have the capacity and the experience in rural development. What will then be required is a re-orientation aligned to the principles of the CRDP. This particular option will also reduce the proliferation of development agencies which duplicate resource utilisation with minimal impact.

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PART C: LAND REFORM: SOUTH AFRICA AND ELSEWHERE

CHAPTER 5: LAND REFORM: SA

5.1 Introduction

South Africa faces many social, economic, cultural, technological, institutional, organisational and political challenges and problems. In the process of building a developmental state these challenges must receive a sharper focus, if the said project will not abort. In economic terms, the challenge that South Africa faces is the same as that faced by other countries across the world; a challenge which the British economist, David Burningham,[13] simplifies into three sets of problems:

- Problems associated with stability;
- Problems associated with growth;
- Problems associated with distribution.

- **Problems associated with stability**

The key objectives in this regard are two-fold: the promotion of growth in the living standards of the people; and, the promotion of a fair distribution of wealth, nationally and globally. Global economic crises lead to decreased outputs, as firms adjust to match decreasing demand of their goods and services; and jobs are lost, as companies/firms collapse or rationalise in attempts to stay alive. As these crises negatively affect the twin objectives of raising living standards and equitable distribution of wealth, political and social conflicts tend to occur, causing instability. Responsible governments constantly seek ways and means of stabilizing their economies. These efforts may be radical at times unleashing "discontent and dissension" which might even work against processes aimed at achieving these twin objectives, as those who are relatively well-off fight to retain possessions and those who have nothing accuse their governments of failing them. Striking a sensitive balance between these two contradictory forces is a function of both macro-economic balances and political economy.

- **Problems associated with growth**

Population growth and the ability of people to demand, and pay for, goods and services, generates growth in output as suppliers seek to meet such demand and make profit at the same time. Demand drives growth and development as firms constantly seek ways and means of matching the rising demand for goods and services. As growth translates into development, people become more and more selective in terms of what they want. This leads to technological innovations, as firms constantly seek more effective, efficient and economical ways of producing and delivering their goods and services to customers. But, growth has got negative externalities as well. In other words, growth has a cost to it, such as congestion, air and water pollution and the like, especially in urban areas; and, the destruction of flora and fauna in the countryside.

[13] David Burningham, 1999, Economics, Hodder Headline, London

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Describing the phenomenon of informal settlements, the Minister of Health, Dr Aaron Motsoaledi has the following to say:

> *In the normal development of human settlements, the processes are sequential, namely, plan, build and occupy. In the case of informal settlements, the processes are reversed, namely, occupy, build and plan.*

There are serious problems facing governments throughout the world; problems of rapid and, mostly, unplanned growth. They affect as much urban areas as they do rural ones. Over-running grazing land because of poor veld management and lack of livestock control could lead to rural poverty which could have been prevented. When this happens, rural people move to the towns and peri-urban areas in search of improvements to their lives. We, then, see a proliferation of unplanned settlements mushrooming all over the place, putting enormous pressure on local government's resources.

- **Problems associated with distribution**

This is a major problem area, not only in South Africa but the world over. Comparative analysis of the world's output consumption patterns between people of industrialised and those of non-industrialised countries shows that the former, who contribute only 34% of the world's population, account for about 87% of the world's output consumption, whereas the latter, who constitute about 66% of the world's population, accounts for 13%. The gap is too wide, and is said to be widening rather than narrowing. But this pattern of resources and, consequently output occur within nations as well. In South Africa for example, 13% of the total population accounts for 87% of landholding whereas 87% of the population accounts for only 13%.In what she refers to as South Africa's two agricultures, Jill Nattrass (1980), clearly demonstrates this uneven land distribution between black and white people. Land per hectare is 13,7 ha per capita in the black sector, while it is 78,0 ha in the white sector. Whereas both 'Agricultures' (1980) cultivated 14% each, output per worker (only men accounted for) was R65 in the black sector, while it was R1 298 in the white sector; and, output per hectare cultivated yielded R34 in the black sector, against R119 in the white sector. This particular unevenness could be accounted for in terms of both population pressure on the land in the black sector as well as uneven distribution of resources (technology and equipment) and inputs (fertilizers, extension services, etc) between the two sectors. Clearly, this situation is undesirable and cannot be tolerated. It must be addressed. What the South African nation should debate and decide upon, is an appropriate institutional framework within which the desired change must occur. In addressing this question of an appropriate institutional framework, we must consider experience in other countries. Ultimately, however, South Africa must find a framework which works for it, given its own uniqueness. Land reform in South Africa must therefore be understood in terms of this distributional factor as well as the contribution of this grossly uneven distribution to income

5.2 Land reform evolution in SA: a brief genesis

It is impossible to know with certainty the many traditions of tenure and land use systems that existed in the southern parts of Africa before the first European colonials settled in areas of the Western Cape in the seventeenth century. There are few written records other than observations by explorers and travellers. Nevertheless these reports make it clear that the indigenous Khoi San and African people were living in well-established communities with functional social institutions and formal or informal systems of local governance and land use. The late ANC President O R Tambo, had the following to say on pre-colonial land holding systems in SA: *"In African epochs, long before*

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the coming of the colonial masters from their northern climes three or four centuries ago, men and woman moved skillfully and purposefully across the terrain, plucking from the earth its bounty. Trained to utilise a variety of means for their survival, they employed the art of the hunt, the judicious selection of fruits of the wild, the identification of the lushest pastures for their livestock, the cultivation of the most reliable staple foods; the growth of trade, the establishment of collective social structures and a world view, despite the occasional clash of interests between one clan and another, of the practical value of warm relationships and a deep respect for a shared humanity." In their book 'Land Title in SA (2000) DL Carey Miller and Anne Pope make an emphatic point in this regard: the indigenous peoples exercised the most fundamental land tenure in forms of existence, which were inextricably associated with land.

The following paragraphs deal with the different waves of tenure systems imposed on the indigenous population leading up to the dying days of apartheid. It provides an overview of the post-apartheid's government attempts at tenure reforms from 1994 until 2008; provides a short analysis of the political economy of all tenure reforms; and, finally, makes a case for more radical land reform.

5.2.1 The era of the Dutch East India Company (1652-1795/1806)

From the earliest encounters between Dutch colonisers and the indigenous Khoi San, threats to traditions of land access and use systems resulted in resistance and struggle. Jan van Riebeeck maintained a detailed registration of freehold grants of farms that were characterised by, as freehold title is to this day, a right of disposal. Similarly freed slaves were granted urban plots in freehold title.

Under the administration of Simon van der Stel freehold tenure on large farms extended to thousands of square miles. However in other rural areas forms of leasehold (such as the loan farms) were developed that were in many ways informal with nominal payments or tithes. In the early eighteenth century forms of quitrents or long term leases were provided, at times with possibilities of conversion to freehold. There was no policy as such on land tenure and forms of holding during the 142 years of the Dutch East India Company colonisation of the Cape, and systems were developed as the fiscal needs of the Company required.

5.2.2 The British Administration (1806-1910)

Faced with a complexity of tenure arrangements, the British Administration in the Cape tried in the early nineteenth century to introduce better systems of land administration and tenure. Other than on a few mission stations, the indigenous people had lost all rights and ownership of land in the Colony by 1824. The British attempted to convert the loan farm system to one of permanent quitrents that required the registration of diagrams in the Deeds Office. Many farmers resisted this conversion preferring the informal arrangements which often amounted to squatting. No new loan farm rights were issued and although the greater part of the colony was held in quitrent, the Administration was forced to return to the loan system to allow Boer squatters to "request tenure" if land was not required for 1820 British settlers. This was seen to aim to prevent the departure of the Boer farmers (Trekboers) from the Colony into areas where conflict with indigenous Africans over access and ownership of land continued.

The growth of the settler community soon led to expansion. Much of this was by mobile stock farmers who moved into the interior. This brought them into direct conflict with indigenous pastoralists and farmers who were dependent on the same resources.

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The Sixth Border War of 1835 was precipitated by incursions by Xhosa military parties as far as Mossel Bay in the South Eastern Cape in an attempt to assert their tradition of user rights in the face of the colonisation of the region. It is notable that registration of perpetual quitrents was granted to the Khoi San and Africans who fought with British forces. However the Roman-Dutch system of Common Law was not changed by the British Administration and the judiciary continued to see ownership as absolute, although divisible and disposable.

The Great Trek of Boer farmers in the 1830's was precipitated by both changes to statute (Slavery Abolition Act, 1833), as well as attempts to change the informal tenure arrangements farmers enjoyed. The Great Trek resulted in the spread of these complex and dynamic informal arrangements where they would persist until modern times. More significantly the Great Trek, Mfecane and wars by the settlers against various indigenous people resulted in ownership and control by white settlers of most of South Africa. By the late 1830s the first phase of European expansion into Southern Africa was complete.

Many of these indigenous people were just re-establishing their social institutions after the blows of the Mfecane when confronted by Boer settlers. Although some African farmers maintained limited access to land through informal sharecropping and labour tenancy arrangements with white farmers, the majority sought to re-establish their tradition of tribal authority and control of land use.

Areas of African (Xhosa) occupation on the eastern frontier however, although annexed by the colonial authorities, were retained largely as 'tribal areas'. Hut and poll taxes were imposed in these areas as a means of coercing at least some Africans into wage labour but the weak administrative capacity of the colonial authorities rendered this almost useless. Consequently, more enterprising and resourced Africans living on the eastern frontier could continue to maintain an independent livelihood, either on their own land or as sharecroppers on white farms.

In the late nineteenth century there were attempts by the British colonial Administration to extend the system of registration of freehold quitrent title to African tribal communal areas. The Glen Grey Act of 1894 was concerned with land tenure and conditions for land holding by Africans in a large area of the Eastern Cape near Queenstown where allotments of 4 morgen (3.42 ha) were established. Beneficiaries were selected by officials with certain conditions imposed by statute including loss of the land if it was not properly cultivated (precarious tenure).

These early land reform initiatives were motivated in part by the liberal values of the time and some concern for opportunities for development but moreover by the belief that individual ownership would erode tribal leadership and tradition, considered reactionary and opposed to the provision of labour for mining and industrial development. Furthermore the restrictions in size on individual lots prevented the emergence of successful African peasant farmers who might compete with white farmers.

In the Transvaal, Free State Republics and Natal, no Africans were able to effect registration of individual title, except in the Thaba Nchu district where Africans had freehold title before the area was incorporated into the Free State Republic. In the Transvaal Republic and Natal no individual registration of title for Africans was permitted but land was held in trust by whites on behalf of African syndicates. A Native Location Commission was established in 1881 to hold title and land in trust for Africans and similar systems of trusteeship developed in parts of Natal. In the Afrikaner Republics, white land rights were allocated on application, giving the right to those recognised as Burghers to select farms which were submitted for registration with a description by the applicant. On a district basis farms were then inspected and title issued after which quitrent was payable.

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The Native Affairs Commission appointed by Lord Milner in 1905 after the war signalled the beginning of segregation and the restriction of land purchases by Africans to areas to be demarcated by future legislation.

The impact of the colonial economy soon gave rise to increasing social stratification amongst the black peasantry as those who were able to take advantage of the new opportunities and technologies participated actively in the colonial cash economy. Evidence suggests that they were so successful that they outstripped the productive capacity of most of the Boer farmers.

By the early 1890's African independence had largely been destroyed, although the areas of African occupation had been retained as native reserves. New cash taxes were imposed and enforced in these areas and as a result of this, Tswana and Zulu migrants started appearing on the mines during the late 1880's.

5.2.3 Era of the Union of SA (1910-1948)

With the formation of the Union of South Africa in 1910, the South Africa Party came to power. The key challenge for the new government was to define a single land and labour dispensation for South Africa. This challenge was resolved through the promulgation of the Land Acts (1913 & 1936). The Natives Land Act of 1913 was passed in response to demands from its rural constituency threatened by the successes of African farmers in tenancy or share-cropping forms of tenure. The Act restricted 80% of the country's population to 13% of the land but was only in practical effect in the Transvaal and Natal. The statute provided for the continuation of restrictions on freehold ownership in the Orange Free State for whites and measures controlling squatting. The Act did not apply in the Cape as the Cape black franchise and rights to registration of ownership in principle were entrenched in the Constitution of the Union in 1910.

The impact of the statute on the lives of the majority of Africans in the Union of South Africa was devastating "the South African Native found himself, not actually a slave, but a pariah in the land of his birth"[14]. The Act prevented Africans from land ownership in the vast areas designated as white and only allowed residence on farms in the form of labour tenancy with a minimum of 90 days annual labour a requirement. The struggle for national liberation in South Africa began in a real sense with the establishment of the South African Native National Congress (later the renamed the African National Congress) which aimed to mobilise all Africans against the Native Land Act. This highlights the continuum of resistance to oppressive land tenure policies from the inception of colonial dispossession.

The Beaumont Commission of 1917 recommended an expansion of areas allocated to Africans by almost double. When these recommendations were tabled in the Native Administration Bill in 1917, the proposed statute was first referred to a Select Committee and to provinces before it was withdrawn.

Spatial segregation in South Africa was entrenched during 1924 to 1939. The Native Trust and Land, 1936 (Act No. 18 of 1936) (renamed The Development Trust and Land Act) finally but partially implemented the recommendations of the Beaufort Commission. The statute entrenched the policy of spatial and territorial segregation followed until the 1980's.

[14] Native Life in South Africa, a protest against African dispossession, ST Plaatjie 1914

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The policy sought to create a duality of land tenure in South Africa with whites holding land in freehold title supported by registration and Africans in the designated territories with tenure held in trust by the state. State control of land use was justified by the perceived economic failure of African farmers. The 1936 statute also addressed labour tenancy and provided measures to address the perceived over-crowding on farms which were a basis for later forced removals.

"Betterment" schemes were introduced in the trust areas which displaced and destroyed many traditional tenure and land allocation systems. Villages were established surrounded by agricultural allotments and where traditional leaders refused to accept the policy they were in many cases replaced with chiefs or headmen appointed by the state.

Race-based tenure restrictions were extended by statute with the enactment of the Asiatic Land Tenure and Indian Representation, 1946 (Act No. 28 of 1946) which restricted the rights of Indians to land and property ownership in certain parts of the country.

5.2.4 Apartheid (1948-1994)

Post-1948 issues of land tenure and ownership were immediately addressed and the Group Areas Act, 1950 (Act No. 41 of 1950) "represented the adoption of a national policy of land rights and use being determined on a racial basis"[15] becoming apartheid or separate development for the next 40 years.

The Prevention of Illegal Squatting Act, 1951 (Act No. 52 of 1951) and the Native Laws Amendment Act, 1952 (Act No. 54 of 1952) allowed for forced removals of Africans from private and public land and the establishment of resettlement camps.

The Native Resettlement Act of 1954 began urban removals and the resettlement of Africans in spatially separate townships like Meadowlands and Orlando East and the development of Soweto. However Coloureds and Indians were most affected by urban removals under the Group Areas Act since in most urban areas Africans were already removed.

The African population was divided into supposedly distinct ethnic nations each with its own homeland and prospect of independence supposedly in keeping with trends elsewhere on the continent.[16] It is well documented that the creation and consolidation of the homeland system resulted in forced removals of more than three and a half million South Africans to the genocide of death and poverty in rural slums. In reality the "notion of rights in an independent territory was at the price of denial of access to rights, including land rights, in by far the greater and economically viable parts of the country as a whole."[17]

The Bantu Homelands Citizens Act, 1970 (Act No. 26 of 1970) provided for the removal of South African citizenship from Africans and enforced citizenship of a homeland. Industrial development in the 1960's and 1970's and a resultant demand for labour in urban areas led to an increase in Africans in the cities but without any tenure except in hostels or informal arrangements as lodgers.

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[15] Ibid p29.

[16] About SA History, South African Government Information website.

[17] Ibid p33.

The National States Constitution Act, 1971 (Act No. 21 of 1971) allowed the State President power to proclaim new national boundaries. Within these homelands the tradition of tribal and communal tenure systems were largely retained but the nature and form of these institutions were diverse and complex.

In some parts of the country there was a continuum of communal tenure where rights to occupy and use land were allocated by family, clan and tribal institutions. In some cases these systems were democratic and required accountability in order for leadership to have legitimacy. Traditional leadership was in many cases in the forefront of struggle against the erosion of African rights historically and during the second half of the twentieth century.

However in other cases, as noted above, traditional tribal structures were corrupted by the appointment of chiefs and headmen who were prepared to collaborate with the colonial and later white administrations. In areas such as the Eastern Cape where "betterment" schemes were introduced in the 1950s such headmen assumed powers to allocate newly created allotments and camps where previously such tenure and composite user rights were allocated by communal tradition. In many areas, traditional rights to residential plots were replaced by Permission to Occupy (PTOs) allocated by Chiefs and headmen.

Nominal independence was extended to Bophutatswana in 1977, Venda in 1979 and Ciskei in 1981. In 1976 the Theron Report of the Commission of Enquiry into Matters Relating to the Coloured Population Group recommended an increase in the access of land for Coloureds. Implementation of the Group Areas Act in urban areas and forced removals to rural areas however continued until the late 1980's. Similarly homeland consolidation continued and the Borders of Particular States Extension Act, 1980 (Act No. 2 of 1980) allowed for the incorporation of so-called black spots into the ethnic homelands.

Thereafter, the Black Communities Development Act, 1984 (Act No. 4 of 1984) allowed Africans to acquire 99-year leaseholds secured by registration on residential land in urban areas outside the homelands. It followed that ownership of more than 87% of the land in the country lay with whites, secured by deeds registration with detailed servitudes and restrictions, and detailed cadastral descriptions. The remaining 13% consisted largely of land in the nominally independent homelands and other areas under diverse traditional communal tenure systems with only the outer boundaries of the areas surveyed.

After 1990, negotiations towards constitutional and political reform began in earnest within the country. At the same time Parliament considered a White Paper on South African Land Policy which placed the issue of land and tenure reform as central to constitutional negotiations. "*The White Paper identified its fundamental premise in the proposition that access to land was a basic human need to be fulfilled by free enterprise and private ownership. Thus, at the outset, the outgoing minority government implicitly rejected any solution involving a fundamental departure from the prevailing politico-economic norms of the first world*"[18].

The three principle policy positions of the White Paper were, firstly, wider access to land rights for all races, secondly, improvements to security of registration of title and finally conservation of land as a national asset. The White Paper proposed the abolition of all racial restrictions on rights to land and support for the extension of such rights.

[18] Ibid, p245.

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In order to secure title and tenure it was proposed that the deeds registration system should be rationalised and that the option of conversion to free-hold title should be available in tribal and communal areas. Implicit in the third policy position was the maintenance of the model of white commercial agriculture albeit broadened. Further, though, a programme of rural development was proposed for under-developed areas accompanied by provisions for establishment of townships.

The Abolition of Racially Based Measures Act, 1991 (Act No. 108 of 1991) provided for the repeal of a host of statutes that historically restricted access and tenure rights of Africans, Coloureds and Indians including the Black Land Act, 1913 (Act No. 27 of 1913), the Development Trust and Land Act, 1936 (Act No. 18 of 1936), the Group Areas Act, 1966 (Act No. 36 of 1966), and the Black Communities Development Act, 1984. The latter Act furthermore established an Advisory Commission on Land Allocation to address demands for restitution that had been voiced more and more vociferously, and this provided a basis for the later programme of restitution and followed by the Commission on the Restitution of Land Rights established by the Restitution of Land Rights, 1994 (Act No. 22 of 1994). The repeal of legislation was necessary to achieve the objective of retaining and extending freehold title with the right of disposal and secured by registration; similarly the intention of the limited restitution initiatives was to provide redress through the provision of registration of title on land lost because of such statutes.

The Upgrading of Land Tenure Rights Act,1991 (Act No. 112 of 1991) provided for the upgrade of rights of deeds of grants, leasehold and quitrents (as described in Schedule 1 to the Act) with automatic conversion to registration of ownership. Further in the case of rights derived from occupation of land (Schedule 2 to the Act), conversion could take place through registration after motivation by the applicant; such cases included rights derived from tradition and custom. The Act gives the State President the powers to extend the scope of both schedules through proclamation.

The first schedule of rights, subject to automatic conversion, was of application in formalised townships where the the Black Communities Development Act, 1984 had allowed Africans to acquire 99-year leaseholds but also on any land outside a township that had been surveyed under any law. The objective was to extend freehold secured by registration in urban and peri-urban areas. Schedule 2 (as amended) defined land tenure rights as "*any lease-hold, deed of grant, quitrent or other right to the occupation of land created by or under any law and, in relation to tribal land, includes any right to the occupation of such land under the indigenous law or customs of the tribe in question*".

The Less Formal Townships Establishment Act (Act 113 of 1991) (LEFTEA) was intended as noted in the White Paper "as an interim measure to deal with the more acute needs of urbanisation while a national strategy on urbanisation was developed. The Act aimed to create quicker procedures for the development and establishment of less formal townships and made specific provisions to regulate tribal land use to enable communal residential settlements. The powers of the Act were vested in the provinces, firstly the Administrator and later the Premier. The Act was criticised by those who felt that too many powers were in the hands of the government rather than those directly affected, the homeless, as well as those who sought a greater role for the private sector and business.

It is noteworthy that LEFTEA was ultimately aimed at security of tenure through registration and exemption from various fees and duties. While it was criticised at the time[19] this was because the Act only provided for acquisition of land in freehold by tribes and not other community groups. This

[19] By the National Land Committee and others.

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was obviously later addressed by the Communal Property Associations Act, 1996 (Act No. 28 of 1996) as discussed below.

The 1991 White Paper on Land Reform also proposed a programme of rural development aimed at the previous quasi-independent homelands and culminated in the tabling of the Rural Development Bill [95 of 1991]. The Bill intended to provide for the establishment of a National Rural Development Corporation and for the laying-out and management of human and agricultural settlements for indigenous tribes. The Bill was withdrawn in 1991.

5.2.5 Post-1994 reforms

The new Constitution provided the framework for land reform and on the basis of the newly established Department of Land Affairs (DLA) produced a series of discussion and policy documents -the Framework Document on Land Reform (1995), the Green Paper on Land Reform (1996), and the White Paper the following year. These ultimately led to the creation of a three-tier, market-based land reform programme premised on the willing seller-willing buyer principle. The three pillars of the programme were defined as the restitution of land rights (lost through racist legislation after 1913); a grant-based, demand-driven land redistribution programme; and a tenure reform component.

The main achievements have been the enactment of a number of laws aimed at creating statutory rights in land. These include the Extension of Security of Tenure Act, 1997 and the Land Reform (Labour Tenants) Act, 1996 which protect the tenure rights of people living on farms, prohibit arbitrary eviction, and provide the possibility for farm-dwellers to secure long-term rights in land. Measures to protect people with informal rights in the communal areas (the former reserves/homeland) are less developed.

5.3. The political economy of the reforms until 1994: A case for more radical change

5.3.1 Key features of each wave of reform

5.3.1.1 Dutch East India Company (DEIC):

- Freehold title; right of disposal – Jan van Riebeeck
- Combination of freehold and leasehold – Simon van der Stel
- Quitrent or long term lease, convertible to freehold
- No land policy for the 142 years of DEIC's rule!

5.3.1.2 British Administration:

- Conversion of loan farms system into permanent tenure
- Quitrent, with diagrams registered in Deeds Office
- Boer resistance for British Administration to revert to the loan farm system

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- Quitrent to Khoi-San and Africans who fought side-by-side with the British during wars against Xhosas

- Introduction of special forms of tenure for Africans (labour tenancy and sharecropping)

- Dutch common law system not changed by the British Administration and the judiciary continued to see ownership as absolute, although divisive and disposable

- Late nineteenth century: freehold quitrent title; also, precarious tenure with limited allotment sizes for Africans (Eastern Cape – Glen Grey Act, 1894); syndicates of Africans – land held in Trust by whites on their behalf: Transvaal and Natal; Native Land Commission (1881) to hold title in land on behalf of Africans called syndicated Trusteeship in parts of Natal.

5.3.1.3 Union of SA:

- 1913 and 1936 Land Acts – 13%/87% racial split

- The Native Trust and Land Act, 1936 (Act No. 18 of 1936), which later became The Development Trust and Land Act, entrenched racial-spatial and territorial segregation, introducing a duality of land tenure: freehold for whites, supported by registration; and, Trusteeships Tenure for Africans (title held by the state on their behalf. Betterment Schemes were introduced in Trust areas, which destroyed them and displaced many traditional tenure and allocation systems. Race-based tenure restrictions introduced, e.g. Asiatic Land Tenure and Indian Representation Act, 1946 (Act No. 28 of 1946).

5.3.1.4 Apartheid era:

- It is difficult to describe/ characterise land policies and laws as land tenure! That is, in the true sense of the word. These laws were implementing policy decisions taken during the Union Era – Group Areas Act (Act No. 41 of 1950); Prevention of Illegal Squatting Act (Act 52 of 1951); Black Laws Amendment Act (Act No. 54 of 1952); Blacks Resettlement Act (Act No. 19 of 1954); Bantu Homelands Citizens (Act No. 26 of 1970); National States Constitution Act (Act No. 21 of 1971); Borders of Particular States Extension Act, 1980 (Act No. 2 of 1980). Introduction of Betterment Planning in the 1950s saw the advent, as well as another form of tenure for Africans – Permission to Occupy (PTO), allocated by chiefs and headmen. The 99-year leasehold for Africans, secured by registration, in terms of the Black Communities Development Act, 1984), was allowed for Africans in white urban areas.

- During the negotiations that commenced in 1990, land was placed at the top of the agenda: White paper on Land Reform (1991). But, the Apartheid regime was not prepared to budge on aspects of land reform.

- *The White Paper identified its fundamental premise in the proposition that access to land was a basic human need to be fulfilled by free enterprise and private ownership. Thus, at the onset, the outgoing minority government implicitly rejected any solution involving a fundamental departure from the prevailing politico-economic norms of the first world.*[20]

- Retention and extension of freehold title with right to disposal by registration!

[20] About SA History Government Information website, p245

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- The Upgrading of Land Tenure Rights Act, 1991 (Act No. 112 of 1991) provided for: (a) upgrade of rights of deeds of grants, leasehold and quitrents (Schedule) into registration of ownership; and, (b) in the case of rights derived from land occupation (Schedule 2) conversion could take place after notification by the applicant – these include rights derived from tradition and custom.

- The Less Formal Townships Establishment Act, 1991 was intended as an interim measure to deal with the more acute needs of urbanisation while a national strategy on urbanisation was developed. It was ultimately, aimed at security of tenure through registration and exemption from various fees and duties.

5.3.1.5 The Post-1994 reforms:

- In terms of the ULTRA (Schedule 2, as amended) land tenure is defined as "any lease-hold, deed of grant, quitrent or other rights to the occupation of land created by or under the indigenous law or customs of the tribe in question." The democratic government, through its Department of Land Affairs, produced a series of discussion and policy documents – the Framework Document on Land Reform (1995), the Green Paper on Land Reform (1996) and the White Paper (1997).

- These led to the creation of a three-tier, market-based land reform programme predicated on the willing seller, willing-buyer principle. Main achievements include the Extension of Security of Tenure Act, 1997 and the Land Reform (Labour Tenants) Act, 1996 which aimed at protecting the tenure rights of people living on farms, prohibit arbitrary evictions and provide the possibility for farm-dwellers to secure long-term rights in land.

5.3.2 Who benefited?

Under apartheid, white farmers enjoyed a comprehensive array of subsidies that functioned to stabilise but also to a large extent prop up the price of food. These subsidies included price stabilisation policies for basic support for marketing institutions in the form of farmers' co-ops, the provision of cheap water and logistics infrastructure, and cheap loans through the Land Bank. In addition, the state provided social services and infrastructure of a high standard for white farmers.

This system of support for commercial farmers included far-reaching state support to control and exploit farm-workers. The state excluded farm-workers from the labour laws that gradually, from the 1970s, improved conditions for most other black workers. White farmers could call on the local police to evict farmworkers at a whim, which made organisation and resistance particularly difficult. Farmworkers' access to housing, healthcare and their children's education depended mostly on the very uncertain charity of their employers.

Rural areas, generally, suffer from "thin" markets, while the formal market structures at the national level tend to shut new and small producers out of the richer areas of the country. Within the former homelands, for example, low incomes limited local demand, making it difficult for local producers to enter the market and fairly compete with manufactured goods trucked in from the formal urban and peri-urban sectors. The underdevelopment of local production and products was reinforced by weaknesses in rural market institutions and infrastructure. As a result, individual producers find it difficult and expensive to access inputs, capital and skills as well as sales outlets, which are generally located in the urban areas. In turn, limited local demand makes it less worthwhile for private investors and producers to set up marketing institutions in rural areas. It is clear, therefore,

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that rural areas and their economies did not benefit from historical land reform conducted during the long years of colonialism and apartheid.

5.3.3 A case for radical change

The discussion on the genesis of land reform in SA clearly demonstrates that: (a) historically all waves of land reform have benefited whites at the expressed expense of black people. This applies to both urban and agricultural land; (b) land reform should be redistributive in nature to address the differentiated structure of ownership as well as to close the income gap brought about by that differential. In this sense, land reform has both race and class connotations. Gender discrimination in landholding is not unique to colonial or apartheid South Africa. It has been there, and is still there in traditional communal landholdings. Land reform has to address this situation. Communal land will have to be surveyed in order to allocate it effectively; that is, to achieve the objectives set out below and for effective monitoring in terms of production.

The following principles will underpin the new approach towards sustainable land reform:

- *Deracialisation of the rural economy for shared and sustained growth*.

  Despite the many land reform policies and legislation, land ownership systems and patterns are still fundamentally defined along racial and gender lines. The Green Paper is proposing a reformed tenure system to ensure that the same policies and laws apply to all citizens, irrespective of race, gender and class. As the rural economy gets more and more deracialised, the question of race, as a criterion for ownership, use or access, will recede to the background; and, the struggle will become more and more gender and class focused.

- *Democratic and equitable land allocation and use across gender, race and class*.

  It is a constitutional imperative that the state must ensure equitable access to land by all citizens. This injunction can only be ensured if all people participate in matters of land allocation and use.

  The Department will ensure full participation by all sectors and groups in those decisions – traditional institutions, municipalities, organised and unorganised producers and consumers, communities and landowners. Institutional support forms part of the land reform system.

- *Strict production discipline for guaranteed national food security*.

  In order to create a strong production discipline culture, there is a need to ensure that land use management is institutionalised with strict enforcement. State support to farmers will be conditional on the land being used for production. The principle of “use it or lose it” in cases of leased state land, will apply where people do not use the land, despite concerted support in terms of social and economic infrastructure, professional services, inputs and institutions such as markets and credit facilities.

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CHAPTER 6: EXPERIENCE ELSEWHERE

6.1 Introduction

This chapter explores international case studies while noting the inherent risk in drawing conclusions from one country and applying them to another without taking adequate account of the specific context and peculiarities that enabled such initiatives to be realised. This exercise is not so much for comparison than for drawing lessons which could assist South Africans in their attempts to address similar challenges to those experienced by these countries in their efforts at rural development and land reform (see Annexure A).

With regard to land reform, for example, Chile which in general terms could be representative of Latin America, talks to the class structure of the agrarian economy, whereas South Africa talks to the race structure of the agrarian economy. Yet lessons could be drawn in terms of drivers for rural land reform, because in both countries issues of redistribution and income inequality (the latter being seen as a function of the former) are central.

The underlying theme is that rural development is about economic growth and social justice, improvement in the living standard of rural people by providing adequate and quality social and economic infrastructure and services, as well as meeting basic human needs. This chapter briefly looks at the key lessons from the main rural development programmes in selected countries.

The following section will provide a brief overview of strategic lessons learnt from each of these countries' processes of rural development and associated land reform. In doing so specific attention has been given to, *inter alia* key features of each experience and key drivers of rural development and land reform.

6.2 Selected countries across the world

6.2.1 Asia

6.2.1.1 China

The past 30 years have seen China experience rapid economic growth and development. The origin of this growth can be found in Deng Xiaoping's reforms which liberalised the Chinese economic system and opened it up to the market economy.

Prior to these reforms, agriculture, rural areas and farmers were bound by a commune system and a planned economy. Under these conditions, farmers did not enjoy the right to produce and exchange agricultural products and to dispose their income, something which impacted negatively on a farmer's incentive to produce.

Over the three decades, China's agrarian reform:

- *Abolished the commune system* and instituted a two layer management system, including *inter alia*, household contract responsibility systems and the granting of farmer self-management rights;

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- *abolished state monopoly* over purchase and marketing, leading to farmers enjoying the right to exchange farm produce freely; and
- *transformed the single collective ownership into various private ownerships* where farmers can dispose their assets at will.

Table 4: Key features and drivers of rural development and land reform: China

KEY FEATURES AND DRIVERS OF RURAL DEVELOPMENT AND LAND REFORM: CHINA

- The promotion of rural enterprises through the *establishment of township and village enterprises (TVEs)* has contributed to economic growth, rural development and institutional transformation. TVEs have led to rural industrialisation and diversified non-farm economic activity. This process has been underpinned by an emphasis on local government participation and involvement.
- The introduction of a *Rural Poverty Alleviation and Development Programme (2001-2010)*: which has been based on the following initiatives:
    - *Participatory approach* and other innovations, including the extensive involvement of NGOs and other organs of civil society in poverty reduction programmes and projects;
    - *Targeting*, leading to greater effectiveness and efficiency, particularly through focusing on identified key nodes (villages) of extreme poverty;
    - *Addressing the poverty of ethnic minorities and people with disabilities*;
    - *Improving access* to basic education and health services;
    - *Improving productivity of mountain agriculture;*
    - *Strengthening basic infrastructure*, including water resources, arable land, transport, power and communication; and
    - *Local capacity building.*

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6.2.1.2 India

The Indian government's policies and programmes to meet the needs of the rural poor emphasise poverty alleviation, generation of employment and income opportunities as well as the provision of infrastructure and basic facilities.

Table 5: Key features and drivers of rural development and land reform: India

KEY FEATURES AND DRIVERS OF RURAL DEVELOPMENT AND LAND REFORM: INDIA

- *Strengthening grass roots level democracy*. The Indian government sought to ensure the involvement of NGOs and self-help groups facilitating participatory planning and development (five year plans with targets and associated budgets);
- The *importance of traditional village enterprises* as a primary contributor to employment;
- The *Employment Guarantee Scheme,* which led to the promulgation of the *National Rural Employment Guarantee Act (NREGA)* that seeks to enhance rural livelihoods through the provision of at least 100 days of guaranteed wage employment in a financial year to every household. Where adult members volunteer to do manual work, *these manual voluntary tasks often relate to improving agricultural productivity through, for example, water harvesting, soil erosion prevention, rural connectivity works, etc*;
- Implementation of other rural development schemes that support micro-enterprises, self-employment, effective linkages, capacity building, infrastructure, technology, access to credit and marketing; and,
- The promotion of rural housing subsidies.

6.2.2 Latin America

6.2.2.1 Brazil

Poverty in Brazil is concentrated in the north-east region of the country. Per capita income in this area is half that of the rest of the country and 70% of all Brazilian farms measuring less than five hectares are found in this area.

Table 6: Key features and drivers of rural development and land reform: Brazil

KEY FEATURES AND DRIVERS OF RURAL DEVELOPMENT AND LAND REFORM: BRAZIL

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KEY FEATURES AND DRIVERS OF RURAL DEVELOPMENT AND LAND REFORM: BRAZIL

- The *Second Ceara Integrated Rural Development Project (IRD)* was aimed at improving income and living conditions of small farmers through increased agricultural productivity and the expansion of small-scale non-agricultural activities and associated institutional strengthening. The project included:
    - agricultural services of research and extension;
    - social infrastructure improvements (health and education);
    - improvement of physical infrastructure (roads, irrigation schemes, marketing facilities, marketing services, etc.); and
    - incentives for small scale non-agricultural enterprises aimed at diversifying the local economy and expanding employment opportunities.
- Problems associated with the IRD initiative included:
    - an over reliance on technology and attempts to teach such technologies to small scale farmers;
    - limited understanding of the mindset of subsistence farmers; and
    - lack of access to land.
- Successes associated with the IRD initiative included:
    - Building the capacity of small scale farmers to organise themselves;
    - promoted better participation in rural development; and
    - adaptability of the model with relative ease for replication in other areas.

6.2.2.2 Mexico

Rural poverty and rising inequality remains a massive problem in Mexico, despite expensive programmes. *Pronasol* and *Progresa* are aiming at addressing these challenges.

Table 7: Key features and drivers of rural development and land reform: Mexico

KEY FEATURES AND DRIVERS OF RURAL DEVELOPMENT AND LAND REFORM: MEXICO

- The *Progresa* Programme sought to allow households living in extreme poverty to meet their basic needs in education, health and nutrition in an attempt to break out of

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KEY FEATURES AND DRIVERS OF RURAL DEVELOPMENT AND LAND REFORM: MEXICO

the cycle of poverty. The Programme relies on the systematic and rigorous identification of recipients. It is furthermore focused on the family/household, especially women and children. Initiatives include:

- subsidies for education, health and nutrition being made directly to the female head of the household;
- scholarships and school supplies to children; and
- free medical consultation and preventative care.

- The Microregion Strategy (MRS) aims at promoting integrated and sustainable development of most marginal regions in Mexico. The instruments of this strategy include:
  - Creating microregions that regroup a number of municipalities with very high and high marginality;
  - establishing strategic community centres that are natural confluence points for the localities; and
  - strategic community centres will concentrate the delivery of basic infrastructure and social services, and the promotion of productive projects to serve the respective localities.

6.2.2.3 Chilé

Chilé's transition to democracy has produced considerable reductions in absolute poverty through the government's pro-growth economic agenda combined with progressive social policies and innovative institutional reforms enacted in the context of a conducive political environment. Despite this, significant challenges remain in terms of relative poverty, social exclusion, isolation and vulnerability underpinned by high levels of inequality, a stratified social protection system and a dual labour market. Unresolved tensions between the market, social rights and democratic freedoms also require resolution for long term sustainability.

Table 8: Key features and drivers of rural development and land reform: Chilé

KEY FEATURES AND DRIVERS OF RURAL DEVELOPMENT AND LAND REFORM: CHILÉ

- The key to the strong economic performance can be attributed to:
  - sound macro-economic management;

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KEY FEATURES AND DRIVERS OF RURAL DEVELOPMENT AND LAND REFORM: CHILÉ

- institutional and structural reforms;
- trade openness; and
- prudent management of mineral resources.

- The agricultural sector and its downstream activities have been central in Chilé's economic success.

6.2.3 Africa

6.2.3.1 Malawi

Malawi is considered a least developing country with an agriculture based economy. It ranks 163rd out of 174 countries in the United Nations Human Development Index.

Table 9: Key features and drivers of rural development and land reform: Malawi

KEY FEATURES AND DRIVERS OF RURAL DEVELOPMENT AND LAND REFORM: MALAWI

- The Malawian government developed an Integrated Sustainable Rural Development Strategy (ISRDS), aimed at resuscitating rural economies and advancing economic growth in rural areas. An assessment of the ISRDS revealed the following challenges:
  - inhospitable economic situation;
  - insufficient knowledge of crop system;
  - farm testing of new crop systems;
  - over optimistic yield assumptions;
  - valuation of increased farm labour;
  - proposals not attractive to farmers;
  - marketing and price policies;
  - increased size of extension staff;
  - management of complex and multi-sector projects; and

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KEY FEATURES AND DRIVERS OF RURAL DEVELOPMENT AND LAND REFORM: MALAWI

- management too divorced from institutions.

- Ten lessons learnt from the ISRDS implementation are:
  - the need for agricultural research;
  - the need for increased on-farm research into production systems;
  - assessment of financial attractiveness and technological proposals;
  - the need to test or pilot projects to demonstrate the feasibility of such projects;
  - appraisals should include a farm cost-of-production and financial viability analysis;
  - marketing and price policies should be favourable before implementation begins;
  - importance of efficient input supplies and efficient marketing;
  - the need for less complex projects and the emphasis on improving effectiveness and productivity of existing institutions rather than the creation of new institutions;
  - the importance of project monitoring as a management tool; and
  - the need for greater phased programmes.

6.2.3.2 Egypt

Rural development in Egypt has evolved during the last five decades across two main strategies: the community and integrated development. However, there is a trend that has emerged since the mid-1990s to shift to a sustainable strategy but on a limited and rather experimental scale. Human development has become the pivotal approach in planning the development of rural areas. The role of the government of Egypt in rural development is mainly to provide the legislative umbrella and inputs for resource development at the local level. The government also focuses on the administrative aspects and capacity building through centrally supervised rural service networks.

Table 10: Key features and drivers of rural development and land reform: Egypt

KEY FEATURES AND DRIVERS OF RURAL DEVELOPMENT AND LAND REFORM: EGYPT

- major goals of the agricultural strategy places emphasis on the establishment and

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KEY FEATURES AND DRIVERS OF RURAL DEVELOPMENT AND LAND REFORM: EGYPT

promotion of agricultural activities. This includes:

- satisfaction of the growing and changing population and export food needs;
- vertical expansion to maximise productive efficiency from limited resources, especially water;
- horizontal expansion to redistribute population;
- establishment of new settlements and new reclaimed land; and
- development of life conditions and capacity building.

- The following still need to be addressed in terms of Egypt's rural development strategy:
  - management of the population growth rate;
  - high illiteracy rate;
  - unemployment;
  - gender biases;
  - poverty distribution between the upper and lower Egypt and amongst females and males; and
  - pollution in the physical and non-physical environment and its impact on agriculture and rural areas.

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6.3 Key lessons for South Africa

The job creation model is central to the success of the CRDP. The model is based on the EPWP principles. The EPWP is not linked to legislation that guarantees employment to the unemployed who perform unskilled work. Other programmes such as "Working for Water" and "Working for Fire", Community Works Programme and other environmental or natural resource management programmes need to be converged under a central piece of legislation like India's NREGA to bring concerted and sustainable employment opportunities to rural areas. At this stage the Council of stakeholders is a voluntary body to implement and manage the CRDP projects in the various districts. The Indian equivalent of the COS (*Panchayat Raj Institutions),* are empowered through the NREGA to make all their decisions enforceable

China has effective targeting strategies and strong central government. The government has compiled a nationwide list of 148 000 key poor villages which prioritises and gives assistance to ethnic minority groups, people with disabilities, and women. China has adopted a long term planning approach (30 years) but divided into manageable 5 year plans. China has a compulsory education

system and called for "implementing nine-year compulsory education in the poverty-stricken areas" by 2010. Similarly Malawi has learnt that long term planning for rural development is more effective.

The IRD project in Brazil built a new capacity of small farmers to organise themselves and promote better participation in rural development, particularly in terms of defining local needs and preparing and setting priorities for projects.

In Malawi, a key lesson learnt is that marketing and price policies are critical for project success and should be favourable before full implementation begins. Fertiliser subsidies were removed in the early 1990s, and fertiliser prices rose 16 times. As a result, food production fell and food security deteriorated sharply. A consortium of donors financed an annual programme of free fertiliser and seed distribution, on the basis that subsidising food production is more sensible and efficient than subsidising food consumption and this resulted in a marked increase in food production.

In Egypt, the community and integrated development are central to the rural development strategy. Human development has become the pivotal approach in planning the development of rural areas. The Egyptian government is also focusing on capacity building through centrally supervised rural service networks.

Mexico adopted the MRS that aims at promoting the integral and sustainable development of the most marginal regions of Mexico. The successful implementation of the strategy would lead to gradual convergence in living standards between marginal and non-marginal municipalities, resulting in both poverty and spatial inequality reduction.

Chilé has made important progress in raising incomes and reducing poverty since 1996. Real per capita incomes have more than doubled since the restoration of democracy in 1990. The key to Chilé's strong economic performance has been sound macroeconomic management, institutional and structural reforms, trade openness, and the prudent management of mineral resources (principally copper).

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PART D: AGRARIAN TRANSFORMATION: A NEW LAND TENURE SYSTEM, STRATEGIC LAND REFORM INTERVENTIONS AND RESTITUTION

CHAPTER 7: A New Land Tenure System: Proposals

7.1 Introduction

Agrarian transformation has been defined in this Green Paper as a 'rapid and fundamental change in the relation (systems and patterns of ownership and control) of land, livestock, cropping and community. This means that agrarian transformation is not just land reform. It is about social, technical, economic, political, cultural, organisational and institutional issues and questions.

Chapters 3 and 4 of the Green Paper dealt relatively extensively with rural development, the CRDP and its three pillars; namely the CRDP concept, the job creation and skills development model and the management system. This chapter focus is on the land reform aspect of agrarian transformation. Chapter five has made a compelling case for a radical change in land reform in SA. This chapter responds directly to the call for a radical change in our land relations that is, in the system and patterns of ownership and control. This Green Paper proposes a 3-tier land tenure system supported by a Land Management Commission as discussed later in the chapter.

7.2 A brief discussion on tenure

It is critical that the tenure system integrates well with the cultural, social and political heritage of South Africa, as well as the projected national strategic direction. Tenure systems evolve over centuries and cannot be said to be immutably fixed. Documented instances of tenure forms which existed amongst South Africans includes the danger of mistaken analysis from prisms of foreign tenure systems abound. For instance, the primacy of *use* rights over freehold titles as well as communal over individual titles to land existed in many communities in South Africa. Regarding the nature of tenure which existed amongst the Richtersveld people of the Northern Cape before the imposition of western titling systems, the Court[21] stated: "*One of the components of the culture of the Richtersveld people was the customary rules relating to their entitlement to and use and occupation of this land. The primary rule was that the land belonged to the Richtersveld community as a whole and that all its people were entitled to the reasonable occupation and use of all land held in common by them and its resources. All members of the community had a sense of legitimate access to the land to the exclusion of all other people. Non-members had no such rights and had to obtain permission to use the land for which they sometimes had to pay. There are a number of telling examples: A non-member using communal grazing without permission would be fined 'a couple of heads of cattle."*

JRL Milton[22], writing on *Ownership,* narrated some of the historical tenure forms crafted largely to satisfy the new entrants- the white settlers in South Africa between 1652 – 1910 as including *Grants in eigendom; Loan tenure – leeningsplaaten; Loan Ownership – leenings eigendom; Emphyteusis –*

[21] The view of the Supreme Court of Appeal in *Richtersveld Community and Others v Alexkor Ltd and Another* 2003 (6) BCLR 583 (SCA) at para 18 was so affirmed by the Constitutional Court on appeal.

[22] At page 654 *infra* in Zimmermann, Reinhard and Visser, Daniel P. (1996) Southern Cross: Civil Law and Common Law in South Africa Clarendon Press, Oxford.

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erfpacht; the Cradock Proclamation; and *Quitrent Tenure*. A number of these land acquisitions and subsequent formalisation bear close semblance to regularised land invasions, tenure order having been created to bolster unlawful occupations. In order to craft a new tenure system for the next generation the position is to take from the past and retain the current only in so far as they advance the cause of fundamental change in power relations over land. The policy proposals will touch on both private (citizens and non-citizens) and public (state) land with the overriding theme of leasehold and freehold rights to land as objects of change.

7.2.1 Ownership and use rights: freehold and leaseholds

The overriding concern is that the land tenure system of South Africa must facilitate efficient land use while, at the same time, eradicating established inequalities and unequal opportunities. In this text, conceptions of land-ownership and land-use have implications for land holdings by both citizens and non-citizens.

While these policy proposals are not to strip citizens of freehold rights in land, it should be noted that on account of national political direction, some other countries do not, in parts or in whole, accommodate private freehold land ownership even for their nationals. In this case of total or partial absence of private land ownership, it would be fortuitous to categorise those national systems as precluding foreigners from land ownership in so far as the distinction is not based on nationality considerations. In Zambia, Malawi, Ethiopia and Nigeria, an executive authority, usually the State President, on behalf of the people, *owns* the land and may only extend leasehold rights evidenced by a certificate of occupancy. A slight variant of this trend is found in those countries where large proportions of their land mass are state-owned with prohibition on sale even to nationals. In Israel, which typifies this latter stance, private ownership of land is available for approximately 7% of the country's land, since approximately 93% of the land is owned by the state by virtue of Basic Law. Restrictions based on ethnic considerations are found in Fiji where about 90% of land is held in trust for native Fijians according to native custom and tradition. Such land cannot be owned by people who are not native Fijians, unless a whole community dies out, after which the land reverts to the state. Only lease of land is possible to non-Fijians.[23]

Two scenarios present themselves in relation to the treatment of land-ownership and land-use vis-à-vis the regulation of foreign-owned land. The first is the argument against extending full right of ownership[24] to non-citizens on account of their supposed time-limited interest in the land. This position argues that there exists no socially rational basis to accord more than tenancy (use) rights to non-citizens. Proponents of this approach regulate foreign land ownership to grant not more than leasehold rights over limited periods with or without the right of renewal. The problem with foreign land ownership is not the *sale or purchase* of land by non-citizens *per se* but the *use* of the land. This view shifts the debate to the realm of the effectiveness of measures designed to assuage the ill-effects of foreign land ownership (such as rising land values, distortion of the land market, perpetuation of segregation and legacy of fragmentation initially created by apartheid land planning, etc). Regulation, in this view, should include measures such as additional property taxation on non-residents or absentee landlords.

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[23] Stephen Hodgson, Cormac Cullinan, Karen Campbell *Land Ownership and Foreigners: A Comparative Analysis Of Regulatory Approaches to the Acquisition and Use Of Land by Foreigners* (FAO, December 1999.)

[24] Some of the entitlements of the property "owner" are: (a) use of the thing (*ius utendi*); (b) reap the fruits, including the income from the thing (*ius fruendi*); (c) consume and destroy the thing (*ius abutendi*); (d) possess the thing (*ius possidendi*); (e) dispose of the thing (*ius disponendi*); (f) claim the thing from any unlawful possessor (*ius vindicandi*); and (g) resist any unlawful invasion (*ius negandi*). *Silberberg & Schoeman: Law of Property* 4th Ed. Butterworths November 2002.

7.2.2 A comparative perspective: freehold and leasehold

Advantages with freehold[25]	***Advantages with leasehold***
Freeholds are perceived as more secure	Reduction of increase in land prices
Less risk for the inefficient and slow processes of bureaucracies	Planned and controlled land development is easier if the government can act as the ultimate owner rather than a statutory regulator
Decreasing readiness to invest towards the end of a leasehold	Regular rent review can ensure that capital appreciation is shared between the public sector and the developer or tenant
Problems related to landlord-tenant disagreements	Monitoring land transactions is easier with leasehold clauses (e.g. speculation in sites-and-services schemes)
	Offers possibilities for providing more equity to disadvantaged groups
Disadvantages of Freehold	***Disadvantages of Leasehold***
Community or national interest may be lost upon transfer	Limited freedom: leaseholders are not entirely free to do whatever they want with the property. The outer residue after the expiration of the lease results in loss of ownership at some point. Certain things cannot be done without the lessor's consent
Offers fewer opportunities for redistribution and land reform as land ownership patterns may remain skewed for longer	Increased bureaucratic processes required to sustain leasehold management. For instance, owners may have to be consulted on most major development decisions affecting land
Distortion of landholding structure as those with quasi-ownership (communal land, PTOs and leaseholds) are perceived to have less secure tenure from those within the formal registration/titling system. Freehold perpetuates the division between the "privileged" and "disadvantaged" persons	The difference in leasehold ownership constraints (between the leasehold *vs* freehold tenure) is reflected in the respective required investment returns. It is felt that leaseholds offer less advantage.
Expensive and formal requirement of freehold titling is exclusionary to the poor, and may further	Leasehold financing is more difficult to obtain the fee financing

[25] See: *Municipal Land Management in Asia – a comparative study, CITYNET, United Nations, New York, 1995.*

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distort the land records	
	Freehold is seen as having a higher status than leasehold. The perception of lack of full ownership. The lessee's interest is regarded as an inferior property investment to freehold

7.3 The three-tier system

The key features of the proposed three-tier system are:

- **State Land**: Leasehold
- **Private Land**: Freehold with limited extent
- **Foreign ownership**: Precarious Tenure

7.3.1 State Land: Leasehold

7.3.1.1 Introduction

Whilst every government would always have legitimate reasons to hold some land for its domestic or service delivery objectives, the differentiated land tenure systems and the creation of the apartheid system in South Africa necessitated the apartheid state to gradually accumulate land either in its name or in that of entities which fell under its control, including the South African Development Trust.

Apart from the government of the Republic of South Africa, the four provincial administrations of the Cape of Good Hope, Natal, Orange Free-State and the Transvaal also had some land registered in their names. The creation of homelands and the inevitable need to create some false sense of independence or control in the minds of the self-governing territories (QwaQwa, GaZankulu, KaNgwane, Lebowa, KwaNdebele and KwaZulu) and the Independent States (Transkei, Bophuthatswana, Venda and Ciskei) resulted in some land being transferred to these governments.

At the end of the apartheid regime, South Africa had its land registered in the names of 15 governments and of many other entities controlled by the said governments. As the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993) sought to clarify the allocation of land in accordance with the newly created democratic governments, it only focused on land owned by the governments identified above and said nothing about land registered in the names of municipalities that existed prior to 27 April 1994. This omission created a clear impression that the Constitutional Assembly intended to create a separate asset management regime for the local sphere, which effectively excluded municipal land from the ordinary definition of state land. Another notable constitutional exclusion relates to land belonging to public entities. This is probably justifiable since the laws that created such entities ordinarily clarify asset management arrangements regarding the assets meant for service delivery objectives of public entities.

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7.3.1.2 Categories of state land

As the discussion above seeks to demonstrate, property managers in the public sector draw a clear distinction between public land and state land. Whilst state land is construed to be a limited concept which simply refers to land falling under ownership and control of the national government and the nine provincial governments, the concept of public land refers to the mass of land belonging to all forms of government entities. This includes land owned by local governments, provincial government, national government and public entities falling under the executive authority of each relevant government.

Provincial state land is generally controlled by the Provincial Departments of Public Works though there are in few instances where the Provincial Departments of Human Settlements, Cooperative Governance and Traditional Affairs, Transport and Education do play a quasi-custodian role.

The Department of Public Works and the DRDLR play a custodianship role at national level. The former essentially manages land which was located in the former territory of the Republic of South Africa and was used for domestic purposes of the national government of the time, including former financial assistance land and former South African Development Trust land which was specifically transferred to the Department of Public Works through a proclamation, whilst the latter holds land which previously belonged to homelands and the South African Development Trust.

Some of the land in the homelands was purchased by individuals and communities, but could not be registered in the names of such persons or communities. It was registered in the name of a national government Minister in trust for such individuals or communities or tribes. The relevant Minister in this regard is the current Minister of Rural Development and Land Reform. This land is commonly referred to as land held in trust and is treated as a special category of state land.

7.3.1.3 Management of state land

The efficient management of assets, including state land, is regulated at national and provincial levels by the Public Finance Management Act, 1999 (Act No. 1 of 1999) together with its associated Treasury Regulations and the Government Immovable Asset Management Act, 2007 (Act No. 19 of 2007). The management of public land on the other hand in the local sphere is regulated by the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003). The statutory separation of public land management responsibilities amongst the spheres is consistent with the constitutional dispensation discussed above.

Both the Public Finance Management Act and the Government Immovable Asset Management Act require the Accounting Officer of each custodian of state land to maintain an asset register. The serious challenge confronting the democratic state in this regard is that it has had to identify its assets (including state land) before it can exercise control over such assets. This has not been easy since some of the government structures that managed state land in the homelands totally collapsed during the transition to democracy. This had a significant negative effect on records.

Unfortunately, the normal human anxiety and uncertainty that accompanies any transition did not escape SA's transition to democracy adding another factor to the confusion around the administration of state land. It would appear, in this regard, that deliberate efforts by some individuals and/or entities in the apartheid civil service (including homelands) to 'lose' records, coupled with the absence of electronic asset management systems, conspired against the state's ability to immediately identify and exercise control over its assets. It is against this background that the democratic state at all levels is still struggling to compile accurate asset registers.

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The available data suggests that national and provincial governments had about 24.5 million hectares in their name as at 27 April 1994. National government had a greater share of about 20.2 million hectares while provincial governments shared the remainder. The aggressive human settlement programme undertaken immediately after the 1994 elections and the disposal of rural state land for land reform purposes resulted in the disposal of some of this land. Existing data shows that about 20 million hectares remains in the name of the State (national and provincial government). It is also estimated that approximately nine million hectares of public land remains under various public entities whilst local governments account for about three million hectares. The total public land portfolio is currently estimated at 32 million hectares.

7.3.1.4 The effects of fragmented public land management

The creation of a separate and different public land management dispensation for local government and the absence of statutory mechanisms to compel the three spheres of government to consult one another in the event of intended disposals, have given rise to a paralysing fragmentation which impacts negatively on service delivery and accountability.

The current fragmentation makes it possible for any sphere of government or any custodian in any sphere of government, to dispose of any property which could have been utilised to achieve service delivery objectives by another. Whilst there is a mechanism to avoid this at national level, the same cannot be said in relation to a national-provincial interface. The local sphere is totally isolated from the other spheres and it seems unlikely that an administrative solution in this regard is possible within the existing framework.

The other threat is that land belonging to one sphere can be sold by another without the knowledge of the legitimate one. Whilst there is a requirement to have vesting of the land confirmed by the custodian, before disposal, there have been instances where transactions have gone through without such vesting having been conferred.

It is submitted that an institutional mechanism is required to compel all custodians in all spheres of government to share information on land that is no longer required for their service delivery objectives, before disposing such land.

7.3.1.5 Implications of leasehold tenure

Some of the state land is located within functional areas of water user associations and enjoy specific water rights for which water use charges are levied. The state will have to keep this land productive and self sufficient for this purpose.

The creation of wall-to-wall municipalities and the promulgation of the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004) resulted in every land parcel, including state land, being rateable. Farm land, including communal land, was generally not rateable in the past hence this has created an additional financial burden which cannot be associated with any spending history. The indications arising from existing valuation rolls and rates invoices suggest that the national and provincial governments cannot afford to pay for rates assessments on their land. It seems that the rates bill might exceed the total annual allocation of a given government department. This consequently calls for a creative solution if leasehold tenure is to be a success.

7.3.1.6 The proposed land administration model for state and public land

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a) Given the history of land administration in the country, it is proposed that there should be one national policy and legislation governing land administration that applies to all spheres of government and public entities to have a common national approach to land administration and to close the chapter on colonial and apartheid land administration.

b) The new land administration law should provide for the establishment of a national body, in the form of the Land Management Commission (LMC), to regulate use, management and allocation of all state land in the country. The LMC will be discussed in detail later in this chapter.

c) All state and public land must be surveyed as a matter of priority, within a period to be specified in the legislation, by all custodian departments, spheres of government and public entities.

d) Responsibility for the management, maintenance, development and property rates and tax liabilities for state domestic assets, townships and registered land holders/users shall remain with all the users and custodians.

e) The Minister of Rural Development and Land Reform or any other relevant Minister shall have the authority to grant rights for use, allocation and development in consultation with the affected custodian/user and or affected community.

f) Land previously acquired by communities but still held in trust by the state shall be subjected to compulsory adjudication prior to the surveying of outer boundaries and the allocation of use rights by qualifying members of that community.

g) All land use rights will be allocated through leasehold rather than freehold, in line with the categorisation model that will be discussed later in this chapter.

h) The new land administration framework must attempt to address the policy conundrum the government faces with regard to the roles, responsibilities and relationship between various institutions currently having various roles in land administration i.e. traditional leadership institutions, common property institutions and local government.

i) Land registered in the name of the DRDLR that is not required by the Department for purposes of the Department should be transferred to another relevant department. Similarly, agricultural land registered in the name of any other department should be transferred to the DRDLR or any other competent department for purposes of advancing the objectives of government.

j) All state and public land should be subject to confirmation of ownership of that land by the LMC.

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7.3.2 Private land: freehold with limited extent

7.3.2.1 Land value trends

Because urban and non-agricultural land are scattered all over the country and are located in close proximity to agricultural areas, the rise of real estate prices in urban areas influences the agricultural land price. Since land reform, especially the restitution programme is based on a willing buyer-willing seller model, and to a lesser extent expropriation but not confiscation approach, the success of agrarian reform hinges on the ability of the state to acquire land for the farmers to whom it intends to offer agricultural land. Land prices, whether pegged around so-called market rates (so-called because of the existence of distortions in land price determination), or at prices set by compulsory acquisition, are already prohibitive enough, making it difficult for government to raise the needed money to acquire land. If the objective of government includes the protection and preservation of agricultural land, regulation targeting exemption prices for agricultural land may be a possibility in stemming this tide. Land use measures as well as legislation governing the subdivision of agricultural land must be synchronised with other measures to address the distortion in the agricultural land market.

A sharp rise in land prices is a market signal that there is a need to consider measures to increase the supply of land more importantly for assuring food security, land reform and social housing. Where land values are very high, measures will be necessary to ensure that providers of food, social housing and land reform are not driven out of the market. It must be acknowledged that post-apartheid city-township formation patterns have only been changing one-dimensionally in so far as blacks migrate to former white areas. The spatial consequences of further uneven and unguarded developments, including implication for government expenditure on transportation, need to be addressed.

Disadvantages of high and rapidly rising land values include:

- problems of housing affordability. Social housing programmes find it difficult to find suitable sites for affordable housing which meet average income earners' value for money criteria; they find themselves priced out of the market;
- declining affordability in the city itself means that people commute further to find affordable family housing, and long distance inward commuting - often by car - becomes increasingly common;
- as unsustainable travel to work patterns become increasingly common, the need for effective public transport increases, and the transportation funding including government subsidies become an issue;
- although there might be a desire to harness development values to fund new transport infrastructure, it would be difficult to devise a mechanism to allow developer contributions to fund the major city-wide public transport schemes which are needed; and
- those who work in small-scale service and manufacturing industries are likely to find that their employment base has moved away from the city itself.[26]

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7.3.2.2 Pre-emption and right of first refusal

[26] *Land Values and the Implications for Planning Policy* by DTZ Pieda Consulting (A research commissioned by the Scottish Executive Social Research) 2002.

A pre-emption right is a right to acquire certain property in preference to any other person. It usually refers to property newly coming into existence. A right to acquire existing property in preference to any other person is usually referred to as a right of first refusal. It is proposed that the state combines the use of both pre-emption right and right of first refusal over certain types of land transactions. Both pre-emption and right of first refusal will be used to regulate land owned by citizens and non-citizens. This is in accordance with what exists in many countries. Though the law in Belgium and the Netherlands contains no restrictions on the ownership of land and buildings by foreigners, in specific areas in Flanders (Belgium) there is a right of first refusal in favour of public authorities on the sale of land and buildings for residential purposes, and in terms of the *Wet Voorkeursrecht Gemeenten* in the Netherlands there is a right of first refusal in favour of the municipality concerning specific parcels of land and/or buildings. In France, when a seller disposes of his/her property certain authorities have the right to purchase the property in priority to the proposed purchaser. This is called the *Droit de Premption*. There are a number of ways in which this right of pre-emption may be exercised. The Commune where the property is situated has the right of *Droit de Premption Urbain* (DPU). This right is usually exercised where the property or land is required for development purposes including public works, leisure facilities etc. Where the Commune does exercise its pre-emption right it usually purchases at a lower price than the purchase price indicated. The seller then has three options: (i) withdraw from the sale and keep the property; (ii) accept the offer at the lower price; or (iii) maintain the asking price and let a judge fix the price at which the Commune purchases the property. A right of pre-emption can be exercised by the tenant of a property as a security for the tenant to preclude the landlord from selling the property without notifying the tenant or selling the property at a lower price. The tenant can within one month following completion take priority over the purchaser. Another right of pre-emption is in relation to rural areas. The farmer and the *Société d'Amenagément Foncier et d'Establissement* Rural (SAFER)(Agricultural Commission) both have a right of pre-emption over land or property.

7.3.2.3 State's power to regulate versus landowner's expectation

A number of legal issues may arise from the state's regulation of land. These include: (i) whether or not regulation restricting the manner of the landowner's dealings with such property diminish the economic value of such property as to amount to either deprivation or expropriation in terms of section 25 of the Constitution; (ii) whether a mandatory reporting or disclosure mechanism on land holdings infringes any right whatsoever; and (iii) the legal impact of any regulation/restriction on the obligations already assumed by the country in terms of bilateral or multilateral treaties and other international arrangements.

It must be noted that in order to govern, direct the affairs of its society and achieve optimum benefits for its citizens, the state requires, and assumes to itself, certain powers over property and persons on its territory. Whilst it is a truism that the state will justify its existence on account of benefits it confers on its citizens, circumstances abound where the exercise of state power effectively amounts to a denial or curtailment of some rights of citizens. In those circumstances, the law should offer a bulwark against arbitrary and capricious exercise of state power, attempting equilibrium between the need for upholding the right impugned and the means through, and purpose for, which state power is exercised. The regulatory power of the state is justified on many grounds including the need to protect public safety, the rights of others, deter the infringement of some common good and public welfare. When the state then allows or creates an expectation of certain benefits to its citizens especially for the pursuit of their livelihood and personal development, it is expected that within its power, the state may pass legislation that regulates certain private conduct to protect public welfare, safety and health. These harms to private property interests need not be compensated by the state. On the other hand, when the state exercises its power to take property for public use, just compensation will be considered due.

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7.3.2.4 Beyond land use – expropriation and deprivation[27]

It has been judicially recognised in several jurisdictions that the mere regulation of property for legitimate purposes might constitute expropriation or confiscatory taking, if its economic impact is too severe.[28] Regulatory actions of the state will be "too severe" in cases where the regulation leaves no economic viability, making the property valueless. The distinction between *expropriation* of property and *deprivations*[29] or *regulatory limitations* on the use of property become crucial since they form the basis for the domestic and international legal consequences of foreign land ownership regulation. It is generally accepted that the distinction cannot be made on a mechanical or conceptual basis. In jurisdictions where it is accepted that some regulatory limitations can be classified as effective expropriations and compensated for, the distinction is usually seen as a matter of degree, so that regulatory limitations will be treated as effective expropriations if they go too far. In other jurisdictions, regulatory limitations that go too far will not be so treated, but will be regarded as excessive and therefore invalid.[30] The typical example of a jurisdiction, which recognises the grey area between the two categories of regulation and expropriation, is the United States of America. The Fifth Amendment of the United States Constitution provides that private property shall not be "taken for public use without just compensation". On this basis, the United States courts have developed the doctrine of *inverse condemnation*. The doctrine may be invoked where, although land is not compulsorily taken, its value has been destroyed or diminished by regulation. When all other remedies have been exhausted, an application may be made for the grant of constitutionally-based compensation. Alternatively, an application may be made for the court to strike down the regulatory conditions. The remedy arises where regulations so limit an owner's rights that an essential element of the property rights is lost.

The mere fact that property values are diminished by government regulation does not create a compensatory taking of property.[31] If government regulation reasonably advances legitimate public interest, and merely diminishes the value of the property, no taking has occurred. Factors to be considered include:

- economic impact;
- investment backed expectations; and
- character of the government action.[32]

The most important consideration is the economic impact of the regulation. In determining the extent of the effect on a landowner's economic interests the courts will consider the rate of return, economic uses of the property, or diminution of the fair market value. To satisfy the rate of return

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[27] For detailed discussion, see generally AJ van der Walt *Compensation for Excessive or Unfair Regulation: A Comparative Overview of Constitutional Practice relating to Regulatory Takings"* 1999 *SA Public Law* 273. AJ van der Walt *Moving Towards Recognition of Constructive Expropriation?* 2002 (65) *Tydskrif vir die Hedendaagse Romeins-Hollandse Reg* 459.

[28] *Pennsylvania Coal Company v. Mahon 260 U.S. 393 (1922)* discussed in Mark W Cordes "The Public/Private Balance in Land Use Regulation" 1998 (3) *Mich. ST. DCL L. Review.*

[29] While the terms used in section 25 of the Constitution are "expropriation" and "deprivation", various terms are used to denote closely related concepts.

[30] AJ van der Walt, Constitutional Property Clauses (1999) p. 19.

[31] Compare *Directory Advertising Cost Cutters CC v Minister for Posts, Telecommunications and Broadcasting and others [1996] 2 All SA 83 (T)* on the exercise of the right to free economic activity, that such right to be exercised within the normal constraints of economic life and maximum profits not guaranteed.

[32] *Penn Central Transportation Co. v. New York City, 438 U.S. 104 (1978.)*

analysis, the courts generally hold that so long as there still remains a reasonable return on investment, the courts will not find a taking has occurred under this criterion. The economic use analysis turns on the question of whether the regulation destroys all, or nearly all economically beneficial uses of the property. Safely, a regulation preventing the most profitable use of property alone is not a taking. The diminution of a property's fair market value has only been alluded to as a criterion for establishing a taking/expropriation as having occurred.

In determining whether or not a regulatory measure on foreign land ownership impacts on the landowner's right, the South African position has been stated in the case of *Steinberg v South Peninsula Municipality*[33]:

- A fundamental distinction is drawn in section 25 of the Constitution between two kinds of taking: a deprivation and an expropriation. It is only in the case of an expropriation that there is a constitutional requirement for compensation to be paid.[34]
- The purpose of the distinction is to enable the state to regulate the use of property for the public good, without the fear of incurring liability to owners of rights affected in the course of such regulation.[35]
- There may be room for the development of a doctrine akin to constructive expropriation in South Africa – particularly where a public body utilises a regulatory power in a manner which, taken in isolation, can be categorised as a deprivation of property rights and not an expropriation, but which has the effect, albeit indirectly, of transferring those rights to the public body.[36] In constructive expropriation a deprivation will, in certain circumstances attract an obligation to pay compensation though no right vests in the body effecting the deprivation. It is the determination of those circumstances which can give rise to problems.[37]
- However, development of a more general doctrine of constructive expropriation, even if permissible in view of the express wording of section 25 of the Constitution, may be undesirable both for the pragmatic reason that it could introduce confusion into the law, and the theoretical reason that emphasis on compensation for the owner of a right which is limited by executive action could, for instance, adversely affect the constitutional imperative of land reform embodied in subsections (4), (6) and (8) of section 25 itself.[38]

7.3.2.5 Government's policy position on private land: freehold title with limitations

It is proposed that:

- South Africans continue to exercise freehold rights over land;
- Sale of land to non-South Africans be subject to limiting regulations;
- Regulatory limitations be placed on the freehold titles held by South Africans in respect of-
    - sensitive and national security land such as communal, coastal, heritage, rural, agricultural, environmentally-sensitive, security-sensitive, and border land; and,

[33] 2001 (4) SA 1243 (SCA).

[34] 2001 (4) SA 1243 (SCA) at para 4.

[35] 2001 (4) SA 1243 (SCA) at para 4.

[36] 2001 (4) SA 1243 (SCA) at para 8.

[37] 2001 (4) SA 1243 (SCA) at para 6.

[38] 2001 (4) SA 1243 (SCA) at para 8.

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    - controlled transactions such as transactions valued at a prescribed threshold, non-resident 'absent-landlord' properties, and land quantity restrictions be subject to special consent and approval regimes;
- Regulatory limitations designed to ensure protection of prime and unique agricultural land, sustainable utilisation of land, subdivision of rural/agricultural land, etc may be imposed on freehold titles of South Africans; and
- For purposes of equitable redistribution, land quantity restrictions/land ceilings, pre-emption rights and rights of first refusal be imposed on freehold titles of both South Africans and non-South Africans.

7.3.3 Foreign-owned land: precarious tenure

7.3.3.1 Basis of regulation

The framework for the regulation of land ownership by foreign nationals is guided by the need, amongst others, to:

- adhere to, and promote the spirit of, the Constitution;
- promote stability within the land sector of the national economy;
- encourage increased productive use of land by historically disadvantaged persons;
- encourage investment in land;
- promote the most efficient and affordable land use for the benefit of South Africans, especially in housing delivery and agricultural production; and
- ensure that the country's land and its resources are accessible to persons or groups of persons from a diverse range of communities in South Africa.[39]

While the government is constitutionally obliged *to foster conditions which enable citizens to gain access to land,* it equally must create an economic climate not inimical to foreign investment. The overriding theoretical basis for liberalisation of the land/property market, with little or no restriction on ownership, is to promote *economic gains* by the private persons and corporations engaged in affected commercial ventures. There is no doubt that the spin-offs are expected to stimulate economic growth including increased employment. Other dividends from such economic activities would be revenue for the state. The flip side is whether such profiteering attendant upon increased economic activities does increase public good or social welfare. A careful balance has to be drawn between the long-term gains from a comprehensive and redistributive land reform that fosters citizens' access to land over short-term pains of political sensitivity and perhaps controversy. Long-term benefits of economic, social and political gains for its nationals may prove unpopular due to the short-term pressures of immediate destabilisation of entrenched status quo from both national and international economic players.

Section 25(5) of the Constitution determines that:

The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.

Two distinctive features are noteworthy from the express mention of "citizens" in subsection (5).

[39] *White Paper on Land Policy* 1997 para 2.1

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Firstly, while other provisions of the property clause contain no express limitation in their applicability to "citizens", subsection (5) significantly does. The restriction in this subsection to a particular category of beneficiaries is clearly designed to circumscribe the scope of the socio-economic right granted. Non-citizens may not seek the constitutional protection offered except if such people have sufficient interest, such as a permanent resident or someone who is married to a South African. The *external effect* of this express limitation to citizens appears to be an imposition of a higher threshold of obligations on the state regarding citizens' as against non-citizens' access to land. Secondly, the express mention of citizens together with "on an equitable basis" creates an internal effect as between classes of citizens. As it cannot be disputed that the thrust of pre-1994 land policies is the unequal treatment of different classes of citizens, the Constitution rightly imposes the need for equitable redress of past imbalances in land ownership patterns. These internal and external effects are bolstered by the equality clause which authorises that unequal measures may be taken to protect or advance persons, or categories of persons disadvantaged by unfair discrimination. It is therefore contended that there is a constitutional basis for the state to adopt reasonable legislative or other measures to foster conditions which enable (a) citizens, as against non-citizens; and (b) amongst categories of citizens,[40] to gain access to land. Subsection (5) creates an obligation that supports the traditional three legs of land reform – tenure reform, redistribution, and restitution – and, at the same time, contains a stand-alone socio-economic right. It must be noted that state measures that unfairly discriminate among its citizens will be subject to stricter constitutional scrutiny.

It becomes imperative that government must be able to offer concrete responses, at periodic intervals, to the central question posed by this constitutional injunction – to what extent are policies of the state conducive to enabling "citizens to gain access to land"? Legal and institutional measures must be in place to measure compliance with this constitutional injunction and to enable the authorities to gauge, at periodic intervals, the extent of such compliance.

7.3.3.2 Land values and foreign acquisitions

Assuming that foreign involvement in property development is on the rise, it is worthwhile to examine the economic influence that foreign investors have had and continue to have on local properties. With foreign investors entering the property market, the increase in the number of buyers in the market could be expected to raise the demand for commercial properties. All other things remaining constant, the increased demand for existing properties should have resulted in higher prices. Even though individual and institutional investors may not deal directly with foreign investors, the presence of such investors as buyers can raise the prices of commercial properties in the markets in which they participate. The prices of properties in turn, influence the rate of return and future growth in the value of properties for all investors - foreign, domestic, institutional, and individual. The presence of foreign investors, as sellers of properties, will increase the number of sellers in the market, which in turn, will increase the supply of properties. Consequently, prices would be negatively affected. To the extent that foreign investors are a significant determinant of property values, an investor evaluating a property would want to consider all the important determinants of commercial real estate prices, including the impact of the presence of foreign

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[40] The connection between this kind of differentiation and other rights has judicial confirmation in *Government of the Republic of South Africa and Others v Grootboom and Others* 2000 (11) BCLR 1169 (CC) at para 25 that "Rights also need to be interpreted and understood in their social and historical context. The right to be free from unfair discrimination, for example, must be understood against our legacy of deep social inequality." Compare *Pretoria City Council v Walker* 1998 (2) SA 363 (CC); 1998 (3) *BCLR* 257 (CC) per Sachs J; *President of the Republic of South Africa v Hugo* 1997 (4) SA 1 (CC); and *Premier, Mpumalanga and Another v Executive Committee, Association of State-Aided Schools, Eastern Transvaal* 1999 (2) SA 91 (CC); 1999 (2) BCLR 151.

investors in the market.[41]

7.3.3.3 Regulatory options

Several regulatory measures may be utilised by the state to manage land ownership by foreign nationals. These include:

Forbidden zones

This involves the identification and classification of parts of the country into no-go zones for non-citizens. Several factors may account for this sort of restriction, ranging from military, security and defense installations, tribal land, environmentally sensitive land, national monuments, seashores and coastal land.

Land quantity restrictions/land ceilings

Adverse consequences such as low utilisation, land speculation and hoarding, generated by the phenomenon of non-resident absentee landlords have justified the imposition of quantity restrictions.

Test of nationality

The definition of who is a citizen is usually a subject of domestic legislation and with the limited exception of stateless persons and refugees every country retains powers to determine who is accorded residency and citizenship rights. The regulation of land ownership in order to limit the access of non-citizens to land may require a special consideration of at least two classes of *citizens* as well as two classes of non-citizens. Regarding citizens, it is possible to distinguish between ordinarily resident and non-resident citizens. Non-citizens may also be similarly classed into those ordinarily resident with right of permanent residence and those not resident in the country. A number of countries, especially for property taxation purposes, rely more on *residency* of the property owner as the primary consideration for foreignness. While *national origin* is not one of the grounds of unlawful discrimination in section 9(3) of the Constitution, it would appear unconstitutional to bar non-South Africans who are already admitted to permanent residency, and who are ordinarily resident in the country, from owning property on the same basis as citizens.[42]

Residency-based measures/absentee landlords

Closely related to the nationality factor is the need to ensure that access to land is granted primarily to those who *live* on it. Justifications for land quantity restrictions apply with equal force to this factor.

Non-natural entities

Other than ownership as a natural person there are four principal vehicles through which a natural person may conduct business in relation to land. These are (i) company either a local private or

[41] Formulations based on Arnold L Redman and N S Gullett, *An Empirical Study of the Impact of Foreign Ownership on the Values of U.S. Commercial Properties* 1998 (11) *Journal of Financial and Strategic Decisions* 53 at p54.

[42] *Larbi-Odam and others v Member of the Executive Council for Education (North-West Province) and another* 1997 (12) BCLR 1655 (CC) at para 31; see also *Baloro and Others v Univ of Bophuthatswana and Others* 1995 (8) *BCLR* 1018 (B).

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public company or an external company; (ii) close corporation; (iii) partnership, either limited or unlimited; and (iv) business trust.

Although corporate vehicles perform legitimate and vital roles in the economy, there are many circumstances when they are misused for illicit and other improper purposes. The main concern in the regulation of foreign land ownership therefore is the information on beneficial ownership and control of these entities for the purposes of determining whether or not restrictions are not evaded. Strict secrecy laws that prohibit professional intermediaries like attorneys, accountants and financial institutions from disclosing required information further disguise beneficial ownership and control; such laws, it is contended, should have limiting provisions.

Reciprocity & preferential national treatment

Certain countries, in response to strategic proximity concerns or international relations, state that other countries accord their nationals same treatment as applicable to their citizens within their territories.

Economic control

Economic-related control measures seem quite prevalent in many countries since the very nature of foreign acquisitions and use of immovable property in a country is said to be influenced mainly by the relative financial superiority of non-nationals against citizens. Measures are thus instituted to restrict or direct the flow of investment according to considerations of national interest. The economic control justification includes the need to restrict land speculation, thus a distortion of agricultural and housing land market prices. Albania, Bulgaria, Canada, Australia, New Zealand, Hungary and the United States of America are among the many countries that have specified economic control in their regulation of foreign land ownership. The government of Australia declared that:

Foreign investment policy provides for government screening of many proposed foreign purchases of Australian businesses and properties. Reflecting community concerns, there are specific restrictions on foreign investment in more sensitive sectors such as real estate. The government has the power under the Act to prohibit proposals that are determined to be contrary to the national interest. The Act also provides penalties for non-compliance. The government seeks to ensure that foreign investment in residential real estate increases the housing stock. The government, therefore, seeks to channel foreign investment into activity that directly increases the supply of new housing (that is, new developments - house and land packages, home units, townhouses, etc) and brings benefits to the local building industry and their suppliers.[43]

It has been reported[44] that France has a number of ways of taxing speculative gains which frustrate a culture of speculation. Unpaid charges may accumulate on tax on properties to the extent that inheritors may actually find themselves in debt. Properties may thus languish unclaimed until they accumulate such debts to the municipality and the state that they fall to the state. In low-income areas the municipality may have first claim among potential buyers on suitable properties for low-income housing and they may place a ceiling on the price at which they acquire the property. The

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[43] *Australian Foreign Investment Policy - Urban Land (Real Estate)* (March 2003)

[44] Sheila Newman *Land and Housing Prices and Land-Use Planning and Housing Systems In Australia* (October 2003) Submission to the Productivity Commission's Inquiry On First Home Ownership.

Taxe Foncière is a lump sum payable on unbuilt land and built land, and may be apportioned between the two. Some exemptions exist for agricultural land.

Disclosure, reporting or information regime

Disclosure measures enable countries to secure an accurate base of data on non-citizen, non-resident land ownership timeously as a basis for policy intervention. These measures are used for a range of planning and governance purposes including taxation and security issues. Countries in this range include Mexico, Canada, Australia, New Zealand, Thailand and the United States of America.

Permit system – investment boards

Numerous countries require foreign investment, including in land, real estate and other land-based natural resources to go through a one-shop investment agency which screens and approves such transactions.

Avoidance mechanisms

Avoidance measures, to varying degrees and extents to frustrate restrictions on foreign citizens (both natural and non-natural) have been practised over the years. Despite the broad scope of the prohibition on foreign ownership of land in many countries, and the even narrow scope of the exceptions, a variety of tactics are used to minimise the impact of the prohibitions. These include, forming joint venture companies with majority local ownership but adequate safeguards for the foreign minority interest and long term leases with rights to renewal. In Namibia, farm/landholdings registered in the name of juristic persons were increasingly being (described as “at alarming rate”) transferred to juristic persons, ostensibly to avoid detection of their “foreignness”, shortly after that government announced that it would introduce the Commercial Agricultural Land Act in 1995.

The ability to obtain information on beneficial ownership and control is at the heart of a regulatory measure on foreign land ownership. Simulated transactions by natural and non-natural persons to defeat regulatory measures that are designed to capture and enforce regulations based on nationality will persist in the absence of adherence to two fundamental principles:

- Beneficial ownership and control information must be obtained or be obtainable by the authorities; and
- There must be proper oversight and high integrity of any system for maintaining or obtaining beneficial ownership and control information.

7.3.3.4 Government’s panel of experts

A panel of experts was constituted in August 2004 to advise government on the causes and impact, including if, and how, any regulation could be devised to address these avoidance concerns. This panel recommended to the government in 2007, amongst others, that:

- it is desirable to regulate, not prohibit, the conditions under which non-South Africans use and own South African land;
- there should be a reporting system making it compulsory for information on acquisitions by non-South Africans to be recorded by the state;
- some restrictions should be placed on the ease with which non-South Africans change the

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use of land especially for undesirable purposes;
- there should be a system that allows consent to be granted in respect of the acquisition of certain land including the imposition of conditions for such; and,
- leasehold titles limiting the length of time in which non-South Africans hold South African land should be introduced as opposed to the current system of freehold titles.

7.3.3.5 Government's policy position on foreign-owned land

It is assumed that there is national consensus and acknowledgement that it is a privilege for non-South Africans to own sensitive South African land and landed assets, and therefore it is appropriate to impose conditions on them in respect of those assets.

It is proposed that:

- The government's policy approach be to encourage foreign investment in land consistent with national interests.
- *Land* for the purpose of this policy should include the physical land as well as other land based resources like buildings, farms, fishing, mining, etc.
- *Non-South Africans* should include all natural persons without South African citizenship and all persons not permanently resident in South Africa.
- *Juristic persons* should be treated as non-South Africans where such corporate bodies are controlled by natural persons who are not South Africans or permanent residents of South Africa.
- *Sensitive* and *national security* land such as communal, coastal, heritage, rural, agricultural, environmentally-sensitive, security-sensitive, and border land, and *controlled transactions* such as transactions valued at a prescribed threshold, non-resident 'absent-landlord' properties and land quantity restrictions should be the subject of special consent and approval regimes.
- All new land acquisitions by non-nationals should be subjected to leaseholds with the land owner taking the reversionary interest.
- Freehold titles by non-nationals on sensitive and controlled land and those deemed in the national interest should be converted to leasehold with other conditions of use imposed.
- Right of first refusal should be instituted within the proposed legislation to enable the state to acquire sensitive and controlled land on the market before non-nationals are able to acquire same.
- A Land Protection Advisory Unit within the proposed Land Management Commission should advise the Minister on the matters covered by the proposed legislation. Key departments and other agencies of the state and the general public should be represented on this Unit.
- A Registrar of Landholdings (reporting to the Land Protection Advisory Unit within the Land Management Commission) should take charge of the monitoring and information gathering mandates to be offered by the proposed legislation. The information generated and gathered by the Registrar should inform a range of policy choices in terms of the proposed legislation.
- General administration of the proposed legislation and broad decision making powers should rest with the Minister of Rural Development and Land Reform, who should act in consultation with other Ministers on matters affecting their functions.
- In order to deal with possible non-compliance with the policy directives, sanctions should be applied to transgressors. The possibility of forfeiture of property acquired in contravention of policy should be instituted.

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- A law titled “Land Protection Act” should be proposed to deal with these matters as the present laws do not cover the policy as proposed.

7.4 Sharpening land acquisition strategies to support the 3 tier system

In support of the 3 tier tenure system, there is a need to accelerate land reform but also obtain value for money for each hectare of land bought.

The pace of the reform has been slower than anticipated and will not make the target initially set (30% target by 2014) for land reform without significant changes in approach. This has brought into question the willing buyer-willing seller approach and the appropriateness of existing compensation levels, proposals for greater use of expropriation with below-market compensation to achieve land reform objectives and for other initiatives to reduce the costs of land acquisition.

There are two approaches proposed to reduce the costs of land acquisition and thus expand the amount of land acquired for land reform:

- Multi-tier pricing regime
- New valuation regime

7.4.1 Multi-tier pricing regime (MPR)

A multi-tier pricing regime is proposed as a strategy to expedite land reform. It is necessary to separate ordinary market transactions from land reform transactions. In this sense, a MPR will comprise of a different pricing regime for land reform and for private land transactions. The MPR comprises of a 3-pronged strategy:

- Willing buyer-willing seller for private transactions
- Land reform: capped land prices as fair and just compensation
- Land tax (as a long term strategy)

7.4.1.1 Willing buyer-willing seller

The *Estimates of National Expenditure* indicates that over the current MTEF period, an additional 2.2 million hectares will be acquired via the redistribution programme at a total cost of about R12.3 billion. While no comparable figures are provided for restitution in terms of hectares, assuming similar land costs, then the MTEF allocation would allow for the restoration of less than 1 million hectares, making a total of around 3 million hectares. Given that approximately 7 million hectares has been transferred to date, this means that over 14 million hectares would need to be delivered over the three years remaining between the end of this MTEF period and 2014. In other words, delivery would need to leap from 1 million hectares per year to over 4.6 million hectares, which is not feasible given the current WBWS approach.

Why will the 30% target be so difficult to achieve? One reason is definitely land prices. They started rising significantly from around 2001 and from 2006 through 2008 rose dramatically. While the redistribution budget has risen quite significantly, it has not been able to keep pace, especially in the last few years. The willing- seller/willing buyer approach was specifically framed to facilitate land

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reform in situations where land reform is carried out within a rule-of-law environment, and where it is considered important to protect property values generally.

The concept of willing buyer-willing seller principle means a completely voluntary transaction between a buyer and a seller[45]. In this regard, the principle accurately denotes the lack of compulsion on landowners"[46]. The underlying assumption is that there are willing buyers and willing sellers who are involved in transaction processes in the market place on an equal basis. However, upon a critical examination and analysis of this principle, it is clear that the willing buyers are those who are in need of land. They are landless as well as resourceless. As such, they depend on the State to enter the market place through the Government's grant system to purchase the land in order to fulfill their various needs for socio-economic development. The social and economic profiles of the willing buyers make them dependent also on the co-operation of the willing sellers for the acquisition of land[47]. In this context, the willing buyer-willing seller principle offers no guarantees to the landless that they will acquire the land they want, or indeed any land at all[48].The market place is also characterised by the supposedly willing sellers. These have the monopoly control of the means of productions that is the land. Land owners have the latitude to determine the price of land that suits them regardless of the buyers' ability to enter into transactions regarding the land in question. In this regard, the so-called willing sellers have a veto power[49].

The overwhelming majority of participants in the 2005 Land Summit rejected the notion of the willing buyer-willing seller principle as a basis for implementing South Africa's land and agrarian reform and called on Government to move away from this principle with a view to considering other options for accelerated land acquisition. This principle only works in the private land market (between ordinary buyers and sellers).

7.4.1.2 Land reform: capped land prices as fair and just compensation

The 2005 National Land Summit urged Government to consider broader use of expropriation to speed implementation of land reform. The potential of expropriation as an alternative to willing-buyer/willing-seller appears to this consultant to lie not in its speed, but in its ability to acquire particular properties whose holder is not willing to sell them, and to do so at less than market price. In the case of expropriation, compensation levels can be legislated, and in many expropriations under land reforms elsewhere, compensation is at legally-mandated below-market values.

There is an on-going discussion of the use of expropriation to acquire land for land reform purposes – which has so far not been done to any extent – and this raises the question of how compensation should be set for those acquisitions. Because funds for land acquisition are a constraint, the interest in expropriation is itself driven to a considerable degree by a desire to reduce costs of land acquisition. Is it constitutionally and practically feasible to use expropriation at mandated compensation levels to acquire land at below-market rates, thus making funds for land acquisition go further?

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[45]Edward Lahiff, Policy Brief Debating land reform, natural resources and poverty, PLAAS, No. 17, September 2005.

[46]Ibid, p. 2.

[47]ibid, pp. 1-2.

[48]Ibid, p. 2.

[49]Edward Lahiff, op cit, p. 1

In South Africa, the Constitution in Section 23(3) affirms that land reform is in the public interest and an appropriate objective for expropriation. It deals specifically with compensation for land taken in the public interest, including land reform, and thus clearly contemplates (but does not require) expropriation of land for land reform purposes.

Section 25(3) provides a set of factors to be considered in determining compensation when land is taken in the public interest, which specifically includes land reform. Such compensation must be:

> "… just and equitable, reflecting an equitable balance between the public interest and the interests of those affected having regard to all relevant circumstances, including
>
> a) The current use of the property;
>
> b) The history of the acquisition and use of the property;
>
> c) The market value of the property;
>
> d) The extent of direct state investment and subside in the acquisition and beneficial capital improvement of the property; and
>
> e) The purpose of the expropriation."

This is not an easy standard to apply. It simply provides a set of circumstances to be taken into account in determining compensation, without suggesting how they should be weighted. The circumstances listed can vary a good deal with the individual case, and so weighting becomes important. In addition, the influence they are to exercise on level of compensation is not always obvious. For example, what impact on compensation should the "current use of the land" have? Is this directed at unutilized or poorly utilized land and its value in current uses, or something else? And what historical circumstances might justify higher or lower compensation?

How far does the Constitution permit below-market compensation to be paid in case of expropriation? The fact that market value is only one factor listed, and that it is not the first factor listed, makes clear that it is not to be the sole standard. Section 25(3) does not require market value to be paid in all cases, and there is considerable judicial authority that below-market compensation is allowable[50] (van der Walt 2005: 767). A formula which results in lower-than-market value compensation could thus if properly framed withstand constitutional challenge. A court reviewing the acquisition would need to decide whether the application of the criteria achieved a result which cumulatively was consistent with justice and equity and which was not arbitrary in the particular case.

Given the constitutional language, at least three options have been identified for arriving at a below-market compensation standard could be arrived at:

1) Through a formula which includes the full range of factors provided for in 25(3), in particular (3) (a). (b), and (d), which are not reflected in the existing formula under the Expropriation Act but can be interpreted to reduce compensation appropriate in cases where they are relevant (such a formula is being actively discussed in the Ministry); or

[50] Van der Walt A J, 2005. "Constitutional Property Law," Juta, Cape Town

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2) Use of 25(3)(d) referring to the purpose of the acquisition as the basis for imposing a "land reform discount", an across-the-board discount of compensation for land acquired for land reform purposes, as suggested by Zimmerman[51] (2005: 383, 418), or

3) Use of "productive value" as opposed to "market value" to determine compensation, as suggested by some commentators (e.g. Lahiff: 3), based on the reference to "current use" as one criterion for determining compensation (25(3)(a)).

Whatever approach is taken would need to comply with the overriding "just and equitable" criteria stated up front in 25(3).[52]

One would expect a land reform compensation standard to receive at least as accommodating a reception by the Constitutional Court as those in expropriations where land reform was not at issue (such as *Harkin, Modderklip, and Du Toit).* The holding of the Constitutional Court in *du Toit* (van der Walt 2005: 772) seems to suggest that the Court will be quite flexible on compensation levels deviating from market value where a legitimate public purpose in concerned. This would seem likely to be particularly true for land reform, given the mandate for land reform reflected in 25(5) and 25(8). There seems a quite good prospect for takings and compensation for a high-priority public purpose such as land reform to avoid the charge of arbitrariness, provided they are carefully articulated.

The principal advantage of an expropriation approach over willing-seller/willing-buyer is that it would avoid the "landowner veto" implicit in the willing-seller/willing-buyer approach. That could confer much greater flexibility on the Department to select the land to be taken, and would be particularly useful when a particular piece of land is required, as for restoration under the restitution program. Reduced compensation levels would allow land acquisition funding to stretch further than under willing-buyer/willing-seller.

7.4.1.3 Land Tax

The land tax proposal is the most direct way of affecting prices, because a land tax would increase the cost of holding under-utilised and unutilised land (of which there is an unknown but likely large amount). A progressive land tax would potentially push additional land onto the market, though how much of that land could be accessed for land reform purposes is unclear. It would of course also produce a new revenue stream for government. If possible, that stream should be legally tied to use in funding land reform. It is suggested that such a land tax should be levied only on very large holdings (the same holdings that might be affected by a ceilings provision), rather than subjecting all holdings to a land tax over and above existing rates. This would avoid incurring administrative costs of collecting small amounts on many small holdings. This targeting would also reduce any general negative impacts on tenure security and investor confidence. It would not make agriculture less profitable, just agriculture on very large holdings. Again, it was seem that such an approach could withstand a constitutional challenge if carefully calibrated to avoid charges of arbitrariness.

However, this proposal is also problematic. The main problem is that any tax that is politically acceptable would have only a marginal downward impact on land prices; in order to compel land prices to drop by, say, 30%, it would have to be so large as to create uncertainty in the commercial farming sector. The other problem is that there is likely to be little appetite to introduce a land tax so

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[51] Zimmerman J, 2005. "Property on the line: is expropriation-centered land reform constitutionally permissible," South African Law Journal 122 (pp 378-418).

[52] Just and equitable in expropriation cases means that the standards used cannot be arbitrary, per the holding of the Constitutional Court in *First National Bank* (see Roux 46-3, and van der Walt 2005 771).

soon after municipal property rates are beginning to be applied to farmland for the first time and this would have to become part of a long term strategy of government. Indeed the Department of Cooperative Governance and Traditional Affairs has signalled that the intention in terms of section 7 of the Municipal Property Rates Act, 2004 is for all properties to be rated, subject to the provisions in section 7(2). The rates policy also inherently contains a plan as far as phasing in the rating of certain properties so as to over time arrive at a stage when all properties within a municipal area are within the rates net.

In conclusion, the MPR provides a suite of options that do not create general insecurity or depress land prices generally. It would however create a dual pricing system: one for land reform transactions and one for private land transactions. The MPR may create a divide between the state and private sellers/buyers. It may also in the long-run create an impression that state-bought properties are of poor quality and this could impact future investments on state properties or land reform properties (especially in relation to joint ventures). Transactions between private persons and the state would also seem artificial and legally this may present challenges.

7.4.2 New valuation regime

There are two primary purposes of valuation in relation to land reform:

- to ensure that sellers are not overpaid for their land and that state resources deployed on behalf of beneficiaries are used efficiently; and
- to determine an amount of compensation to the owner that is just and equitable according to the provisions of the Constitution.

The DRDLR requires that an independent valuer who is registered with the Council of Valuers endorse valuations. This Council is not to be mistaken with the SA Institute of Valuers. The Institute is a voluntary body whereas the Council for Valuers is a body set up in terms of the Property Valuers Act, 2000 (Act No.47 of 2000), which regulates this profession.

The general policy[53] of the DRDLR is that all valuations are to estimate fair market value using the comparable sales method except when this is not practicable or for particular types of property. Where a valuer deems that market value cannot be estimated because it is not practicable to do so, she/he will be expected to explain the specific circumstances that make it impracticable. For cases involving rural land, the alternative to market value will normally be productive value, while for cases involving urban land the alternative will normally be replacement value. The same principles are applied as for the general valuation that is required every 4 years as part of the Municipal Property Rates Act, 2004. These methods of valuation have not resulted in quicker or cheaper land acquisition for land reform purposes. The valuation handbook makes no mention of any other approach that could be used to estimate land price and it simply focuses on valuation methodologies.

It is therefore proposed that the state create a valuation body that would standardize land valuations in the country. The creation of a proactive role for the state in relation to valuation in essence gives effect to a multi-tier pricing regime. This model of valuation is successfully used in countries such as Malaysia, Australia and New Zealand. The proposed intervention of the state will create an equal

[53] A valuation handbook was published by the former Department of Land Affairs in 1998 as a guideline to assist land reform project managers in setting up terms of references for valuations.

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land market for both private land transactions and land reform transactions. The intervention will require the creation of a Valuer General (similar to the Surveyor-General).

In Australia the Valuer General (VG) assists' landowners in understanding typical land values and market trends over time and in local government areas a table of representative land values is made available and provides independent quality assurance of valuations for rating purposes. In New Zealand the VG:

- certifies rating valuations to local authorities;
- provides technical advice to Government on valuation and the valuation services sector;
- monitors and audits the work of rating valuation service providers (VSPs);
- is ex-officio chair of the Valuers Registration Board; and
- sits on the council of the New Zealand Institute of Valuers.

If such a regime is to be implemented in South Africa, it must be supported by an authority with its own legislation e.g. Australia has set up a Land and Property Management Authority that is regulated by the State Property Authority Act. It is envisaged that the new 3-tier tenure system will be supported by a Land Management Commission. Its primary role will be: (a) to establish and (b) to protect and sustain the credibility and integrity of South Africa's Land Register. It will also act as a reference point in determining land price trends.

The new valuation regime can be created within the LMC. The LMC must allow for the establishment of a VG whose responsibilities will include *inter alia* setting thresholds (legal) for local authorities for different land uses and commodities, monitoring and auditing the work of valuers and acting as an appeals authority for cases where there are disagreements. Within this system the state may also impose other measures such as a progressive land tax and a further discount in terms of transactions undertaken for social and economic reform purposes such as for human settlement and land reform. This system must also be aligned to the deeds registry system and also take into consideration the work of the Council of Valuers and legislation such as the Municipal Property Rates Act and Property Valuers Act.

7.5 The Land Management Commission (LMC)

7.5.1 Functions of the LMC

The LMC will function in relation to private, state and public land. The basic functions of the LMC can be grouped as follows:

(a) Advisory

Through implementation experience, the LMC will play an advisory role in policy formulation and development. The LMC will recruit competent and suitably qualified individuals to develop a national framework that will give effect to its mandate as directed by the Minister and enabling legislation. It will advise the Minister on all aspects of its macro-environmental scope of work ranging from policy, legal, technical, technological, economic and developmental. In consultation with the Department, it will also offer similar advice to custodians of state and public land.

(b) Coordination

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This function of the LMC is to coordinate the monitoring of the execution of land management functions by all state and public land custodians with other departments and agencies, such as the Department of Public Works, the Housing Development Agency and the Department's trading account (see chapter 9). This is to ensure compliance with the agreed policy of government on land management and to provide professional support and assistance when required In coordinating its work with that of the trading account, the LMC will refer cases where land is deemed to be above the prescribed ceilings to the trading account for the Department to exercise its right of refusal. The LMC should be in a position to gain buy-in among all agencies managing state land to take rigorous compliance action. Through better coordination, the LMC should strive to improve the functioning of the state land rental market by adopting a common approach to pricing policies based primarily on market values, but discriminatory towards targeted programmes for equity in access to land.

(c) Regulatory

The LMC should become the regulatory authority of all state, public and private land in South Africa. The role has two dimensions. The first covers the role of protection of all land, which includes the prevention of illegal occupation, preventing environmental degradation, particularly, illegal land use and ensuring compliance with legislation. The second entails optimal land utilisation to ensure food security, employment creation and investment. This will require the LMC to maintain an accurate regularly updated land register on land holdings, by both nationals and foreigners, monitor change of ownership, land use and optimal land utilisation. All land owners and custodians of state and public land should be required by law to declare the extent of their land holding and periodically up - date the LMC on any changes.

(d) Auditing

The LMC will conduct and commission periodic compliance audits on land utilisation, policy and legislation on the extent of declared land holding, land use and verify such information against the register of declared landholdings, issue compliance reports and exercise its powers where necessary.

(e) Reference point

The LMC will act as a reference point in the following land instances:

I. certain changes in land use;
II. acquisition and/or disposal of private or public land by foreign nationals, human or juristic; and, between South Africans and foreign nationals, human or juristic, especially where such change of use or disposal has the potential of negatively impacting on the state's ability to meet its constitutional obligations to effect land reform; and
III. finalisation of spatial development frameworks / area-based plans and environmental impact assessments.
IV. land price trends
V. real estate management best practices

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7.5.2 Powers of the LMC

The LMC will be a statutory body, which will be autonomous, but accountable to the Minister of Rural Development and Land Reform or any Minister that the government might deem appropriate. It should be composed of South Africans of high integrity and esteem, because of the sensitive nature of its mandate and responsibility; and it should conduct its work in an accountable, transparent and professional manner. Its primary role will be: (a) to establish and (b) to protect and sustain the credibility and integrity of South Africa's Land Register. In this regard, its powers will be as follows:

- The power to subpoena anyone and any entity, private or public, to appear before it, and answer any question relating to their landholding or land interest;
- The power to enquire about any legitimate land question, of its own initiative or at the instance of interested parties;
- The power to verify and/or validate/invalidate individual or corporate title deeds;
- The power to demand a declaration of any landholding, with all the necessary documentation relevant to such a declaration; and
- The power to grant amnesty and/or to initiate prosecution, whichever the case might be or at its discretion.

7.6 Aligning the cadastral system

"Land administration systems and land registration in particular, are but means to an end... Land markets are reliant on a system of land registration that can deliver certainty." [54]

Surveying, conveyancing and deeds registry administration comprise the three main areas of the land registration and land ownership system in South Africa (SA). SA is reputed to have one of the best deeds registration systems in the world based largely on the exceptional degree of accuracy associated with it. Cadastral surveying is undertaken exclusively by or under control of Registered Professional Land Surveyors. Land surveyors submit their documents to the Surveyors-general for examination and approval after which the conveyancers lodge the approved survey documents at the respective Registrars of Deeds for registration. *"Cadastral systems, in particular land registration and cadastral surveying, constitute a critical system for effective land administration in a market economy. Given the right circumstances, cadastral systems contribute to enhancing social and political stability, improving the economy, and improving government's efficiency in land administration and service delivery. Cadastral systems contribute to social and political stability through improved tenure security.*" [55]

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[54] Ting, L., Williamson, I., Grant, D., & Parker, J. 1997 Lessons from the Evolution of Western land Administration Systems, *International Land Tenure Conference*

[55] Barry M, Fourie C, 2001, Wicked problems, soft systems and cadastral systems in periods of uncertainty, *South Africa International Conference on Spatial Information for Sustainable Development.*

The effectiveness of the cadastre system in the past has however mainly been measured in the context of its ability to manage a small percentage of land parcels in South Africa. Land reform initiatives to date and the proposed new land tenure system would in effect increase volumes of transactions by at least 300 % (more than 6 million to about 20 million). The current system was mainly geared to manage a specific kind of ownership and will have to be able to support the envisaged land tenure arrangements. The system would have to be diversified to cater for the additional proposals with regard to leasehold, limited freehold extent and precarious landownership for foreigners. Some of the aspects that would need to be reviewed include declaration and registration of citizenship, identification and registration of forbidden zones, warning systems in case of non-compliance, registration of different types and periods of leases, security of various forms of tenure used as collateral, effective de-racialisation, continuous transfer of land held in terms of Permission to Occupy and Grants, and ensuring fairness and equity in terms of gender.

The e-cadastre system is currently in the design phase and addresses the short and long term business requirements. The system's capacity will have to be aligned to cater for the proposed three tier land tenure system. It is envisaged that the e-cadastre would also allow for a reduction in cost of business, as well as easier and less costly access to all South Africans, including those in the rural areas. The capacity in terms of human resource and administrative systems to ensure alignment would be considered, also with respect to finalizing the land audit to ensure availability of information about who owns what property in terms of state, public and private land.

The Deeds Registries Act and Sectional Title Registration Act would be further amended. All other relevant legislation with regard to conveyancing, surveying and deeds registration would also be reviewed in line to the proposed LMC and 3 tier tenure system. One national legislation and policy should be in place to apply to all spheres of government and public entities. The deeds registration system should support a single land administration system.

Transformation and alignment of the cadastre also would be considered within the international context where there has been an acknowledgement over the past decades that *"the problems that are faced, both in rural and in urban development, are becoming so complex that only a multi-disciplinary approach will be able to solve them. Populations expand putting greater pressure on the land and its resources… many, for example, need to find faster and less expensive ways of recording land parcels and the formal and informal legal interests that are attached to them. Radical solutions are needed that do not necessarily build on the precedents of the past, many of which have evolved from colonial experience and alien cultures"* [56]

The revised proposals with regard to the cadastre and land administration system require priority surveying processes of state and public land as well as land held in trust by the state, which will require in-depth analysis and review of the current capacity and processes within Surveying and Registration systems. As the envisaged LMC will function in relation to private, state and public land the mandate of the Surveyor General and Deeds Registrar would need to be aligned to allow the LMC to a regularly updated land register on land holdings, for both nationals and foreigners in order to monitor change of ownership, land use and optimal land utilization.

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[56] P Dale, 2000, The importance of land administration in the development of land markets - a global perspective, TU Delft - UDMS

CHAPTER 8: RESTITUTION

8.1 Challenges facing restitution

8.1.1 Scope of restitution

Section 25(7) of the Constitution provides that a person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress. One of the main challenges as acknowledged by government is the limited scope of the legislation. In terms of the Restitution of Land Rights Act,1994 (Act No. 22 of 1994) the act or event of restitution of a right in land is defined to mean the restoring of a right in land or equitable redress to victims of dispossessions after 1913 as a result of past racially discriminatory law or practices.

The *White Paper on South African Land Policy* developed in April 1997 provided that the cases of those dispossessed under betterment policies, which involved the forced removal and loss of land rights for millions of inhabitants of the former bantustans, should be addressed through tenure security programmes, land administration reform and land redistribution support programmes. As a result a number of instances where betterment claims were not accepted for lodgment under the restitution programme. In other instances betterment claims that were successfully lodged were found to be compliant with the Restitution Act.

Another category comprises those who did not lodge claims by 31 December 1998 for various reasons. In this regard there have been calls for the re-opening of the lodgment period.

8.1.2 Equitable redress

Yet another challenge with the application and interpretation of the Restitution Act is the narrow application and interpretation of the principle of equitable redress. The question that has arisen is what constitutes equitable redress? Equitable redress deals with issues of justice, fairness and equity.

This point has enormous political, social and economic implications. However it is submitted that there has been a narrow interpretation of equity to mean equality and with a special focus on a number of hectares. Equity means more than just 'number of hectares'. It should factor in size, quality, value of the property and compensation received at the time of dispossession.

8.1.3 Claims in communal areas

What has become evident is that the process of returning the land to claimants in communal areas has not always or altogether taken into account the historical dynamics underlying the loss of the land in the first place. People were removed from a community for whatever reason(s) and the land part which they occupied was excised from the whole and used for purposes determined by the colonial-apartheid regime. Ideally, the people who should have claimed the land back are members of the community who lost the land excised; and those families who had been removed should have been automatically 'returned with the land' and financially compensated for the pain and loss.

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The situation is that the people who had been removed claimed the portion which had been excised and restored in terms of the Restitution Act. Ownership was held by CPAs registered under the Communal Property Associations Act, 1996. This polarised people because members of the community to which the excised land portion historically belonged did not accept those who successfully claimed the land as sole owners. It should be realised that communities were never compensated for land forcefully excised from their communal land. Where compensation was paid, it was to those who were removed and was only a token gesture. The principle of inclusivity must be applied in restoration of these rights to preserve unity in those communities.

8.1.4 Traditional institutions

The role of traditional leaders remains critical in the process of restoring land to traditional communities. A significant part of the remaining land claims, which are mostly rural in nature, affect traditional communities. The challenges experienced with claims of this nature include the following:

- The notion that communal land is owned by traditional leaders;
- boundary disputes between neighbouring communities;
- disputes around the authenticity of traditional leadership; and
- the conflict of interests between traditional leaders and members of communities which affects development planning as well as land administration.

8.1.5 Complexity of rural restitution claims

Some of the claims under Restitution include large and costly projects in forestry, sugar-cane estates, mining, conservation and protected areas. Such claims, by their nature, are unaffordable and require specific idiosyncratic settlement models which are outside the dominant models used by the Commission on the Restitution of Land Rights. These claims have a potential of creating sustainable economic opportunities for the communities. The restitution of land rights can be used as a catalyst for deracialisation of the rural economy, shared and sustained growth and food security.

It is therefore important to look into alternative equitable redress mechanisms such as strategic partnerships with special focus on equity-share, co-management and mentorship or a combination of these. This will also require a review of section 6(2)(b) of the Restitution Act to see if these alternative settlement models could be incorporated into the principle of equitable redress.

There is also a need to address related challenges in settlements where the housing option is chosen. Successful and sustainable settlement of restitution claims requires assistance from municipalities in terms of human, financial and material resources. Local government has realised that in fulfilling their constitutional mandate of providing services and facilitating development in a sustainable manner, a new ethos and strategies have to be employed, hence the need for Integrated Development Plans (IDPs).

The Commission on the Restitution of Land Rights has, *inter alia*, identified the following as constituting the role of municipalities in land reform:

- assist in identifying land needs in each municipality;
- provide support to restitution beneficiaries;

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- and as an implementing agent for land reform projects and thereby be a conduit for administering development grants.

8.2 Future approach to restitution

The approach to restitution should include the following:

- Restitution must be developmental in nature and aligned with the principles of the CRDP;
- innovation in settlement models;
- social and administrative negotiated solutions; and
- a review of the application of the principle of equitable redress.

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CHAPTER 9: STRATEGIC LAND REFORM INTERVENTIONS

9.1 Introduction

Sustainable land reform is a key strategy in achieving national food security. Food security can be defined as the condition in which a population has the physical, social, and economic access to safe and nutritious food over a given time period to meet dietary needs and preferences for an active life. Production, income and the high price of food are the variables that contribute to hunger in rural areas. Around 75% of the world's hungry and poor people live in rural areas in poor countries.[57] Most of the nearly 11 million children who die before reaching the age of five, including eight million infants live in rural areas. Most of the 530 000 women who die during pregnancy and childbirth; of the 300 million cases of acute malaria and more than one million malaria deaths each year; and of the 121 million children who do not attend school, live in rural areas.[58]

It is for this reason that the Department has taken the conscious decision to establish a unit with the specific mandate of ensuring that land reform is both sustainable and strategically placed to ensure national food security. The purpose of the unit is to identify and implement strategic interventions in terms of land reform, acquire strategically located land, to recapitalise failing projects and develop current and future projects as part of the Department's commitment to sustainable land reform.

To respond to the challenges of the collapsing land reform projects and defunct irrigation schemes in the former homelands, the Department has introduced two strategic interventions: Strategic land acquisitions and the Recapitalisation and Development Programme. The objectives are to:

- increase production;
- acquire strategically located land and land above the prescribed ceilings in a given district
- guarantee food security;
- graduate small farmers into commercial farmers; and
- create employment opportunities within the agricultural sector.

Strategic land acquisitions

If the department wants to acquire land rapidly and cost effectively for the land reform than it has managed to do so far, it has to explore alternative measures or mechanisms to those it has relied upon up to now. These would have to deal with the issue of affordability of land reform, deracialisation of the rural economy for shared and sustained growth; democratic and equitable land allocation and use across gender, race and class; and strict production discipline for guaranteed national food security.

Acquisition of land would also be made possible through the categorisation of land linked to agro-climatic conditions and the land's productive capabilities:

[57] Food and Agriculture Organisation, 2005. *The State of Food Insecurity in the World*, [available online: http://fao.org].

[58] Ibid.

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The categories for these ranges will need to be scientifically determined but can be categorised as follows:

- Large scale commercial (game farming, cropping, livestock e.g. beef and dairy);
- Medium scale commercial;
- Small scale commercial; and
- Homestead.

- **Homestead**

The first category comprises of a large majority of landless poor who need land for shelter and some land for household food production. This group includes approximately 2,8 million people who live on commercial farm land without any security of tenure, landless poor who live in and around rural small towns without meaningful incomes and people from over-crowded former homelands. These land needs can be met through the land redistribution programme by providing small units of land to accommodate their specific needs. They are not regarded as farmers but require land for shelter, ploughing and grazing to meet their basic household needs. For estimation purposes only, it is assumed that the target for land reform is set at providing 1 000 000 such beneficiary households with land per household, appropriate for the geographical area, (inclusive of non-exclusive grazing) with which to engage in subsistence production (estimated between 1.5 and 7 hectares in an area where there is sufficient rainfall for dry land cultivation and the soil is of sufficient quality to be able to grow staple foods).

- **Small scale commercial**

The second category comprises of a group commonly known as small scale farmers with proven ability and commitment to farm but do not have the means to expand as they do not have enough land, access to finance and the required technical support. This category is largely found in communal areas and commercial farms. In fact, many commodity organisations affiliated to the organized agricultural formations almost all boast having thousands of this category as part of their membership. The new approach will purposefully target this category as they have a better chance of success. It is in this area where the Department aims to intensify production discipline, skills development, mentorship and job creation as conditions for government support. The success of the Department with this key intervention should, in the medium to long term, be measured on the number of farmers in this category who graduate to the commercial level.

- **Medium scale commercial**

There is a need to encourage the expansion of small-scale commercial producers-those who have already been farming commercially at a small scale and with aptitude to expand, but are constrained by land and other resources. The target is to create opportunities for expansion for **6 500** beneficiaries. For estimation purposes only, the appropriate land size may be set at 800 hectares per farmer. In more arid areas, such as most of the Northern Cape, the extent of land would need to be adjusted accordingly.

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- **Large scale commercial**

The fourth category consists of relatively established black farmers who are already entrepreneurs. They largely achieved their success despite limited or lack of government support. Together with the second category, with well structured and coordinated support, they stand a fighting chance to compliment the country's ageing cadre of established commercial farmers in providing food security for the country. Critical to their sustained competitiveness and profitability, will be a well structured support package combining risk equity and government support. Through this approach, despite fiscal constraints, the Department will measure the successful implementation of land reform through the number of jobs created, increased incomes and a critical mass of successful farmers who will contribute to the gross domestic product (GDP) and balance of payments.

9.3 Recapitalisation and Development Programme (RADP)

Before the global economic recession, South Africa had enjoyed a sustained period of economic growth over a decade. During the same period, however, millions of people continued to live in poverty with social grants as their only source of livelihood. Like most developing countries in the world, South Africa has seen the middle-income earners become key drivers in propelling economic growth as they have access to disposable income. On the other hand, today South Africa has approximately 14 million people depending on social grants for a living. Professor Andre Roux of the University of Stellenbosch once described this situation as "a paradox of success".

According to the review of the Agriculture Sector Plan conducted in 2008, agriculture's contribution to the GDP has been declining since the early 1970's. With the escalating prices of input costs worldwide most established commercial farmers in our country, who do not have the benefit of subsidies like their counterparts in Europe and America, have found it hard to keep their operations profitable. There is now a view that South Africa has become a net importer of food as local farmers find it hard to compete with imports from subsidised farmers elsewhere in the world.

The primary focus of land reform up to now has been driven by the goal of achieving equitable land ownership amongst the country's citizens. Where efforts were made to develop post-settlement strategies, there was insufficient capacity within government for implementation. The programme's reliance on the market, as a mechanism to redistribute land, resulted not only in the process being slow and expensive but has also meant that there were hardly any resources left for support to land reform beneficiaries. Achieving the 30% target by 2014 became an end in itself.

Many observers generally associate land reform with failure both from the point of view of its pace and sustainability without examining the root causes of the problem. From the various reviews conducted, both by the state and independent researchers, there is consensus that many land reform projects have failed due mainly to a lack of technical and financial support to the beneficiaries. While there is no known research conducted on the impact of failed land reform projects on food security and farm jobs, the fact that most of the six million hectares of agricultural land acquired through the land reform programme are now out of production has become reason enough for the government to consider introducing the RADP. The Department has set aside 25% of the Department's land acquisition budget for the recapitalisation and development of land reform projects acquired since 1994.

There is no doubt though that there are many black farmers who bought farms with loan finance from different lending institutions, without any state support, who are experiencing the same hardships as land reform beneficiaries. One of the key tasks of the Department going into the future will be to determine the magnitude of the problem in this category and investigate sustainable ways

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to assist them. A question arises as to whether white commercial farmers in financial distress should qualify for the RADP given that the goal of the Programme is to guarantee food security for the country. Any such debate will also have to consider the fact that some of the farmers in the latter category have enjoyed support through various state sponsored schemes such as extended loan repayment periods from institutions such as the Land Bank and the now defunct Agricultural Credit Board (ACB).

The government, as a start, would like to primarily focus on distressed land reform farms. This is important considering the amount of public investment that has gone into this programme since 1994. Recapitalisation and development will have to come with stringent conditions for those who want to benefit from it, if government is to avoid creating a culture of entitlement from unscrupulous individuals who are in it for personal gain. The RADP is underpinned by the following objectives:

- to increase production;
- to guarantee food security;
- to graduate small farmers into commercial farmers;
- to create employment opportunities within the agricultural sector; and
- to establish rural development monitors.

9.3.1 Recapitalisation sub-programme

The recapitalisation sub-programme is the funding element of the RADP. It will be funded partially by the government through grants with conditions attached on a social contract with the beneficiary. Part of the funding will come from risk equity either from a developmental financial institution such as the Land Bank, the Land Reform Credit Facility at KHULA, any other authorised lender or an equity partner who could be an established commercial farmer, agribusiness or any other strategic partner who sees a business opportunity and is willing to take risk and invest in the enterprise. Government will facilitate the transaction and provide legal and other related technical support required by the parties to the transaction, including funding any due diligence exercise that may be required. Creating the necessary policy environment will remain the primary responsibility of government.

9.3.2 Development sub-programme

The development sub-programme will consist of the operational side of the enterprise. Government will ensure, together with a strategic partner and the beneficiary, that there is a proper assessment of the operation and that there is a credible and bankable development plan that provides the desirable outlook towards profitability of the enterprise. The bulk of the public investment will go towards economic infrastructure to make the farms farmable. Good governance will be key in ensuring a strategic balance in the power relations among the partners. The Department of Agriculture, Forestry and Fisheries has a central role to play as a partner, in this sub-programme because it is the custodian of agricultural enterprise and controls extension services, including veterinary services and research and development facilities.

In addition, the Department intends to employ Rural Development Monitors (RDMs) from the communities. The regular monitoring of ongoing projects would help the Department to ensure that

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our projects are impacting on the community positively. The RDMs will be tasked to measure and assess simple parameters which would illustrate the execution quality of the projects, its impact on their communities and the coherence and sustainability of the projects depending on its environment. The establishment of such monitors not only places the responsibility of development in the hands of the communities we are serving but would also aid the Department in its coordination and facilitation functions.

The RDMs will be sourced from:

- unemployed economically active rural people, especially women and youth;
- development activists who enjoy community work;
- rural people who can complete project assessment forms and submit simple reports such as on land use *(identification of fallow land, etc);*
- change agents who are keen to see local economic development and optimal use of natural resources; and
- effective village communicators who can link their villages with development facilitators.

The functions of the RDMs will *inter alia* include:

- Consultation and feedback to the village leadership about their work;
- identifying unproductive farms/land and the owners/ users of the same;
- assessment of land lying fallow/unproductive land and the reasons it could not be made available to other users;
- monitoring use of land, including commonages and communal land, with special focus on production discipline related to livestock, crops and other natural resources.
- supporting the COS and government to identify and prioritise appropriate disaster management interventions to reduce vulnerabilities of their communities to potential future disasters;
- identifying other natural resources/productive assets that are under-utilised (e.g. community gardens, forests, rivers/dams, shearing sheds, dipping tanks, farm stalls, community Thusong centres, etc); and
- compiling reports and submitting these to the DRDLR (district offices as well as the COS/ Municipalities) for processing.

9.4 Strategic Partnerships

The Department is currently undertaking a massive campaign to mobilise all social partners and forging strategic partnerships to ensure that all available capacity in the agricultural sector is galvanised to contribute to the success of this programme. This is being done following a recognition of the magnitude of the task and the capacity constraints of the Department, both material and technical, to undertake the post colonial national reconstruction programme.

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The Department has called for mentors who have extensive farming experience, who are or were successful commercial farmers, active or retired, who may already be working with various commodities and are involved in skills transfer and training to developmental farmers under any of the organised agricultural unions. These mentors shall become strategic partners of the beneficiaries and will be required to enter into fixed agreements with the Department setting out clear and quantifiable deliverables.

The institutional arrangements shall include share equity arrangements and co-management with beneficiaries and the Department. Mentors will be expected to assist with farm assessments, turnaround strategies for distressed farms, preparing farm and business plans, training and skills transfer, and production discipline.

The core principles of the strategic partnerships are:

- Mentorship
- Co-management
- Share-equity.

9.4.1 The Mentorship Programme

Mentorship will become a central element of the programme given the skills gap of land reform beneficiaries. While government and commodity organisations across the agricultural sector have implemented various mentorship programmes over time, there has not been any formal engagement between these two partners to share experience and knowledge on the subject. There is therefore no common approach towards mentorship, resulting in negative perceptions among those who are supposed to benefit from it.

Mentorship in the implementation of the RADP will not be grant driven. In other words, the Department will only fund the expenses of a mentor in the initial stages of the business but will expect that this cost will become one of the fixed costs of the business to ensure that the mentor also takes risk in the business. If the business does not make money, the mentor cannot expect to be paid. Organised agriculture and other strategic partners will be engaged to debate the existing models of mentorship, so that each commodity group could have clear norms and standards for mentorship.

The mentorship programme aims to equip all land reform projects identified under the RADP with training, marketing; finance and networking skills etc to ensure that the identified projects if not all, can start producing as intended and can enter markets and create successful farms and enterprises.

Mentors that will be accredited by the Department are expected to equip all Land Reform beneficiaries whether on small or large-scale farms with the necessary training to run successful enterprises. Different mentors will be assigned different projects in accordance with their different commodity skills and knowledge to impart those skills and knowledge over a number of agreed years to the land reform beneficiaries. This will take place though training and assessments. To realise this, the Department has undertaken a massive campaign to rally and sensitise social organisations.

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The mentor, within an agreed framework, shall impart the following skills to land reform beneficiaries/mentees:

- Technical skills (production, processing, technology)
- Business skills (financial management, entrepreneurship, management, human resource management and deal making)
- Mechanisms for the provision of training (on-off farm training, practical training, institutional training, accreditation
- Financing arrangements.

The mentors will be appointed on a permanent basis for three cycles and will be remunerated accordingly. In the first cycle they will be appointed full time where they will visit the farm on a weekly, monthly or quarterly basis, as agreed upon by the Department of Rural Development and Land Reform and the mentor. In the first cycle, they will be paid a stipend by the Department to cover any costs associated with mentorship.

The second cycle will be the practical cycle, where the beneficiary and mentor will put into practice all lessons learnt to generate funds from the farm so that both can earn a salary. The mentor will then evaluate the beneficiary's progress and then report back to the Department. The mentor will be paid a percentage of any crops/produce sold in that cycle. During the third year, the mentor would have sufficiently trained or equipped the beneficiaries, will have a monitoring role and will visit and interact with the beneficiaries/mentees to evaluate their performance and assist where and when necessary, and the mentor will be paid a percentage of the profits as agreed upon. The mentor will report quarterly to the provincial office of the DRDLR.

9.4.2 Co-management as part of comprehensive rural development

Co-management is a situation in which two or more social actors negotiate, define and guarantee amongst themselves a fair sharing of the management functions, entitlements and responsibilities for a given territory or set of natural resources. Within the DRDLR co-management is seen as being a multidisciplinary practice with various corporate and commercial actors having direct or indirect interests in developing public-private-partnerships with beneficiaries and the state. It takes into consideration social and historical factors to ensure the sustainability of projects.

Co-management covers a range of agreements – formal legal agreements that are politically negotiated and informal rights/pragmatic agreements. Co-management is also seen as a partnership arrangement in which the department, the community of local resource users and external agents (NGOs, academic and research institutions), and other resource stakeholders share the responsibility and authority for the management of resources leading to sustainable socio-economic development (job creation, economic growth, Black Economic Empowerment and transformation). It also addresses the entrepreneurship development i.e. the sourcing of opportunities as well as the participation and beneficiation of all parties but specifically in this case the benefit of the land reform beneficiary. It covers various partnership arrangements and degrees of power sharing and integration of local (informal, traditional and customary) and centralised government systems. The partnerships are pursued, strengthened and redefined at different times in the management process, depending on the existing policy and legal environment, the political support of the Department for community-based initiatives and the capacities of community organisations to become partners. It should be understood that different resources means different rights.

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Co-management requires negotiation, consensus-building and power sharing and recognises knowledge, values and experiences that both parties bring to the table. Co-management is a long-term commitment that requires adequate time and resources if the objectives are to be achieved. It is a process and not an end in itself and in many instances each co-management construction has to be tailor-made to the specific situation.

There are different co-management arrangements that will be pursued:

- **Partnering with farmers**

  There are many established farmers who have co-management or even share cropping arrangements with their neighboring new land owners. This has assisted some land reform beneficiaries to have access to equipment and machinery which they would otherwise not have been able to afford. Some have been able to build up their herd with the support of their experienced neighbours. Most of these arrangements are not formal and therefore created suspicions of exploitation by some beneficiaries. Through this programme, this arrangement will be formalised, with government playing a facilitating and catalytic role. Part of this co-management arrangement can include empowerment and capacity building as an important aspect. Government needs to ensure the necessary commitment and funding is in place including adequate support structures and training facilities to strengthen the partnership.

- **Co-management in nature conservation areas including national parks**

  The transition of South Africa into a participatory democracy in 1994 has led to a number of new policies and laws relevant to natural resource management and the Constitution embraces principles of equitable access to natural resources, sustainable use of resources, access to information and involvement of the public in decision-making processes and management. The National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA) devotes sections to co-management and allows for environmental management co-operation agreements which emphasise the importance of sharing roles and responsibilities between resource users, government and other stakeholders. This then refers to the resolution of natural resource management issues through “co-management” and natural resources refer to renewable resources as components of living ecosystems. It is a management approach in which responsibility for resource management is shared between the Department and resource user groups. It refers to the arrangements whereby local people and their organisations are given responsibility for decision making about access to and use of natural resources, in exchange for assured benefits, through agreements with government authorities. Sustainable local use of natural resources is the reason for setting up co management agreements. The challenge to effective co-management agreements is the management of relations between the parties both contractual and physical. As part of the steps towards successful co-management responsibilities, rights and power relations should be clarified and there should be capacity building of all partners. Co-management requires adequate time and resources and there should be a set criteria for skills transfer and the gradual transition of management, thus ensuring that there is a combination of management between beneficiaries and current management, to the extent that timelines should be set for this transition phase, including training initiatives.

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On 2 May 2007, the erstwhile Minister for Agriculture and Land Affairs, and Minister for Environmental Affairs and Tourism approved and signed an inter-ministerial Memorandum of Agreement (MOA) on land claims in protected areas, which included a restitution process and an operational protocol to be followed for the settlement of land claims against protected areas. This agreement gave effect to the Cabinet decision that it is feasible to restore land that has been proclaimed as protected areas, without physical occupation by restitution beneficiaries. The MOA sets principles that must be followed when dealing with claims in protected areas, with a number of clauses that have particular relevance to co-management. The National Co-management Framework presents the models of co-management of protected areas that have been restored to persons or communities in terms of the Restitution Act and expands on the associated benefits/beneficiation. It attempts to draw on the work and experience of a range of different conservation agencies in settling land claims and negotiating other co-management agreements.

There are three categories of co-management proposed in terms of the framework:

Full co-management: where the compensation for no physical occupation takes the form of socio-economic beneficiation and participation in co-management. This should be applied in areas where beneficiation is viable and possible.

Lease: where the state leases the land from the land claimants. This should be applied where few (if any) socio-economic opportunities exist and would result in inadequate compensation for loss of beneficial occupation. Treasury approval is required for this category of co-management. A "community levy" could be levied on all visitors and be channeled into a community trust fund to finance future community development projects. This could be used as a basis to determine the lease fee. Further work is needed on the determination of a formula for the lease fee.

Part co-management/Part Lease: where a combination of co-management and lease are applied. This would be applied on the basis of the socio-economic opportunities.

These categories should be viewed as a continuum, rather than discrete models, with the circumstances of each protected area taken into account when defining the co-management model.

- **Co management in municipal commonage areas**

The DRDLR will continue to partner with local government to ensure social and economic development in relation to sustainable commonage development and management. Municipal commonage refers to land that is legally designated for the use of the local population and is most often used for agricultural purposes in order to supplement incomes and enhance food security. When there is active involvement from the municipality and Department within a regulatory framework there is a greater chance of success of sustainable commonage development. Commonage rights allocations ensure sound commonage management and security of livelihoods. Rights and regulations are drafted as part of the commonage management contract. Once these contracts are signed between the Department, the municipality and the individual there is a better understanding of the roles and responsibilities. It should be noted that contracts and agreements would be between individuals and the municipality and the Department rather than a group/municipality/Department contract. In cases where the agreements have been signed with a group, it is open to corruption and the land is often degraded because of misuse. Power struggles often cripple the groups and cause inefficient and unsustainable usage of the commonage. Municipal commonage can be used as an opportunity for local economic development if the processes are transparent and all institutional arrangement and agreements are adhered to.

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9.4.3 Share equity schemes

The experience of the Department with the current equity schemes are that they have not really served the purpose; hence the review on their continued implementation. The Department wants to have a more hands on role in the future to monitor public funds that are invested in such joint ventures. Contrary to the current arrangements where the Department is the only investor, strategic partners would from now on, have to take financial risk in the partnership or joint venture. The form of the risk will depend on each situation, always subject to negotiations and formal agreement among all parties involved.

The *White Paper on South African Land Policy* described share equity schemes as follows: "A partnership with the private sector which represents a well balanced mix of farming systems, flourishing agricultural sector and secure tenure for all stakeholders." Share equity schemes in agriculture are arrangements in which potential/land reform beneficiaries or small scale farmers buy shares in a farming enterprise or an agricultural processing company. It is similar to shared ownership and seeks to contribute towards the achievement of land reform objectives by roping in private sector participation in land reform through equity sharing of the enterprises. In the past the Department focused on an enterprise ownership structure, they were to give labour tenants, farm-dwellers, farm-workers, etc, an opportunity to own land and agricultural enterprises, and by so doing assist to rectify the skewed ownership of land and related assets, particularly high-value commercial agriculture and eco-tourism enterprises. The key elements of these equity schemes are as follows:

- financing models which specifically look at the structure and responsibilities of the shareholding structure;
- secure land tenure especially ownership and leasing agreements;
- management development;
- mentorship;
- beneficiation; and
- off-take agreements and market development.

9.4.4 Institutional support: trading account unit

The Land Reform: Provision of Land and Assistance Act, 1993 (Act No. 126 of 1993) empowers the Minister to establish a trading account through which land, in terms of this Act, can be warehoused. It further empowers the Minister to acquire property (including property linked to the categories approach/ceilings approach), maintain and improve such property. This makes it possible for the Minister to acquire economically viable enterprises, including shares and going concerns, for land reform beneficiaries in order to afford them a reasonable chance to succeed. It is proposed that the trading account combines the use of both pre-emption right and right of first refusal over certain types of land transactions. The Minister could also, in terms of section 10(1)(b)(ii), maintain, plan, develop or improve property or cause such maintenance, planning, development or improvement to be conducted by a person or body with whom or which he or she might have concluded a written agreement for that purpose.

This strategic vehicle will be critical in assisting the Department in its pursuit to deracialise the rural economy and addressing the issues of class and gender. The Department will identify and acquire strategically located interests in land and warehouse them for purposes of land reform along the lines of the Public Investment Corporation. Monopolies in the agricultural value chain will be

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targeted for this purpose. Government will work hand-in-hand with both black and white farmers to achieve this objective.

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PART E: WAY FORWARD

CHAPTER 10: WHAT IS TO BE DONE?

Introduction

The vision of the CRDP is vibrant, equitable and sustainable rural communities. Achieving this aim requires an integrated and phased approach that can systematically transform the political, economic and social systems that keep rural communities in a poverty trap.

Improving livelihoods and services in rural areas as well as addressing the current challenges of the land reform programme cannot be achieved overnight. As discussed in the preceding chapters, a series of policy and legislative measures have been proposed. These measures will follow the process as outlined below.

Policy and legislative environment

The Green Paper will form the basis for the development of policy and legislation which will inform the implementation of rural development and land reform.

Submission of the draft green paper to Cabinet for approval

During the course of 2010-2011, the Green Paper will be submitted to Cabinet for approval.

Submission of the Green Paper to Parliament

Once approved by Cabinet the Green Paper will be submitted to Parliament for consideration and discussion.

Public Consultation

The Green Paper will be gazetted for public comment following Cabinet's approval and will be open for public comments for a period of two calendar months. In addition it will be circulated to all clusters, national departments and spheres of government. It will also be published on the departmental website. Workshops, roadshows and other media will also be utilised to communicate the proposals in the Green Paper. The Green Paper will be published in all the official languages. Interpreters will be used during workshops in rural areas to effectively engage communities in debate around the policy proposals. The Department will enlist the services of Government Communication Information Services to assist in the consultation processes. NGOs/CBOs will also be called upon to assist in this regard.

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Implementation of aspects of the Green Paper

Some aspects of the Green Paper are currently being implemented such as the Comprehensive Rural Development Programme. Evidence gathered from the implementation of the CRDP will also be used to refine the policy framework. Legislation flowing from the Green Paper process such as the Tenure Security Bill and the Land Use Management Bill will be processed simultaneously with the Green Paper.

Refinement of the Green Paper

Following public consultation processes, reports including public comments will be drafted. These reports will then be used to refine the policy proposals in the Green Paper so that the proposals lead to a solid policy framework.

White Paper process: Rural Development and Land Reform

A draft White Paper will be submitted to Cabinet for approval.

Drafting of omnibus legislation and regulations

The Department has been focusing on the development of this Green Paper which has articulated and elaborated on some of the measures and therefore it is intended to culminate in a new land policy framework and an 'omnibus of legislation' which should be the consolidation of all land-related laws, regulations and by-laws. This would include all laws relating to tenure security, redistribution and state land.

Implementation of the White Paper and Omnibus legislation

The White Paper will then be further unpacked and implementation strategies will be developed. The Department has already begun a process of further research and engagements that will lead to the creation of omnibus legislation by 2012 and implementation manuals.

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CHAPTER 11: SUMMARY AND CONCLUSION

The Green Paper on Rural Development and Land Reform confirms the need for continuity and change. The need for continuity stems from 3 founding documents, the Freedom Charter (1955), the Constitution, 1996 and the Reconstruction and Development Programme (RDP). These documents give content and strategic direction to all ANC governments in pursuit of a national democratic society characterised by national unity, non-racialism, non-sexism, democracy and shared prosperity. The Charter is also a fundamental reference to evaluate progress and guide future trajectories on land and agrarian reform in South Africa. As stated earlier, the execution of the national democratic revolution therefore, is both facilitated and constrained by the Constitution. Chapter two of the Constitution provides for a Bill of Rights that has won international praise for the justiciable socio-economic rights it contains but also provides that the state needs to demonstrate that it has adopted a reasonable plan for the realisation of these rights- both in its implementation and planning. Since 1994, the ANC-led governments put into place several strategies, programmes and legislation (as outlined in Chapter 1) as part of its reasonable plan to deal with rural poverty and inequality; and these provided some level of success but faced critical challenges in terms of the implementation and joint planning of these programmes and strategies.

So why do we need to change? Firstly, the realities of apartheid geography still persist (as explained in Chapter 2). The apartheid system created three kinds of spaces in South Africa, each with its own political, social and economic systems: the major urban areas; the commercial farming regions and associated small towns and the so-called homelands. This had far-reaching political and social implications that reverberate within rural society today. Low incomes combined with low levels of employment leave rural households heavily dependent on government grants and remittances by family members working in urban areas and white commercial farms.

Secondly, key drivers of change such as the Land Summit recommendations, the 2007 recommendations by the panel of experts regarding land ownership by foreigners, the ANC (Polokwane) 52nd National Conference Resolutions in 2007, the 2009 Election Manifesto of the ANC, the Medium Term Strategic Framework (MTSF), international obligations, the New Growth Path and the Green Economy have made strategic proposals that have yet to be fully realised. The Land Summit, for example, sought to affirm several issues which government and other stakeholders had begun to flag as areas needing a rethink by both policy makers and implementers of land and agrarian reform. These areas included, *inter alia*, the need for accelerated and sustainable land reform, support for small-scale agriculture and strategic partnerships, in which government, landless people, farming communities and other components of civil society act together for sustainable land and agrarian reform.

Finally, the current Administration, following its predecessors, is guiding South Africa to become a developmental state. A developmental state is therefore interested in measureable and sustainable results and it acknowledges that while government grants are critical for alleviating poverty, they can never fully compensate for the lack of sustainable economic activities. A developmental state is also committed to the distribution of social and economic benefits to all its citizens, including the distribution of agricultural land in such a way that it contributes to the incomes of black South Africans who wish to earn a living from farming, without creating significant adverse consequences to the total level of agricultural production. It is for this reason that the land reform programme and rural development programmes will continue, albeit in a changed form so that we unite all South Africans and eradicate the legacy of apartheid in all its forms.

The rural development mandate in its changed form flows directly from the resolutions taken at the 52nd Conference of the ANC held in Polokwane in 2007. The CRDP is proposed as the key

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programme that will be utilised to give effect to this mandate. It is aimed at being an effective response at poverty and food insecurity by implementing development initiatives that address the needs of the person, household and community to create vibrant, equitable and sustainable communities. The objectives of the CRDP will be achieved through a broad-based agrarian transformation strategy that focuses on development facilitation, spatial analyses and planning as well as rural infrastructure development. Central to the CRDP is a job creation strategy that will be linked to infrastructure development on the one hand and on the other the establishment of rural enterprises and agro-processing initiatives. The job creation model is to be implemented initially with young people in rural areas and is later to be expanded as the rural economy and enterprises grow. Successful implementation of the programme will have a significant impact in improving access to rural services as well as economic, social and ICT infrastructure. It is also envisaged that the programme will impact positively on unemployment, HIV infections, crime and social grant dependency in rural areas.

Given the multiplicity of initiatives needed to develop rural spaces in the country, a well coordinated multi-sectoral approach is required and the proposed CRDP management system is intended to provide the framework for this coordination and alignment. Development initiatives within the CRDP concept need to ensure that communities are central to their own development and the management system proposes specific institutions where communities participate in, plan and monitor their own development. The establishment of the different components of the management system requires significant human and financial resources across the three spheres of government and the private sector. In addition, addressing the current infrastructure backlogs within rural areas would have significant budgetary implications that cannot be addressed by government alone but also requires substantial investment by the private sector. In bringing effective solutions to rural areas, it would be imperative to ensure that the state has sufficient research capacity to develop innovative and cost-effective models. To enhance the capacity of the state as well as improve skills levels of rural youth, a NARYSEC is being established. The essence of the NARYSEC is to instill discipline and regenerate an appreciation of culture and moral values by ensuring that rural youth have an in-depth understanding of their community and their development needs in order for them to participate in developing effective solutions.

Land reform remains a fundamental policy of government and therefore forms an integral part of the agrarian transformation strategy. The measures proposed in Chapter 7 are informed by an in-depth analysis of the consequences of previous policies as well as comparable studies in other countries.

The principles that underpin this new approach towards sustainable land reform are:

- Deracialisation of the rural economy for shared and sustained growth;
- democratic and equitable land allocation and use across gender, race and class; and
- strict production discipline for guaranteed national food security.

These principles are incorporated into a three-tier tenure system with the following key features:

- State and Public land: under leasehold;
- private land: freehold with limited extent; and
- foreign ownership with precarious tenure.

In addition, the magnitude of the task to unravel the chaotic land administration systems to bring about order, social cohesion and development in the communal areas will require special focus by the democratic state and dedicated and well-resourced institutional support. In dealing with this issue it is important to obtain resolution on the issues of land management in communal areas especially in terms of balancing the roles of traditional institutions, communities and municipal

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authorities. To improve administration of land in support of particularly restituted communal land, it will be important to review the Communal Property Associations Act, 1996 (Act No. 28 of 1996).

A Land Management Commission is proposed to support the implementation of the 3-tier tenure system through the following functions: advisory, coordination, regulatory, auditing and as a point of reference. Its powers will be as follows:

- the power to subpoena anyone and any entity, private or public, to appear before it, and answer any question relating to their landholding or land interest;
- the power to enquire about any legitimate land question, of its own initiative or at the instance of interested parties;
- the power to verify and/or validate/invalidate individual or corporate title deeds;
- the power to demand a declaration of any landholding, with all the necessary documentation relevant to such a declaration; and
- the power to grant amnesty and/or to cause prosecution, whichever the case might be or at its discretion.

Two approaches are also proposed to reduce the costs of land acquisition and thus expand the amount of land acquired for land reform: multi-tier pricing regime and a new valuation regime. In additional legislative and system changes would need to be made to the existing cadastre system to align it with the proposed 3 tier system.

Restitution will also remain an important policy of the government; however the future approach to restitution must be developmental in nature and will include the following:

- alignment with the principles of the CRDP;
- innovation in settlement models;
- social and administrative solutions; and
- an emphasis on the principle of equitable redress.

The Recapitalisation and Development Programme is a strategic land reform intervention aimed at improving national food security. The implementation model underlying the programme is based on the creation of partnerships and the key elements of these partnerships are mentorship, share equity and co-management.

In finding solutions it is imperative to take cognisance of the implications that land reform in general will have on government resources, both human and financial.

In conclusion, bearing in mind the inherited historical challenges linked to both land reform and rural development, it remains doubtful that the current structure of the DRDLR can effectively respond to its current mandate. The Green Paper process therefore offers an opportunity to aptly reconfigure the Department to respond to its current challenges and new mandate.

The renewed interest in rural areas confirms the opportunities inherent in rural areas. It also confirms that rural people can contribute more to their own prosperity and to national and global

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growth in the future than they have been able to do in the past. The current Administration is committed to addressing rural poverty, land reform and enhancing productivity. Finally, it is hoped that rural people, one day, cry because of all the beautiful things they will be experiencing in the countryside!

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