

THE NEED FOR SETTLEMENT SUPPORT IN LAND REFORM PROJECTS:  
FOCUS ON SUSTAINABLE DEVELOPMENT

by

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## **DECLARATION**

I declare that The need for settlement support in Land Reform Projects: Focus on sustainable development is my own work and that all the sources that I have used or quoted have been indicated and acknowledged by means of complete references.

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Signed: L Rungasamy

## **ABSTRACT**

**South Africa, emerging from the yoke of colonialism and imperialism embarked on an ambitious land reform programme during the 1990's. It was anticipated that land reform would take place effectively and sustainably.**

**However, evidence to date revealed that land reform has been a failure and the cause thereof can be attributed to the lack of post settlement support.**

**The focus of the research was to find out whether post-settlement support is the reason behind successful projects and if so to highlight the necessity of post-settlement support in land reform projects.**

**The methodology used was through review of literature, legislations and policies on land reform and analysis of case studies.**

**Outcome of the research indicates an intricate relationship between land reform and post-settlement support. The transfer of land to land reform beneficiaries must go hand in hand with the effective provision of post-settlement support for projects to be success and sustainable.**

**KEY PHRASES: land reform, post settlement support, Department of Land Affairs, sustainable development, land restitution, land redistribution, projects, failure, land dispossessions, South Africa.**

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ALRA	Aboriginal Land Rights (Northern Territory) Act
ANC	African National Congress
CASE	Community Agency for Social Enquiry
CASP	Comprehensive Agricultural Support Programme
Constitution	Constitution of the Republic of South Africa, Act 108 of 1996, as amended
CPIs	Communal Property Institutions
CRDP	Comprehensive Rural Development Programme
CRLR	Commission on Restitution of Land Rights
DEAT	Department of Environmental Affairs and Tourism
DLA	Department of Land Affairs
DME	Department of Minerals and Energy
DoA	National or provincial Department of Agriculture
DPLG	Department of Provincial and Local Government
DPW	Department of Public Works
DWAF	Department of Water Affairs and Forestry
ESAT	Environmental and Sustainability Assessment Tool

FAO	Food and Agricultural Organisation of the United Nations
FSRDA	Free State Rural Development Agency
FSS	Farmer Settlement Support
IDP	integrated development plan
ILC	Indigenous Land Corporation
ISRDP	Integrated Sustainable Rural Development Programme
ISRDS	Integrated Sustainable Rural Development Strategy
LCC	Land Claims Court
LARP	Land and Agrarian Reform Programme
LRAD	Land Redistribution for Agricultural Development
M&E	monitoring and evaluation
MEC	Member of the [Provincial] Executive Council [a provincial minister]
MST	Movimento dos Trabalhadores Rurais Sem Terra [Brazil]
NDA	National Department of Agriculture
NEMA	National Environmental Management Act 107 of 1998, as amended
NTA	Native Title Act
PBC	Prescribed Bodies Corporate
PDoA	Provincial Department of Agriculture
PLAAS	Programme for Land and Agrarian Studies, University of the Western Cape
RID	Rural Infrastructure Development
RDP	Reconstruction and Development Programme
RLCC	Regional Land Claims Commission
SADC	Southern African Development Community
SANT	South African Native Trust
SLAG	Settlement/Land Acquisition Grant
NGO	Non Governmental Organisations
NP	National party
NNTT	National Native Title Tribunal
STRIF	Social Technical, Rural Livelihoods and Institutional Facilitation













# CHAPTER ONE

## INTRODUCTION

*A serious shortcoming in the land programme is the weakness of after-settlement support and the consequent failure of many transfers to result in sustainable use of the land, impacting on the country's overall agricultural productive capacity.*<sup>1</sup>

### 1 1 INTRODUCTION

South Africa embarked on an ambitious land reform process during the 1990s.<sup>2</sup> The African National Congress<sup>3</sup> through the *Reconstruction and Development Programme*<sup>4</sup> proposed that the land reform programme would be implemented in an effective manner.<sup>5</sup> In the *White Paper on South African Land Policy*<sup>6</sup> it was anticipated that through land reform, land would be distributed more equitably, poverty would be eradicated and the overall quality of life of the beneficiaries would improve in a sustainable way, in both the medium and the long term.

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<sup>1</sup> *Towards a Fifteen Year Review Synthesis Report* (2008) <http://www.thepresidency.gov.za/pebble.asp?relid=1135> 29. Accessed on 10 January 2010. See also Du Plessis W, Pienaar J and Olivier N "Land Matters 2008(2)" 2008 2 *SA Public Law* 103-104.

<sup>2</sup> See generally Visser D and Roux T "Giving Back the Country: South Africa's Restitution of Land Rights Act, 1994 in Context" in Rwelamira M R and Werle G (eds) *Confronting Past Injustices: Approaches to Amnesty, Punishment, Reparation and Restitution in South Africa and Germany* Butterworths (1996) 89 -111; Murphy J "The Restitution of Land after Apartheid: The Constitutional and Legislative Framework" in Rwelamira M R and Werle G (eds) *Confronting Past Injustices: Approaches to Amnesty, Punishment, Reparation and Restitution in South Africa and Germany* Butterworths (1996) 113-132; Van der Merwe C G and Pienaar JM "Land Reform in South Africa" in Jackson P and Wilde D C *The Reform of Property Law* (1997) 334-380; Carey Miller D L "The Reform of South African Land Law in its Roman-Dutch Context – New Wine?" in Jackson P and Wilde D C *Property Law: Current Issues and Debates* Ashgate (1999) 281-306; Carey Miller D L *Land Title in South Africa* Juta (2000) 241-551; Badenhorst P J, Pienaar J and Mostert H *Silberberg and Schoeman's The Law of Property* Butterworths (5ed 2006) 585-665, Mostert H, Pienaar J and Van Wyk J "Land" in Joubert WA (ed) *The Law of South Africa* (2ed 2010) vol 14 pars 108-175.

<sup>3</sup> Hereafter referred to as the "ANC".

<sup>4</sup> Hereafter referred to as the "RDP".

<sup>5</sup> African National Congress *The Reconstruction and Development Programme: A Policy Framework* Umanyano Publications (1994) 20-21.

<sup>6</sup> Department of Land Affairs Government Printer (1997) 5.

The land reform programme rests on three pillars, namely land restitution, land tenure reform and land redistribution.<sup>7</sup> Through these programmes, the Government set itself the target of delivering 30% of commercial agricultural land by 2015 (about 25 million hectares).<sup>8</sup> The main objectives of the above three programmes were to address the pattern of racially skewed land ownership by making agricultural land more accessible to the previously disadvantaged, to provide security of tenure of land rights, to restore rights in land to those who were previously dispossessed in terms of racial laws or practices and to those who never had rights to possession such as women. It was envisaged that all of these had to be done in a manner that would promote sustainable development through joint effort by government, beneficiaries and stakeholders making use of available resources.<sup>9</sup>

Now, some sixteen years later the success or not of that programme must be judged.

While it has been stated that there is agreement across the political and social spectrum that the state's programme of land reform is in severe difficulties,<sup>10</sup> in

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<sup>7</sup> Mostert H, Pienaar J and Van Wyk J "Land" in Joubert WA (ed) *The Law of South Africa* (2ed 2010) vol 14 par 108.

<sup>8</sup> African National Congress *The Reconstruction and Development Programme: A Policy Framework* Johannesburg Umanyano Publications (2004) par 2.4.14. See also Didiza A T "Land and Agrarian Reform in South Africa: 1994-2006". Presentation at the *International Conference on Agrarian Reform and Rural Development* Brazil (March 2006). There is some confusion about this target, on two counts. While the term used in the RDP was 'agricultural land' – which could be taken to mean all potentially arable and grazing land – government spokespersons and key policy documents now commonly refer to 30 per cent of 'commercial agricultural land', defined as 'white-owned agricultural farmland', or 'commercial farmland formerly owned by whites'. Secondly, the term 'commercial agricultural land' suggests that the delivery of state land to black owners should not be regarded as contributing to the 30 per cent goal. However, key government spokespersons routinely include the delivery of state land when talking about land reform delivery. See Thomas G Presentation to the Parliamentary Portfolio Committee on Agriculture and Land Affairs *Department Strategic Plan Briefing 2005-2010* 15 March 2005. See also Ministry for Agriculture and Land Affairs *Land Redistribution for Agricultural Development: A Sub-programme of the Land Redistribution Programme* <http://land.pwv.gov.za/redistribution/irad.htm>; Walker C *Landmarked: Land Claims and Land Restitution in South Africa* Jacana (2008) 200.

<sup>9</sup> See generally Pienaar J "Land Reform and Sustainable Development – a Marriage of Necessity" 2004 *Obiter* 269-293.

<sup>10</sup> Lahiff E *Land Reform in South Africa: A Status Report 2008* PLAAS University of the Western Cape (2008) 1; Andrews M "Struggling for a Life in Dignity" in Moyo S "The Land Question in Southern Africa: A Comparative Review" in Ntsebeza L and Hall R (eds) *The Land Question: The Challenge of Transformation and Redistribution* HSRC Press (2007) 204 questions whether a market-led land reform can ever create an environment where the injustices of the past can be reversed.

general it can be said that the land reform programme has had mixed success.<sup>11</sup> While a large number of hectares of land have been transferred in terms of the redistribution process and 95 per cent of land restitution claims<sup>12</sup> have been settled, a number of areas of concern remain. One of the most important of these is the lack of post-settlement support which has resulted in the failure of some of the land reform projects.<sup>13</sup> The government itself has admitted that one of the shortcomings of the land reform programme is the lack of post-settlement support.<sup>14</sup> In both *Baphiring Community v Uys and Others*<sup>15</sup> and *In re Kranspoort Community*<sup>16</sup> the Land Claims Court added its voice to this general concern.

Post-settlement support must be viewed in the context of settlement support in general. Settlement support in land reform depends mostly on the form, purpose and prioritisation given to land reform in general and the post-acquisition phase in particular.

Post-settlement support can be provided in the form of financial support, education, training and capacity building, establishment and maintenance of

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<sup>11</sup> Limpopo Local Economic Development (LED) Partnership: "Reducing Poverty through Pro-Poor Economic Growth" on line: <http://www.limpopoled.com/papers.htm>. Accessed on 18 January 2011. Also see Du Plessis W, Olivier and Pienaar J "Land Matters: New Developments 2004(1)" 2004 *SA Public Law* 213; Pienaar J, Du Plessis W and Olivier N "Land matters: 2006(2)" 2006 *SA Public Law* 414-418; Du Plessis W, Pienaar J and Olivier N "Land Affairs and Rural Development: Agriculture 2009(1)" 2009 *SA Public Law* 151-161; Du Plessis W, Pienaar J and Olivier N "Land Affairs and Rural Development: Agriculture 2009(2)" 2009 *SA Public Law* 588-591.

<sup>12</sup> South Africa *Department of Rural Development and Reform Annual Report 2009-2010* Pretoria Government Printer. See Pienaar K "Bickering and Backlogs still dog Land Reform" <http://www.timeslive.co.za/opinion/letters/article174316.ece> Accessed on 18 January 2011. See also Parliamentary Monitoring Group "Land Claims and Restitution Projects" briefing by the Department of Rural Development and Land Reform <http://www.pmg.org.za/report/20100217-land-claims-and-restitution-projects-briefing-department-rural-development>. Accessed on 10 January 2010. See also generally Walker C *Landmarked: Land Claims and Land Restitution in South Africa* Jacana (2008); *Land Reform in South Africa: Constructive Aims and Positive Outcomes – Reflecting on Experiences on the Way to 2014* Conference held on 26-27 August 2008 (Seminar Report no 20) KAS (2009); *Land Reform in South Africa: A 21<sup>st</sup> Century Perspective* Centre for Development and Enterprise Research Report no 14 (2005) 19-20,.

<sup>13</sup> De Villiers B *Land Reform – A Commentary* KAS (2008) 8; Du Plessis W, Olivier and Pienaar J "Land Matters: New Developments 2004(1)" 2004 *SA Public Law* 213; Du Plessis W, Olivier N and Pienaar J "Land Matters: New Developments 2005(2)" 2005 *SA Public Law* 439; Pienaar J, Du Plessis W and Olivier N "Land Matters: 2006(2)" 2006 *SA Public Law* 414-418; Du Plessis W, Pienaar J and Olivier N "Land Affairs and Rural Development: Agriculture 2009(1)" 2009 *SA Public Law* 151-161; Du Plessis W, Pienaar J and Olivier N "Land Affairs and Rural Development: Agriculture 2009(2)" 2009 *SA Public Law* 588-591.

<sup>14</sup> See the quote above n 1.

<sup>15</sup> 2010 (3) SA 130 (LCC); [2010] 3 All SA 353 (LCC) pars 15, 26- 27.

<sup>16</sup> 2000 2 SA 124 (LCC).

physical infrastructure (especially in rural areas) as well as expertise in agricultural assistance.<sup>17</sup> In the *In re Kranspoort Community*<sup>18</sup> case the court listed some problems generally experienced in the implementation of restoration orders. These include a lack of coordination between the processes and the planning, budgeting and development programmes of government, the absence of proper planning before the settlement of land, disputes over the entitlement to membership of a community and a shortage of skills and resources needed to develop the land.

Within the context of the South African land reform programme, post-settlement support refers specifically to the government's function and responsibility in assisting beneficiaries of the land reform programme after they have received land.<sup>19</sup> The categories of the land reform programme that are directly applicable are the land restitution programme and the land redistribution programme.

## 1 2 THE PROBLEM

Section 25(1-9) of the Constitution of the Republic of South Africa 1996<sup>20</sup> infers that the erstwhile national Department of Land Affairs<sup>21</sup> has, in terms of land reform, a responsibility and also a mandate to provide access to land and to extend land rights and ownership in urban and rural South Africa. The emphasis, therefore, has to be on service delivery to previously disadvantaged individuals and communities which lost land, or were denied access to land, as a result of the institutionalization of the previous government's policy of separate development.<sup>22</sup>

The DLA's responsibility, in terms of its specialist function, is not only restricted to land redistribution and restitution. There is an intricate relationship between the redistribution of land and post-settlement support as part of land reform. In the

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<sup>17</sup> Dekker H A L *The Invisible Line: Land Reform, Land Tenure Security and Land Registration* Ashgate (2003) 80-81.

<sup>18</sup> 2000 2 SA 124 (LCC) par 107..

<sup>19</sup> Molefe R "Land Claims Face Series of Obstacles" *City Press* 21 September 2004 24.

<sup>20</sup> Hereinafter referred to as the "Constitution".

<sup>21</sup> Hereafter referred to as "DLA". The DLA was replaced by the Department of Rural Development and Land Reform (hereafter referred to as the DRDLR) in 2009. In many instances the DRDLR is still referred to as the DLA where a programme was initiated during its existence.

<sup>22</sup> Xulu B and Maharaj B "Land Restitution during Apartheid's Dying Days 34(2/3) June-September 2004 *Africa Insight* 48-57. The history and the background of land reform will be discussed in detail in chapter 2.

RDP<sup>23</sup> it is stated that government is not only responsible for the redistribution of land but it also has an obligation to empower land reform beneficiaries. The purpose of this empowerment would be to establish an effective support foundation to ensure that sustainable development takes place.

There has been a general focus on the transfer of land by government pursuant to land restitution and land redistribution. More emphasis has been placed on equality and the redress on historical inequalities,<sup>24</sup> and a lesser focus on post-settlement support to the beneficiaries of these transfers. Little or no attention is being given to ensure that there is proper post-settlement support after the restoration of land to ensure sustainable development. The attitude of government is “buy now, train later”.<sup>25</sup>

In an endeavor to address the land need of the landless South Africans, it seems that government has failed to provide proper support to individuals/groups/communities (beneficiaries) post transfer of the land into their names. Despite land reform beneficiaries having received and /or being resettled on land, the majority of them continue to remain in abject poverty, are unemployed and may even be in a worse off position than before. As a result the DLA has, since 1994, been severely criticised by beneficiaries, land owners, other government departments and various non governmental organisations<sup>26</sup> for its allegedly unsupported allocation of land through the various land reform programmes.<sup>27</sup>

The failure of land reform projects has been attributed to many factors, but the most widely cited are inadequate or inappropriate planning, a general lack of capital and skills among intended beneficiaries, a lack of post-settlement support from state agencies, most notably local municipalities and provincial departments

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<sup>23</sup>African National Congress *The Reconstruction and Development Programme: a Policy Framework* Umanyano Publications (1994) 20-21.

<sup>24</sup> May J *et al* “Monitoring the Impact of Land Reform on the Quality of Life: A South African Case Study” 58 (2002) *Social Indicators Research* 294.

<sup>25</sup> De Villiers B *Land Reform – A Commentary* KAS (2008) 8.

<sup>26</sup> Hereafter referred to as “NGOs.”

<sup>27</sup>Roodt M J “Land restitution in South Africa” in Leckie S (ed) *Returning Home: Housing and Property, Restitution, Rights of Refugees and Displaced Persons* Transnational (2003) 263.

of agriculture as well as poor dynamics within beneficiary groups.<sup>28</sup> A lack of access to funding and markets is also another reason, since a few beneficiaries were almost on the verge of losing their land because of not being able to service debts taken by them to finance projects undertaken on the land such as agriculture or game farming.

Land reform can only be successfully performed if it is accompanied by “supportive flanking policies”,<sup>29</sup> meaning that there must be the provision of post-settlement support to land reform beneficiaries which as stated above, can be in the form of financial support, education, training and capacity building, establishment and maintenance of physical infrastructure (especially in rural areas) as well as expertise in agricultural assistance.

The Minister for Agriculture and Land Affairs is quoted as stating that “post-settlement support has been identified as essential for the sustainability of the land reform program.”<sup>30</sup> Consequently the role of post-settlement support is central in ensuring sustainable development in land reform projects. Previous experience has indicated that there needs to be a concerted joint effort on the part of all government departments, key role players, strategic partners, beneficiaries and civil society in order to achieve an expeditious land reform process that realizes its broader objective of poverty reduction and economic and social upliftment.

### **1 3 AIM OF RESEARCH**

The aim of the research is, in brief, to examine the situation with regard to post-settlement support in South Africa. It is restricted to a discussion of the land restitution and land redistribution programmes because it is mainly in these two programmes where land is transferred to land reform beneficiaries.

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<sup>28</sup> Lahiff E *Land Reform in South Africa: A Status Report 2008* Programme for Land and Agrarian Studies (PLAAS) University of the Western Cape (2008) 6.

<sup>29</sup> Dekker H A L *The Invisible Line: Land Reform, Land Tenure Security and Land Registration* Ashgate (2003) 80.

<sup>30</sup> Appel M “Support is vital for Land Reform” Programme *BuaNews* (Tshwane) 18 February 2008 Posted to the web 19 February 2008 online <http://www.buanews.gov.za/>, Pretoria.

Many years have passed since the attainment of democracy. Yet, the underlying problems of landlessness and insecure land rights and poverty remain largely unresolved.<sup>31</sup> The objectives of the land reform policy were quite clear in that it intended to address the land need of those previously disadvantaged, eradicate poverty and promote economic development and growth to improve the quality of life for all. It was envisaged that by receiving access to land, beneficiaries would be able to economically empower themselves. Redistribution of land is widely seen as having the potential to significantly improve the livelihoods of the rural poor and to contribute towards economic development.

From my working experience as an official of the Regional Land Claims Commission,<sup>32</sup> it is evident that the current approach of government in implementing the land reform programme is not effective. My motivation to undertake such a study evolved through my experience with land reform projects and interactions with land reform beneficiaries, current land owners and members of agricultural unions. The majority of the claimants are still poor and current land owners and members of agricultural unions constantly complain about land reform being failure as most farms handed over to beneficiaries have become barren or have been vandalized.

To date 50% of South Africa's land reform projects are said to be a failure,<sup>33</sup> mainly as a result of the lack of post-settlement support. Consequently, this study will focus on post-settlement support in land reform projects and the consequences of the presence or absence thereof. The aim is to see whether post-settlement support has played a role in successful projects and if so to highlight the necessity of the provision of post-settlement support to all beneficiaries of the land reform programme to ensure that there is sustainability.

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<sup>31</sup> Deininger K and May J *Can there be Growth with Equity? An Initial Assessment of Land Reform in South Africa* (Policy research working paper No 2451 World Bank (2000). See Lipton M "Rural Reforms and Rural Livelihood: The Context of International Experience" in Lipton M and De Klerk M (eds) *Land, Labour and Livelihoods in Rural South Africa* Vol 1 Western Cape (1996). See also Van Zyl J *et al Agricultural Land Reform in South Africa: Policies, Markets and Mechanisms* Oxford University Press (1996).

<sup>32</sup> L Rungasamy, Director: Quality Assurance, Regional Land Claims Commission: Free State and Northern Cape (2003-2011).

<sup>33</sup> Williams C *Capital-and Market-access Constraints in Land Reform Projects; Three Case Studies from Mpumalanga* The Rural Action Committee (TRAC) Mpumalanga (2008) 4.

However, an examination of post-settlement support is not possible without an examination of the bigger picture of the imperatives for land reform, its constitutional mandate and the different sub categories of land reform.

This study seeks to determine why the objectives of land reform have not been met especially in relation to the improvement of the quality of lives of land reform beneficiaries. It aims to investigate whether beneficiaries of land reform receive post-settlement support after land has been transferred to them by government and if such support is being provided, to determine the extent and adequacy of thereof in meeting the needs of the beneficiaries. Land reform projects, both those which are successful and those which are unsuccessful will be examined to determine whether the provision or lack of post-settlement support by government has played a role therein in terms of success and sustainable development.

#### **1 4 METHOD**

The output of this dissertation is the study of existing land reform legislation and policies that were undertaken in relation to post-settlement support. Quantitative and qualitative data on land reform projects were also analysed in relation to the presence or absence of post-settlement support. Articles, journals, law reports and books on land and agrarian reform and post-settlement support were also consulted as well as studies conducted by the DLA. The realization that one of the reasons for the failure of the land reform programme is a result of the lack of post-settlement support has come very late in the process. It has really only been during the past few years that this issue has been raised. This has resulted in a dearth of literature directly applicable to the issue.

Chapter 2 is devoted to land reform. It starts off by looking at the historical background and the advent of land reform. A journey will be taken through the history of South Africa, its indigenous inhabitants, colonial rule, the Boer wars, the apartheid policies, forced land dispossessions and eventually the attainment of democracy. This chapter also discusses the procedure and implementation of the



land reform programme in relation to the provision of post-settlement support, its effectiveness or lack thereof.

Chapter 3 of the research discusses the concept of post-settlement support and its relation to land reform. Focus will only be on two of the three pillars of land reform, namely the land restitution and land redistribution programmes.

Chapter 4 is an analysis of the two programmes of land reform in terms of the provision of post-settlement support in achieving the objectives of land reform. There are also case studies of four land reform projects. It will highlight the achievements of the former DLA to date as far as the provision of post-settlement support and the achievement of the objectives of land reform are concerned. A comparison will be made between land restitution and land redistribution case studies. An analysis of the constraints in each of the projects will be assessed and ameliorated.

Chapter 5 delves into the international experiences in post-settlement support in countries such as Zimbabwe, Australia and Brazil. These countries were chosen because of the similarities in the land reform approach being market related and also because DLA has also taken study tours to Brazil to learn further about its land reform strategies. The positive learning experiences from international land reform will be identified and implementation strategies in South African land reform projects identified.

Lastly chapter 6 includes a comprehensive framework for achieving a sustainable post-settlement support system in the context of rural development linked to land and agrarian reform and food security.

## **1 5 CONCLUSION**

Land reform in South Africa, whether it takes place through the land redistribution or land restitution, has posed tremendous challenges to both past and present governments, not only in terms of the way the land is redistributed but more

importantly the manner in which the claims are dealt with from inception, until settlement and post transfer. The manner in which it has been implemented has been received with a great deal of criticism both by the broader civil society and the land reform beneficiaries themselves. Not only is there a concern about the slow pace of delivery as per the targets set in the RDP, but there is also a concern about the quality of the outcomes of the land reform programme. A simple internet search on the media exposure of South African land reform issues reveals overwhelming negative public opinion both at national and international levels.<sup>34</sup>

Due to a lack of post-settlement support in terms of poor planning, poor execution of plans and poor management, many of the projects have become failures.

This study will therefore focus on what is regarded as a successful land reform project, as well as what is regarded as unsuccessful. The focus will also be to find out whether post-settlement support is the reason behind successful projects and if so to highlight the necessity of post-settlement support in land reform projects to ensure that eventually they are successful and sustainable. Redistributive land reform in South Africa is premised on the need to bring about both direct benefits to beneficiaries and indirect benefits to the rural economy.<sup>35</sup> In essence, what needs to be the aim is encapsulated in the following quote:

Provided land reform is correctly implemented, it can contribute to increased efficiency and equity, increased growth and poverty reduction.<sup>36</sup>

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<sup>34</sup> De Jager T "Reflecting on Experiences in Land Reform and Proposals on Alternatives" in *Land Reform in South Africa: Constructive Aims and Positive Outcomes – Reflecting on Experiences on the Way to 2014* Conference Held on 26-27 August 2008 Roode Vallei Country Lodge, Pretoria (Seminar Report No 20) KAS (2009) 1-4.

<sup>35</sup> Hall R "Land Reform in South Africa: Successes, Challenges and Concrete Proposals for the Way Forward" in *Land Reform in South Africa: Constructive Aims and Positive Outcomes – Reflecting on Experiences on the Way to 2014* KAS (2009) 5.

<sup>36</sup> Kirsten J F and Van Zyl J "Approaches and Progress with Land Reform in South Africa " vol 38 (1999) *Agrekon* 326.

## CHAPTER TWO

### LAND REFORM IN SOUTH AFRICA

#### 2 1 INTRODUCTION

Land reform in South Africa was necessitated by the unequal racial distribution of land which occurred first, through the colonial influence and later through the apartheid government. In this regard the following quote is appropriate:

Awaking on Friday morning, June 20, 1913, the South African Native found himself, not actually a slave, but a pariah in the land of his birth.<sup>37</sup>

In 1994 South Africa began the long and difficult process of rebuilding the country post-apartheid. One of the most pressing issues for the ANC government was land reform. In a country facing considerable problems stemming from poverty and unemployment, state-driven land reform was seen as a crucial part of the programme for reconstruction and development in South Africa.

This chapter discusses the background and the history in South Africa that necessitated land reform. While this has been indicated many times before,<sup>38</sup> it is always necessary to recap the most essential elements. Then it seeks to define land reform and why there is a need for post-settlement support in land reform projects in South Africa. This dissertation will only discuss the two land reform programmes, namely restitution and redistribution. Land tenure reform beneficiaries are being included under the redistribution programme in terms of the provision of grants and therefore any matters related to post-settlement support will be covered under the land redistribution programme.

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<sup>37</sup> Plaatjie S T *Native Life in South Africa* PS King (1916) 21.

<sup>38</sup> See Akomaye Yanou M *Dispossession and Access to Land in South Africa: An African Perspective* Langaa RPCIG Cameroon (2009); Feinstein C H *An Economic History of South Africa: Conquest, Discrimination and Development* (2005); Murray C & O'Regan C *No Place to Rest* Oxford University Press (1990); Thwala W D *Historical Basis for Land Reforms in South Africa Backgrounder-Land and Agrarian Reform in South Africa* National Land Committee (2003).

The chapter elaborates further on the procedures and implementation of the land reform programme - whether provisions are made for post-settlement support, whether they are effective and whether they result in sustainable development. Post-settlement support within the context of land reform will be discussed in detail in chapter 3.

## 2 2 HISTORICAL BACKGROUND

The arrival of the first Dutch settlers in South Africa in 1652 marked the beginning of colonialism in South Africa with the expropriation and dispossession of land belonging to the indigenous people.

From 1795 to 1910 (except for a brief period from 1803-1806)<sup>39</sup> the British occupied the Cape and their occupation also extended to Natal which was annexed as a British colony in 1843. During this period the white settlers rapidly moved into the African interior even at the expense of violent encounters or acts of bartering with the aim of appropriating vast tracts of land.

The Khoisan were the first indigenous people to be encountered by the European settlers. The actual relocation and segregation of black people from white people started as early as 1658 when the Khoisan were informed that they could no longer reside in the area west of the Salt and Liesbeck rivers.<sup>40</sup> The 1800's saw the first reserves being proclaimed by the British and the Boer governments. The resultant plight of the Khoisan was described by a colonial magistrate of the time:

Those who used to live contently under chiefs, peacefully supporting themselves by breeding cattle, have mostly all become [...] hunters and robbers, and are scattered everywhere among the mountains.<sup>41</sup>

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<sup>39</sup> *South African History and Stats*. Htm on line: Accessed on 05 June 2009, Huridocs code:5458 1.

<sup>40</sup> Levin R "Land Restitution and Democracy" in Levin R & Weiner D (eds) *No More Tears . . . Struggles for Land in Mpumalanga, South Africa* Africa World Press Inc (1997) 234; Thwala W D "Land and Agrarian Reform in South Africa. *The Negotiated Roots of South African Land Reform*" online <http://www.nlc.co.za/pubs2003/landagrarian> Accessed on 3 February 2011 2.

<sup>41</sup> Our Land...Our Life... Our Future...A land dispossession history, adapted from the text for TCOE exhibition. South African History. On line, viewed 19 February 2010.

The discovery of gold and diamonds in the mid to late 1800s was another turning point in the history of South Africa. It brought tens and thousands of people to the area north of the Cape (Kimberley) for diamonds and to the Witwatersrand area in (what was then) Transvaal to the gold fields. As a result the scramble for land increased as did the greed for access to precious minerals.<sup>42</sup>

The indigenous people were subjected to further land dispossessions as the white settlers started to usurp land originally occupied by them. Many were forced to become mine workers or farm labourers as they were seen as a source of cheap labour. The rights once enjoyed by the indigenous people and their ancestors who had lived on the land for generations were slowly being eroded. As a result people who were once successful farmers prior to the discovery of minerals were converted into poorly paid wage labourers.<sup>43</sup>

A system of sharecropping and labour tenancy emerged where black people were allowed to work and/or farm on farms owned by white persons. Many blacks also started to migrate to other areas in search of work which resulted in the creation of reserves or communal areas being established whilst others simply started to squat in open areas.

Legislation was promulgated that restricted the residence and movement of Africans/natives (as they were referred to in the acts). They included the Native Locations Act of 1879, the 1894 Glen Grey Act and the Squatter Laws Act 21 of 1895.<sup>44</sup> These statutes were applicable in the Cape Colony, Transvaal and Transkei areas, respectively. They relied on a “one man one plot” policy and also restricted the number of African families to five per white family. Then followed the Native Occupation of Land Act of 1908 (Transvaal) which aimed to reduce the number of black people allowed on white farms.

With the formation of the Union of South Africa in 1910, the South African Party came to power. The Union comprised four provinces: Cape, Natal, Transvaal and

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<sup>42</sup> Meredith M *Diamonds, gold and war: The British, the Boers and the making of South Africa* Jonathan Ball Publishers (2007) 8, 9, 13.

<sup>43</sup> Ntsebeza L and Hall R (eds) *The Land Question: The Challenge of Transformation and Redistribution* HSRC Press (2007) 108.

<sup>44</sup> Carey Miller D L *Land Title in South Africa* Juta (2000) 16.

Free State. 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 various statutes involving land which were drafted and implemented with the intent of segregating the indigenous native population from the white people.

The Natives Land Act of 1913<sup>45</sup> was the first major piece of segregation legislation passed by the Union Parliament and remained a cornerstone of apartheid until the 1990s when it was replaced by the current policy of land reform.<sup>46</sup> It was the first step in formalizing the limitations of the rights of black land ownership.<sup>47</sup> The Act restricted the area of land for lawful black occupation to only seven percent of the total land area in South Africa, which translated into 8, 98 million hectares throughout South Africa.<sup>48</sup> Besides being used as a tool to systematically segregate people according to race, the Act was also used as an instrument to increase the pool of cheap black labour. It turned black people from cash tenants and sharecroppers into labour tenants, thereby further restricting access to land for black people.<sup>49</sup> It is argued that the Act was implemented in an attempt to reduce competition from peasant producers in that it denied them their ability to participate in the economy of the country, and therefore, any social and economic benefits from economic participation.<sup>50</sup>

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<sup>45</sup> Act 27 of 1913 hereafter referred to as the Natives Land Act.

<sup>46</sup> The Natives Land Act <http://en.wikipedia.org/wiki/Native-Land-Act> Accessed on 22 January 2007. See also Leon T "Restoring Ownership in Southern Africa. Land Reform in Southern Africa". Proceedings and conclusions of a conference held in the Democratic Union of Africa Johannesburg 24-26 May 2001 12.

<sup>47</sup> See generally Van der Merwe C G and Pienaar JM "Land Reform in South Africa" in Jackson P and Wilde D C *The Reform of Property Law* (1997) 335-338; Mostert H, Pienaar J and Van Wyk J "Land" in Joubert WA (ed) *The Law of South Africa* Butterworths (2010) vol 14 par 108; Bosman F *Land Reform: A Contextual Analysis* <http://www.fwdeklerk.org.za/download.docs/07%2005%2024%20Grondhervorming%20publikas> (2007) Accessed on 3 February 2011 3; Rugege S "A Right of Access to Land and its Implementation in Southern Africa: A Comparative Study of South Africa and Zimbabwe Land Reform Laws and Programmes 2004 *Law, Democracy and Development* 235.

<sup>48</sup> Surplus Peoples Project *Forced removals in South Africa* (SPP report volume 4) Citadel Press (1983) 29.

<sup>49</sup> Thwala W D *Historical Basis for Land Reforms in South Africa: Background-land and Agrarian Reform in South Africa* National Land Committee (2003) par 5.

<sup>50</sup> Hartley A and Fortheringham R *20 Years in the Land Rights Struggle 1979-1999* Association for Rural Advancement (1996) 14. See also Letsoalo E M *Land Reform in South Africa* Skotaville Publishers (1987) 36; Carey Miller D L *Land Title in South Africa* Juta (2000) 19-26; Van der Merwe

In 1923 the accommodation of black people in separate urban residential areas was provided for through the Natives (Urban Areas) Act.<sup>51</sup> As a result more people were forced to live in smaller areas. The Black (Urban Areas) Consolidation Act<sup>52</sup> was an extension of the Natives Urban Areas Act.

In 1936 the Native Trust and Land Act<sup>53</sup> was passed. It established the South African Native Trust.<sup>54</sup> The SANT was responsible for the purchase and administration of all African reserve areas. It began a process of controlling livestock by dividing arable land and implementing a programme of agricultural-residential planning (referred to as “betterment planning”). The Act resulted in an increase in squatter and informal settlements since its restrictions increased the pressure on land for agricultural and settlement purposes. This in turn led to increased levels of poverty due to the lack of access to land for household food production.<sup>55</sup>

In 1937 the Natives Laws Amendment Act<sup>56</sup> was enacted to prohibit black people from buying land in urban areas.<sup>57</sup> Subsequent land dispossession legislation, settlement planning, forced removals and the Bantustan system contributed to the movement and displacement of an estimated 3, 5 million black people to homelands and black townships in South Africa.<sup>58</sup>

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C G and Pienaar JM “Land Reform in South Africa” in Jackson P and Wilde D C *The Reform of Property Law* (1997) 338-339.

<sup>51</sup> Act 21 of 1923. Carey Miller D L *Land Title in South Africa* Juta (2000) 24.

<sup>52</sup> Act 25 of 1945.

<sup>53</sup> Act 18 of 1936.

<sup>54</sup> Hereafter referred to as the SANT.

<sup>55</sup> Hartley A and Fortheringham R *20 Years in the Land Rights Struggle 1979-1999* Association for Rural Advancement (1996) 16; Carey Miller D L *Land Title in South Africa* Juta (2000) 23-28.

<sup>56</sup> Act 46 of 1937.

<sup>57</sup> Thwala W D *Historical Basis for Land Reforms in South Africa Backgrounder-Land and Agrarian Reform in South Africa* National Land Committee (2003) par 7.

<sup>58</sup> Thwala W D *Land and Agrarian Reform in South Africa. The Negotiated Roots of South African Land Reform* <http://www.nlc.co.za/pubs2003/landagrarian> accessed on 3 February 2011 3.

In 1948 the National Party<sup>59</sup> came into power. The NP introduced further segregation laws and policies in South Africa that affected not only the black people but all persons who were considered as non white. The NP introduced a system of apartheid - translated from Afrikaans; it means 'apartness'. On paper the apartheid policy appeared to call for equal development and freedom of cultural expression, but the way it was implemented made this impossible. Apartheid made laws forced the different racial groups to live separately and develop not only separately, but also grossly unequally.<sup>60</sup> It can be said that the apartheid policy was no different from the segregation policies and legislation passed by the previous governments before the NP came into power. What was different is that apartheid made segregation a part of the law and it started to divide black people according to tribal affinity and located them within demarcated tribal "homelands".<sup>61</sup>

The first Group Areas Act was passed in 1950,<sup>62</sup> and the second in 1966.<sup>63</sup> It provided for the proclamation of segregated areas where only members of particular race groups were allowed to live and it also controlled inter racial property transactions. The majority of the dispossessions and often violent forced removals of black people into reserves took place in terms of this Act.<sup>64</sup> Many families were uprooted only to be relocated in distant areas and towns that were specifically allocated per race group. As a result many hardships were suffered, families were broken up, belongings were lost and no compensation was provided to those affected by the forced removals. The 1966 Group Areas Act was the cause of the imbalance in land distribution and it provisions accrued 102 million

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<sup>59</sup> Hereafter referred to as the NP.

<sup>60</sup> *Background and Policy of Apartheid* <http://www.sahistory.org.za/pages/governance-projects/apartheid-repression/history01.htm>, Accessed 19 February 2010 1.

<sup>61</sup> Letsolo E M *Land Reform in South Africa* Skotaville Publishers (1987) 36.

<sup>62</sup> Act 41 of 1950.

<sup>63</sup> Act 36 of 1966.

<sup>64</sup> See further Dodson A "The Group Areas Act: Changing Patterns of Enforcement" in Murray C and O'Regan C *No Place to Rest* Oxford University Press (1990) 137-161; Van der Merwe C G and Pienaar JM "Land Reform in South Africa" in Jackson P and Wilde D C *The Reform of Property Law* (1997) 339; Bosman F *Land Reform: A Contextual Analysis* <http://www.fwdeklerk.org.za/download.docs/07%2005%2024%20Grondhervorming%20publikas> (2007) Accessed on 3 February 2011 3.



hectares of land to 55 000 commercial white farmers versus the 11.2 million black people restricted to 17 million hectares of land.<sup>65</sup>

The Blacks Abolition of Passes and Co-ordination of Document Act<sup>66</sup>, the Blacks Resettlement Act<sup>67</sup> and the Promotion of Bantu Self-Government Act<sup>68</sup> were all used to control the influx of black people in certain areas. They also contributed to the displacement of the black people and contributed to ensuring that the government of the day met its objective of racial segregation.

Since 1960 over a million black people have been removed from white farms following the strict application of laws against squatting and labour tenancy.<sup>69</sup> Further, between 1948 and 1976, 258 632 black people were removed from “black spots” (defined as land in a white demarcated area where black people were said to be living illegally) and resettled in the homelands.<sup>70</sup> It is estimated that approximately 3, 5 million people lost their land rights and were forcefully removed from their homes or land and relocated to the designated reserves.<sup>71</sup> As a result vast rural slums were created in the homelands. Outside of these areas the pass laws and influx control were extended and harshly enforced.<sup>72</sup>

Eventually the skewed ownership of land along racial lines was clearly apparent in South Africa. 88% of all whites compared to 39% of black South Africans lived in urban areas in the 1980s. It was also estimated that in 1985, whites had a housing surplus of 37,000 units. On the other hand, black South

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<sup>65</sup> De Villiers B *Land Reform: Issues and challenges. A Comparative Overview of Experiences in Zimbabwe, Namibia, South Africa and Australia* KAS (2003) 47. See generally Murray C and O'Regan C *No Place to Rest* Oxford University Press (1990).

<sup>66</sup> Act 67 of 1952.

<sup>67</sup> Act 19 of 1954.

<sup>68</sup> Act 46 of 1959.

<sup>69</sup> Gilliomme H and Schlemmer K (eds) *Up against the Fences: Poverty, Passes and Privilege in South Africa* David Phillip (1985) 50.

<sup>70</sup> Letsoalo E M *Land Reform in South Africa* Skotaville (1987) 48.

<sup>71</sup> Bosman F *Land Reform: A Contextual Analysis* <http://www.fwdeklerk.org.za/download.docs/07%2005%2024%20Grondhervorming%20publikas> (2007) Accessed on 3 February 2011 3. See also Leon T “Restoring Ownership in Southern Africa. Land Reform in Southern Africa”. *Proceedings and Conclusions of a Conference held in the Democratic Union of Africa* Johannesburg (24-26 May 2001) 12; Walker C “The Limits to Land Reform. Rethinking the ‘Land Question’” 2005 vol 31(4) *Journal of Southern African Studies* 807.

<sup>72</sup> *South African History* <http://www.southafrica.co.za/about-south-africa/at-a-glance/history/> 2006-2010 Accessed on 19 February 2010 par 17.

Africans in urban areas and homelands had a backlog of at least 342,000 units and 281,269 units respectively.<sup>73</sup>

The unequal distribution of land led to the unequal distribution of resources amongst the inhabitants of South Africa. Apartheid policies pushed millions of black South Africans into overcrowded and impoverished reserves, homelands and townships. As a result of the above and other related apartheid legislation, there existed landlessness, poverty, illiteracy, unemployment and insecurity of tenure amongst the country's majority population, namely the black people. By the 1990s the land ownership patterns in South Africa were racially skewed with 87 per cent of the land owned by white people and the remaining 13 per cent of land being occupied and utilized by black people. In addition white farmers owned the commercially arable land.<sup>74</sup>

In summary therefore, land tenure in South Africa has a long history of institutionalised racial and gender discrimination and the exclusion of persons, groups and communities from secure land tenure.<sup>75</sup>

### **2 3 THE ADVENT OF LAND REFORM**

"The land shall be shared among those who work it" was one of the rallying cries of the ANC, articulated in the 1950 Freedom Charter.<sup>76</sup> The main objectives of the ANC were the abolition of all racial restrictions on ownership and land uses. This eventually resulted in the passage of land reform legislation that would enable government to acquire and redistribute land. The proposals of the ANC for post-apartheid land reform were contained in a series of documents including the 1988

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<sup>73</sup> Thwala W D *Historical Basis for Land Reforms in South Africa Backgrounder-Land and Agrarian reform in South Africa* National Land Committee (2003) par 9; Van der Walt A "Land Reform in South Africa since 1990. An Overview" 1995 vol 10 *SA Public Law* 1-30; Moyo S *The Land Question and Land Reform in Southern Africa* <http://www.eldis.org/fulltext/moyo3.pdf>. 10 Accessed on 18 January 2011.

<sup>74</sup> Kariuki S and Van der Walt L *Land Reform in South Africa: Still Waiting* (2000) [www.africafiles.org/article.asp](http://www.africafiles.org/article.asp) Accessed on 18 January 2011.

<sup>75</sup> Carey Miller D L *Land Title in South Africa* Juta (2000) 241-245; Badenhorst P, Pienaar J and Mostert H *Silberberg-Schoeman's Law of Property* Butterworths (5ed 2006) 586-587; Van der Walt A J "Land Reform in South Africa since 1990 – an Overview" 1995 *SA Public Law* 2.

<sup>76</sup> Barry M Now *Another Thing Must Happen: Richtersveld and the Dilemmas of Land Reform in Post Apartheid South Africa* [web.wits.ac.za/NR/rdonlyres/76125AAF-68F6-4650-9368.../barry.pdf](http://web.wits.ac.za/NR/rdonlyres/76125AAF-68F6-4650-9368.../barry.pdf). (2004) 361.

*Constitutional Guidelines for a Democratic South Africa*, the 1990 proposed Bill of Rights and *Discussing the Land Issue* in 1991.<sup>77</sup>

By the end of the 1980s, the apartheid government, realizing that its days were numbered, took its first hesitant steps to rectify the situation. First, it embarked on a programme of reform and co-option of the black middle class into the market economy.<sup>78</sup> Then the De Klerk government published the *White Paper on Land Reform* in 1991, which provided for the abolition of some of the racially based apartheid legislation and the idea of land restitution, but not the decriminalisation of illegal squatting.<sup>79</sup> The Abolition of the Racially-Based Land Measures Act 108 of 1991 allowed for the abolition of the racially discriminatory acts of 1913 and 1936 as well as the 1966 Group Areas Act.

Land issues became a central and integral part of the overall negotiations towards a democratic South Africa. In the constitutional negotiations the ANC put forward a series of policy proposals which included the following:

- Redressing the injustices caused by the apartheid policy of dispossession;
- Addressing demands of grievances concerning land restoration and ownership by the creation of a special land court;
- Creating institutions through which the homeless and landless will have access in order to obtain land, shelter and necessary services;
- The recognition and protection of the diversity of tenure reforms in South Africa; and
- The promotion of a policy of affirmative action within a viable economic development to ensure amongst other things, access to land with secure

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<sup>77</sup> Barry M Now *Another Thing Must Happen: Richtersveld and the Dilemmas of Land Reform in Post Apartheid South Africa* [web.wits.ac.za/NR/rdonlyres/76125AAF-68F6-4650-9368.../barry.pdf](http://web.wits.ac.za/NR/rdonlyres/76125AAF-68F6-4650-9368.../barry.pdf). (2004) 361.

<sup>78</sup> Letsoalo E M "Land Reform in Post Apartheid South Africa: In Transition?" *Rural Development International Workshop* (1996) 1.

<sup>79</sup> Van der Merwe C G and Pienaar JM "Land Reform in South Africa" in Jackson P and Wilde D C *The Reform of Property Law* (1997) 350-354; Carey Miller D L *Land Title in South Africa* Juta (2000) 245-246; Badenhorst P, Pienaar J and Mostert, H *Silberberg-Schoeman's Law of Property* Butterworths (5ed 2006) 588-590; Van der Walt A J and Pienaar G J *Introduction to the Law of Property* Juta (6ed 2009) 320.

rights for residential settlement, as well as access to good agricultural land, which will create new opportunities.<sup>80</sup>

Shortly after the first democratic elections the President of the ANC, Mr Nelson Rolihlahla Mandela indicated that:

the first challenge of that interim government of national unity will be to begin the process of dismantling apartheid and transforming South Africa into a democratic, non-racial and non-sexist country. To dismantle apartheid means to return South Africa to the hands of all her people. This is the fundamental thrust that must inform the programme of reconstruction and development which this government will have to implement.<sup>81</sup>

## **2 4 LAND REFORM IN TERMS OF THE INTERIM CONSTITUTION**

The Interim Constitution of the Republic of South Africa<sup>82</sup> was the stepping stone towards undoing the injustices of the apartheid regime as far as the racially skewed ownership and distribution of land was concerned. A number of provisions in the Interim Constitution are relevant in this context. Section 8 (3) provided that:

- (a) This section shall not preclude measures designed to achieve the adequate protection and advancement of persons or groups or categories of persons disadvantaged by unfair discrimination, in order to enable their full and equal enjoyment of all rights and freedoms.
- (b) Every person or community dispossessed of rights in land before the commencement of this Constitution under any law which would have been inconsistent with subsection (2) had that subsection been in operation at the time of the dispossession, shall be entitled to claim restitution of such rights subject to and in accordance with sections 121, 122 and 123.

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<sup>80</sup> African National Congress *The Reconstruction and Development Programme: a Policy Framework* Umanyano Publications (1994) 20-21. See also Didiza A T "Land and Agrarian Reform in South Africa: 1994-2006". Presentation at the *International Conference on Agrarian Reform and Rural Development* Brazil (March 2006).

<sup>81</sup> Mandela Nelson Rolihlahla "Statement on the occasion of the eighty-second anniversary of the ANC" January 8, (1994).

<sup>82</sup> Constitution of the Republic of South Africa, 1993 (hereafter referred to as the "Interim Constitution"). See generally Van der Merwe C G and Pienaar JM "Land Reform in South Africa" in Jackson P and Wilde D C *The Reform of Property Law* (1997) 357-358.

Sections 121 to 123 of the Interim Constitution dealt with the restitution of land rights. They *inter alia* determined what qualified as restitution, provided for the setting up of a Commission on Restitution of Land Rights and orders by the court in restitution cases.

Section 28 of the Interim Constitution was a general clause protecting the right to property for all citizens.

Consequently the Interim Constitution focussed mainly on the restitution of land rights. It was only later that the ANC government, together with other alliance partners and civil society developed the RDP, a framework document that provided a set of guidelines for a land reform policy.<sup>83</sup> This programme aimed to address the injustices of the past apartheid policies and forced land dispossessions by providing access to land rights and restitution through the redistribution and restitution programmes, and security of tenure of rural farm dwellers through the tenure security programme. The RDP also set the target to redistribute 30% of agricultural white owned land by 2014.<sup>84</sup>

## **2 5 LAND REFORM IN TERMS OF THE 1996 CONSTITUTION**

The 1996 Constitution created the basis for a liberal democracy, albeit with an emphasis on socio-economic rights and a clear mandate on the state to redress the injustices of the past. The constitutional clause on property – section 25 - guarantees the rights of existing owners but also grants specific rights of redress to victims of past dispossession. It set the legal basis for a potentially far-reaching land reform programme.<sup>85</sup> It included provisions which would implement the policy of land reform. The applicable sections of the Constitution are the following:

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<sup>83</sup> African National Congress *The Reconstruction and Development Programme: a Policy Framework* Umanyano Publications (1994).

<sup>84</sup> African National Congress *The Reconstruction and Development Programme: a Policy Framework* Umanyano Publications (1994). See also Didiza A T “Land and Agrarian Reform in South Africa: 1994-2006” Presentation at the *International Conference on Agrarian Reform and Rural Development* Brazil March (2006).

<sup>85</sup> Van der Merwe C G and Pienaar JM “Land Reform in South Africa” in Jackson P and Wilde D C *The Reform of Property Law* (1997) 358-359; Lahiff E “Land Redistribution in South Africa:

Section 25(5): 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.

Very little legislation was promulgated in terms of this provision as the redistribution programme takes place mainly in terms of programmes and projects. However, an example of legislation passed in terms of this provision is the Development Facilitation Act 67 of 1995<sup>86</sup> which aims to make alternative and extra land available for development as well as to promote a variety of land tenure reforms.<sup>87</sup> The specific provisions of the Act which pertain to the development of so-called land development areas – chapters V and VI - have been declared invalid by the Constitutional Court in *Johannesburg Metropolitan Municipality v Gauteng Development Tribunal and Others*.<sup>88</sup> Consequently the DFA need not receive any attention, except perhaps in a historical context.

Section 25(6): A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure, or to comparable redress.

Recent land reform laws such as the Land Reform (Labour Tenants) Act 3 of 1996, the Communal Property Associations Act 28 of 1996, the Interim Protection of Informal Land Rights Act 31 of 1996 and the Extension of Security of Tenure Act 62 of 1997 all serve the purpose.<sup>89</sup> It should be noted that a Draft Land Tenure Security Bill replacing some of this legislation was published for comment at the end of 2010.

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Progress to Date” Paper presented at *Land Redistribution: Towards a Common Vision* Regional Course Southern Africa ( 2007) 3.

<sup>86</sup> Hereafter referred to as the “DFA”

<sup>87</sup> Carey Miller D L *Land Title in South Africa* Juta (2000) 293; Van der Walt A J *Constitutional Property Law* Juta (2005) 291-394.

<sup>88</sup> 2010 6 SA 182 (CC); 2010 9 BCLR 859 (CC) 2010 ZACC11 par [2], [69], [70], [80]. See also *City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal and Others* 2010 2 SA 554 (SCA); 2010 2 BCLR 157 (SCA). 2010 6 SA 182 (CC); 2010 9 BCLR 859 (CC); Van Wyk J “Parallel planning mechanisms: a recipe for chaos?” 2010 (1) PER 7

<sup>89</sup> Carey Miller D L *Land Title in South Africa* Juta (2000) 293; Van der Walt A J *Constitutional Property Law* Juta (2005) 291-394.

Section 25(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.

The act of parliament referred to is the Restitution of Land Rights Act 22 of 1994.<sup>90</sup>

Section 25(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 provisions of section 36(1).

The above section provides that the state has the responsibility to redistribute resources in order to address past imbalances, provided that that such reform is done in line with the general limitation clause mentioned in section 36(1).<sup>91</sup>

Accordingly the above sections ensured that there was “a constitutional mandate for the Department of Land Affairs, together with the Commission on Restitution of Land Rights, to ensure that there would be equitable land distribution among South Africans and that the injustices of land dispossessions dating back to 1913 would be effectively addressed.”<sup>92</sup>

## 2 6 THE LAND REFORM PROGRAMME

The land reform programme in South Africa was initiated with the aim of undoing what the apartheid laws of 1913 onwards had done.<sup>93</sup> The framework for the policy on land reform was set out in the *White Paper on South African Land Policy* in 1997 and is seen as a catalyst and foundation for eradication of poverty, economic development and growth to improve the quality of life of all South Africans. The *White Paper* was a culmination of various consultations and discussions as well as policies such as the Department of Land Affairs *Framework*

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<sup>90</sup> Carey Miller D L *Land Title in South Africa* Juta (2000) 293; Van der Walt A J *Constitutional Property Law* Juta (2005) 291-394.

<sup>91</sup> Carey Miller D L *Land Title in South Africa* Juta (2000) 293; Van der Walt A J *Constitutional Property Law* Juta (2005) 291-394.

<sup>92</sup> Didiza A T “Land and Agrarian Reform in South Africa: 1994-2006” Presentation at the *International Conference on Agrarian Reform and Rural Development* Brazil (March 2006).

<sup>93</sup> Van der Merwe C G and Pienaar JM “Land Reform in South Africa” in Jackson P and Wilde D C *The Reform of Property Law* (1997) 359-367.

*Document on Land Policy* of May 1995, the *Draft Statement of Land Policy and Principles*, discussed at the National Land Policy Conference held on 31 August and 1 September 1995 and the *Green Paper on South African Land Policy* of 1 February 1996.<sup>94</sup> The Growth Employment and Redistribution Strategy of 1996 and the Integrated Sustainable Rural Development Strategy of 2000 had a similar aim.

In adherence to constitutional imperatives South Africa embarked on a market based land reform programme that rested on three pillars - land restitution, land redistribution and land tenure reform.<sup>95</sup> The main objective of the land restitution programme is to restore rights in land to those who were previously dispossessed of their rights in land in terms of racial laws or practices after 19 June 1913. The land redistribution programme aimed to address the pattern of racially skewed land ownership by making agricultural land more accessible to the previously disadvantaged and the land tenure reform programme aims to secure tenure, resolving issues and providing alternatives for tenants.<sup>96</sup>

It was envisaged that all of these had to be done in a manner that would promote sustainable development through joint effort by government, beneficiaries and stakeholders making use of available resources. Through these programmes, the Government set itself the target of delivering 30% of commercial agricultural land by 2015, (about 25 million hectares).<sup>97</sup>

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<sup>94</sup> See in general Lahiff E and Rugege S "A Critical Assessment of Land Redistribution Policy in the Light of the *Grootboom* Judgment" 2002 *Law, Democracy and Development* 291-292.

<sup>95</sup> De Villiers B *Land Reform: Issues and Challenges. A Comparative Overview of Experiences in Zimbabwe, Namibia, South Africa and Australia* KAS (2003) 49; Lahiff E and Rugege S "A Critical Assessment of Land Redistribution Policy in the Light of the *Grootboom* Judgment" 2002 *Law, Democracy and Development* 291; Pienaar J M "Land Reform and Sustainable Development – a Marriage of Necessity" 2004 *Obiter* 271.

<sup>96</sup> De Villiers B *Land Reform: Issues and challenges. A Comparative Overview of Experiences in Zimbabwe, Namibia, South Africa and Australia* KAS (2003) 49-52; Bosman F *Land Reform: A Contextual Analysis* <http://www.fwdeklerk.org.za/download.docs/07%2005%2024%20Grondhervorming%20publikas> (2007) Accessed on 3 February 2011 5-6; Lahiff E and Rugege S "A Critical Assessment of Land Redistribution Policy in the Light of the *Grootboom* Judgment" 2002 *Law, Democracy and Development* 291.

<sup>97</sup> African National Congress *The Reconstruction and Development Programme: a Policy Framework* Umanyano Publications (1994) par 2.4.14. See also Didiza A T "Land and Agrarian Reform in South Africa: 1994-2006" Presentation at the *International Conference on Agrarian Reform and Rural Development* Brazil (March 2006).



According to the *White Paper on South African Land Policy* of April 1997 the aim of the South African Government's land reform policy is four-fold:

- To redress the injustices of apartheid;
- To foster national reconciliation and stability;
- To underpin economic growth; and
- To improve household welfare and alleviate poverty.<sup>98</sup>

The *RDP Policy Framework* document stated that,

A national land reform programme is the central and driving force of a programme of rural development.... [I]n implementing the national land reform programme...the democratic government will build the economy by generating large-scale employment, increasing rural incomes and eliminating overcrowding.<sup>99</sup>

The boldness of the RDP's assertion appears to be worlds apart from the land reform programme that exists over 12 years later. Were the RDP's expectations fundamentally ill-founded, or has the implementation of land reform failed to realise its underlying potential?

We shall now look at the land restitution and land redistribution programmes in terms of their procedures and implementation as well as provisions relating to post-settlement support. In the process it must be determined to what extent they have been able to meet the expectations of the *White Paper on South African Land Policy* and the RDP.

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<sup>98</sup> Department of Land Affairs *White Paper on South African Land Policy* Government Printer (1997).

<sup>99</sup> African National Congress *The Reconstruction and Development Programme: a Policy Framework* Umanyano Publications (1994) 2.4.2. See also Human Sciences Research Council *Integrated Rural and Regional Development Land Redistribution for Agricultural Development: Case Studies In Three Provinces* Final Report Pretoria (2003) 1.

## 2 7 LAND RESTITUTION

The legal basis for land restitution is provided by the 1993 Interim Constitution, section 25(7) of the 1996 Constitution and the Restitution of Land Rights Act.<sup>100</sup>

The purpose of the Restitution Act is to provide for the restitution of rights in land to persons or communities dispossessed of such rights after 19 June 1913 as a result of past racially discriminatory laws or practices.<sup>101</sup> A Commission on the Restitution of Land Rights<sup>102</sup> under a Chief Land Claims Commissioner and seven Regional Land Claims Commissioners representing the nine provinces was established. A special court, the Land Claims Court,<sup>103</sup> with powers equivalent to those of the High Court, was also established to deal with land claims and other land-related matters in terms of sections 22, 33, 34 and 35 of the Restitution Act.<sup>104</sup>

In 1997 the Restitution Act was amended to bring it in line with the 1996 Constitution. Claimants were allowed direct access to the LCC (rather than having to go through the CRLR) and the Minister of Land Affairs was given greater powers to settle claims through negotiation.<sup>105</sup>

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<sup>100</sup> 22 of 1994. Hereafter the "Restitution Act". For more detail see eg Murphy J "The Restitution of Land after Apartheid: The Constitutional and Legislative Framework" in Rwelamira M R and Werle G (eds) *Confronting Past Injustices: Approaches to Amnesty, Punishment, Reparation and Restitution in South Africa and Germany* Butterworths (1996) 113-132; Van der Merwe C G and Pienaar JM "Land Reform in South Africa" in Jackson P and Wilde D C *The Reform of Property Law* (1997) 361-363; Jaichand V *Restitution of Land Rights: A Workbook* Lex Patria (1997); Mostert H, Pienaar J and Van Wyk J "Land" in Joubert WA (ed) *The Law of South Africa* Butterworths (2010) vol 14 pars 141-152; Rugege S "A Right of Access to Land and its Implementation in Southern Africa: A Comparative Study of South Africa and Zimbabwe Land Reform Laws and Programmes 2004" *Law, Democracy and Development* 248; Hall R (ed) *Another Countryside? Policy Options for Land and Agrarian Reform in South Africa* PLAAS (2009) 5; Land Reform in South Africa: A 21<sup>st</sup> Century Perspective Centre for Development and Enterprise Research Report no 14 (2005) 19; Van der Walt A J and Pienaar G J *Introduction to the Law of Property* (6ed 2009) 322-326.

<sup>101</sup> Restitution Act Preamble.

<sup>102</sup> Hereafter the "CRLR". See also Mostert H, Pienaar J and Van Wyk J "Land" in Joubert WA (ed) *The Law of South Africa* Butterworths (2010) vol 14 pars 146-147.

<sup>103</sup> Hereafter the "LCC". See also Mostert H, Pienaar J and Van Wyk J "Land" in Joubert WA (ed) *The Law of South Africa* Butterworths (2010) vol 14 pars 148-152.

<sup>104</sup> Restitution of Land Rights Act 22 of 1994.

<sup>105</sup> Barry M Now *Another Thing Must Happen: Richtersveld and the Dilemmas of Land Reform in Post Apartheid South Africa* [web.wits.ac.za/NR/rdonlyres/76125AAF-68F6-4650-9368.../barry.pdf](http://web.wits.ac.za/NR/rdonlyres/76125AAF-68F6-4650-9368.../barry.pdf). (2004) 362.

According to a former Chief Land Claims Commissioner, Mr Andrew Mphela, the strategic objectives of the CRLR include the following:

- To provide equitable redress to victims of racial land dispossession in terms of the Restitution Act
- To provide access to rights in land, including land ownership and sustainable development
- To foster national reconciliation and stability
- To improve household welfare, underpinning economic growth, contributing to poverty alleviation <sup>106</sup>

## 2 7 1 Entitlement to restitution and procedural steps

In order to be entitled to restitution, the criteria set down in section 2 of the Restitution Act must be met:

### Section 2: Entitlement to restitution

(1) A person shall be entitled to restitution of a right in land if-

- (a) he or she is a person dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices; or
- (b) it is a deceased estate dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices; or
- (c) he or she is the direct descendant of a person referred to in paragraph (a) who has died without lodging a claim and has no ascendant who-
  - (i) is a direct descendant of a person referred to in paragraph (a);  
and
  - (ii) has lodged a claim for the restitution of a right in land; or
- (d) it is a community or part of a community dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices; and
- (e) the claim for such restitution is lodged not later than 31 December 1998.

(2) No person shall be entitled to restitution of a right in land if-

- (a) just and equitable compensation as contemplated in section 25 (3) of the Constitution; or
- (b) any other consideration which is just and equitable, calculated

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<sup>106</sup> Commission on Restitution of Land Rights *Progress and Strategies to Finalise all Claims by 2012* <http://www.pmg.org.za/report/20090708-Commission> Accessed on 02 September 2010.

at the time of any dispossession of such right, was received in respect of such dispossession.

A claim should also not be frivolous and vexatious in order to be accepted as a valid claim, in terms of section 11(c) of the Restitution Act.

A restitution award in terms of the restitution programme, may take many forms. Land originally lost by claimants can be restored to them or alternative land may be acquired should it not be feasible to restore the original land. Financial compensation can be paid or provision can be made in a development programme. All restitution claims are made against the state, not the current owners of the land.<sup>107</sup>

Before a claim can reach the stage of settlement it must first go through a number of phases in what is called the “claim cycle” or business process as illustrated below:<sup>108</sup>

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107 Van der Merwe C G and Pienaar JM “Land Reform in South Africa” in Jackson P and Wilde D C The Reform of Property Law (1997) 363; Carey Miller D L Land Title in South Africa Juta (2000) 245-246; Badenhorst P Pienaar J and Mostert H Silberberg and Schoeman’s Law of Property Butterworths (2006) 588-590; Van der Walt A J and Pienaar G J Introduction to the Law of Property Juta (6ed 2009) 320.

108 Commission on Restitution of Land Rights (CLRL) Land Restitution in South Africa: Our Achievements and Challenges (2003).



Figure 1 Restitution business process

### **2 7 1 1      Phase 1**

Phase 1 comprises the lodgement of claims.<sup>109</sup> It was however, closed on 31 December 1998<sup>110</sup> by the DLA after calls for extension were made when the initial closing date was April 1998. At the same time the DLA also undertook to make people aware of restitution and lodgement of claims through an awareness

<sup>109</sup> Section 10(1) of the Restitution Act which requires details of the history of the title of land, other interests in the land, market value and the value of investments in the land and current use to which property is being put.

<sup>110</sup> In terms of section 2(1) (e) of the Restitution Act.

campaign.<sup>111</sup> With the increase in the number of claims lodged as the cut off date came closer, the awareness campaign was hailed a success and some regional offices of the DLA were recorded to be receiving as many as 1 000 calls per day.<sup>112</sup> With the cut off for lodgement of claims it means that no new claims could be lodged after the said date.

### **2 7 1 2      Phase 2**

Phase 2 deals with the screening and categorisation of claims as well as with preliminary research. These activities are conducted by the officials of the Regional Land Claims Commission<sup>113</sup> who are known as project officers. Here claims are prioritised for settlement within a specific financial year and they are categorised as being either urban or rural claims and further categorised as individual or community/group claims. “Urban” means that rights which claimants were dispossessed of were based in an urban area and were mostly individually lodged claims or group claims. In this case the settlement award chosen by claimants are mostly in the form of financial compensation. However there are cases where the option of land restoration has been chosen. Urban claimants represent only 10% of potential land restitution beneficiaries.<sup>114</sup> “Rural” claims refer to claims where rights lost are based in a rural area and consist mainly of community claims. Claims then go through pre-liminary research. This is where the project officer receives the claim file and conducts a ‘desk top’ investigation in line with the requirements of section 2 and section 11 of the Restitution Act.

### **2 7 1 3      Phase 3**

Once the claim is found to be on the face of it (*prima facie*), valid, it is then published in the *Government Gazette* by the Regional Land Claims

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<sup>111</sup> Hartley W "ANC Calls for Extension of Claims Period" *Business Day* September 3 1997.

<sup>112</sup> "People Rush to Lodge Claims before Cut-off" *Business Day* December 30 1998.

<sup>113</sup> Hereafter referred to as the "RLCC".

<sup>114</sup> Example 1: District Six see "District Six Residents Return after 30 years" *Mail & Guardian* December 1 2000. Example 2: Tramway community claim. *SAFM News* June 28 2001. Example 3 the Port Elizabeth Urban claim see Du Toit A, "The End of Restitution: Getting Real about Land Claims" in Cousins B (ed) *At the Crossroads: Land and Agrarian Reform in South Africa into the 21st Century* PLAAS University of the Western Cape (2000) 196; "Historic Land Restitution Deal in Downtown PE" *Mail & Guardian* February 11 – 17 2000

Commissioner.<sup>115</sup> An assessment of notification of interested parties in terms of the publication of the *Gazette* notice is also done. Thereafter the first stakeholders meeting is held which includes the land owners of the land under claim, the claimants, the CRLR and other government departments such as the Department of Agriculture<sup>116</sup> and the municipality. This platform is used by the land claims commission to notify interested parties about the restitution claim that was lodged and the procedures to be followed by the Commission in processing the claim to finality.

#### **2 7 1 4      Phase 4**

Phase 4 is the preparation for negotiations. It consists of further research in terms of conducting verification of the claimants (identifying who are the rightful beneficiaries). During this time an “options workshop” is conducted with the claimants. The ‘options workshop’ is conducted by the post-settlement unit. During this workshop claimants are advised about the various restitution award options that are available through the land restitution programme, such as restoration of original land, provision of alternative land, payment of financial compensation, provision of alternative relief and/or priority access to other government housing and land development programmes.<sup>117</sup>

Valuation on the claim is conducted by the Commission using qualified valuers to determine the monetary value of the claim. If claimants received any form of compensation at the time of the dispossession the Commission must conduct historical valuations in order to determine whether or not the said compensation was just and equitable. If it is found that compensation received at the time was just and equitable the claimant is then informed in writing and the claim is declared invalid in terms of section 2(2) of the Restitution Act.

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<sup>115</sup> In terms of section 11 of the Restitution Act. See *Mahlangu NO v Minister of Land Affairs & Others* 2005 (1) SA 451 (SCA) par 13, 455 D – G; *Farjas Pty Ltd v Land Claims Commissioner, Kwa Zulu Natal* 1998 (2) SA 900 (LCC) 936–937 pars [23] to [25] regarding the duty of the Commissioner once satisfied that the claim meets the requirements set in section 11 of the Restitution Act.

<sup>116</sup> Hereafter referred to as the “DoA”.

<sup>117</sup> Department of Land Affairs *White Paper on South African Land Policy* Government Printer (1997). See also the definition of “equitable redress” in the Restitution Act chapter 1:Definitions.

Where claimants opt for restoration of land the Commission must conduct valuations on the land claimed or alternative land in order to determine the current market value thereof. This valuation report is then used as a tool for the commission to negotiate with the current land owner in order to purchase the land for the claimants. Besides being used as a tool for negotiations the valuation report also contains important information about the condition of the land to be purchased in terms of topography, rainfall, carrying capacity, current land use, provisions for water and electricity. This information would to a certain extent assist the post-settlement unit and the claimants when doing the land use planning on the project which is part of the process of providing post-settlement support.

During phase four the Commission also engages with the claimants in terms of conducting a needs analysis on the land to be restored. This is done jointly with the pre-settlement and post-settlement teams and other stakeholders such as the Department of Minerals and Energy (now Mineral Resources), the Department of Agriculture<sup>118</sup>, the Department of Labour and the Municipality. This is also seen to be part of the planning process in the provision of post-settlement support.

Once an offer to purchase is accepted by the landowner and/or claimants agree on the settlement option, the claim then proceeds towards settlement or phase five.

## **2 7 1 5      Phase 5**

It is during this phase that the post-settlement support issues come more into play. With the option of restoration of original land or alternative land the post-settlement unit advises the claimants briefly about the various communal property institutions<sup>119</sup> that will have to be established in order for the claimant to receive

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<sup>118</sup> Hereafter referred to as the “DoA”

<sup>119</sup> Hereafter referred to as “CPIs”. Communal property Institution (CPI) refers to a legal entity that may be established for the purpose of communal tenure of land. South Africa’s land reform programme (as set out in the Department of Land Affairs White Paper of 1997) supports communal land tenure as one of the tenure forms through which groups of people can access and hold land. There are a number of different types of CPI’s that may be established. These include Trusts, Communal Property Associations (CPA), Private Corporations, Close Corporations or Partnerships. The Communal Property Associations Act<sup>119</sup> is the more common choice of CPI that is used in land



ownership of land as well as brief information about the different land uses that can be conducted by claimants with the option of land restoration. Claimants are also advised that a land use feasibility study must also be conducted before further steps can be taken by the commission with regard to negotiating with the land owner for purchase thereof.

However, from my working experience, these steps are not always followed by the project officers in most of the land restoration cases. The pre- settlement unit and post-settlement unit also seem to work in silos as far as the settlement of restitution claims are concerned and this will become evident when we look at in depth case studies in the next chapter.

In phase 5, the claim is packaged in the form of a section 42D<sup>120</sup> submission for approval and settlement. This amendment to the Restitution Act was promulgated because of concerns that the court driven process was proving to be too antagonistic and slow. It gave the Minister of Land Affairs powers to make restitution awards based on negotiated agreements and facilitated an exponential increase in the number of claims settled.<sup>121</sup> In this section 42D submission the whole process of settlement of the claim, from the beginning is outlined. From the lodgement of the claim, research (history of land acquisition and dispossession of

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reform projects as opposed to Trusts. The reason behind such a choice is based on the control which the department may still have on the CPA since the CPA Act makes provision in terms of section 13 for the association to be placed under the administration of the Director General should there be issues of maladministration. The CPA act also makes provision for annual reporting to take place as well as monitoring and inspection by the Director General in terms of section 11 to enable him to monitor compliance with the provisions of the relevant constitution and CPA Act.<sup>119</sup> These mechanisms, are however, not available in Trusts.

The CPA act also dictates important principles that must be contained in the constitution of the CPA such as fair decision making process, equality of membership, democratic processes, fair access to the property of the association, accountability and transparency.<sup>119</sup>

The choice of CPI is therefore an important decision that must be made by beneficiaries of land reform and the choice of entity will also have an impact on settlement support and the success or not of a project. CPA would be the most attractive land holding entity for land reform beneficiaries, provided members of the association receive the necessary training and capacity building skills in order to effectively and efficiently manage the land that will be transferred to them in the name of the association.

<sup>120</sup> In terms of the Restitution Act. Section 42D allows for a claim to be settled by the Minister by entering into an agreement with the interested parties provided the Minister is satisfied that a claimant is entitled to restitution of a right in land in terms of section 2, and that the claim for such restitution was lodged not later than 31 December 1998.

<sup>121</sup> Walker C *Land, Memory, Reconstruction and Justice: Perspective on Land Claims in South Africa* Ohio University Press (2010) 63.

claimants) validation, gazetting, verification of claimants, valuations, negotiations with land owner and claimants and any other interested parties, financial and policy implications to statistical information on the claim are included in this submission. The submission is then routed for approval by the delegated authority (the Regional Land Claims Commissioner, Chief Land Claims Commissioner or the Minister of Rural Development and Land Reform).

## **2 7 1 6      *Phase 6***

Phase 6 is implementation of the settlement. The implementation of the restitution award may take the form of processing financial compensation payments and/or restoration of land to claimants or development. As stated earlier if the land restoration option has been chosen the post-settlement unit takes over the claim once the section 42D submission has been approved, to implement the restitution award. In the context of this dissertation this is a crucially important phase which starts in phase 4 of the restitution project cycle and is performed by the restitution post-settlement unit in each of the regional offices. The focus of this research is based on the post-settlement support which is lacking in most of the land reform projects where land has been restored to the beneficiaries. More evidence of this will be provided in the next chapter.

## **2 7 2 Post-settlement support**

Direct provisions relating to post-settlement support are not included in the Restitution Act itself. However, early versions of the act contained provisions, now repealed, relating to the feasibility of restoration in section 15. “Feasibility of restoration” touches upon whether certain factors preclude restoration from taking place or making it undesirable. Section 15 of the Restitution Act provided that prior to the referral of a claim contemplated in section 121(2) of the Interim Constitution, the court, the Chief Land Claims Commissioner had to request the minister to certify whether restitution was feasible. Section 15(6) provided that the minister had to take into account the following factors to determine whether restoration was achievable in practice:

- Whether the zoning of the land in question has since the dispossession been altered;
- Whether the land has been transformed to such an extent that it is not practicable to restore the right in question;
- Any relevant urban development plan;
- Any other matter which makes the restoration or acquisition of the right in question unfeasible; and
- Any physical or inherent defect in the land which may cause it to be hazardous for human habitation.

This requirement was confirmed in the 1996 case of *Macleantown Residents Association: Re Certain Erven and Commonage in Macleantown*.<sup>122</sup>

Section 15 was repealed by Land Restitution and Reform Laws Amendment Act 63 of 1997.<sup>123</sup> However, in 1997 a similar provision was inserted into section 33 of the Restitution Act. This was section 33(cA) providing that in determining whether land should be restored to the claimants the court must take into account the feasibility of restoration where a restoration of a right in land is claimed.

This issue was dealt with in *In re Kranspoort Community*.<sup>124</sup> Dodson J was satisfied that in that case the restoration of rights in land was feasible, but restoration was made subject to the submission of a development plan within six months. Only thereafter would the transfer of the land be ordered. However, the court indicated its misgivings about the lack of proper planning in relation to resettlement of the land.<sup>125</sup>

In *Baphiring Community v Uys and Others*<sup>126</sup> the court was required to determine whether the restoration of the land under claim is feasible and equitable, bearing in mind that if the community (or part of the community) is relocated to the land, the relocation will not be successful without additional financial assistance.

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<sup>122</sup> 1996 4 SA 1272 (LCC) 1282.

<sup>123</sup> S 11(1).

<sup>124</sup> 2000 2 SA 124 (LCC).

<sup>125</sup> Par 93. See Van Wyk J "Feasibility of Restoration' as a Factor in Land Restitution Claims" 2011 SA Public Law (forthcoming). See also Du Plessis W, Olivier N and Pienaar J "Land Reform: A Never-ending Process" 2000 SA Public Law 230 235.

<sup>126</sup> *Baphiring Community v Uys and Others* 2010 (3) SA 130 (LCC) [2010] 3 All SA 353 (LCC) pars 15, 26- 27. See also Van Wyk J "Feasibility of Restoration' as a Factor in Land Restitution Claims" 2011 SA Public Law (forthcoming).

Mia AJ ruled against relocation of the community to the land under claim and the reasons given were that:

The lack of support and resources for relocation to the old Mabaalstat as well as the circumstances of the claimant community at the new Mabaalstat weigh against relocating the Baphiring Community to the old Mabaalstat. It appears that, if relocated, community members will be forced to downgrade their living space. Relocation will necessitate the establishment of new dwellings and infrastructure at old Mabaalstat. The evidence indicates that the costs of successful relocation will be outside the reach of the claimant community and the State.<sup>127</sup>

It was also indicated that most communities (beneficiaries of land reform) lack the institutional capacity, expert and financial support as well as costs of relocation of the current landowners will be substantial and it will be increased by the actual cost and financial assistance necessary to provide the homes and infrastructure required to enable the community (or part of the community) to move back onto the land. In addition, there will be the costs of equipment and running capital necessary for continued farming on the land.<sup>128</sup>

The LCC also views the provision of post-settlement support as an integral part of the processing of land restitution claims and notes that it must be taken into account before the decision can be taken to restore land to the claimants in meeting the objectives of the land restitution programme.<sup>129</sup>

### **2 7 3 Conclusions**

To date a total of 75 844 claims have been settled out of 79 696 claims lodged and 3852 claims remain outstanding.<sup>130</sup> On the surface of it these figures look impressive. However, if one chops away at the surface the picture is not quite so rosy.

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<sup>127</sup> *Baphiring Community v Uys and Others* 2010 (3) SA 130 (LCC); [2010] 3 All SA 353 (LCC) par 26.

<sup>128</sup> *Baphiring Community v Uys and Others* [2010] ZALCC 1; 2010 (3) SA 130 (LCC); [2010] 3 All SA 353 (LCC) par 27.

<sup>129</sup> Makhanya M "Pastoral bliss is way in the past - the focus now must be innovation" *Sunday Times* <http://www.timeslive.co.za/opinion/columnists/article329379.ece>.

<sup>130</sup> Commission on Restitution of Land Rights *Annual report 2009-2010* 12 and 63.

Currently there are approximately 200 land restoration projects under the restitution programme<sup>131</sup> and the Commission has the responsibility to ensure that restitution is done in such a way as to provide support to the vital process of reconciliation, reconstruction and development.<sup>132</sup> Development is a crucial issue and, many beneficiaries of the restitution programme are as impoverished as they were before they obtained their land. However many studies have found that the Commission has not been able to implement restitution in a way that is consonant with its ends of reconciliation, reconstruction and development.<sup>133</sup> This is confirmed by a statement made by the Institute for Poverty, Land and Agrarian Studies (PLAAS) acting director, Andries du Toit that “a national survey found that just one of 128 land restitution projects was producing a sustainable profit”.<sup>134</sup>

## 2 8 LAND REDISTRIBUTION

The land redistribution programme can be seen as one of the conditions or measures referred to in section 25(5) of the Constitution which states 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”.

The specific objective and approach of the redistribution programme are set out in the *White Paper on South African Land Policy* as follows:

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<sup>131</sup> Lahiff E *Land Reform in South Africa a Status Report, 2008* PLAAS University of the Western Cape (2008) 11.

<sup>132</sup> Department of Land Affairs *White Paper on South African Land Reform Policy* Pretoria (1997) 317.

<sup>133</sup> De Villiers B *Land Reform: Issues and Challenges. A Comparative Overview of Experiences in Zimbabwe, Namibia, South Africa and Australia* KAS (2003) 66. See also Van der Merwe C G and Pienaar JM “Land Reform in South Africa” in Jackson P and Wilde D C *The Reform of Property Law* (1997) 359-361; Hall R (ed) *Another Countryside? Policy Options for Land and Agrarian Reform in South Africa* PLAAS (2009) 5; 9; *Land Reform in South Africa: A 21<sup>st</sup> Century Perspective* Centre for Development and Enterprise Research Report no 14 (2005) 22-24; Van der Walt A J and Pienaar G J *Introduction to the Law of Property* (6ed 2009) 322-326.

<sup>134</sup> *The Star* 1 September 2008.

The purpose of the land redistribution programme is to provide the poor with access to land for residential and productive uses, in order to improve their income and quality of life. The programme aims to assist the poor, labour tenants, farm workers, women, as well as emergent farmers. Redistributive land reform will be largely based on willing-buyer willing-seller arrangements. Government will assist in the purchase of land, but will in general not be the buyer or owner. Rather it will make land acquisition grants available and will support and finance the required planning process.<sup>135</sup>

Few legislative enactments have been made in terms of the land redistribution programme. The first is the DFA. It will not be discussed because its main provisions regulating land redistribution – chapters V and VI were declared invalid by the Constitutional Court in 2010.<sup>136</sup> The second piece of legislation is the Provision of Land and Assistance Act.<sup>137</sup> It authorizes the Settlement and Land Acquisition Grant<sup>138</sup> and the Integrated Programme of Land Redistribution and Agricultural Development.<sup>139</sup>

## 2 8 1 Settlement and Land Acquisition Grant

From 1995 to 1999, the redistribution program was implemented largely by means of the Settlement and Land Acquisition Grant which provided a modest grant to poor people, usually in groups, to purchase land on the open market.<sup>140</sup> Initially

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<sup>135</sup> Department of Land Affairs *White Paper on South African Land Policy* Government Printer (1997) 38. See also Mostert H, Pienaar J and Van Wyk J "Land" in Joubert WA (ed) *The Law of South Africa* Butterworths (2010) vol 14 par 111.

<sup>136</sup> Johannesburg Metropolitan Municipality v Gauteng Development Tribunal and Others 2010 6 SA 182 (CC), 2010 9 BCLR 859 (CC) 2010 ZACC11 par [2], [69], [70], [80]. See 2 5 above for a broader discussion of the DFA in a land redistribution context see Van der Merwe C G and Pienaar JM "Land Reform in South Africa" in Jackson P and Wilde D C *The Reform of Property Law (1997)* 368-369; Lahiff E and Rugege S "A Critical assessment of Land Redistribution Policy in the Light of the Grootboom Judgment" 2002 *Law, Democracy and Development* 295-296; Van der Walt A J and Pienaar G J Introduction to the Law of Property (6ed 2009) 322-326.

<sup>137</sup> 126 of 1993. See also Van Wyk J "The Relationship (or not) between Rights of Access to Land and Housing: De-linking Land from its Components" 2005 *Stellenbosch Law Review* 481; Mostert H, Pienaar J and Van Wyk J "Land" in Joubert WA (ed) *The Law of South Africa* Butterworths (2010) vol14 pars 112-113.

<sup>138</sup> Hereafter referred to as "SLAG".

<sup>139</sup> Hereafter referred to as "LRAD".

<sup>140</sup> Jacobs P *et al Evaluating Land and Agrarian Reform in South Africa* PLAAS University of the Western Cape (2003) 1; Van Wyk J "The Relationship (or not) between Rights of Access to Land and Housing: De-linking Land from its Components" 2005 *Stellenbosch Law Review* 482; Van der Merwe CG and Pienaar J "Land Reform in South Africa" in Jackson P and Wilde D C (eds) *The Reform of Property Law* (1997) 360; Lahiff E and Rugege S "A Critical Assessment of Land Redistribution Policy in the Light of the Grootboom Judgment" 2002 *Law, Democracy and Development* 279-319; Rugege S "A Right of Access to Land and its Implementation in Southern

the grant amount was R15 000.00 which was in line with the housing subsidy amount existing at the time. In 1998 the grant was increased to R16 000.00 per household and beneficiaries were encouraged to pool together these funds to purchase white owned farms for commercial agricultural purposes which they would not have been able to do individually in light of the cost of farms.<sup>141</sup> Added to the basic grant amount was a settlement planning grant which was 9% of the total grant amount of the project to be used by the implementing department to engage the services of facilitators and consultants to conduct feasibility studies, prepare business plans, do land valuations and meet transfer costs, etc.<sup>142</sup>

However this programme had many problems, some identified in the *DLA Policy Statement* of 2000.<sup>143</sup> Problems identified include the fact that there was an over reliance on market forces, inflated prices were paid for marginal land and most importantly, that there was a lack of any significant contribution to the development of semi-commercial and commercial black farmers.<sup>144</sup> SLAG made no provision for post-transfer support<sup>145</sup> and government at the time acknowledged that there was a lack of integration and co-operation between the DLA, the DoA and other relevant stakeholders such as other government departments, NGOs and the private sector.

In addition many redistribution applications were put together to increase the “kitty” of R16 000.00 per household without real group cohesion. This has been referred to as a “rent a crowd” strategy which entails that people sign up with little knowledge or understanding of what is involved.<sup>146</sup>

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Africa: A Comparative Study of South Africa and Zimbabwe Land Reform Laws and Programmes 2004 *Law, Democracy and Development* 235-265.

<sup>141</sup> Lahiff E and Rugege S “A Critical assessment of Land Redistribution Policy in the Light of the *Grootboom* Judgment” 2002 *Law, Democracy and Development* 295.

<sup>142</sup> Didiza A T “Land and Agrarian Reform: 1994-2006” Presentation by the Minister of Agriculture and Land Affairs at the *International Conference on Agrarian Reform and Rural Development* Brazil (March 2006).

<sup>143</sup> *Policy Statement by the Minister of Agriculture and Land Affairs for Strategic Directions on Land Issues* Ministry for Agriculture and Land Affairs (2000).

<sup>144</sup> Lahiff E and Rugege S “A Critical Assessment of Land Redistribution Policy in the Light of the *Grootboom* Judgment” 2002 *Law, Democracy and Development* 296.

<sup>145</sup> Jacobs P *Support for Agricultural Development*” PLAAS (2003) 3.

<sup>146</sup> De Villiers B *Land Reform: Issues and Challenges. A Comparative Overview of Experiences in Zimbabwe, Namibia, South Africa and Australia* KAS (2003) 73.

Another factor contributing to the failure of SLAG was the lack of ownership of the projects by the beneficiaries because business plans for their projects were drawn up by consultants who more often than not would draw plans to please the department instead of including the needs and wants of the beneficiaries.<sup>147</sup>

Other problems experienced by the programme are lengthy project cycles, excessive bureaucracy, over-centralisation of the decision-making process, and low levels of complementary support services.<sup>148</sup>

There was also a lack of partnership and integration between the Departments of Land Affairs and Agriculture. Land Affairs was not only providing land, but was also providing resources for agricultural capital, inputs, and assisting with farm plans. A similar lack of integration existed with other relevant government departments, non-governmental service providers, NGOs and the private sector.

SLAG prioritised land delivery over agrarian transformation and as a result it failed to advance the vision of the ANC government of fast-tracking the emergence of a stratum of black commercial farmers.<sup>149</sup>

## **2 8 2 Land Redistribution for Agricultural Development**

Due to SLAG not being successful, the new Minister of Agriculture and Land Affairs announced a sweeping review of land reform policy and programmes, including a moratorium on new redistribution projects in 1999.<sup>150</sup> This culminated

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<sup>147</sup> De Villiers B *Land Reform: Issues and Challenges. A Comparative Overview of Experiences in Zimbabwe, Namibia, South Africa and Australia* KAS (2003) 72.

<sup>148</sup> Didiza A T "Land and Agrarian Reform in South Africa: 1994-2006" Presentation at the *International Conference on Agrarian Reform and Rural Development* Brazil (March 2006).

<sup>149</sup> Hall R *Evaluating Land Reform and Agrarian Reform in South Africa: Farm Tenure* PLAAS University of the Western Cape (2003) 16.

<sup>150</sup> Ministry for Agriculture and Land Affairs *Land Redistribution for Agricultural Development: A Sub-Programme of the Land Redistribution Programme* (2001). See generally Lahiff E and Rugege S "A Critical Assessment of Land Redistribution Policy in the Light of the *Grootboom* Judgment" 2002 *Law, Democracy and Development* 279-319; Van Wyk J "The Relationship (or not) between Rights of Access to Land and Housing: De-linking Land from its Components" 2005 *Stellenbosch Law Review* 482; Rugege "The Right of Access to Land and its Implementation in Southern Africa: A Comparative Study of South Africa and Zimbabwe Land Reform Laws and Programmes" 2004 *Law, Democracy and Development* 253-254; Hall R (ed) *Another Countryside? Policy Options for Land and Agrarian Reform in South Africa* PLAAS (2009) 64-65; *Land Reform in South Africa: A*



in a revised redistribution programme that would include grants for aspiring commercial farmers, food safety net grants for the rural poor, settlement grants for both urban and rural poor to access land for settlement and a revised commonage grant that would be available to both municipalities and tribal authorities.<sup>151</sup> The new programme was called Land Redistribution for Agricultural Development: A Sub-programme of the Land Redistribution Programme. There are three separate components to this programme, namely agricultural development, settlement and non-agricultural enterprises.<sup>152</sup>

The agreed objectives of LRAD as reflected in its framework document are to:

- Increase access to agricultural land by black people (Africans, Coloureds, and Indians) and to contribute to the redistribution of approximately 30% of the country's commercial agricultural land (i.e. formerly 'white commercial farmland') over the duration of the programme;
- Contribute to relieving the congestion in over-crowded former homeland areas;
- Improve nutrition and incomes of the rural poor who want to farm on any scale;
- Overcome the legacy of past racial and gender discrimination in ownership of farmland;
- Facilitate structural change over the long term by assisting black people who want to establish small and medium-sized farms stimulate growth from agriculture create stronger linkages between farm and off-farm income-generating activities;
- Expand opportunities for promising young people who stay in rural areas;
- Empower beneficiaries to improve their economic and social wellbeing;
- Enable those presently accessing agricultural land in communal areas to make better productive use of their land;

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21<sup>st</sup> Century Perspective Centre for Development and Enterprise Research Report no 14 (2005) 23.

<sup>151</sup> Jacobs P *et al Evaluating Land and Agrarian Reform in South Africa* PLAAS University of the Western Cape (2003) 4; Lahiff E and Rugege S "A Critical Assessment of Land Redistribution Policy in the Light of the *Grootboom* Judgment" 2002 *Law, Democracy and Development* 296.

<sup>152</sup> Lahiff E and Rugege S "A Critical Assessment of Land Redistribution Policy in the Light of the *Grootboom* Judgment" 2002 *Law, Democracy and Development* 296-297.

- Promote environmental sustainability of land and other natural resources.<sup>153</sup>

In order for the said objectives to be met LRAD has to operate under the following key underlying principles:

- LRAD is unified and basic, it is flexible and beneficiaries can use it in ways according to their objectives and resources;
- All beneficiaries make a contribution (in kind or cash), according to their abilities;
- LRAD is demand directed, meaning that beneficiaries define the project type and size;
- Implementation is decentralised;
- District-level staff assist applicants, but do not approve the application;
- Ex-post audits and monitoring will substitute a lengthy *ex ante* approval process.<sup>154</sup>

The aim of LRAD is, therefore, to contribute more significantly to the agricultural market and to broaden the target group of beneficiaries from not only the poor but to include emerging black farmers.

The grant amount was increased on a sliding scale of (R20 000.00 to R100 000.00) depending on the amount of the own contribution in kind, labour and/or cash. Beneficiaries who provided an own contribution of at least R5 000.00, which was the minimum, would obtain a grant of R20 000.00 whilst an own contribution of R400 000.00 could obtain the maximum grant amount of R100 000.00. The grant and own contribution are calculated on a per individual adult basis (18 years and older). If people choose to apply as a group, the required own contribution and the total grant are both scaled up by the number of individuals

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<sup>153</sup> Ministry for Agriculture and Land Affairs *Land Redistribution for Agricultural Development: A Sub-Programme of the Land Redistribution Programme* (2001).

<sup>154</sup> Ministry for Agriculture and Land Affairs *Land Redistribution for Agricultural Development: A Sub-Programme of the Land Redistribution Programme* (2001) Executive summary.

represented in the group. The approval of the grants is based on the viability of the proposed project, which takes into account total project costs and projected profitability.

The types of projects that can be catered for include – but are not limited to – the following:

- *Food safety-net projects*

Many participants may wish to access the programme to acquire land for food crop and/or livestock production to improve household food security. This can be done on an individual or group basis. Many of these projects will be at the smallest end of the scale, because poor families may be able to mobilise only the minimum own contribution in cash, labour and materials.

- *Equity schemes*

Participants can make the requisite matching own contribution, and receive equity in an agricultural enterprise tantamount to the value of the grant plus the own contribution. Since, under the terms of LRAD, the grant is intended for people actively and directly engaged in agriculture, the grant recipient in the case of the equity scheme will be both a co-owner and employee of the farm. The purchased equity should be marketable in order to retain its value.

- *Production for markets*

Some participants enter LRAD to engage in commercial agricultural activities. They access the grant and combine it with normal bank loans, approved under standard banking procedures, and their own assets and cash to purchase a farm. These farmers typically have more farming experience and expertise than those accessing land for subsistence or food-safety-net-type activities.

- *Agriculture in communal areas*

Many people living in communal areas already have secure access to agricultural land, but may not have the means to make productive use of that land. Such people would be eligible to apply for assistance so as to make productive investments in their land such as infrastructure or land improvements. These

projects may take on the character of food safety-net projects, or may be more commercially oriented.

The programme continues to be described as demand-led, meaning that beneficiaries themselves must define the type of project in which they wish to engage and must identify their own land.

All projects approved under LRAD must meet certain eligibility criteria. The approval of the grants is based on the viability of the proposed project, which takes into account total project costs and project profitability. Every project application must be accompanied by a business plan and strict commercial criteria are employed to assess the viability of these projects.<sup>155</sup>

LRAD is open to individuals or groups, although large groups are discouraged from applying. Group projects require the setting up of an appropriate legal entity, such as a communal property association<sup>156</sup>, a trust or a close corporation.

Problems of lack of post-settlement support, however, still persist under the new grant structure of LRAD. A study conducted by the Human Sciences Research Council<sup>157</sup> in three South African provinces, Limpopo, KwaZulu Natal and Eastern Cape, reveal that although LRAD introduced inroads with its new grant structure, greater resources available through LRAD for project costs have generally not translated into better post-settlement support, which is probably more important for keeping group farm projects on track.<sup>158</sup>

A lack of sustainability of most LRAD projects at the provincial level can be attributed to lack of co-ordination between the DLA and other agencies, notably the provincial Departments of Agriculture. The two departments manage the programme jointly where decision-making has been devolved to a provincial

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<sup>155</sup> Ministry for Agriculture and Land Affairs *Land Redistribution for Agricultural Development: A Sub-programme of the Land Redistribution Programme* (2001) 7.

<sup>156</sup> Hereafter referred to as "CPA"

<sup>157</sup> Hereafter referred to as "HSRC"

<sup>158</sup> Human Sciences Research Council *Land Redistribution for Agricultural Development: Case Studies in Three Provinces* Final Report. Integrated Rural and Regional Development (2003) 72.

grants committee where the two departments jointly approve or reject the project proposal. These decisions are made based on the commitment to deliver the necessary support services and grant resources within the mandate of the two departments.<sup>159</sup> There is, however, a general perception in the DLA, that the primary responsibility for post-transfer support lies with Provincial DoA, as stipulated in LRAD policy.<sup>160</sup>

To this end Farmer Settlement Support<sup>161</sup> units have been created in the provincial agricultural departments to co-ordinate post-transfer support to LRAD projects, especially in the areas of agricultural extension, infrastructural support and training. FSS units receive their budgets from provincial governments, while funding from the National DoA is usually earmarked for specific activities such as training.

Compared to the earlier SLAG programme, LRAD was intended to introduce a significant shift in the area of post-transfer support. Currently, however, no specific institution has responsibility for driving and coordinating the provision of post-transfer support to redistribution beneficiaries.<sup>162</sup>

With regard to the training of beneficiaries, the LRAD projects driven by the sugar industry in KwaZulu-Natal serve as an example from which a valuable lesson can be learned. Beneficiaries are put through an agricultural training programme which occurs about six months prior to transfer. Beneficiaries are therefore well prepared for the first year, which is considered the most critical phase of any agricultural project and proposed additional ways to enhance the technical and management skills of LRAD beneficiaries are mentorship and management programmes.<sup>163</sup>

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<sup>159</sup> Mather C *South African Agriculture and Livelihoods in the Era of Liberalisation* PLAAS University of Western Cape (2000).

<sup>160</sup> Jacobs P *et al Evaluating Land and Agrarian Reform in South Africa* An Occasional Paper Series No 1: Redistribution PLAAS University of the Western Cape (2003) 19 -21.

<sup>161</sup> Hereafter referred to as "FSS".

<sup>162</sup> Jacobs P *et al Evaluating Land and Agrarian Reform in South Africa* An Occasional Paper Series No 1: Redistribution PLAAS University of the Western Cape (2003) 19-21.

<sup>163</sup> Jacobs P *et al Evaluating Land and Agrarian Reform in South Africa* An Occasional Paper Series No. 1: Redistribution PLAAS University of the Western Cape (2003) 19-21.

From the case studies in the next chapter, however, it will be seen that the post transfer support to beneficiaries is not really being implemented, which results in the failure of the said projects.

LRAD only supports the Land Affairs component of the plan and it is not clearly stated as to how the agriculture component should be financed. Consequently this component has been organised on an *ad hoc* basis, with the result that its impact has been limited.<sup>164</sup>

In order to bridge the gap identified in land redistribution projects - namely the lack of post-settlement support, lack of agricultural support services, poor coordination amongst provincial Departments of Agriculture and local governments, leading to poorly designed projects, the Comprehensive Agricultural Support Programme<sup>165</sup> was introduced.<sup>166</sup>

### **2 8 3 Comprehensive Agricultural Support Programme**

CASP is a framework developed to complement LRAD and is a core programme managed by the DoA. Its aim is to improve the quality of post-settlement support in agricultural projects and is available to all emergent farmers. In 2004/5 it had a budget of some R 234 million.<sup>167</sup>

The main priority areas under the CASP programme include the following:<sup>168</sup>

- Information and knowledge management;
- Technical and advisory assistance;
- Financial support;
- Training and capacity building;
- Marketing and business development; and

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<sup>164</sup> Lahiff E *Land Reform in South Africa: Is it meeting the Challenge? Policy Brief* PLAAS University of the Western Cape (2001).

<sup>165</sup> Hereafter referred to as "CASP".

<sup>166</sup> South African Ministry of Agriculture *Progress on the Implementation of the Comprehensive Agricultural Support Programme (CASP)* Government Printer (2004) 7-8.

<sup>167</sup> *Land Reform in South Africa: A 21<sup>st</sup> Century Perspective* Centre for Development and Enterprise Research Report no 14 (2005).

<sup>168</sup> Didiza A T "Land and Agrarian Reform: 1994-2006" *International Conference on Agrarian Reform and Rural Development* Brazil (March 2006).

- On-and off- farm infrastructure.

The CASP is a programme designed to enhance the provision of support services in order to promote and facilitate agricultural development, targeting beneficiaries of the land reform and agrarian reform programmes. CASP draws its mandate from the recommendations of the Strauss Commission, which introduced the adoption of the “sunrise” package, aimed at improving the conditions of the beneficiaries of land reform. CASP is further mandated by other policies, such as the *White Paper on Agriculture*<sup>169</sup> and the *Strauss Commission Report* of 1996.<sup>170</sup>

CASP beneficiaries are usually farmers, including beneficiaries of LRAD and other strategic programmes, e.g SLAG, restitution, redistribution and tenure reform provided with farm level support. CASP targets beneficiaries from previously disadvantaged groups, so as to enhance national and household food security. Beneficiaries receive a once-off grant for an agricultural-related project, in which the request for the grant must adhere to the guidelines as proposed in the LRAD operational manual<sup>171</sup>

The progress report on the implementation of the CASP intimated that CASP can only be implemented successfully if certain limitations in effective service delivery within the agricultural sector are removed. For instance the 2003 *Intergovernmental Fiscal Review Process on Agriculture* has come to the following conclusion with regard to government’s agricultural support activities:

The lack of delivery and implementation of a wider range of governmental measures, regulations and programmes, as well as an ineffective support system, all of which are critical to ensure an enabling environment for agriculture, constitutes a major concern and challenge to all state agencies supporting the agricultural sector.<sup>172</sup>

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<sup>169</sup> South African Ministry of Agriculture *White Paper on Agriculture* Government Printer (1997).

<sup>170</sup> South African Ministry of Agriculture *Progress on the implementation of the Comprehensive Agricultural Support Programme (CASP)* Government Printer (2004) 7-8.

<sup>171</sup> South African Ministry of Agriculture *Progress on the Implementation of the Comprehensive Agricultural Support Programme (CASP)* Government Printer (2004) 12.

<sup>172</sup> South African Ministry of Agriculture *Progress on the Implementation of the Comprehensive Agricultural Support Programme (CASP)* Government Printer (2004) 3.

Transferring land in isolation from wider changes in access to resources and infrastructure leaves beneficiaries with constrained choices: to engage in low-input agriculture that they can finance themselves or to engage in joint ventures with public or private sector partners.<sup>173</sup>

## **2 9 LAND AND AGRARIAN REFORM PROJECT**

With overwhelming evidence pointing to the failure of the majority of land reform projects as highlighted in the preceding chapters a review by government of its performance in implementing its policies in the land, agriculture and rural sector led to the Presidency challenging Directors-General to devise projects that would have maximum impact on the eradication of poverty, job creation, and economic growth.<sup>174</sup>

This culminated in the Land and Agrarian Reform Project<sup>175</sup> concept document. The Directors-General of the Departments of Agriculture and Land Affairs responded by proposing an accelerated land and agrarian reform project, to be managed as a joint project of the DLA, the national DoA, provincial Departments of Agriculture, state-owned enterprises and sector partners.<sup>176</sup>

The strategy for LARP is based on a well co-ordinated, aligned bottom-up approach based on joint planning at the local settlement project level and coordinated implementation within government and between government and its sector partners. LARP services will be provided via 'One-stop Shops' to the land reform beneficiaries. The 'One-stop Shop' concept places all relevant services from the different service providers, public or private and whether for business planning, financing for land, fixed or movable assets, farm development,

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<sup>173</sup> Hall R "A Political Economy of Land Reform in South Africa" 2004 vol 31 no 100 *Review of African Political Economy* 213-227.

<sup>174</sup> Department of Land Affairs *Land and Agrarian Reform Project: Concept Document* (2008) 7.

<sup>175</sup> Hereafter referred to as "LARP".

<sup>176</sup> Department of Land Affairs *Land and Agrarian Reform Project: Concept Document* (2008) 7.



production inputs, value addition or agri-business, in one venue in close proximity to the beneficiaries.<sup>177</sup>

According to the concept document, LARP has the following objectives:

- To redistribute 5 million hectares of white owned agricultural land to 10 000 new agricultural producers;
- To increase the number of black entrepreneurs in the agribusiness industry by 10%;
- To provide universal access to agricultural support services to the target groups;
- To increase agricultural production by 10–15% for the target groups, under the LETSEMA-ILIMA Campaign<sup>178</sup>; and
- To increase agricultural trade by 10–15% for the target groups.<sup>179</sup>

It is unclear whether LARP is intended to operate in parallel with existing programmes, to complement them or to replace them. Given that LARP appears to have no budget of its own, and shares the targets already set for land reform in general, it seems, at best, to represent a new way of using existing resources.<sup>180</sup>

Overall, it is not apparent as to what exactly is new about LARP and what it adds to existing land reform efforts since it brings with it no new resources, and a frank admission that existing resource commitments are greatly insufficient to meet the target of 30% by 2014. It therefore seems unlikely that LARP will impact significantly on either the pace or sustainability of land reform

At the time of research there was no information available in terms of the implementation of the LARP principles on land reform programmes. However, the concept behind LARP does highlight the additional budget that will be required to purchase the necessary areas of land at market prices. It also shows that

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<sup>177</sup> Department of Land Affairs *Land and Agrarian Reform Project: Concept Document* (2008) 7.

<sup>178</sup> This campaign aims to bring about an increase in production by unlocking the potential of currently “dead” land and other assets, in particular in communal areas.

<sup>179</sup> Department of Land Affairs *Land and Agrarian Reform Project: Concept Document* (2008) 7-8.

<sup>180</sup> Lahiff E *Land Reform in South Africa: A Status Report 2008* PLAAS University of the Western Cape (2008) 30.

government is aware of the importance of providing post-settlement support to the beneficiaries of land reform in order for the projects to be successful and sustainable.

## **2 10 SUCCESSES AND FAILURES OF THE LAND REFORM PROGRAMME**

It would seem that the failures of land reform have been more than the successes. The Commission's achievements thus far have been impressive in terms of the number of claims settled and the hectares of land restored but the restitution programme "has not contributed much thus far to rectifying the extreme imbalance of ownership of productive resources."<sup>181</sup> While different policies and programmes have supported the land reform programme in the last sixteen years the rate of transfer of land has been slow and the general sustainability of projects has been in question. A review by government of its performance in implementing its policies in the land, agriculture and rural sectors has revealed that whilst visible gains have been made in some areas, considerably more still needs to be done by it in collaboration and alignment with its sector partners to ensure a vibrant agricultural and rural sector.<sup>182</sup> The current land reform programme has failed to contribute to economic growth in the country, specifically in terms of creating sustainable livelihoods, rural employment and poverty alleviation.

Most of the beneficiaries (including individuals and communities) who obtained ownership and access to land in rural areas through either, restitution, redistribution or tenure reform, have up to now been unable to utilize the land to its full potential.<sup>183</sup> Currently the majority of the land reform beneficiaries in the rural areas are unskilled and lack the experience and expertise to develop and utilize the acquired land.<sup>184</sup> Therefore the ideal of achieving a situation of sustainable

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<sup>181</sup> De Villiers B *Land Reform: Issues and Challenges. A Comparative Overview of Experiences in Zimbabwe, Namibia, South Africa and Australia* KAS (2003) 66.

<sup>182</sup> Hall R *Land and Agrarian Reform in South Africa: A Status Report 2004* Research report no 20 PLAAS University of the Western Cape (2004) v. See also Department of Land Affairs *Land and Agrarian Reform Project (LARP) Concept Document* (2008) 1; Kariuki S *Agrarian Reform, Rural Development and Governance in Africa: A case of Eastern and Southern Africa* Centre for Policy Studies (2009) 12.

<sup>183</sup> Mkhabela M "Didiza requires plans to settle land claims" *City Press* 7 June 2004 7.

<sup>184</sup> Sepaela P "Nkuzi has its Say" *Land News* Government Printer (2006) 14-16.

development and improved quality of life, especially in terms of agricultural development has not been realized.<sup>185</sup>

The number of failed land reform projects is on the rise. This has attracted much media attention of late. One investigation has uncovered the failures of the land reform programme showing thousands of formerly productive farms lying abandoned.<sup>186</sup> Moreover it was discovered that:

- 20 top crop and dairy farms in the Eastern Cape, bought for R11.6-million and returned to a Kokstad community, are now informal settlements;
- A once-thriving potato farm in the KwaZulu-Natal Midlands is now a makeshift soccer field;
- 10 000 people who were given back 8000ha of prime fruit and macadamia farms in Limpopo are crippled by R5-million debt;
- A former multimillion-rand tea estate in Magoebaskloof in Limpopo has become an overgrown forest;
- More than five tons of a macadamia nut crop on a reclaimed Limpopo farm was so poor that it was dumped into the Levubu river; and
- A R22-million irrigation system built by the government to supply water to new farmers in KwaZulu-Natal lies unused.<sup>187</sup>

These examples clearly show that the provision of post-settlement support has not aligned adequately to the transfer of land. The high failure rate of post-settlement support projects is linked to a lack of, among other things, farm management knowledge, marketing skills and adequate access to development credit.<sup>188</sup> In this regard there are numerous examples of cases in all provinces where general

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<sup>185</sup> Du Toit P *Die Groot Suid Afrikaanse Grondskandaal Legacy* (2004)1-5.

<sup>186</sup> Mthethwa B "Farms collapse as land reform fails" *Sunday Times* <http://southafrica-pig.blogspot.com/2009/03/farms-collapse-as-land-reform-fails-in.html> Accessed on 18 January 2011.

<sup>187</sup> Mthethwa B "Farms collapse as land reform fails" *Sunday Times* <http://southafrica-pig.blogspot.com/2009/03/farms-collapse-as-land-reform-fails-in.html> Accessed on 18 January 2011.

<sup>188</sup> Samayende S "Land reform a dismal failure" *City Press* 14 July 2005 1.

neglect of acquired land, poverty and under development are still the order of the day.<sup>189</sup>

The department has been accused of not providing effective post-settlement support as part of the land reform process and this criticism is supported by the majority of land reform beneficiaries who remain subjected to poverty and underdevelopment even after receiving land through the land reform programme.<sup>190</sup> As a result the department has been ineffective in achieving the objectives of facilitating post-settlement support to the beneficiaries who receive land in terms of the land reform programmes, despite cases of isolated successes.<sup>191</sup>

An assessment done by the DoA in 2004, found that between 60-70% of land reform projects, both in restitution and redistribution projects, in the post-settlement phase are experiencing operational difficulties or are considered dysfunctional.<sup>192</sup> The reasons behind such a situation are attributed to the following:

- Insufficient training and skills transfer to beneficiaries receiving title to land;
- Failure to assess the land use needs from the persons who are to receive title to land in relation to the capacity and potential of the land;
- Poor intergovernmental relations as well as between the private sector and civil society;
- Identification of important role-players and stakeholders too late in the process;
- Lack of capacity and skills on the part of government to develop and implement business plans;

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<sup>189</sup> Du Toit P *Die Groot Suid Afrikaanse Grondskandaal Legacy* (2004) 1, 24, 40.

<sup>190</sup> Hall R "Where are we? Where to from here? Towards an agenda for policy debate" Unpublished lecture presented at the *National Land Summit* held at NASREC Johannesburg (27 July 2005) 13.

<sup>191</sup> One reflected under chapter 5 of this dissertation.

<sup>192</sup> Hilzinger-Maas D "An Expeditious Land Reform Process Realises its Broader Objective of Poverty Reduction and therefore Mitigates the Factors that Influence Spatial Poverty Traps" A paper prepared for the *International Workshop: Understanding and Addressing Spatial Poverty Traps* Chronic Poverty Research Centre and the Overseas Development Institute (29 March 2007) 3; Samayende S "Land reform a dismal failure" *City Press* 14 July 14 2005 1.

- Insufficient or lack of funding on the part of government/stakeholders and beneficiaries themselves;
- Communal ownership of land vs. legal entities to hold title. (Difficulties arise with legal entities which are dysfunctional and not capacitated)
- No clear identification or guidelines on whose role it is to provide post-settlement support;

## 2 11 SUSTAINABLE DEVELOPMENT IN THE CONTEXT OF LAND REFORM

Throughout the previous paragraphs we have come across the term sustainable development. It will therefore be appropriate to explain what is sustainable development within the context of land reform?

The basis for sustainable development is laid down in section 24 of the Constitution. Its provisions authorized the enactment of the National Environmental Management Act.<sup>193</sup> The Preamble to the Act defines the term “sustainable development” as meaning “the integration of social, economic and environmental factors into planning, implementation and decision making so as to ensure the development serves present and future generations.”<sup>194</sup>

In short, sustainable development entails that, in order for land reform to be successful, beneficiaries’ quality of life must improve substantially, and acquired land must be utilized to its full commercial potential, after resettlement on claimed land has occurred. This was well explained in the case of *In re Kranspoort Community* 2000 2 SA 124 (LCC) where Dodson J, in having to determine whether rights in land should be restored listed “the risk of unsustainable depletion of renewable resources” as a problem.<sup>195</sup> The effect of such a depletion would be to prevent the younger members of the community from having equitable access to the restored asset in future. Such a problem would permit a judge to impose conditions to ensure that equal access to the restored asset by all members of the

<sup>193</sup> Act 107 of 1998. Hereafter referred to as “NEMA”.

<sup>194</sup> Section 1(1) (xxix).

<sup>195</sup> Par 111. See also Dodson A “Unfinished Business: The Role of Governmental Institutions after Restitution of Land Rights” in Walker C *et al* (eds) *Land, Memory, Reconstruction and Justice: Perspectives on Land Claims in South Africa* Oxford University Press (2010) 273-287.

community.<sup>196</sup> As authority for imposing such conditions the court referred to the case of *Makuleke Community Claim pertaining to Pafuri Area of Kruger National Park*.<sup>197</sup> Dodson questions whether, with regard to restitution, the Act comes at all close to providing a comprehensive legislative and institutional framework for addressing the demands of sustainable resettlement.<sup>198</sup>

Pienaar J has made an incisive contribution on the issue of sustainable development.<sup>199</sup> She analyses the current land reform legislation in the context of sustainable development. The statutes she refers to include those in both the redistribution context such as the Provision of Land and Assistance Act<sup>200</sup> as well as the restitution context, namely the Restitution Act. Neither statute contains any direct provisions regarding sustainable development. The indirect provisions referred to are section 2 of the Provision of Land and Assistance Act and section 42C of the Restitution Act. She also refers to the positive role the DFA could play. However, in the context of its land-development provisions having recently been declared invalid these arguments are no longer relevant.<sup>201</sup> She states that while none of the statutes is specifically development-oriented they do contain useful provisions that can be fruitfully employed.<sup>202</sup> She refers to the role that LRAD and the *Strategic Plan for South African Agriculture* can play in land reform.<sup>203</sup> Her conclusion is that the mere transfer of land does not guarantee successful land reform. Moreover, the lack of skilled black farmers to maintain South Africa's agricultural production is required. To this end training programmes, support packages and the establishment of farmers' unions should start to address the

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<sup>196</sup> Par 183.

<sup>197</sup> 1998 JOL 4264 (LCC). With regard to the imposition of development conditions see also *Mphela v Engelbrecht* 2005 2 All SA 135 (LCC).

<sup>198</sup> See also Dodson A "Unfinished Business: The Role of Governmental Institutions after Restitution of Land Rights" in Walker C *et al* (eds) *Land, Memory, Reconstruction and Justice: Perspectives on Land Claims in South Africa* Oxford University Press (2010) 283.

<sup>199</sup> "Land Reform and Sustainable Development – a Marriage of Necessity" 2004 *Obiter* 269-293. The article will not be discussed in detail here.

<sup>200</sup> 126 of 1993.

<sup>201</sup> *Johannesburg Metropolitan Municipality v Gauteng Development Tribunal and Others* 2010 6 SA 182 (CC); 2010 9 BCLR 859 (CC) 2010 ZACC 11 par 2, 69, 70, 80. See also Van Wyk J "Parallel Planning Mechanisms: a Recipe for Chaos?" 2010 (1) *PER*.

<sup>202</sup> Pienaar J M "Land Reform and Sustainable Development – a Marriage of Necessity" 2004 *Obiter* 269-293 275.

<sup>203</sup> Pienaar J M "Land Reform and Sustainable Development – a Marriage of Necessity" 2004 *Obiter* 269-293 286-291.

divide that is at present still land reform on the one hand and sustainable development on the other.<sup>204</sup>

On a more practical level the experiences of a small community in the Franschoek area in the Western Cape, South Africa, are documented. The following were identified as 'keys to success' which need to be kept in mind and implemented to ensure that the outcomes of the land reform initiatives are sustainable. These are:

- First and foremost, create a community consensus regarding the basic vision, goals and methodology, then document this consensus and have it signed by all stakeholder groups.
- Once such a social accord is signed, don't stop consulting with the community, who need to be constantly kept informed and kept on board.
- Government, at whatever level, can only create enabling environments, not initiate or execute such projects for and on behalf of communities, who have to engage with their own business sector as experienced wealth creators to drive such initiatives.
- Although empowerment and conservation are essentially moral causes, they cannot be properly served without adequate funds. It is therefore imperative that business must be incentivised to serve these very essential causes by linking them to high-value business opportunities, thereby creating the necessary opportunity/obligation for cross-subsidisation.
- By bringing in responsible business that actively subscribes to the triple bottom line, huge capacity, capital, experience, expertise and energy can be tapped into, whilst also gaining another very important benefit, which is to have projects properly packaged in 'bankable' documents. Most project proposals in South Africa seem to fail not because of lack of potential funding, but because of an inability to unlock the funds available because of a lack of demonstrable 'bankability' in respect of the project's presentation. The loan-funding support extended to Franschoek by the likes of the DBSA has also proved to be critical.

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<sup>204</sup> Pienaar J M "Land Reform and Sustainable Development – a Marriage of Necessity" 2004 *Obiter* 269-293 293.

- In preparing such an initiative, every minute spent at the outset on careful consultation, research and conceptualisation saves hours in the later stages when authorisations and development rights have to be negotiated. Go slowly and carefully in the beginning, in order to be able to proceed rapidly later.
- Each project will be unique, its content determined by local circumstance. It must essentially be owned and driven by locals, with a motivated 'champion', not by people that can be perceived as outsiders.<sup>205</sup>

Although the Department of Land Affairs has included in its project cycle, environmental planning and has developed an Environmental Sustainability Assessment Tool (ESAT) to ensure the incorporation of environmental considerations in the land reform planning and project cycle, it will be seen later in this research document<sup>206</sup> that majority of land reform projects are still failing. The reason is the lack of post-settlement support, insufficient proper consultation and participation of land reform beneficiaries and role-players in government and non government organizations in planning and implementation stages therefore resulting in failed projects with no sustainability.

Without this support it will be difficult for government to successfully achieve what it set out to do, that is addressing the imbalances of the past apartheid regime, restoring rights in ownership to land and thereby alleviating poverty. At the same time contributing towards economic and social development of the country and of the beneficiaries themselves.

## 2 12 CONCLUSION

In conclusion, it is necessary to state that the land reform process in South Africa is a difficult and complex process.<sup>207</sup> While land reform has brought some positive

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<sup>205</sup> Steenkamp W *Sustainable Development: Land Reform*  
[http://www.enviropaedia.com/topic/default.php?topic\\_id=265](http://www.enviropaedia.com/topic/default.php?topic_id=265) Accessed 4 October 2008.

<sup>206</sup> Chapter 4

<sup>207</sup> Pearce B "A Critical Assessment of Land Reform in South Africa 1994–1996" Southern and Eastern African Regional Conference on Experiences, Perspectives and Strategies on Land Reform and Land Rights in Rural and Urban settings Johannesburg (1996).



results in the past sixteen years in terms of restitution and redistribution of land, many settlement projects are of questionable quality and sustainability.

In order for land reform to contribute to sustainable livelihoods for the beneficiaries of the restitution and the redistribution programmes, it must be supported by a wide ranging programme of agrarian reform which includes pre and post-settlement support by the department together with other relevant role players and stakeholders. These would include other government departments, such as Human Settlements for the provision of housing, Agriculture for assistance with funding and drawing up of business plans and training, municipalities for the provision of basic services in terms of inclusion in their IDP's and private partners.

Many of the problems and deficiencies relating to features of the current agrarian reform policy/programmes and the disjuncture in planning and implementation of land acquisition and transfer to beneficiaries can be traced back to the lack of post-settlement support. Training and capacity building was another factor that had to be addressed as part of the provision of post-settlement support to beneficiaries<sup>208</sup> and in my opinion to the implementing officials of the land reform programme as well. Capacity constraints within DLA have been highlighted and must be addressed.<sup>209</sup> Through case studies it has been pointed out that "major problems exist in land reform projects in terms of inadequate infrastructural development, poor service provision and unrealistic business planning. The importance of the post-settlement support for the overall success of the land reform programme was highlighted in the *Mid-term Review of the Land Reform Pilot Programme*.<sup>210</sup> It was pointed out that post-transfer support is crucial for the overall success of land redistribution, yet it has been neglected by virtually all the key role players. Consequently these issues must be addressed in the context of

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<sup>208</sup>Jacobs P *et al Evaluating Land Reform and Agrarian Reform in South Africa: Farm tenure* PLAAS University of the Western Cape (2003) 20.

<sup>209</sup> Jacobs P *et al Evaluating Land Reform and Agrarian Reform in South Africa: Farm Tenure:* PLAAS University of the Western Cape (2003) 20.

<sup>210</sup> Department of Land Affairs *Mid-term Review of the Land Reform Pilot Programme* (1997).

the provision of post-settlement support to ensure that projects become successful and sustainable.<sup>211</sup>

In the context that many of the ills of the land reform programme point to a lack of post-settlement support, the next chapter discusses post-settlement support within the context of the South African land reform programme.

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<sup>211</sup> Lahiff E *Land Reform in South Africa: Is it Meeting the Challenge?* Policy Brief no1 PLAAS University of the Western Cape (2001).

## CHAPTER THREE

### POST-SETTLEMENT SUPPORT IN THE CONTEXT OF THE SOUTH AFRICAN LAND REFORM PROGRAMME

#### 3 1 INTRODUCTION

Post-settlement support – variously known as “settlement support”, “post-transfer support”, “post-distribution support” or “post-acquisition support”, amongst others – has assumed various meanings and applications. The *locus* afforded to settlement support in land reform depends mostly on the form, purpose and prioritisation given to land reform in general and the post-acquisition phase in particular.

During this phase beneficiaries must be assisted to utilise the land received in terms of land reform in a way that reduces poverty and gives them a sustainable livelihood.

Post-settlement support can be provided in the form of financial support, education, training and capacity building, establishment and maintenance of physical infrastructure (especially in rural areas) as well as expertise in agricultural assistance.<sup>212</sup> Support services or complementary development support, was specified in the *White Paper on South African Land Policy* of 1997 to include assistance with productive and sustainable land use, infrastructure support, farm credit, agricultural inputs and access to markets for farm outputs.<sup>213</sup>

From the previous chapter it was clear that many of the problems relating to land reform can be laid at the door of the lack of post-settlement support. This chapter

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<sup>212</sup> Dekker H A L “*The Invisible Line: Land Reform, Land Tenure Security and Land Registration*” Ashgate (2003) 80-81.

<sup>213</sup> Department of Land Affairs *White Paper on South African Land Policy* Government Printer (1997) 16.

discusses the responsibility for and concept of post-settlement support and its relation to land reform. Focus will be on two of the three pillars of land reform, namely the land restitution and land redistribution programmes.

### **3 2 RESPONSIBILITIES FOR AND PROGRESS IN THE PROVISION OF POST-SETTLEMENT SUPPORT**

The rigid distinction in South Africa's land policy between land delivery and agricultural development has resulted in post-transfer support being largely neglected. There is no comprehensive policy on support for agricultural development after land transfer and the agencies entrusted with this function have made little progress in this regard. Agricultural assistance for individual land reform projects is *ad hoc*.<sup>214</sup>

The responsibility for the provision of post-settlement support lies with the DLA - now known as the Department of Rural Development and Land Reform. However, its role is restricted to that of facilitation of the process. The department therefore does not take the responsibility for the physical implementation of the post-settlement support process since it does not have the required capacity. These lie with the respective specialist line function departments who come in once the land use and needs are identified with the land reform beneficiaries. The role of the department is therefore to identify which elements are needed to ensure sustainable development after the transfer of land to beneficiaries. These needs are then to be delegated to other statutory bodies within the various spheres of government that are responsible for the specific area of post-settlement support.<sup>215</sup> For example housing needs of land reform beneficiaries would involve the provision of basic services such water, sanitation, electricity, roads, transport, hospitals, recreational areas, etc. These would then require departments such as Human Settlements, Water Affairs, the municipality, etc. that would be involved in the post-settlement process.

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<sup>214</sup> Jacobs P *et al Evaluating Land and Agrarian Reform in South Africa* An occasional paper series No 1: Redistribution PLAAS University of the Western Cape (2003) 7.

<sup>215</sup> Department of Land Affairs *Framework for Sustainable Support* Government Printer (2005) 2-3.

### 3 3 INTERNATIONAL VIEW

According to the United Nations Food and Agricultural Organisation

Land reform becomes more effective when beneficiaries have or acquire the necessary experience in land use and management and when they have the capacity to generate sustainable income or sufficient food. Rural infrastructure, improved technologies and a range of responsive rural services, including training, have proved essential to effective and lasting agrarian reform.<sup>216</sup>

Once land has been acquired, the following key ingredients of a comprehensive support provision programme are necessary – as outlined in the *Declaration of Principles and Programme of Action*, also known as the ‘Peasants Charter’, adopted by the World Conference on Agrarian Reform and Rural Development in 1979:

- Access to water, agricultural inputs, services, markets, credit, research, technology development and extension;
- Expansion and diversification of employment opportunities;
- Improved public and private utilities and services, that is, education, health, nutrition, safe drinking water, energy, roads and communication;
- Full and equitable integration of women in development;
- Participation by the beneficiaries;
- Facilitation of enabling macro-policies (that is, fiscal, price, trade and investment policies).<sup>217</sup>

International experience shows that post-settlement support provision to land reform beneficiaries cannot be viewed simply as a narrow or technical issue. It requires the involvement of a wide range of active and committed players,

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<sup>216</sup> Food and Agriculture Organization “FAO’s Contribution to Good Policies and Practices in Agrarian Reform and Rural Development: A Brief Overview” Paper presented at the *International Conference on Agrarian Reform and Rural Development* Porto Alegre (2006).

<sup>217</sup> Food and Agriculture Organization “FAO’s Contribution to Good Policies and Practices in Agrarian Reform and Rural Development: A Brief Overview” Paper presented at the *International Conference on Agrarian Reform and Rural Development* Porto Alegre (2006).

including community members, non-governmental organisations (NGOs), social movements, local government, a range of government departments and international agencies.<sup>218</sup>

The attainment of sustainable development outcomes therefore depends on the provision of settlement support which should not be added at the end of the land reform process but should form an integral part of the entire process of land reform through the planning, transfer and post-transfer phases in an integrated manner involving all role players (land reform beneficiaries, government departments, private sector partners, etc.) and resources such as natural resources as well as financial and human resources.

#### **3 4 POST-SETTLEMENT STRATEGIES AND INSTITUTIONAL ARRANGEMENTS**

According to the Programme for Land and Agrarian Studies (PLAAS), the principles and policies underpinning land reform in different countries have led to the adoption of various types of post-settlement strategies and institutional arrangements, which can be broadly categorised as follows:

- Decentralisation;
- Centralisation and a high level of state involvement;
- Variations of private sector involvement and partnership arrangements;
- Non-interventionist or no apparent strategy;
- Land occupations.<sup>219</sup>

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<sup>218</sup> *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* Programme for Land and Agrarian Studies for the Sustainable Development Consortium (2006) 3.

<sup>219</sup> *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* Programme for Land and Agrarian Studies for the Sustainable Development Consortium (2006) 5-6.

The characteristics of each of these strategies are the following:

Table 1: Post settlement strategies

<b>DECENTRALISATION</b>	<b>CENTRALISATION</b>
<ul style="list-style-type: none"> <li>- Focus is on diversity and inclusion taking into account gender, ethnicity, instruments for land access with wider perspectives on rural development involving cross sectoral co-ordination and strengthened civil society partnerships.<sup>220</sup></li> <li>- Understanding regional and local social, market and cultural conditions assist in formulating settlement support strategies that cuts across the different sectors responsible for regional and local development. It is therefore an integrated approach using area based management of natural resources and support provisions.</li> </ul>	<ul style="list-style-type: none"> <li>- Linked with a strategy of centralised land reform where the state provides the necessary inputs and views settlement support as an integral part of the broader land reform process.</li> <li>- State institution responsible for land reform and agricultural production is also responsible for the provision of settlement support.<sup>221</sup></li> </ul>
<b>PRIVATE SECTOR AND PARTNERSHIPS</b>	<b>NON INTERVENTION OR NO APPARENT STRATEGY</b>
<ul style="list-style-type: none"> <li>- Refers to states operating within a market based framework where there is a reliance on the private sector and partnership arrangements to provide the necessary post-settlement and developmental support.<sup>222</sup></li> <li>- The most common form is the contract scheme such as the procurement or marketing contracts where the land owner is responsible to produce according to pre-determined quality specifications using his own inputs and partial and production contracts some of the inputs are provided and the produce is purchased at already agreed prices. Lastly total contracts are where the landowner supplies and manages the inputs and the land reform beneficiaries provide the land and the labour.</li> <li>- Through these partnerships or joint ventures</li> </ul>	<ul style="list-style-type: none"> <li>- Settlement support is not provided by default or by intention.</li> <li>- On the one hand and reform is seen only to acquire land for the beneficiaries and no settlement support is given thereafter.</li> <li>- On the other hand institutions have adopted a development support strategy based on a bias towards urban areas and more commercial large scale farmers. As a result new entry farmers such as land reform beneficiaries do not receive this support or physical infrastructure such as road, transport, electricity, running water and telecommunications in the rural areas where they are mainly found.</li> </ul>

<sup>220</sup> *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* Programme for Land and Agrarian Studies for the Sustainable Development Consortium (2006) 6.

<sup>221</sup> *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* Programme for Land and Agrarian Studies for the Sustainable Development Consortium (2006) 6.

<sup>222</sup> *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* Programme for Land and Agrarian Studies for the Sustainable Development Consortium (2006) 7.

land reform beneficiaries are able to access capital, inputs and technologies which they would not have had access to on their own and at the same time the private sector benefits by inheriting a positive marketing image working with formerly disadvantaged communities.	
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- This provides land reform beneficiaries with potential to establish themselves provided they are given assistance in accessing the private sector and forming joint ventures that will be to their advantage.	
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Lastly there is the strategy of land occupations. This places pressure on state institutions to provide settlement support.<sup>223</sup>

The need for collaboration and communication between the various government departments in delivering sustainable land and agrarian reform is highlighted in chapter 6 of the *White Paper on Land Policy* of 1997, where the following principles are highlighted:

- Government, where appropriate, must enter into partnership arrangements with the private sector, NGOs and community based organisations. Implementation mechanisms and procedures must facilitate this co-operation.
- Co-ordination of departments and levels of government, and sound working arrangements between national, provincial and local administrations is fundamental to the success of land policy.
- A monitoring and evaluation system that can track the progress of land policy measures and that can provide feedback to managers and the public, is a key element in ensuring that policy measures are able to achieve their intended goals.<sup>224</sup>

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<sup>223</sup> This will be seen in the country case study of Brazil in chapter 5.

<sup>224</sup> Department of Land Affairs *White Paper on South African Land Policy* (1997).



### **3 5 INITIATIVES IN SOUTH AFRICA**

In South Africa, the Integrated Development Planning (IDP) approach of the Department of Provincial and Local Government and the Integrated Sustainable Rural Development Programme (ISRDP) have not yet had the desired impact on support to land reform beneficiaries. Similarly, initiatives like the DLAs' policy and guidelines for integrating environmental planning into land reform and development have the potential to contribute significantly to sustainability in land reform, but have not yet been implemented adequately.<sup>225</sup>

Post-settlement support services that are available to land reform beneficiaries tend to be supplied by provincial departments of agriculture and a small number of non-governmental organisations, but the evidence would suggest that these only serve a minority of projects as will be seen in Chapter 4 below.

### **3 6 PHASES OF POST-SETTLEMENT SUPPORT**

After acknowledging that post-settlement support forms an integral part of the land reform process, the DLA developed key responsibility areas for the provision of post-settlement support.

In the land restitution programme post-settlement support is provided to restitution beneficiaries by a post-settlement unit. The post-settlement support process consists of 8 phases<sup>226</sup> as is captured in the diagram below.

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<sup>225</sup> Hilzinger-Maas D "An Expeditious Land Reform Process Realises its Broader Objective of Poverty Reduction and therefore Mitigates the Factors that Influence Spatial Poverty Traps" A paper prepared for the *International Workshop: Understanding and Addressing Spatial Poverty Traps* Chronic Poverty Research Centre and the Overseas Development Institute (29 March 2007) 3.

<sup>226</sup> Commission on Restitution of Land Rights *Annual Report 2007-2008* 53.

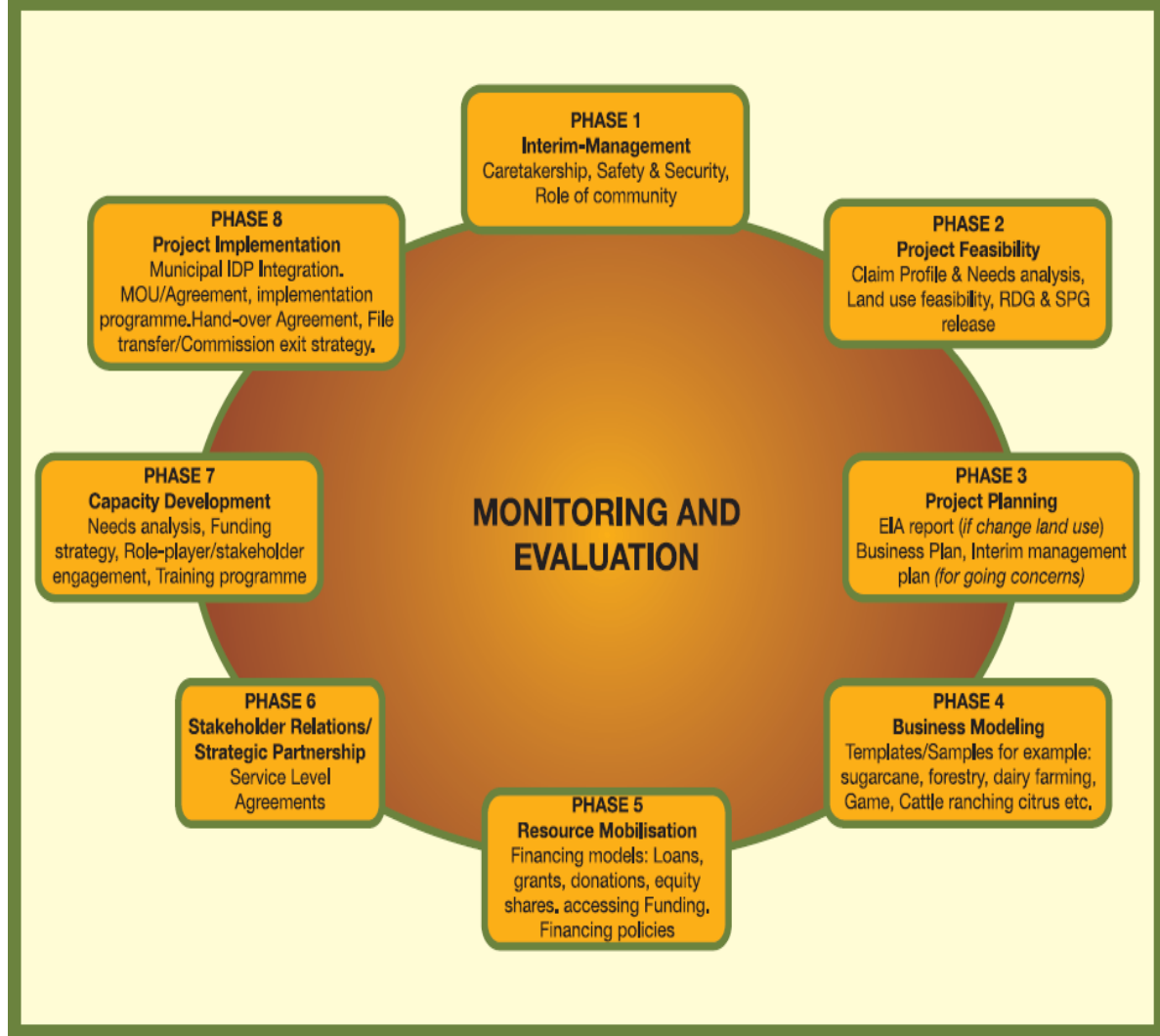


Figure 2: Post settlement phases

The deliverables of the different phases for post-settlement in restitution projects are captured below:<sup>227</sup>

#### Phase 1: Interim management plan

- Provisional management plan /caretakership
- Service level agreement
- Lease agreement
- Plan clearly stating the community's role

This phase is said to take about four months involving re-orientation training of the caretaker of interim farm manager to reflect the new relationship of the community through its legal entity being the new owner.<sup>228</sup>

<sup>227</sup> *Progress on Restitution Land Claims*  
<http://www.info.gov.za/speeches/2006/06013012451001.htm> Accessed on 21 January 2011.

<sup>228</sup> *Sustainable Restitution Support-South Africa Restitution Implementation Manual: Partnership for Sustainable Pre-and Post settlement support* SADC Centre for Land related, Regional and Development Law and Policy University of Pretoria (2010) 47.

## Phase 2: Project feasibility

- Project profile report
- Socio – economic report
- Land use feasibility including EDST report if applicable
- Application for the release of grants

This phase should take between four to six months and is co-ordinated by the RLCC.<sup>229</sup>

## Phase 3: Project planning

- IDP inclusion road map (with local municipality)
- Project business plan
- Provisional management plan (whenever applicable)
- Implementation plan

This phase should take between four weeks to three months.<sup>230</sup>

## Phase 4: Business modelling

- Templates for business initiatives
- Implementation of different business models

This phase should take eight weeks. There should be agreement between the legal entity and the business enterprise/strategic partner or joint venture and registration of the business enterprise.<sup>231</sup>

## Phase 5: Resource mobilisation

- Financing strategy on different financing models
- Financing agreements on various business models

This phase should take about six months.<sup>232</sup>

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<sup>229</sup> *Sustainable Restitution Support-South Africa Restitution Implementation Manual: Partnership for Sustainable Pre-and Post settlement support* SADC Centre for Land related, Regional and Development Law and Policy University of Pretoria (2010) 47.

<sup>230</sup> *Sustainable Restitution Support-South Africa Restitution Implementation Manual: Partnership for Sustainable Pre-and Post settlement support* SADC Centre for Land related, Regional and Development Law and Policy University of Pretoria (2010) 36, 41, 46, 48.

<sup>231</sup> *Sustainable Restitution Support-South Africa Restitution Implementation Manual: Partnership for Sustainable Pre-and Post settlement support* SADC Centre for Land related, Regional and Development Law and Policy University of Pretoria (2010) 48-49.

<sup>232</sup> *Sustainable Restitution Support-South Africa Restitution Implementation Manual: Partnership for Sustainable Pre-and Post settlement support* SADC Centre for Land related, Regional and Development Law and Policy University of Pretoria (2010) 47.

#### Phase 6: Stakeholder relationship / strategic partnership

- Stakeholder analysis (and nature of participation)
- Service level agreements
- Agreements / commitments with Strategic partners

This phase should take about 5 months to identify stakeholders, interact with them, train and capacitate them, agree on roles and responsibilities and conclude Memorandum of Understanding.<sup>233</sup>

#### Phase 7: Capacity development

- Report on needs identified
- Funding strategy
- Training programme
- Stakeholder commitment for training

This phase should take six months.<sup>234</sup>

#### Phase 8: Project implementation

- Implementation plan,
- Memorandums of Understanding on IDP integration,
- Implementation agreements,
- Handover agreement
- Commission's exit strategy

This phase should take between one to four years.<sup>235</sup>

All of the above activities under the phases can be done simultaneously and most of them start during the pre-settlement phase of the claim such as finalising the caretakership agreement or lease agreements, identification of stakeholders and land use needs and feasibility studies are conducted even before the claim is approved in terms of section 42D of the Restitution Act. However from my working experience most of these phases are conducted only after the claim has been approved in terms of section 42D, that is when the project is then handed over to

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<sup>233</sup> *Sustainable Restitution Support-South Africa Restitution Implementation Manual: Partnership for Sustainable Pre-and Post settlement support* SADC Centre for Land related, Regional and Development Law and Policy University of Pretoria (2010) 28-29.

<sup>234</sup> *Sustainable Restitution Support-South Africa Restitution Implementation Manual: Partnership for Sustainable Pre-and Post settlement support* SADC Centre for Land related, Regional and Development Law and Policy University of Pretoria (2010) 45.

<sup>235</sup> *Sustainable Restitution Support-South Africa Restitution Implementation Manual: Partnership for Sustainable Pre-and Post settlement support* SADC Centre for Land related, Regional and Development Law and Policy University of Pretoria (2010) 49-54.

the post settlement unit. This then causes a delay in the provision of post settlement support since the post settlement project officer must start afresh in terms of determining land use needs, identifying stakeholders and commissioning feasibility studies. It is because of the silo mentality between the pre-settlement and post settlement units that implementation of settlement support is negatively affected.

Under the Land Redistribution for Agricultural Development (LRAD) programme which is a sub programme of land redistribution, the framework document states that, “the Department of Agriculture has a post-settlement support services in place to assist farmers. Training will be provided periodically and field officers will be available in all districts to offer technical assistance to all farmers, emerging as well as commercial.”<sup>236</sup> By this is meant the provincial agriculture departments. However, the actual involvement of the provincial agriculture departments varies greatly from province to province, and even from district to district.<sup>237</sup> This will become more evident in Chapter 4 when the different land reform programmes will be discussed in greater detail as far as the provision of post-settlement support or lack thereof is concerned.

### **3 7 INHERENT SHORTCOMINGS IN THE DEPARTMENT’S PROVISION OF POST-SETTLEMENT SUPPORT**

In a study of LRAD projects in three provinces, the Human Sciences Research Council (HSRC) found that “...in many cases there is still no institutionalised alternative to laying the whole burden of training, mentoring and general capacitation on the provincial agricultural departments”.<sup>238</sup>

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<sup>236</sup> Department of Land Affairs *Framework Document for the Land Redistribution for Agricultural Development (LRAD) Programme* (2001).

<sup>237</sup> Human Sciences Research Council *Integrated Rural and Regional Development Land Redistribution for Agricultural Development: Case Studies in Three Provinces* Final report (2003) 8.

<sup>238</sup> Human Sciences Research Council *Integrated Rural and Regional Development Land Redistribution for Agricultural Development: Case Studies in Three Provinces* Final report (2003) 72.

Similarly, in a study of nine LRAD projects in the Eastern Cape Province, it was found that not one had obtained any support from the private sector, and most had not had any contact with either the DLA or the DoA since obtaining their land.<sup>239</sup>

These examples underscore the shortcomings in the provision of post-settlement support. These are the following: Firstly, as inferred earlier,<sup>240</sup> there has been a general focus on the transfer of land to address inequalities of land redistribution by government,<sup>241</sup> and a lesser focus on post-settlement support to the beneficiaries of these transfers. The transfer of land to land reform beneficiaries must go hand in hand with the effective provision of post-settlement support since the mere transfer of land alone has not necessarily reduced poverty or contributed to sustainable development.<sup>242</sup> To substantiate this assumption, the *White Paper on South African Land Policy*<sup>243</sup> identifies the lack of effective post-settlement support in the land reform programme as an institutional shortcoming that needs to be addressed.

One of the main problems affecting the effective provision of post-settlement support is that there is a lack of co-ordination and communication between the key departments of agriculture and land affairs, and other institutions such as the Department of Housing, the Department of Water Affairs and Forestry and local government structures.<sup>244</sup> Due to the multidimensional nature of post-settlement support the skills required to assist in the settlement of new landowners are in many instances not found in a single government department. The needs of beneficiaries may span various departments such as Education, Finance, Agriculture and Environment Affairs, Housing, etc. An integrated policy is therefore required with a single department taking responsibility for general guidance and

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<sup>239</sup> Hall R *LRAD Rapid Systematic Assessment Survey: Nine Case Studies in the Eastern Cape*. Unpublished paper PLAAS University of the Western Cape (2004) 58.

<sup>240</sup> See chapter 1.

<sup>241</sup> May J *et al* "Monitoring the Impact of Land Reform on the Quality of Life: A South African Case Study" 2002 vol 58 *Social Indicators Research* 293-312 294.

<sup>242</sup> Bosman L "Grond Alleen Bemagtig nie die Boere" *Rapport* 19 March 2005 19.

<sup>243</sup> Department of Land Affairs *White Paper on South African Land Policy* (1997) 12.

<sup>244</sup> Lahiff E *Land Reform in South Africa: A Status Report 2008* PLAAS University of the Western Cape (2008) 37; Lahiff E and Hall R "PLAAS Submission to the Portfolio Committee on Agriculture and Land Affairs Programme for Land and Agrarian Studies" PLAAS University of the Western Cape (2004) 3.

policy development but with the actual fieldwork being undertaken by the respective specialist line function departments.<sup>245</sup> To ensure involvement and meaningful participation there must be effective communication, co-ordination, collaboration, co-operation and integration between the different specialist government departments and institutions. One of the advantages of the joint approach is that it would avoid the piece-meal approach which sometimes leads to the collapse of agricultural production projects after land transfers.

Post-settlement support is usually only focussed on pre-project planning, while post project planning is neglected.<sup>246</sup> Project planning, funding and sustainability will benefit from an integrated approach under which the relevant departments jointly make project decisions, co-finance the total project costs and monitor and support the project.<sup>247</sup>

Theories of good governance maintain that governance and democracy are essential conditions for the development of societies and governance is good only if government attains its goal of creating conditions that guarantee satisfactory quality of life for each citizen.<sup>248</sup> It is therefore important that good governance structures be maintained within the Department of Rural Development and Land Reform to ensure that the implementation of post-settlement support is sustainable.

### **3 8 CONCLUSION**

Post-settlement support within the context of land reform has been defined. It refers to the government's responsibility in assisting land reform beneficiaries after they have received land in terms of the land reform programme.

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<sup>245</sup> De Villiers B *Land Reform: Issues and Challenges. A comparative overview of experiences in Zimbabwe, Namibia, South Africa and Australia* KAS (2003) 66. See also Jacobs P *et al* *Evaluating Land and Agrarian Reform in South Africa* An Occasional Paper series No 1: Redistribution PLAAS University of the Western Cape (2003) 19 -21.

<sup>246</sup> Jacobs P *Post Transfer Support in South Africa's Land Reform Programme* PLAAS University of the Western Cape (2003) 4.

<sup>247</sup> Didiza A T "Land and Agrarian Reform in South Africa: 1994-2006" Presentation at the *International Conference on Agrarian Reform and Rural Development* Brazil (March 2006) Fig 6.1.

<sup>248</sup> Fourie D J and Schoeman L "Local Government and Sustainable Post-Settlement Support for Restitution: In Search of Efficient Governance Objectives in Public Administration" 2010 vol 45(1) *Journal of Public Administration* 125-161.

The importance of the provision of post-settlement support has been recognised in the international sphere where “rural infrastructure, improved technologies and a range of responsive rural services, including training, have proved essential to effective and lasting agrarian reform.”<sup>249</sup>

The *White Paper on South African Land Policy* states that:

government has a responsibility to provide assistance with farm credit, farm-inputs and marketing. Advice and assistance may be needed to facilitate the productive use of the land, as well as the provision of rural infrastructure (eg water supplies, drainage, power supplies, roads).<sup>250</sup>

To release this country’s full potential, the department would have to provide the rural communities with the necessary resources, the most important of which is improved water supply, to ensure that production is carried out throughout the year. Other forms of intervention should include extension services, training programmes and financial support to purchase farming equipment. It should be noted that while the availing of such resources and assistance by the government is essential, it would, however, be inadequate if it were not further modified by government interventions aimed at eliminating the historical legacy of urban bias within development projects as well as to ensure comprehensive rural development. The government's 2000 Integrated Sustainable Rural Development Strategy (ISRDS) is a positive step towards this goal. “Not only would these steps help to eliminate the popular prejudice towards rural areas and enhance their attractiveness as places with economic opportunities, they would also help to slow down the rapid urbanisation process which, together with high urban unemployment, have led to a boom in overcrowded informal settlements marked by urban social instability as well as increase in social ills such as high crime levels.”<sup>251</sup>

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<sup>249</sup> Food and Agriculture Organization “FAO’s Contribution to Good Policies and Practices in Agrarian Reform and Rural Development: A Brief Overview” Paper presented at the *International Conference on Agrarian Reform and Rural Development* Porto Alegre (2006).

<sup>250</sup> Department of Land Affairs *White Paper on South African Land Policy* (1997).

<sup>251</sup> Mapadimeng M S “The Land Redistribution for Agricultural Development (LRAD) Sub-Programme: Opportunity for or Constraint to Land Redistribution, Rural Economic Development and Poverty Alleviation?” 2003 vol 52 *Commentary Transformation* 35.



Post-settlement support is a process which should not only be added at the end when land is transferred to the beneficiaries but it should form an integral part of the whole process of planning, transfer and post-transfer phases in an integrated manner involving all role players. In the following chapters the manner in which post-settlement support has been provided or not provided to the beneficiaries of land reform will be examined. Where it has been provided, the *ad hoc* manner of its provision will illustrate the negative impact it has had on land reform.

## CHAPTER FOUR

# AN ANALYSIS OF THE OUTCOMES OF THE LAND RESTITUTION AND REDISTRIBUTION PROGRAMMES IN RELATION TO POST-SETTLEMENT SUPPORT

### 4 1 INTRODUCTION

This chapter looks at the manner in which implementation of the land reform programme has been taking place in South Africa in relation to the provision of post-settlement support and the sustainability of projects.

In South Africa the systematic failure of post-settlement support in land reform has been identified as a major contributing variable to the approximated 50 percent failure rate of new land reform projects.<sup>252</sup> This major weakness relates to both land redistribution and restitution programmes.<sup>253</sup> In a written reply to a question in parliament, the current Minister of Rural Development and Land Reform indicated that “2,864 farms had been acquired” through the land reform programme. “29% of the 1,250 LRAD projects reviewed have failed, and a further 22% are declining.”<sup>254</sup>

Inadequate support to the beneficiaries of land reform has been a recurring complaint almost since the inception of the programme. Various studies have shown that beneficiaries experience severe problems accessing services such as credit, training, extension advice, transport and ploughing services, veterinary services and access to input and produce markets.<sup>255</sup> Post-settlement services

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<sup>252</sup> William C and Van Zyl N *Capital- and Market-access Constraints in Land Reform Projects; Three Case Studies from Mpumalanga (incomplete draft)*. Institutions TIPS and TRAC-MP (2008) 4.

<sup>253</sup> Cousins B “Agrarian Reform and the ‘Two Economies’: Transforming South Africa’s Countryside” in Ntsebeza L and Hall R (eds) *The Land Question in South Africa: the Challenge of Transformation and Redistribution* (2005) 224.

<sup>254</sup> *Land Redistribution in South Africa Proving a Failure* <http://southasia.oneworld.net/globalheadlines/land-redistribution-in-south-africa-proving-a-failure>. IRIN Accessed on 14 December 2010.

<sup>255</sup> Lahiff E *Land Reform in South Africa: A Status Report 2008* PLAAS University of the Western Cape (2008) 37. See also William C and Van Zyl N *Capital- and Market-access Constraints in Land*

which amongst others include capacity building, integrated project development, integration of various government departments, institutional arrangements and skills transfer are seldom in place when the land is eventually settled on.<sup>256</sup>

In assessing the impact of land reform on the livelihoods of its beneficiaries as well as on its outcomes and sustainability cognisance must be taken of the following:

- Whether there has been an increase in income of the beneficiaries due to marketed produce or employment;
- Improved food security through agriculture (home gardens or through marketed produce being sold and more disposal income to buy food);
- Improved access to basic services: housing, water and sanitation, schools, clinics, etc;
- More sustainable use of natural resources.<sup>257</sup>

An in depth analysis of post-settlement support therefore necessitates reference to the following:

- Available data on the number of projects in restitution involving the component of land restoration and LRAD projects in redistribution;
- Monitoring and evaluation (M&E) reports that have been done by the DLA in assessing restitution and redistribution projects and the provision of settlement support services;
- Diagnostic case studies of restitution and redistribution projects with particular emphasis on the element of settlement support and sustainability of projects (impact of land reform on livelihoods)
- Interviews with officials of the Department of Land Affairs and beneficiaries of land reform projects through structured

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Reform Projects; Three Case Studies from Mpumalanga (incomplete draft). Institutions TIPS and TRAC-MP (2008) 4; Adams M, Sibanda S and Turner S Land Tenure Reform and Rural Livelihoods in South Africa Overseas Development Institute (1999) 3.

<sup>256</sup> Moabelo K E Land Claims Process in Limpopo Province: A Case Study of the Makotopong Community in South Africa (2007) iv.

<sup>257</sup> May J & Roberts B Monitoring and Evaluating the Quality of Life of Land Reform Beneficiaries 1998/1999 Summary report prepared for the Department of Land Affairs (2000).

questionnaires on the issue of settlement support in land reform projects and sustainability of projects,

- A review of new measures within the DLA to improve land reform planning and implementation

What follows are the various studies conducted and an examination of the literature on land reform projects with the aim of assessing the performance outcomes of the restitution and redistribution programmes.

## **4 2 COMMUNITY AGENCY FOR SOCIAL ENQUIRY REPORT**

The most substantial source of qualitative information on the outcomes of rural restitution claims to date is the audit conducted by the Community Agency for Social Enquiry<sup>258</sup> in 2005 and 2006.<sup>259</sup>

The study involved 179 rural restitution claims that included a development component - that is where land was to be restored to the beneficiaries in terms of the Restitution of Land Rights Act 22 of 1994.

Specific findings by CASE - were as follows:

- Lack of skills: in 60% of the projects studied beneficiaries claimed that they did not receive training and technical advice in order to have made a success in their projects. Technical assistance especially in respect of agriculture and tourism was lacking.
- Lack of funding: from 50% of all projects studied it was apparent that although grants were approved with the settlement of the restitution claims, these grants were not being released and spent as expected. In order to release the grants a proper business plan had to be in place and spending had to take place through the implementation of

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<sup>258</sup> Hereafter referred to as "CASE".

<sup>259</sup> Hall R *The Impact of Land Restitution and Land Reform on Livelihoods* PLAAS University of the Western Cape (2007) 5.

the plan itself. It could therefore be inferred that because there were no business plans in place there was no proper implementation of the plans and beneficiaries could not access and spend the grants that were approved for their projects.

- Lack of essential equipment: due to the lack or insufficient funding in some projects, beneficiaries could not procure essential equipment for production. This was evident in 50% of projects
- Internal conflict was evident in 34% of projects which obviously impacted on effective participation of beneficiaries, thereby also impacting on the success of the project.

The CASE report further highlighted factors that were contributing to the success of projects as well as factors that were contributing to their failure, as follows:<sup>260</sup>

Table 2: Factors affecting projects

<b>FACTORS CONTRIBUTING TO MORE SUCCESSFUL PROJECTS</b>	<b>FACTORS MOST COMMONLY CONTRIBUTING TO FAILURE</b>
-Skilled and experienced leadership	- Attempts to manage business enterprises under communal management - Unclear determination of individual rights and benefits
-Active participation of claimant structures in project steering committees established by the CRLR for planning purposes	-Project steering committees that close out participation of members Lack of clarity about roles and responsibilities leading to conflict
-Availability and utilisation of settlement planning and discretionary grants	-Inappropriately structured and supported legal entities

<sup>260</sup> Diako B and Weideman M *et al* *Assessment of the Status Quo of Settled Land Restitution Claims with a Developmental Component Nationally* CASE (2005).

-Sustained support from government and NGOs	-Poor quality/inadequately monitored service provision
-Strategic partnerships, special purpose vehicles, mentoring and appointment of managers, were appropriately established and monitored to enable the takeover of existing enterprises	-Lack of management and financial skills to run commercial enterprises

From this study it is evident that land reform projects can only succeed and be sustainable if settlement support is provided. There is therefore an urgent need for the provision of settlement support to all land reform beneficiaries. It is imperative for the department that is responsible for implementing the land reform programme to have a strategy in place that will look at ways of saving the failed projects and at the same time plan ahead for the pipeline projects.

#### **4 3 DEPARTMENT OF LAND AFFAIR'S TEN YEAR REVIEW OF LAND REFORM**

This review was done in preparation of the land summit in 2005, whereby the DLA assessed the performance of the restitution programme.

The review highlights the success and challenges of the Commission and provides a history of measures to improve the performance of the restitution programme. One of the conclusions reached was that:

It has become abundantly clear that the implementation of this (Restitution) mandate cannot stop at land transfer. In liaison with relevant government departments, the Commission has to ensure sustainable settlement of land. Land transferred to land reform beneficiaries should be used in a productive manner that ensures a better life for all present and future generations.<sup>261</sup>

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<sup>261</sup> Didiza A T "Land and Agrarian Reform in South Africa: 1994-2006" Presentation at the *International Conference on Agrarian Reform and Rural Development Brazil* (March 2006) 14.

This was as a result of the findings from the review that

the lack of integration of restitution into the land reform programme as a whole has negatively impacted on its potential to realise development and economic empowerment opportunities for claimants.<sup>262</sup>

On the whole the DLA's 10 year review noted that the CRLR was putting in place mechanisms to support beneficiaries acquiring land to ensure qualitative and sustainable settlement of land claims. These include:

- Technical skills (agriculture, land use planning, commercial crop production, large-scale livestock farming, horticulture, game farming);
- Business skills (finance, marketing, risk management, entrepreneurship, business process mapping and modelling);
- Organisational skills (resource mobilisation, co-operatives, roles and responsibilities, stakeholder commitments, joint ventures, capacity building);
- Development planning skills (social facilitation, rural livelihood, project management, group dynamics, conflict resolution, rural development planning); and
- Financing and financial management. (Land Bank and National Development Agency).

The report stated further that the Commission required the active involvement of other role players in developing its implementation plan, meaning that there had to be an integrated approach towards post-settlement support. In this regard it was indicated that currently the Commission works in conjunction with all Members of Executive Councils (MECs) responsible for Land Affairs, provincial departments of agriculture, as well as provincial and district offices of the Department of Land Affairs. In a number of provinces the Premiers participate actively or delegate staff from their respective offices to contribute meaningfully towards the development of provincial plans to enhance the prospects of success of the implementation plans. The report indicated that "despite the fact all actors acknowledge the need for an

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<sup>262</sup> Didiza A T "Land and Agrarian Reform in South Africa: 1994-2006" Presentation at the *International Conference on Agrarian Reform and Rural Development Brazil* (March 2006) 6.

integrated approach this has not yet been achieved.”<sup>263</sup> The report, however, did not provide reasons for the factors which have led to the continued fragmented approach of the respective departments.

The report alluded to measures to improve intergovernmental relations and the alignment of key departments in the delivery of settlement support services such as the Department of Water Affairs and Forestry (DWAF), Department of Minerals and Energy (DME), Department of Environmental Affairs and Tourism (DEAT) and the Department of Public Works (DPW). At provincial level the main focus was on leadership in the provinces in the form of the Premiers and provincial MECs with responsibility for land and agriculture as well as the district and local municipalities that needed to include land reform projects into their Integrated Development Plans (IDPs).

With regard to integration within the department it was proposed that all branches needed to work together in an integrated manner so as to be able to plan and implement land reform projects as far as budgets, decision making and provision of support and services were concerned. The main idea was to move away from the ‘silo’ mentality of settling claims. The review report proposed strategies to be put in place such as unifying Restitution, LRAD, SLAG, the Comprehensive Agricultural Support Programme (CASP), and Agricultural Credit Scheme procedures and budgets, improving the integration of land reform into municipal IDPs, strengthening the co-ordination role played by municipalities, and increasing the focus on the empowerment of beneficiary communities.<sup>264</sup>

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<sup>263</sup> Didiza A T “Land and Agrarian Reform in South Africa: 1994-2006” Presentation at the *International Conference on Agrarian Reform and Rural Development Brazil* (March 2006) 65.

<sup>264</sup> Didiza A T “Land and Agrarian Reform in South Africa: 1994-2006” Presentation at the *International Conference on Agrarian Reform and Rural Development Brazil* (March 2006).



#### **4 4 “LAND RESTITUTION IN SOUTH AFRICA: OUR ACHIEVEMENTS AND CHALLENGES”**

This report was presented by the Commission on Restitution of Land Rights in 2003 and also looked at the extent to which the commission was executing its mandate and its responsibility in terms of settled claims.

The report highlights the Commission’s responsibilities of planning and development in respect of settled claims as follows:

The Commission is required to implement the restitution awards of the Land Claims Court and the Minister in terms of the Act. Inherently this means that the Commission has a duty to facilitate development planning. It is in the interest of the Commission to ensure qualitative and sustainable settlement of land claims and thus provides post-settlement support to claimants.<sup>265</sup>

One of the constraints identified in the report referred to problems experienced by the beneficiaries acquiring agricultural farms through the land reform projects in terms of lack of development which is caused by lack of technical, business, organisational and development planning skills and financial management skills.

#### **4 5 QUALITY OF LIFE SURVEYS**

Monitoring and evaluation (M&E) has been considered as an important aspect of policy analysis in South Africa as it provides insight into management and implementation processes, as well as effectiveness of targets and provision of support. As a result the Monitoring and Evaluation Directorate of the DLA was involved in the land reform programme since the first planning exercise was initiated by the department.

The original design for monitoring and evaluation was based on a series of questionnaires developed during 1994 through a series of workshops convened by

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<sup>265</sup> Commission on Restitution of Land Rights *Land Restitution: Our Achievements and Challenges* (2003) 6.

the Land and Agricultural Policy Centre (LAPC). The system that was developed focused on three main elements:

- Measurement of the quality of life enjoyed by land reform beneficiaries using a household questionnaire;
- Assessment of the targeting and equity components of the land reform programme as a whole using a community level questionnaire supported by an on-line management information system;
- A number of other questionnaires, referred to as formats, which collected a range of community and household level information.<sup>266</sup>

The conceptual framework that underpins the redesigned M&E system for land reform in South Africa is grounded on five propositions:

- **Food Security:** Food security is an important determinant of well-being that is directly affected by land reform. This may stem directly from improved production and sales, or indirectly, from improved security, access to services or institutional support.
- **Access to Services:** Although the mandate of the DLA does not extend to the provision of services, these are central determinants of the physical quality of life of land reform beneficiaries. As a result, these are thought to be sufficiently important for inclusion into the DLA M&E system as indirect outcomes from land reform.
- **Local Institutions:** An important aspect of the land reform policy relates to the formation of different types of land management committees. Institutional capacity is key both as an outcome of development, and as a mechanism for the facilitation of development.

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<sup>266</sup> May J & Roberts B *Monitoring and Evaluating the Quality of Life of Land Reform Beneficiaries* Summary Report prepared for the Department of Land Affairs (2000) 2.

- Targeting: The land reform programme has adopted a targeted approach with the result that some households may inadvertently be excluded. For this reason, a beneficiary profile is a necessary component of the M&E strategy, and, wherever possible, a comparative analysis with non-beneficiaries is included. What is meant by targeting by the land reform programme is that the programmes have certain criteria that must be met in order for one to benefit from the specific land reform programme. For instance under SPLAG the grant was meant for the poor and there were complaints that this sub programme did not cater for semi commercial or the aspiring black commercial farmers (see footnote 144), hence LRAD was created. LRAD grants were on a sliding scale based on own contribution and therefore catered for the development of the aspiring black farmers. As result of this targeted approach those who could not afford own contribution were not able to benefit from the programme, hence these households were excluded.
- Role of Agriculture: While agriculture is not the sole activity addressed by land reform, the particular form taken by the South African land reform programme demands that agricultural activities be examined in detail. Land reform is concerned with the regeneration of an agrarian economy, of which agriculture is an important component, and is central to the logic of market-assisted land reform such as that adopted in South Africa.<sup>267</sup>

The first *Quality of Life* report was completed in the year 2000. It was the third land reform monitoring study undertaken since the introduction of the policy in 1994. It was commissioned by the Department of Land Affairs to gain some insight into the impact of land reform on the lives of beneficiaries. The following table indicates the distribution of the sample.<sup>268</sup>

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<sup>267</sup> May J & Roberts B *Monitoring and Evaluating the Quality of Life of Land Reform Beneficiaries* Summary Report prepared for the Department of Land Affairs (2000) 3-4.

<sup>268</sup> May J & Roberts B *Monitoring and Evaluating the Quality of Life of Land Reform Beneficiaries* Summary Report prepared for the Department of Land Affairs (2000) 3.

Table 3: Quality of Life distribution sample

Year of Transfer	Years since transfer	Number of projects in sample	% of total sample	Number of hh's in sample	% of total sample
1998	0-1	55	54.5%	724	51.9%
1997	1-2	26	25.7%	418	30.0%
1996	2 -3	19	18.8%	232	16.6%
1995	3-4	1	1.0%	20	1.4%
1994	4-5	0	0.0%	0	0.0%
Total		101	100.0%	1394	100.0%

This table shows that more than half of the projects and households that were sampled only entered into the land reform programme some 12 months before the fieldwork was undertaken, while a further 26% of projects, and 30% of households had received the land grant between one and two years ago. This has significant implications for the interpretation of the results of the study since it is likely that the full impact of the land transfer has yet to be realised.<sup>269</sup>

The findings of the study indicate that many projects did not yet show any signs of economic potential. The majority of the beneficiaries of the land reform projects had little knowledge of the management of the project and how funds were utilised. This could result in opportunities for corruption and the misuse of community funds by the more knowledgeable beneficiaries. It was also found that grazing was the more productive form of land use whilst much land remained underutilised with neither grazing or cultivation taking pace.

With regard to the access of services the report showed that land reform beneficiaries seemed to enjoy a comparatively higher level of services (such as electricity, running water and telecommunications) than African rural households as a whole. However, on closer inspection it was found that this service provision was not as a consequence of land reform itself and that land reform beneficiaries

<sup>269</sup> May J & Roberts B *Monitoring and Evaluating the Quality of Life of Land Reform Beneficiaries* Summary Report prepared for the Department of Land Affairs (2000) 3.

were further away from reliable transport networks. Another finding was that of provincial variation in terms of the provision and access to services, suggesting that land reform projects were better integrated into service delivery programmes in some areas than in others, and that improvements are possible in certain provinces.<sup>270</sup>

The data also shows that roughly half the communal projects were generating an income, although few were making any profit. This is not unusual for enterprises that are only 2-4 years old, but does suggest the need for support from institutions specialising in micro-enterprise support, such as Ntsika Development Corporation, as well as from the DoA.<sup>271</sup>

The report recommended that the land reform programme continue to be supported, and perhaps even expanded. Identifying factors that were conducive to the success of these land reform projects is one way of giving direction to the development of future policy. The analysis suggests that having beneficiaries make an own contribution, keeping project sizes small, and relying on a more participatory and broader-based process at the local level are key determinants of economic success. Other areas of attention include:

- Simplifying the administrative procedures that are followed;
- Increasing the flexibility of the programme to allow for larger grants;
- Linking to other programmes of livelihood support and service delivery; and
- Careful targeting sub-groups of the rural poor whose current participation in the land reform is limited.<sup>272</sup>

The fourth *Quality of Life Survey* was conducted in 2005/2006 and the report was concluded in 2008.<sup>273</sup> The survey used the beneficiaries of land reform who had

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<sup>270</sup> May J & Roberts B *Monitoring and Evaluating the Quality of Life of Land Reform Beneficiaries* Summary Report prepared for the Department of Land Affairs (2000) 5.

<sup>271</sup> May J & Roberts B *Monitoring and Evaluating the Quality of Life of Land Reform Beneficiaries* Summary Report prepared for the Department of Land Affairs (2000) 7.

<sup>272</sup> May J & Roberts B *Monitoring and Evaluating the Quality of Life of Land Reform Beneficiaries* Summary Report prepared for the Department of Land Affairs (2000) 4; 19-20.

received transfer of land and a control group of people who had also applied for access to land through one of the land reform programmes but for whom transfer of land still had to take place, as the basis of the study. This would enable the survey to answer one of the most pressing questions concerning land reform in South Africa: does the transfer of land improve the welfare of those who receive it?<sup>274</sup>

The sample was drawn in a manner that ensures that analysis can be undertaken at a provincial level. A total of 243 transferred projects and 202 projects where land had not yet been transferred were selected, with an anticipated total sample size of 4000 households. Eventually 3710 households were located and surveyed, 2002 beneficiaries and 1708 control households. This provided information for 13 472 people in beneficiary households and 11 159 people in the control group households. Overall a sample attainment rate of 92.7% was achieved.<sup>275</sup>

It was found that over two thirds of land reform beneficiaries have access to agricultural land but that only thirty eight percent of households were producing an income from agriculture. For those 38% that were generating an income from agricultural production, the average value of the income is R3 549 per annum.<sup>276</sup>

A trend that was noted in terms of agricultural activity was that there was simply a continuation of the activities that were previously undertaken on the farms such as livestock and maize farming. It can, therefore, be concluded that because of the lack of pre- and post-settlement support, the farms were not being used to their full potential nor were beneficiaries receiving support in terms of capacity building, technical development in terms of different farming practices, business plans, etc

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<sup>273</sup> May J *et al* *Monitoring and Evaluating the Quality of life of Land Reform Beneficiaries and the Impact of Land Transfers: 2005/2006* Report prepared for the Department of Land Affairs draft report (26 October 2008).

<sup>274</sup> May J *et al* *Monitoring and Evaluating the Quality of life of Land Reform Beneficiaries and the Impact of Land Transfers: 2005/2006* Report prepared for the Department of Land Affairs draft report (26 October 2008) 1.

<sup>275</sup> May J *et al* *Monitoring and Evaluating the Quality of life of Land Reform Beneficiaries and the Impact of Land Transfers: 2005/2006* Report prepared for the Department of Land Affairs draft report (26 October 2008) 1.

<sup>276</sup> May J *et al* *Monitoring and Evaluating the Quality of life of Land Reform Beneficiaries and the Impact of Land Transfers: 2005/2006* Report prepared for the Department of Land Affairs draft report (26 October 2008) 85.

that would enable them and empower them to benefit optimally through the land reform programme.<sup>277</sup>

#### **4 6 STUDY DONE ON LRAD PROJECTS BY THE HSRC**

In 2003 a study on LRAD projects was done by the Integrated Rural and Regional Development unit of the HSRC.<sup>278</sup> The purpose of the study was to make some preliminary observations on how well LRAD was working relative to its objectives and on looking at the challenges facing delivery.

The findings of the study are as follows:

- A wide range of clients access LRAD with different aspirations, resources and agricultural and entrepreneurial expertise. This results in the finding of LRAD supporting a variety of different project types such as family farm type projects for the better off, multi household projects for the poorer applicants or farm worker projects where a group of workers use LRAD to acquire the farm they have been working on.
- Family farm-type projects were working well because the beneficiaries of the project seem to have more entrepreneurial experience because they belong mostly to the more “well off” beneficiaries. There is less infighting because the group is small and the project is sufficiently capitalised. LRAD grants are based on a sliding scale of own contribution. Refer to par 2 page 42. Family farm-type projects would entail a smaller group of people with more financial contribution and entrepreneurial expertise towards the LRAD grant hence they are considered as the more “well off” beneficiaries.
- Group farming projects or co-operative farming projects are seen as an alternative to family-farm type projects. Here the beneficiaries

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<sup>277</sup> May J *et al* *Monitoring and Evaluating the Quality of life of Land Reform Beneficiaries and the Impact of Land Transfers: 2005/2006* Report prepared for the Department of Land Affairs Draft Report (26 October 2008) 85.

<sup>278</sup> Human Sciences Research Council: Integrated Rural and Regional Development Unit. *Land Redistribution for Agricultural Development: Case Studies in Three Provinces* (2003) iii-ix.

aim to maintain or continue the farming operations of the previous owner. This is seen to be a popular choice as beneficiaries agree to work collectively and comply with a large farm business plan. However, the increased financial resources under group farming projects have not contributed towards better post-settlement support which is seen to be more important than additional capital through the group.<sup>279</sup>

Results from the case studies conducted indicated that there is no ownership taken of the responsibility to provide mentorship, capacity building and training to LRAD beneficiaries. It was noted that the DLA and the Land Bank's responsibility effectively stops at the land handover and thereafter it is expected that the provincial department of agriculture will provide the post-settlement support. Due to lack of capacity on the side of the Provincial Department of Agriculture, they have only been able to effectively provide this support in a few projects. Consequently the recommendation is that the DLA needs to play a more active role in the design and funding of mentorship programmes and they need to effectively support Provincial Departments of Agriculture. The study also recorded success in a few individual cases where they had brought in private support. The conclusion is, therefore, that good post-settlement support would contribute towards the sustainability of projects.

#### **4 7 LRAD CASE STUDIES**

A national "rapid systematic assessment survey" on LRAD projects was conducted by the DLA in 2004 to investigate land use and the impact on livelihoods of the beneficiaries of the said projects.<sup>280</sup> The study focussed on qualitative case studies and identified 2 types of projects, namely group based projects and individual projects.

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<sup>279</sup> Human Sciences Research Council: Integrated Rural and Regional Development Unit. *Land Redistribution for Agricultural Development: Case Studies in Three Provinces* (2003) iii-ix.

<sup>280</sup> Hall R *The Impact of Land Restitution and Land Reform on Livelihoods*" PLAAS University of the Western Cape (2007) 6.



Group based projects consisted of groups of poor people who came together with the aim of obtaining sufficient grant funding for the purpose of acquiring land. The study found that most of these projects had failed because of the lack of training, infrastructure and capital resulting in the non-implementation of the business plans.<sup>281</sup> Another cause of the failure of projects was the lack of access to extension advice and local markets which emanated from the high cost of transport from the rural area to the closest town.<sup>282</sup> Faced with high input costs and lack of capital many projects were converted into mainly grazing. A spin off from this was that more young boys were able to attend school instead of herding since animals were confined within the fenced areas.

Under the individual type projects the study found that it consisted mostly of men who used as their own contribution their existing livestock and sourced loans to secure a higher grant. These individuals also found themselves facing high input costs, lack of extension services/advice and insecure market access.<sup>283</sup> In order to service the loans they had taken, they found themselves investing in other sources of income such as taxis and spaza shops which were proving to be more profitable than the farming they intended doing through the LRAD projects.

In conclusion, the study highlighted the plight of beneficiaries who had focussed mainly on the acquisition of land to conduct commercial farming to generate a profit. However, no thought had been put into how such commercial farming was going to be implemented and funded. Commercial farming obviously came with high input costs, knowledge of requirements in terms of infrastructure, technical expertise and access to secure markets. Due to the lack of additional funding, extension services and advice and insecure markets most beneficiaries were unable to generate profits. Hence some of the LRAD projects did not have the desired impact it had hoped to achieve in terms of contributing more significantly in the agricultural market.

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<sup>281</sup> Hall R *The Impact of Land Restitution and Land Reform on Livelihoods*” PLAAS University of the Western Cape (2007) 6.

<sup>282</sup> Hall R *The Impact of Land Restitution and Land Reform on Livelihoods*” PLAAS University of the Western Cape (2007) 6.

<sup>283</sup> Hall R *The Impact of Land Restitution and Land Reform on Livelihoods*” PLAAS University of the Western Cape (2007) 6.

## **4 8 NATIONAL DoA REVIEW OF LRAD PROJECTS**

The National DoA review of 50 LRAD projects in the Free State province during 2003<sup>284</sup> reached the following conclusions:

- There were poor implementation processes that contributed to poor community ownership of projects resulting in beneficiaries not taking responsibility or wanting to progress on the objectives set.
- Departmental officials who have to assist the community projects generally have an inadequate understanding of concepts such as commercial farming, small farmer development, economy, beneficiaries and gender issues.
- Project management in terms of planning and monitoring were poor or non-existent resulting in poor co-ordination between stakeholders
- There was a lack of monitoring and evaluation on the projects as a whole to be able to reflect on them in terms of progress and achievements and identifying training needs.
- There was very little innovation in projects in terms of improving on their agricultural endeavours or identifying and making use of new markets.

## **4 9 APPRAISAL OF LAND REFORM PROJECTS IN NORTH WEST PROVINCE**

A report was done for the National DoA where a total of 102 land reform projects (of which 75% were LRAD projects) were appraised with the intention of developing a comprehensive re-engineering plan for projects that were not commercially viable.<sup>285</sup>

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<sup>284</sup> De Lange A *et al* *Empowerment Study Report: The Evaluation of Empowerment Policies, Strategies and Performance within the Agricultural Sector* University of the Free State (2004) 2-19.

<sup>285</sup> Kirsten J *et al* *Appraisal of Land Reform Projects in North West Province* Report for the National Department of Agriculture (2005)15.

The findings revealed that:

- In 39 of the projects, members were in conflict, leading to lost interest or abandoned projects;
- 52 projects were producing effectively and marketing their produce;
- 30 projects had no production, since land was acquired through land reform;
- 50 of the farms were in a vandalised and dilapidated condition;
- 69 of the farms did not have implements at all whilst 34 farms needed additional implements;
- In about half of all the projects there was no knowledge of a business plan. Instead, those who had farming knowledge farmed according to their own plans;
- 34% of projects that had land bank loans were not keeping up with repayments;
- Projects that were linked to a mentor tended to be more successful;
- Very few projects had a post-settlement plan included in the business plan;
- There were limited extension services and advice from the PDA in almost half of all projects appraised.

Despite the majority of the findings being negative, most of the beneficiaries showed a much more positive attitude towards their projects.<sup>286</sup> This, therefore, leads one to question the business plans that are drawn up on behalf of the beneficiaries which seem to not to contain what the beneficiaries themselves would like to see happening on their land.

#### **4 10 STUDY UNDERTAKEN BY FARM-AFRICA**

Farm-Africa is a British based NGO that has been working in the land sector in the Northern Cape since 1995. This study of land reform and its impact on livelihoods

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<sup>286</sup> Kirsten J *et al* *Appraisal of Land Reform Projects in North West Province* Report for the National Department of Agriculture (2005) 26.

was undertaken using land reform beneficiaries in Northern Cape province. The aim was to develop the technical and agricultural managerial skills of beneficiaries to enable them to develop their land optimally.<sup>287</sup> As its basis the study used land reform beneficiaries who benefited from the land redistribution programme or the land restitution programmes in eight different projects. It assessed their assets, activities and income resources between the period 2001 to 2003.<sup>288</sup>

The study found that there was a significant increase in the income of the households, but there was no evidence to suggest that any of this change resulted from agricultural activities. Secondly, with regard to livestock, it was found that none of the households was re-structuring their livelihoods to make livestock a key element even though the Northern Cape region is more suited to livestock farming.<sup>289</sup>

The study concluded that the land reform beneficiaries were not developing the land received in terms of the programme due to constraints such as:

- A lack of technical agricultural support;
- Difficulties in accessing their land due to large distances and the high cost of transport;
- Low levels of human capital with regard to technical agricultural skills;
- Credit market failures limiting the number of people able to access funds to finance production activities, farm infrastructural repairs and maintenance; and,
- A liberal macro-economic policy that has significantly increased risk in the agricultural sector.<sup>290</sup>

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<sup>287</sup> Bradstock A *Land Reform and its Impact on Livelihoods: Evidence from Eight Land Reform Groups in the Northern Cape Province of South Africa* FARM-Africa (2005) 1.

<sup>288</sup> Bradstock A *Land Reform and its Impact on Livelihoods: Evidence from Eight Land Reform Groups in the Northern Cape Province of South Africa* FARM-Africa (2005) 1.

<sup>289</sup> Bradstock A *Land Reform and its Impact on Livelihoods: Evidence from Eight Land Reform Groups in the Northern Cape Province of South Africa* FARM-Africa (2005) 1.

<sup>290</sup> Bradstock A *Land Reform and its Impact on Livelihoods: Evidence from Eight Land Reform Groups in the Northern Cape Province of South Africa* FARM-Africa (2005) 24.

All of the above point to a lack of or limited post-settlement support to land reform beneficiaries.

## 4 11 IN-DEPTH CASE STUDIES

In order to identify what the actual reasons are behind the failure or success of the land reform projects it is imperative that an in-depth look be taken at the individual projects that have evolved from the restitution and land redistribution programmes. Two projects per each programme<sup>291</sup> will be discussed below.

### 4 11 1 Restitution projects

A diagnostic study of the Bjaladi (Limpopo province) and the Boitumelo (Free State province) claims was undertaken by the Programme for Land and Agrarian Studies (PLAAS) a few years after the conclusion of the settlement of the claim on behalf of the Belgian Technical Co-operation and the Commission on Restitution of Land Rights. The aim of the study was to examine the restitution case of the Bjaladi Community and the Boitumelo claim, to identify the actual land use and development of the land that had been restored and to look at post-settlement support provided. Below is a synopsis of some of the key findings:

#### 4 11 1 1 *Claim lodgement and settlement*

<p>Zebediela – the Bjaladi Community Claim</p>	<p>Claim lodged in 1998 and settled in 2003.</p> <p>5, 973.203 ha was awarded to the community who chose a Communal Property Association (CPA) as the legal entity to acquire, hold and manage the property in common on behalf of its members. The Bjaladi Communal Property Association (CPA)</p>
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<sup>291</sup> Other studies have been done and documented. See eg Gule D “Post-settlement Support at the Nkumbuleni Pilot Project in KwaZulu-Natal” in *Land Reform in South Africa: Constructive Aims and Positive Outcomes – Reflecting on Experiences on the Way to 2014* KAS (2009) Conference held on 26-27 August 2008 (Seminar Report no 20) KAS (2009) 109-118; Jacobs R “Post-settlement Support at the Ebenhaeser Pilot Project in Vredendal” in *Land Reform in South Africa: Constructive Aims and Positive Outcomes – Reflecting on Experiences on the Way to 2014* Kas (2009) Conference held on 26-27 August 2008 (Seminar Report no 20) KAS (2009) 119-123.

	was established and registered with the Department of Land Affairs. <sup>292</sup>
Boitumelo – Thaba Patchoa Claim	<p>The restitution claims were settled in 2003. The claims lodged were in respect of three farms namely, Sweet Home No. 667, Tshiamelo No. 665 and Segogoane’s Valley No. 664, all situated in the district of Ladybrand with a total extent of 634 3945 hectares<sup>293</sup>,</p> <p>The claimants consisted of the former owners of the farms as well as those who were tenants or who worked for the former owner.</p> <p>In order not to have any conflict between the former owner and the tenants, as there were now 2 classes of rights that were lost the CRLR decided to find alternative land for those that did not lose ownership rights. These claimants formed the Boitumelo CPA.</p>

#### **4 11 1 2 Beneficiary profile**

Zebediela – the Bjatladi Community Claim	<p>423 claimant households verified. The initial claimant group consisted of 331 households (1, 244 individuals). New members have since joined the CPA and there are now 423 households (1, 573 beneficiaries).<sup>294</sup></p> <p>Almost all claimants live off-site, scattered through several villages. No comprehensive beneficiary profile available in terms of land needs, social and economic background in order to have assisted with settlement planning issues.</p> <p>Distinction between claimants and the large workforce resident on the estate. It could be argued that the workers are de facto the principal beneficiaries.</p>
Boitumelo – Thaba Patchoa Claim	<p>Claimants consist of originally dispossessed persons or their direct descendants. Originally there were 44 members. However subsequent to the settling of the claim two further members were identified, bringing the total members to 46.<sup>295</sup></p> <p>Initially the members of the Boitumelo CPA wanted to settle on the restored farms. However, they later decided against it in preferring the farms to be used solely for farming purposes. Currently the CPA members work in shifts to provide labour on the farm and during this time they occupy the houses currently on the farm, whilst the farmhouse is being leased to a family which is not part of</p>

<sup>292</sup> Tilley S and Lahiff E *Bjatladi Community Restitution Claim*. Cape Town PLAAS University of the Western Cape and Sustainable Development Consortium (2007) 16.

<sup>293</sup> Commission on Restitution of Land Rights *Annual Report 2005/2006* 20.

<sup>294</sup> Tilley S and Lahiff E *Bjatladi Community Restitution Claim*. Cape Town PLAAS University of the Western Cape and Sustainable Development Consortium (2007) iv; 13.

<sup>295</sup> Commission on Restitution of Land Rights *Annual Report 2005/2006* 20.

	the CPA.
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#### **4 11 1 3 Communal property institutions**

<p>Zebediela – the Bjatladi Community Claim</p>	<p>A CPA was established. However, its constitution appears to be poorly understood by the executive. ‘While the general rights of members are outlined in the CPA constitution, more detailed rules have not been drawn up regarding the substantive rights and duties of individual members.’<sup>296</sup></p> <p>Land has yet to be transferred to the CPA, which is conducting business as if it were the owner, albeit with the permission of the Minister as registered owner. (The lease agreement does not appear to have been signed by the Minister.) CPA reports holding its AGMs and having audited books of accounts. Constitution contains clauses which effectively restrict the rights of the members to their land, which is inconsistent with the Restitution Act.</p>
<p>Boitumelo – Thaba Patchoa Claim</p>	<p>The Constitution of the Boitumelo CPA stipulates some of the following objectives for the association:</p> <ul style="list-style-type: none"> <li>• To hold and manage the acquired land in terms of the settlement agreement on behalf of the members to assist in the acquisition of skills by members</li> <li>• To take any steps to address poverty, unemployment and the socio-economic needs of its members or their households.<sup>297</sup></li> </ul> <p>In terms of the Constitution each household has a right to a residential site on the farms, to cast a vote at meetings. CPA members complained that they do not receive the financial statements of the association.</p>

#### **4 11 1 4 Membership rights, obligations and benefits**

<p>Zebediela – the Bjatladi Community Claim</p>	<p>423 claimant households identified but widely dispersed. According to the CPA Constitution, membership gives everyone a share in business ventures set up and access to employment opportunities and communal land. In practice, however, few members of the CPA appear to be securing much benefit from the</p>
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<sup>296</sup> Tilley S and Lahiff E *Bjatladi Community Restitution Claim*. Cape Town PLAAS University of the Western Cape and Sustainable Development Consortium (2007) iv; 13.

<sup>297</sup> *Boitumelo Project Report* Sustainable Development Consortium (2007) 99-100.

	<p>project. A R1 million rand-a-year lease is paid to the CPA, but very little of this has found its way back to members. Approximately 850ha of the restored land is used for the citrus project whilst grazing land remains underutilised even though there is a shortage of grazing land by members of the CPA who are resident in the neighbouring village.<sup>298</sup></p> <p>The land that was restored the claimants is instead leased out for the next 15 years.</p> <p>It is mainly the farm workers who enjoy benefits from employment, skills development, accommodation, services, home gardens and access to subsidised produce, whilst the actual CPA members who do not live on the land do not.</p>
Boitumelo – Thaba Patchoa Claim	<p>In terms of the CPA Constitution each household has a right to a residential site on the farms (which members decided against), to cast a vote at meetings and to access to information in respect of the business of the CPA.</p> <p>The Constitution of the CPA has not made any provision for members of the association to benefit from the proceeds of the association. The only benefit received is the payment of wages in return for the work they perform on the farm.</p>

#### **4 11 1 5 Business entities**

Zebediela – the Bjatladi Community Claim	<p>Zebediela Estates (Pty) Ltd is operating under a shareholding agreement allocating 55% of shares to a strategic partner, 30% to claimants and 15% to workers.</p> <p>5% of strategic partner's shares to be transferred to CPA over five years and the remainder sold at end of 15-year lease period. Zebediela Estates has entered into a lease agreement with Zebediela Citrus (Pty) Ltd (the Operating Company).</p> <p>The workers in the employ of the company have organised themselves into a Workers' Trust called the Zebediela Workers' Trust. There are 237 permanent employees who are members of</p>
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<sup>298</sup> Commission on Restitution of Land Rights *Annual Report 2003/2004* 30. See also Tilley S and Lahiff E *Bjatladi Community Restitution Claim*. Cape Town PLAAS University of the Western Cape and Sustainable Development Consortium (2007) 16-21.



	the trust and of these 237, 10 of them are also members of the Bjatladi CPA. <sup>299</sup> The workers have not received any dividends since the establishment of the strategic partnership. <sup>300</sup>
Boitumelo – Thaba Patchoa Claim	The project has an established dairy and poultry farm which had existing contracts with Dairy Belle and local outlets to supply eggs. <sup>301</sup>

#### **4 11 1 6      *Institutional development and support***

Zebediela – the Bjatladi Community Claim	CPA received initial support from the RLCC, but no sustained institutional development plan is in place. Executive uncertain about key clauses in CPA constitution. Blurred roles of CPA in relation to operating company
Boitumelo – Thaba Patchoa Claim	<p>The CPA’s constitution needs to be reviewed. The constitution contains redundant clauses. One clause prescribes that 50% of the committee members should be resident on the farm, a provision which is clearly no longer relevant. Overall, the definition and allocation of rights and inheritance are unclear. Substantive rights and benefit-sharing arrangements have not been defined.</p> <p>This has become a source of tension in the project as there is an apparent lack of transparency on how the proceeds from the egg and dairy farming are being utilised. This combined with leadership tussles, has the potential to become a source of open conflict. To date no assistance has been given to the CPA to amend its Constitution</p>

#### **4 11 1 7      *Training and capacity development***

Zebediela – the Bjatladi Community Claim	Comprehensive skills development plan in place to develop key production skills and middle-management competencies. However, no strategy in place to invest in the creation of senior management with capacity to take over the management of the estate. fourteen CPA members have to date been trained in plant production and ten workers have undergone horticulture training
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<sup>299</sup> Tilley S and Lahiff E *Bjatladi Community Restitution Claim*. Cape Town PLAAS University of the Western Cape and Sustainable Development Consortium (2007) 14.

<sup>300</sup> Tilley S and Lahiff E *Bjatladi Community Restitution Claim*. Cape Town PLAAS University of the Western Cape and Sustainable Development Consortium (2007) 15.

<sup>301</sup> *Boitumelo Project Report* Sustainable Development Consortium (2007) 99-100.

	through the AgriSETA, which funded a service provider to conduct the training. <sup>302</sup>
Boitumelo – Thaba Patchoa Claim	<p>The Free State Rural Development Agency (FSRDA) has been assisting the Boitumelo CPA with training in bookkeeping and financial management. The complaint from the members was that although the training was helpful, it was held over a short period for member to have learnt and be able to apply the knowledge learnt adequately. Although Agri Free State committed itself to provide beneficiaries of land reform with training and mentorship no success has been achieved in brokering a relationship between it and the CPA.</p> <p>Other training identified by members of the CPA include book keeping and technical farming skills. Provision was also made in the ‘business plan’ for training at Glen Agricultural College and unspecified training from the Department of Labour, these plans have also not been put into action.<sup>303</sup></p>

#### **4 11 1 8 Business plan**

Zebediela – the Bjatladi Community Claim	No written business plan in place. Citrus is the dominant business and it is run by the strategic partner. The farm is mixed-use property and currently only an estimated 20% of its resources are being used. Needs a business plan that identifies and packages a range of business opportunities in ways that will ensure maximum benefits to claimants.
Boitumelo – Thaba Patchoa Claim	<p>Even though the restitution claim was settled in 2003, at the time of the study in 2007, the business plan still remained incomplete. The Department of Agriculture: Free State was approached to develop the business plan for the CPA.</p> <p>The RLCC has formed a partnership between the Land Bank and the National Development Agency which is based on a national agreement that the Chief Land Claims Commission reached with the Land Bank and the NDA. The Land Bank undertook to do a pre-evaluation and potential assessment of the farm.<sup>304</sup> Due to the lack of a proper business plan and land use plans, the CPA may be seen as underutilising the farms that have been handed to them, as they are currently just continuing with enterprises and land uses that were there on the farms prior to them being</p>

<sup>302</sup> Tilley S and Lahiff E *Bjatladi Community Restitution Claim*. Cape Town PLAAS University of the Western Cape and Sustainable Development Consortium (2007) 20.

<sup>303</sup> *Boitumelo Project Report* Sustainable Development Consortium (2007) 99-100. See also Commission on Restitution of Land Rights *Annual Report 2005/2006* 20.

<sup>304</sup> *Boitumelo Project Report* Sustainable Development Consortium (2007) 99-100.

	<p>restored to the CPA.</p> <p>The potential assessment study would have assisted in identifying other land use potential of the farms and the business plan would have been able to take the enterprise of the CPA further than where it is currently, that is only supplying local markets.</p> <p>Not having a business plan in place is also hampering further development and improvement of infrastructure on the farm since the Commission will not release and approve spending of grants approved for the project unless the request for the release is accompanied by a business plan. Currently the CPA experiences electricity outages and the henhouses are in a poor condition. This resulted in losses due to milk sometimes getting spoilt or temperatures dropping too low in winter that egg production drops. It was reported that CASP funding in the region of R600 000.00 was acquired from the Department of Agriculture Free State, which was earmarked for improvements to the dairy parlour and hen houses, however, this has not yet been done.</p>
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#### **4 11 1 9      *Commercial enterprises on the land***

<p>Zebediela – the Bjatladi Community Claim</p>	<p>Citrus (oranges and lemons), beef herd, dairy, shop. Significant underutilised potential would appear to exist.<sup>305</sup></p>
<p>Boitumelo – Thaba Patchoa Claim</p>	<p>As stated above the farms are currently being used for dairy farm and poultry and the farm house is currently being leased out for which the CPA receives rental.</p> <p>The CPA has taken over the contract with Dairy belle in Dewetsdorp and currently supplies about 1200 litres of milk. The poultry and eggs are either sold directly to the public or to the shops in the Dewetsdorp area. What is good is that the enterprise of the CPA is situated approximately 10 kilometres from Dewetsdorp helping to keep their overheads to a minimum.</p>

#### **4 11 1 10      *Partnerships and joint ventures***

<p>Zebediela – the Bjatladi Community</p>	<p>Partnership with Henley Farming and Workers' Trust. Henley Farm Properties (Pty) Ltd represented by John Boyes, was chosen as</p>
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<sup>305</sup> Tilley S and Lahiff E *Bjatladi Community Restitution Claim*. Cape Town PLAAS University of the Western Cape and Sustainable Development Consortium (2007) 23.

Claim	<p>the Strategic Partner since he has a history with Zebediela Citrus (Pty) Ltd since 2001 when he was contracted by the Limpopo Department of Agriculture to run the Estate. The mandate of the strategic partner is to manage the company for a period of at least fifteen years during which time it will: <sup>306</sup>.</p> <ul style="list-style-type: none"> <li>• See to the general management of the company. At the commencement of the agreement, employees of the strategic partner were to continue to fill key positions in the management structure of the company, including the positions of general manager, production manager, pack-house manager, maintenance and engineering manager and administration manager.</li> <li>• Be responsible for the management of day-to-day operations of the estate. To this end it has employed the expertise of a farm manager, a dairy farm manager, livestock farm manager (who is also the CPA chairperson and performing the farm management tasks on a part-time basis) and a citrus farm manager.</li> <li>• Take all decisions regarding technical, personnel and operational matters.</li> <li>• Provide working capital to the company.</li> </ul> <p>Henley Farm Properties brings with it expertise and experience in terms of both technical operations and knowledge of the citrus sector. The management team has a history in the sector and has a detailed knowledge of farming citrus in the area, including key aspects such as climatic impacts on citrus, water requirements, access to the necessary networks and credit with suppliers. Boyes has an understanding of how both the local and export markets operate and is part of an existing network of citrus growers.</p>
Boitumelo – Thaba Patchoa Claim	None

#### **4 11 1 11 IDP integration**

Zebediela – the Bjatladi Community Claim	<p>IDP largely silent on land reform despite overwhelming numbers of claims. Neither the Capricorn District Municipality nor the Lepelle Nkumpi Local Municipality has been directly involved with the land claim or the provision of post-settlement support. Given that the township portion has not been handed over to the municipality and is still owned by the state, the municipality does not have a direct role to play in providing support or services to the community or the estate. Currently, the strategic partner provides services (sewage disposal, water and electricity) to the estate and the township portion.</p> <p>The Capricorn District Municipality's integrated development plan (IDP) outlines only the most general statements in support of rural</p>
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<sup>306</sup> Tilley S and Lahiff E *Bjatladi Community Restitution Claim*. Cape Town PLAAS University of the Western Cape and Sustainable Development Consortium (2007) 8; 20.

	<p>development, land reform and environmental management, including only passing reference to land reform and Zebediela.</p> <p>The IDP's analysis of capital investment for the Capricorn District refers to Zebediela (rather inappropriately) as part of the 'revitalisation of small-holder irrigation schemes' and locates it within the jurisdiction of the Department of Agriculture as the implementing agent.<sup>307</sup></p>
Boitumelo – Thaba Patchoa Claim	The RLCC also tried to foster relations between the CPA and the local Municipality; however no formal support has been received to date. <sup>308</sup>

#### **4 11 1 12 Support by other government agencies**

Zebediela – the Bjatladi Community Claim	The Limpopo Growth and Development Strategy (LGDS) of 2005 does not refer specifically to the Zebediela area but links the development of the fruit and vegetable potential of a number of districts with public sector interventions, skills development of emerging farmers, and land reform processes <sup>309</sup> . While programmes such as the LGDS have general applicability to land reform, there is no evidence that they are providing any specific support to Zebediela or other land reform projects in the province. <sup>310</sup>
Boitumelo – Thaba Patchoa Claim	As above, only support in terms of training (which has remained incomplete)

#### **4 11 1 13 Restitution award/grant funding<sup>311</sup>**

Zebediela – the Bjatladi Community Claim	<p>Settlement planning grant: R1,440 x 331 households = R476,640.00</p> <p>Restitution discretionary grant: R3,000 x 331 households = R 993,000.00</p>
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<sup>307</sup> Tilley S and Lahiff E *Bjatladi Community Restitution Claim*. Cape Town PLAAS University of the Western Cape and Sustainable Development Consortium (2007) 27.

<sup>308</sup> *Boitumelo Project Report* Sustainable Development Consortium (2007) 99-100.

<sup>309</sup> Tilley S and Lahiff E *Bjatladi Community Restitution Claim*. Cape Town PLAAS University of the Western Cape and Sustainable Development Consortium (2007) 27.

<sup>310</sup> Tilley S and Lahiff E *Bjatladi Community Restitution Claim*. Cape Town PLAAS University of the Western Cape and Sustainable Development Consortium (2007) 23.

<sup>311</sup> Commission on Restitution of Land Rights *Annual Report 2005/2006* 20.

	<p>Development assistance grant in terms of section 42 C: R 16,100,000.00  Total financial implications: R17,569,640.00  The land and its immovable assets (orchards and buildings) were valued at R61,432,855. 00<sup>312</sup></p> <p>Grants were invested in rehabilitation of commercial core and irrigation infrastructure. No direct benefits were provided to beneficiaries.</p>
Boitumelo – Thaba Patchoa Claim	<p>Settlement planning grant: R1,440 x 44 households = R 63 360.00  Restitution discretionary grant: R3,000 x 44 households = R132 000.00  Development assistance grant in terms of section 42 C: R0  Total financial implications: R 195 360.00  Grant amounts have not yet been released since the commission requires a business plan to be in place before grants may be released and used.</p>

#### **4 11 1 14 Post-settlement support**

Zebediela – the Bjatladi Community Claim	<p>The post-settlement unit in the RLCC Limpopo is known as the Settlement Support and Development Unit (SSDU).  In terms of the section 42D submission and the settlement agreement concluded for the said claim, the following post-settlement support was provided and/or proposed by the SSDU:</p> <ul style="list-style-type: none"> <li>• During the processing of the claim the SSDU was involved in carrying out options workshops with the community in order to identify the type of restitution award the community wanted. These options were based on restoration of a right in land or equitable redress (financial compensation, alternative state land or access to state owned development programs such as housing, development of rural land).</li> <li>• Based on the options chosen the SSDU would then assess the feasibility of settlement options, including the impact of proposed options and site layout, and identifies all relevant planning-related needs for facilitating the sustainable settlement of land claims.</li> <li>• It also facilitates CPA training and capacity- building to ensure that Communal Property Associations function effectively.</li> <li>• The SSDU has an added responsibility to establish linkages with strategic partners and to encourage the formation of business partnerships.<sup>313</sup></li> </ul>
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<sup>312</sup> Tilley S and Lahiff E *Bjatladi Community Restitution Claim*. Cape Town PLAAS University of the Western Cape and Sustainable Development Consortium (2007) 17.

<sup>313</sup> Commission on Restitution of Land Rights *Annual Report 2003/2004* (30).

	<p>Post-settlement support in the case of Bجاتلادي-Zebediela has essentially been provided through the involvement of the strategic partner, and to a lesser extent by the RLCC and the Department of Agriculture. The support given by these agents is crucial for the management and sustainability of the estate. the settlement of the Bجاتلادي claim has been seen by most stakeholders as consisting primarily of the continued operation of the citrus estate, with benefits being shared in terms of rental income, share dividends and employment opportunities, and post-settlement support has focused on these aspects</p>
Boitumelo – Thaba Patchoa Claim	<p>Like the claim settled by RLCC Limpopo above, the Thaba Patchoa claim involving the Boitumelo CPA, also had a post-settlement Support plan in place which was done by the Regional Land Claims Commission: Free State’s post-settlement unit. The said unit was also responsible for conducting options workshops with the claimants prior to the claim being settled. The unit was responsible for conducting a needs assessment with the claimants as well as feasibility studies. Stakeholder relationships were to be established and maintained through the establishment of a steering committee by the RLCC: FS whose responsibility was also to chair the said meetings. Stakeholders were to consist of the Executive members of the Boitumelo CPA, The RLCC FS, Department of Agriculture FS, the Municipality and NGO’s.</p>

#### **4 11 1 15      Current land uses**

Zebediela – the Bجاتلادي Community Claim	<p>Besides citrus farming, which is the main land use there is also livestock farming dairy production, Zebediela Cash and Carry and the Zebediela guesthouse.</p> <p>a.      Citrus farming</p> <p>The estate has 850 ha under citrus – 45% navel, 29% Valencia and 26% lemons<sup>314</sup>. This was already in existence when the land was restored to the community. Plans are underway to increase the lemon plantation. Citrus grown on the estate is sold locally and is also exported to the foreign market (China, Japan, Russia and South America). The current trend of growing sales in the international markets is a good sign of success for the citrus project.</p> <p>Trade relations between South Africa and China have been strengthened through the signing of a Citrus Protocol allowing</p>
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<sup>314</sup> Tilley S and Lahiff E *Bجاتلادي Community Restitution Claim*. Cape Town PLAAS University of the Western Cape and Sustainable Development Consortium (2007) 22.

South Africa to export its citrus produce directly to the Chinese market. According to an article on Creamer Media's *Engineering News Online*, 12 May 2006) "The Citrus Protocol will result in a significant boost for the industry as well as the Bjatladi community. The direct export to China as a result of the signing of the protocol will enable an increased export quantity".<sup>315</sup>

Unfortunately the study also revealed that in order for the success to continue with the overseas market as well as locally, the annual yield of the citrus project should remain constant or increase. In order to maintain this there has to be steady flow of water to the orchards. The risk is that there has already been a forecast on the decrease of water availability. Additional water rights should therefore be secured as a matter of urgency.

b. Livestock Farming

As indicated earlier, the grazing area is underutilized on the restored land. The study revealed that there is currently about 300 head of cattle which is for local consumption, 51 heifer calves, 41 heifers, 51 bullocks, 113 cows and 4 bulls. Improvements done after settlement of the restitution claim include new watering troughs and the erection of a new scale. Bloubuffel grass, a high-nutrient livestock feed is also grown which is sold to local farmer s for R15 a bale and it is also used as fodder on the farm.<sup>316</sup>

c. Dairy production

Dairy production is done on a small sale and is done manually. Consumption of the dairy product is also only intended for the local market. With only 57 dairy cows there are plans to expand and breed more. This would require proper business plans to be in place.<sup>317</sup>

d. Zebediela Cash and Carry and Zebediela Guesthouse

The cash and carry, which sells citrus from the farm, basic foodstuffs and bulk products is run as a separate commercial entity by a group of members who have received a loan of R100 000.00 (interest free) from the CPA. The location of the cash and carry is good as it is next to the taxi rank. On the other hand, what is disturbing is that the CPA did not agree with the group as to how and when repayment of the loan made will take place.<sup>318</sup>

<sup>315</sup> "South Africa and China Strengthen Trade Partnership" 12 May 2006 *Creamer Media's Engineering News Online* [www.engineeringnews.co.za](http://www.engineeringnews.co.za).

<sup>316</sup> Tilley S and Lahiff E *Bjatladi Community Restitution Claim*. Cape Town PLAAS University of the Western Cape and Sustainable Development Consortium (2007) 23.

<sup>317</sup> Tilley S and Lahiff E *Bjatladi Community Restitution Claim*. Cape Town PLAAS University of the Western Cape and Sustainable Development Consortium (2007) 23.

<sup>318</sup> Tilley S and Lahiff E *Bjatladi Community Restitution Claim*. Cape Town PLAAS University of the Western Cape and Sustainable Development Consortium (2007) 23.



	The guest house is also run by a group of CPA members. Here too no terms have been agreed to between the parties concerned as well as with the operating company. Given the geographical area of the guesthouse it has a potential to become a great success and benefit to the members of the CPA, if it is run properly and again if proper business plans are in place.
Boitumelo – Thaba Patchoa Claim	As stated above the farms are currently being used for dairy farm and poultry and the farm house is currently being leased out for which the CPA receives rental. The CPA has taken over the contract with Dairy belle in Dewetsdorp and currently supplies about 1200 litres of milk. The poultry and eggs are either sold directly to the public or to the shops in the Dewetsdorp area. What is good is that the enterprise of the CPA is situated approximately 10 kilometres from Dewetsdorp helping to keep their overheads to a minimum.

#### **4 11 1 16 Monitoring**

The Bjatladi CPA is required by the RLCC to submit annual progress reports, which account for the operation of the estate and are required for the release of grant funding. These are reviewed to enable the Commission and other role players to identify problems and provide the necessary support where it is required.

The DOA plays an ongoing role as a director on the Board. According to Erasmus<sup>319</sup>, the department's watchdog function will remain for the whole fifteen years.<sup>320</sup> Its role is to ensure that the interests of the CPA are protected. As a director, it plays a largely advisory role, but it is also integrally involved in many of the decision-making processes.

The DOA has assisted with training in agricultural skills and provides scholarships for members and their children. The department, through the AgriSETA, supports

<sup>319</sup> Limpopo Department of Agriculture, Senior manager, Restitution Systems and Support Unit: C. M. Erasmus as contained in 312 below

<sup>320</sup> Tilley S and Lahiff E *Bjatladi Community Restitution Claim: Cape Town* PLAAS University of the Western Cape and Sustainable Development Consortium (2007) 27.

capacity-building projects aimed at equipping members and workers of the estate. Skills training and skills transfer thus take place through these programmes. The provincial DoA has seconded an extension officer (who is also a member of the Bjatladi community and the chairperson of the CPA) to Zebediela in order to provide extension assistance. The department has also sought additional specialised support for Zebediela through agencies such as the Sub-tropical Fruit Institute of the Agricultural Research Centre (ARC).

#### **4 11 2        Redistribution projects**

The redistribution programme is aimed at ensuring that section 25(5) of the Constitution is implemented as part of the broader land reform programme of government. One of the aims of the land redistribution programme is the redistribution of 30% of white-owned agricultural land by 2015 for sustainable agricultural development.<sup>321</sup>

Statistics show that land redistribution has not been a success. They indicate that 30% of agricultural land (24.6 million hectares) would be redistributed to black South Africans by 2014. However, by June 2009 only 6.7% (5.5 million hectares) had been parcelled out and many recipient farmers were struggling to survive.<sup>322</sup>

The Minister of Rural Development and Land Reform also indicated that of the 2864 farms that were acquired, 1250 of them were for LRAD projects. A review was done by the Department of the 1250 farms for LRAD projects and it was revealed that 29% of the said projects had failed and 22% were on the verge of failure as well, if no agricultural support was given to the projects.<sup>323</sup>

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<sup>321</sup> African National Congress *The Reconstruction and Development Programme: a policy framework* Umanyano Publications (1994).

<sup>322</sup> *Land Redistribution in South Africa Proving a Failure*  
<http://southasia.oneworld.net/globalheadlines/land-redistribution-in-south-africa-proving-a-failure>  
Accessed on 14 December 2010.

<sup>323</sup> *Land Redistribution in South Africa Proving a Failure*  
<http://southasia.oneworld.net/globalheadlines/land-redistribution-in-south-africa-proving-a-failure>  
Accessed on 14 December 2010.

Similar patterns and challenges experienced with beneficiaries of land restitution projects may also be experienced by beneficiaries of other land reform programmes such as land redistribution and tenure reform. This section will therefore focus on redistribution and its sub programme of Land Redistribution for Agricultural Development (LRAD).<sup>324</sup> Two projects will be examined, namely Bonita Park women small farmers in the Northern Cape province and Kutlwanong Farmers Trust in the Free State province in order to identify challenges and to determine what is causing the failure of the projects or contributing towards success and sustainability.

#### **4 11 2 1 Background information**

Bonita Park Women Small Farmers	The project is situated in the Northern Cape Province in the Vaalharts Irrigation scheme. The farm that has been acquired for the beneficiaries is 25.6 ha in extent. The beneficiaries of the project are all women and they received their land in 2004. <sup>325</sup>
Kutlwanong Farmers Trust	The Kutlwanong Farmers Trust is the second land reform project in the Free State Province. The farm was transferred to the Kutlwanong Farmers Trust (KFT) in November 1996 to 200 member families. The farm measures 3930 ha in extent and belonged to a former white farmer who used it for large scale farming. <sup>326</sup> The study focused on cash cropping and poultry farming.

#### **4 11 2 2 Beneficiary profile**

Bonita Park Women Small Farmers	Initially there were 30 beneficiaries who were all women. Now there are only 12 active beneficiaries. All the beneficiaries come from a background of poverty and few of them have full time employment. Most of them are not literate and do not have any experience in farming activities. There is no documented profile about the beneficiaries which would have assisted with proper
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<sup>324</sup> For more detail on LRAD see 2 8 2 above.

<sup>325</sup> *Ten Women Get State Land at Hartswater* Sapa 31 August 2004. See also *Field-based Learning Findings: LRAD and Commonage Settlement and Implementation Support Strategy for Land and Agrarian Reform in South Africa* Sustainable Development Consortium (2006) 153.

<sup>326</sup> Carnegie J *et al The Rocky Road Towards Sustainable Livelihoods: Land Reform in Free State, South Africa* International Institute for Environment and Development Gatekeeper Series No SA76 (2003) 7.

	<p>planning and implementation of the project in terms of the needs of the beneficiaries.<sup>327</sup></p> <p>It was noted that the beneficiaries did not demand services or assistance from the implementing departments and role players. It seems as though that because they are a group of women they lack the confidence to demand or because of the patriarchal nature of officials working in the department, that the required assistance has not been given to the beneficiaries.<sup>328</sup></p>
Kutlwanong Farmers Trust	<p>The trust consists of the 200 member families. There was no documented list of the said members in terms of their profile. However, the study noted that members lacked the skills and training to be able to conduct cash crop farming on their own.<sup>329</sup></p> <p>On the other hand the 60 members who formed part of the poultry production group were able to use their knowledge and skills to conduct traditional poultry farming.<sup>330</sup></p>

#### 4 1 1 2 3 **Communal property institutions**

Bonita Park Women Small Farmers	<p>The group chose to form a Communal Property Association to acquire hold and manage the land on behalf of its members. The Constitution of the CPA, seems to be well understood by the members as it has been written in clear and unambiguous terms. The CPA was well run, and the active beneficiaries displayed a high degree of commitment. Meetings are held and attended regularly by its members and activities are carried out in line with the constitution. Minutes are kept of all meetings.<sup>331</sup></p>
Kutlwanong Farmers Trust	<p>The 200 member families formed themselves into a Trust. They divided themselves into groups according to the land use options they had agreed on, however, basic organisational factors such as membership, management, decision-making, organisational</p>

<sup>327</sup> *Field-based Learning Findings: LRAD and Commonage Settlement and Implementation Support Strategy for Land and Agrarian Reform in South Africa Sustainable Development Consortium (2006) 153.*

<sup>328</sup> *Field-based Learning Findings: LRAD and Commonage Settlement and Implementation Support Strategy for Land and Agrarian Reform in South Africa Sustainable Development Consortium (2006) 153.*

<sup>329</sup> Carnegie J *et al The Rocky Road Towards Sustainable Livelihoods: Land Reform in Free State, South Africa* International Institute for Environment and Development Gatekeeper Series No SA76 (2003) 12.

<sup>330</sup> Carnegie J *et al The Rocky Road Towards Sustainable Livelihoods: Land Reform in Free State, South Africa* International Institute for Environment and Development Gatekeeper Series No SA76 (2003) 13.

<sup>331</sup> *Field-based Learning Findings: LRAD and Commonage Settlement and Implementation Support Strategy for Land and Agrarian Reform in South Africa Sustainable Development Consortium (2006) 153.*

	functioning, financial matters and other issues were not jointly decided upon or understood by the members. Members therefore lacked the required training in terms of the functioning and understanding roles and responsibilities of a legal entity. <sup>332</sup>
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#### **4 11 2 4      Membership rights, obligations and benefits**

Bonita Park Women Small Farmers	No information was provided except that the land purchased for them has been leased to a white farmer for 5 years. It is therefore assumed that each of them would share equally from the rental received.
Kutlwanong Farmers Trust	The KFT had a Trust Deed setting out membership, management, financial matters and decision making. However, the study revealed that they had not received proper training on the functioning of a Trust and rights associated with being a member. <sup>333</sup> However, it was agreed that profit sharing would be done according to the group that the member belonged to and not between the whole membership of the trust. This led to conflict amongst the members of the Trust because some large enterprise groups (e.g. the poultry, handicraft and vegetable groups) have comparatively small demands for land and thus perceive that the more extensive enterprise groups (e.g. livestock and cash crops) are “farming on their land”. As the legal framework for setting-up the Trust is unclear in terms of membership, resource allocation and profit sharing, organisational conflicts are difficult to resolve. <sup>334</sup>

#### **4 11 2 5      Business entities**

Bonita Park Women Small Farmers	There is no business being conducted by the beneficiaries themselves. 1 ha remains unused and the balance is being leased to a neighbouring farmer for a period of five years. The lease money is the only income for the beneficiaries.
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<sup>332</sup> Carnegie J *et al* *The Rocky Road Towards Sustainable Livelihoods: Land Reform in Free State, South Africa* International Institute for Environment and Development Gatekeeper Series No SA76(2003)13.

<sup>333</sup> Carnegie J *et al* *The Rocky Road Towards Sustainable Livelihoods: Land Reform in Free State, South Africa* International Institute for Environment and Development Gatekeeper Series No SA76 (2003)13.

<sup>334</sup> Carnegie J *et al* *The Rocky Road Towards Sustainable Livelihoods: Land Reform in Free State, South Africa* International Institute for Environment and Development Gatekeeper Series No SA76 (2003)13.

	Due to the lack of training, support and capacity building the beneficiaries were forced to lease out the land as they themselves were not in a position to farm it. <sup>335</sup>
Kutlwanong Farmers Trust	The 200 member group divided themselves into six enterprise groups of their own choice, namely, beef cattle, dairy cattle, cash crops, vegetables, poultry and home crafts. <sup>336</sup> For the purpose of the study only cash crops and poultry farming was considered. But it seems that the other enterprises such as livestock and handicraft have not yet commenced. <sup>337</sup>

#### **4 1 1 2 6      *Training and capacity development***

Bonita Park Women Small Farmers	<p>None of the beneficiaries have any experience in farming activities. Very few of them are literate. From the research it is evident there is no plan in place to provide support, training or mentorship to small-scale farmers who have acquired land within the scheme. An extension officer is available but it seems that such officer is not sufficiently trained himself or lacks the desire and will to fulfil his official duty.</p> <p>The group has identified training needs of which one of them is financial management, unfortunately no training has been forthcoming.</p> <p>It is important that the beneficiaries receive the desired training, support and skills in order to build their capacity and confidence. They will then be able to demand what is due to them and also implement what they will be taught in order to make the project a success.<sup>338</sup></p>
Kutlwanong Farmers Trust	Most of the members of the Trust required training, skills and capacity building. However, no plan was in place to provide it for

<sup>335</sup> *Field-based Learning Findings: LRAD and Commonage Settlement and Implementation Support Strategy for Land and Agrarian Reform in South Africa Sustainable Development Consortium (2006) 153.*

<sup>336</sup> Carnegie J *et al The Rocky Road Towards Sustainable Livelihoods: Land Reform in Free State, South Africa* International Institute for Environment and Development Gatekeeper Series No SA76(2003) 10.

<sup>337</sup> Carnegie J *et al The Rocky Road Towards Sustainable Livelihoods: Land Reform in Free State, South Africa* International Institute for Environment and Development Gatekeeper Series No SA76(2003)10.

<sup>338</sup> *Field-based Learning Findings: LRAD and Commonage Settlement and Implementation Support Strategy for Land and Agrarian Reform in South Africa Sustainable Development Consortium (2006) 153.*

	<p>them. Financial management, capacity building in terms of the Trust and other business/legal entities, technical know how in agricultural farming activities (most members merely had experience working as farm labourers) are some of the areas in which training was required. Had the members received the required training then it would have contributed to a greater success of the project. Even though there were stakeholders assisting with some of the land uses and enterprises, in the end there was insufficient skills transfer to the members themselves as most of the activities were done by the stakeholders with the members merely doing the work of labourers.<sup>339</sup></p>
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#### **4 11 2 7 Business plan**

Bonita Park Women Small Farmers	<p>There is no business plan in place. The project has also not been included in the IDP of the municipality. The fact that there is no business plan in place means that the project is doomed to become a failure.</p>
Kutlwanong Farmers Trust	<p>It seems as though KFT executive and the other stakeholders simply continued with the large scale farming on the farm that they received. No input was received from the broader members of KFT and nor could there have been a proper business plan in place which would have looked at all potential land uses of the farm, budget and resources, etc. Therefore it can be assumed that there was also no resource and land use management plan in place since at one stage KFT members began fighting amongst themselves as they felt that certain enterprises such as cash crops and livestock farming was using more land than the other enterprises. This had its origins in neglect by DLA in the planning process before the land was transferred to KFT.<sup>340</sup></p> <p>Even though the Department of Agriculture eventually produced a business plan, it was not done in consultation with the KFT members and focussed more on the business enterprises and on large scale farming activities. In the long run this business plan is not going to be sustainable to the KFT members who are the actual beneficiaries of the project.</p>

<sup>339</sup> Carnegie J *et al* *The Rocky Road Towards Sustainable Livelihoods: Land Reform in Free State, South Africa* International Institute for Environment and Development Gatekeeper Series No SA76(2003)11.

<sup>340</sup> Carnegie J *et al* *The Rocky Road Towards Sustainable Livelihoods: Land Reform in Free State, South Africa* International Institute for Environment and Development Gatekeeper Series No SA76(2003)15.

#### 4 11 2 8 **Commercial enterprises on the land**

<p>Bonita Park Women Small Farmers</p>	<p>As stated above the farm is being used to plant lucerne by the farmer to whom it has been leased. It seems as though, because of the lack of support from government and other role players no proper proposal was in place for this project before the approvals were granted.</p> <p>There is no settlement taking place on the farm. There are also no fixed improvements. All the beneficiaries live 25km away from the farm. They also do not have their own transport to travel to the farm. The beneficiaries indicated that having a fixed structure on the farm would assist them greatly as it could be used as an office or as a storeroom.<sup>341</sup></p>
<p>Kutlwanong Farmers Trust</p>	<p>Two farm activities were chosen for the study to illustrate sustainability: cash cropping and poultry production.</p> <p>a. Cash cropping</p> <p>In the first year of ownership by KFT, the combination of political pressure for delivery, the need for the KFT to begin ‘farming’, and KFT’s enthusiasm, led to a plan to grow 800ha of maize on the arable land. A committee comprising the DoA (represented by the local extension team), Senwes and KFT: was formed to oversee the process.<sup>342</sup></p> <p>The harvest was successful in that KFT managed to pay off its loan from Senwes and Standard Bank. However, the following year was not as successful as planting was late and KFT was not able to secure financial backing.</p> <p>b. Poultry production</p> <p>Poultry production, unfortunately, was not as successful as cash cropping during its first attempt. The poultry group initially consisted of about 60 members of KFT, but eventually dwindled to half its size, because of the frustration experienced by the group</p>

<sup>341</sup> *Field-based Learning Findings: LRAD and Commonage Settlement and Implementation Support Strategy for Land and Agrarian Reform in South Africa Sustainable Development Consortium (2006) 153.*

<sup>342</sup> *Carnegie J et al The Rocky Road Towards Sustainable Livelihoods: Land Reform in Free State, South Africa International Institute for Environment and Development Gatekeeper Series No SA76(2003)15.*



	<p>on the lack of funding and support it was receiving. Again the Department of Agriculture wanted to focus on large scale high technology poultry farming like was done with cash cropping, but in the end there were no funds available to start the project.</p> <p>Of the 30 members that were left, they decided to start the business on their own by each member contributing building material and R20.00. The members used their knowledge and skills which they used for many years under their traditional farming practices. They were able to work as a team and use available resources and succeeded in building a traditional style chicken house made of manure, soil and grass walls. In the end KFT members succeeded and were able to sell the chicken locally in the township. Even though they were not able to realise a substantial profit, they were still able to build on their existing knowledge and skills and only improve on them in the future.</p>
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#### **4 11 2 9 Partnerships and joint ventures**

Bonita Park Women Small Farmers	None
Kutlwanong Farmers Trust	<p>The cash cropping project received assistance from Senwes only during the first year. Although the members had been exposed to commercial agriculture, they were not involved enough in the process, and were not given the appropriate training to be in a better position the following year to be more in control of the process.</p> <p>Poultry farming was conducted by the beneficiaries themselves.<sup>343</sup></p>

#### **4 11 2 10 Grant funding**

Bonita Park Women Small Farmers	<p>It was stated that the project would benefit from the Department's Comprehensive Agricultural Support Programme. The funds would be used for the upgrading of the existing infrastructure on the farm, such as canals, fences, the dam and the renovation of the farmhouse. "The amount to be spent is estimated at about R270,000."<sup>344</sup></p> <p>However, at the time of the study only the balance of the grants in</p>
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<sup>343</sup> Carnegie J *et al* *The Rocky Road Towards Sustainable Livelihoods: Land Reform in Free State, South Africa* International Institute for Environment and Development Gatekeeper Series No SA76(2003)13.

<sup>344</sup> *Ten Women get State Land at Hartswater Sapa* 31 August 2004.

	<p>the amount of R12 000.00 was available to the beneficiaries and this amount was insufficient for production on the farm. The farm also did not have any implements or equipment. Again funds were insufficient to even buy equipment.<sup>345</sup> A possibility that the extension officer did not assist the beneficiaries to obtain access to the CASP funding and hence beneficiaries feeling as though they have been let down by government.<sup>346</sup></p>
<p>Kutlwanong Farmers Trust</p>	<p>According to the study the following funding was received by beneficiaries for the cash cropping project:</p> <ul style="list-style-type: none"> <li>• Senwes gave KFT production credit of about R1.2 million, and provided the inputs as well as project management for the process in association with a local farmer who was given a contract for land preparation and planting services</li> <li>• Standard Bank provided a short term loan for some necessary equipment</li> <li>• The KFT provided the land and labour.<sup>347</sup></li> </ul> <p>It must be noted that for the following year's season, KFT was not able to secure the assistance they had received previously from Senwes and Standard Bank. The Department of Agriculture, itself, lacked the skills and capacity to take the project to the next level.</p> <p>For the poultry farming after nearly 18 months of planning a high technology 2000-broiler business with the Department of Agriculture funds were still not available to begin an enterprise. Out of frustration, about half of the members decided to establish the enterprise on their own. Each member contributed R20 and their own building materials.<sup>348</sup></p>

#### **4 11 2 11 Post-settlement support**

<p>Bonita Park Women Small Farmers</p>	<p>The role of the Department of Agriculture and Land Affairs was to assist the beneficiaries with training and capacity building, provide technical opinion on the farm use plan, land use and environmental assessment and assist with agricultural support services. The department also had to monitor and evaluate the outcomes of the LRAD project to assess the quality of impact on</p>
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<sup>345</sup> *Field-based Learning Findings: LRAD and Commonage Settlement and Implementation Support Strategy for Land and Agrarian Reform in South Africa Sustainable Development Consortium (2006) 154.*

<sup>346</sup> *Field-based Learning Findings: LRAD and Commonage Settlement and Implementation Support Strategy for Land and Agrarian Reform in South Africa Sustainable Development Consortium (2006) 153.*

<sup>347</sup> Carnegie J *et al The Rocky Road Towards Sustainable Livelihoods: Land Reform in Free State, South Africa* International Institute for Environment and Development Gatekeeper Series No SA76(2003)11.

<sup>348</sup> Carnegie J *et al The Rocky Road Towards Sustainable Livelihoods: Land Reform in Free State, South Africa* International Institute for Environment and Development Gatekeeper Series No SA76 (2003)12.

	<p>the beneficiaries of the project. However, the study revealed that no such assistance was received by the department.</p> <p>These are the some of the problems that were faced by the beneficiaries which forced them to lease the land:</p> <ul style="list-style-type: none"> <li>• a lack of farming experience and no capacity building strategy;</li> <li>• a lack of financial resources for production (the only finance they had was R12 000 – the balance of the grant);</li> <li>• a lack of implements and machinery;</li> <li>• a lack of support from government departments (PDoA) and the municipality;</li> <li>• no transport to the land from their homes 25km away;</li> <li>• no farm dam for the storage of water;</li> <li>• no farmhouse where they could store goods or which they can use as an office;</li> <li>• no business plan; and</li> <li>• too many beneficiaries to enable reasonable benefits for all.<sup>349</sup></li> </ul>
<p>Kutlwanong Farmers Trust</p>	<p>The DLA is usually responsible for providing support services to the beneficiaries. This included project facilitation, establishment of a legal entity, economic feasibility and planning, land evaluation, negotiations with the current landowner and land transfer.<sup>350</sup></p> <p>From the study it was evident that it was only the cash cropping project that received some sort of post-settlement support. The beneficiaries' lack of experience about where to go for information or who to seek to provide support was also evident.</p> <p>There is clearly a need for the public sector organisations supporting the process of land reform to ensure that real capacity is built, resulting in people and organisational empowerment. Enterprise groups that are still 'waiting for action' have become increasingly frustrated and disillusioned by the land reform process. They have come to realise that, by itself, land acquisition does not constitute a livelihood.<sup>351</sup> Due to the lack of post-settlement support there was a lack of the use of appropriate technologies, resource management and market opportunities for the beneficiaries in their respective projects.</p>

<sup>349</sup> *Field-based Learning Findings: LRAD and Commonage Settlement and Implementation Support Strategy for Land and Agrarian Reform in South Africa* Sustainable Development Consortium (2006) 153-154.

<sup>350</sup> Carnegie J *et al The Rocky Road Towards Sustainable Livelihoods: Land Reform in Free State, South Africa* International Institute for Environment and Development Gatekeeper Series No SA76(2003) 16.

<sup>351</sup> Carnegie J *et al The Rocky Road Towards Sustainable Livelihoods: Land Reform in Free State, South Africa* International Institute for Environment and Development Gatekeeper Series No SA76(2003)16.

## **4 12 ANALYSIS AND CONCLUSIONS**

As stated earlier,<sup>352</sup> beneficiaries that receive land, be it through restitution or the redistribution programme, may experience similar constraints. On analyzing the specific case studies there is a common thread running through them in that they experience similar challenges that are hampering their success and sustainability or contributing towards sustainability. These will be discussed hereunder:

### **4 12 1 No documented data is available on the profiling of the land reform beneficiaries**

Not all land reform beneficiaries come from the same economic, social and educational background and not all beneficiaries want to either live or work on the land. It would be important to first assess the community profile, the skills base and level of expertise of the community, and the community's intended use of the land, amongst other factors.<sup>353</sup> As far as possible, the land use rights and the rules governing these should be determined during the options, initial planning and settlement process.

The fact that the DLA does not obtain and keep documented records of profiling of the beneficiaries makes it difficult for proper planning to be done in terms training and capacity building, land use needs and other social and economic development needs as is evident in the Kutlwanong Farmers Trust and Bonita Women Small Farmers. In the Kutlwanong the inherent skills base and knowledge of the community was not taken into consideration when the business plan was drawn up, hence the business plan focused more on highly technical farming methods.

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<sup>352</sup> See par 4 11 2.

<sup>353</sup> Tilley S and Lahiff E *Bjatladi Community Restitution Claim*. Cape Town PLAAS University of the Western Cape, and Sustainable Development Consortium (2007) 29.

#### 4 12 2 Lack of capacity building in communal property institutions

Land handed back to a community or tribe as a result of a successful land claim must be registered in the name of such community or tribe as a juristic person or held in trust for the community.<sup>354</sup> Institutional support to land reform beneficiaries is therefore one of the aspect of post-settlement support to which attention must be paid. The department assists the beneficiary group or community in choosing a communal property institution and also assists the community to draft a constitution or trust deed that sets out the rules, membership and land use rights in terms of the regulations of the Communal Property Associations Act.<sup>355</sup> This Act provides for a procedure to establish communal property associations as juristic persons which can acquire, hold and manage land on behalf of the community or group.<sup>356</sup>

The CPA Act enjoyed a largely lukewarm reception, because it was generally perceived to be too sophisticated for most communities. Furthermore, lawyers drafting constitutions for these communities frequently did not take community customs and culture sufficiently into consideration.<sup>357</sup> Therefore, intensive training is required by land reform beneficiaries before they establish a communal property institution in order to hold and manage the land they receive. In most cases, however, the department fails to capacitate the beneficiaries. As a result, in most of the projects above, CPIs that were formed were not fully functional and members did not clearly understand their roles and responsibilities and how the constitution or the trust deed affected their rights to the land. Moreover, in both restitution and redistribution projects the user rights and rights to share and benefit in the land were generally not defined and allocated to individual members. For the

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<sup>354</sup> Pienaar G "Aspects of Land Administration in the Context of Good Governance" 2009 *PER* 23.

<sup>355</sup> 28 of 1996. Hereafter referred to as the "CPA Act". See the comments by Dodson J in *In re Kranspoort Community* 2000 2 SA 124 (LCC) pars 107-117.

<sup>356</sup> Carey Miller D L *Land Title in South Africa* Juta (2000) 467-491; Badenhorst P Pienaar J and Mostert H *Silberberg-Schoeman's Law of Property* Butterworths (2006) 620-622.

<sup>357</sup> Pienaar K "Communal Property Arrangements: A Second Bite" in Cousins B (ed) *At the Crossroads: Land and Agrarian Reform into the 21st Century* Agrarian Studies School of Government University of the Western-Cape (2000) 325; Pienaar G J "Registration of informal land-use rights in South Africa" 2000 *Journal of South African Law* 458-459.

success of land reform it is imperative that institutions are clear on rights and benefits.

There is a need for capacity building as far as CPIs are concerned. This is relevant to both beneficiaries of the land reform projects as well as to the implementers/officials of the department.<sup>358</sup> If beneficiaries are not given a good basic explanation and understanding of CPIs the success of the project can be compromised.

From the study it is also evident that those beneficiaries who are literate often end up misusing their position to benefit themselves or their close family members to the exclusion of the broader community members or group members, resulting in infighting and conflict amongst beneficiaries. For example, in the Bjatladi community claim, certain individuals within the CPA benefited greatly from the project through securing managerial positions on the estate, but most ordinary members have yet to see any material benefit.<sup>359</sup> This ultimately affects the success or any form of positive development of the said projects.

#### **4 12 3 Training and capacity building of beneficiaries**

From the projects discussed above it is evident that limited training was provided in only one project despite the fact that training needs were identified for beneficiaries in all the projects way in advance. The critical problem was that even though training needs had been identified there was no plan in place to provide such training to the beneficiaries. It must be understood that most of the land restoration projects of restitution and land redistribution are in rural areas and most of the beneficiaries also come from the rural setting. Due to the atrocities of the

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<sup>358</sup> From my interaction with officials within the department through the questionnaire, discussions and being part of interview panels, it was evident that majority of them did not know what a communal property institution was and also what is the difference between the various institutions, the advantages and disadvantages between institution versus another or even how to go about establishing and registering an institution.

<sup>359</sup> Tilley S and Lahiff E *Bjatladi Community Restitution Claim*. Cape Town PLAAS University of the Western Cape and Sustainable Development Consortium (2007) 25.

apartheid era most beneficiaries are illiterate and unskilled with knowledge of farming being limited to that of a farm worker. It is therefore imperative that training in technical farming (livestock and agriculture), financial management, functioning of CPIs, marketing of products are provided to beneficiaries before they receive title to their land. In addition, there should be post-transfer training on a practical, hands-on basis to ensure that what has been learnt from the training provided is being applied. It is also important that budget is available to provide the training that is required by beneficiaries. Alternatively the department must enter into service level agreements with relevant stakeholders to be able to provide such training to beneficiaries at no or minimal cost. Farmer training is critical for the viability and sustainability of agricultural projects. Three methods to facilitate the skills transfer to land reform beneficiaries are training through agricultural colleges, mentorship, and management programmes.<sup>360</sup>

#### **4 12 4 Business plan**

Only the Kutlwanong Farmers Trust project had a business plan in place. However, the drawing thereof was not done through an open participatory process with the beneficiaries. Instead it was a business plan that focussed on financial and economic considerations, using the traditional norms and standards developed for large-scale commercial agriculture in the province. The other three projects did not have business plans in place (which is a characteristic of most land reform projects).

The fact that restitution projects did not have business plans in place meant that projects were doomed to fail since development on the projects could only take place by use of the grants approved for the project and these grants could only be released by the Chief Land Claims Commissioner if the request for release of grants was accompanied by a business plan.

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<sup>360</sup> Jacobs P *Support for Agricultural Development* PLAAS University of the Western Cape (2003) 12.

Ensuring a business plan is in place is also another important aspect of the post-settlement support that must be considered.

#### **4 12 5 Funding**

In both restitution and land redistribution projects, funding for the projects is done through grants or through private sector partners as in the case of the Kutlwanong Farmers Trust.

In restitution the land restored to claimants is purchased by the state after valuations on the land have been conducted. Restitution development and settlement grants are also approved per household verified in the project. Recently there has been the development grant in terms of section 42C of the Restitution Act which is calculated on the value of the land and may not exceed 25% thereof. The grants can only be used once the Chief Land Claims Commissioner has approved the request for the release thereof. Such request must be supported by a business plan and resolution from the community, agreeing to the use of their funds in the manner stipulated in the business plan.<sup>361</sup>

From my working experience, it has been established that in most cases once claims have been approved in terms of section 42D, the project is sometimes forgotten by project officers or it is handed over to post-settlement unit and the project officer responsible in the post-settlement unit is sometimes not certain as to how to deal with the project, hence the project remains unattended. The effect on non-payment is serious:

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<sup>361</sup> *Restitution Grants Guideline* 1 July 2008.



By not paying out these post-settlement grants, the department is incapacitating land claimants from making a success of the land transferred to them, as is unfortunately evidenced by the 90% failure rate of land transferred.<sup>362</sup>

With regard to land redistribution projects, funding also takes place through the approval of grants and this is linked to the amount of own contribution under the SLAG or LRAD sub programme. In most of the LRAD cases, funding in the form of the grants was only sufficient to purchase the land identified. This left little or no funding for training of beneficiaries, purchasing of farm implements and equipment or for conducting the agricultural business they had wanted to embark on. This meant that in order to supplement their income beneficiaries ended up taking loans from financial institutions or invested money in other quick income generating activities in order to survive. It was also evident in LRAD projects that beneficiaries were allowed to provide their labour as part of their own contribution to secure higher grants. This proved to be successful where beneficiaries were highly committed to ensuring that their business ventures were successful as in the Kutlwaning Farmers Trust project above. The grant funding is also supplemented with funds from the DoA in the form of CASP. However, this must be applied for on behalf of the beneficiaries. Other funding may come from beneficiaries using the land as a form of security to acquire loans from the bank. Most of these funds are used to develop the land, such as fencing or irrigation or for buying necessary farm implements and equipment.

In the end land restitution and land redistribution beneficiaries have not been able to improve their social and economic positions and alleviate poverty through the redistribution of land to them as they would have hoped to. It is, therefore, imperative that funding of land reform projects should go hand in hand with a business plan and the business plan must be in line with the funding that is available. This ensures that any venture undertaken by beneficiaries on the land is successful and sustainable.

#### **4 12 6 Monitoring and evaluation**

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<sup>362</sup> Phakathi B “State lacks R3,4bn to Help New Farmers” *Business Day* <http://www.businessday.co.za/articles/content.aspx?id=113832> 6 July 2010.

Monitoring and evaluation is part of the project management cycle of the post-settlement unit within the Commission. However, from my experience, it is not properly implemented by some of the project officers, probably because they do not have the understanding of what is required of them under this key responsibility area. This is evident from the presentations of their annual Performance Assessment Reports.<sup>363</sup> Most of the officials report that it is sufficient for them to obtain or prepare a Monitoring and Evaluation report for the projects but don't show what the actual deliverables of them monitoring and evaluating the projects were. It is therefore assumed that because such deliverables cannot be identified no proper monitoring and evaluation has taken place or no progress has been made on the projects.

It is evident that very little monitoring and evaluation has taken place and if it has taken place no measures are put in place to assist with challenges experienced by beneficiaries. Only in the project of the Bjaladi community claim was it required that the beneficiaries provide the Commission with annual progress reports so that the Commission could intervene and provide solutions where problems were being encountered or in identifying needs of beneficiaries such as further training and skills development, additional funding or interventions by stakeholders.

It must be noted that monitoring and evaluation must be conducted on a regular basis in order for it to have the desired impact.

#### **4 12 7 Working in silos**

As stated earlier,<sup>364</sup> land reform cannot be conducted in isolation, meaning that the relevant stakeholders need to come together to ensure that projects are successful and sustainable and to ensure the department is able to meet its objectives in terms of the *White Paper on Land Reform*.<sup>365</sup>

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<sup>363</sup> Member of Moderating Committee for the Land Claims Commission: for three financial years: Levels 1-12.

<sup>364</sup> See 3.7 above.

<sup>365</sup> *White Paper on Land Reform* (1997).

Projects where stakeholders and relevant role players came together and participated according to their identified roles and responsibilities were seen as some of the successful projects. Through working together the required technical skills and resources can contribute towards successful land reform projects.

It is therefore imperative that the project officer responsible in the post-settlement unit as well as the officer responsible at the start of a project are able to identify and engage stakeholders right from the inception of the project so that everyone is on board from the beginning. It is also important for the said stakeholders to meaningfully contribute towards their roles and responsibilities in each project.

In some land reform projects stakeholders failed to attend stakeholder meetings and keep to their commitments. Requests to stakeholders to attend the meetings are normally made to the Head of Department who nominates an official from the relevant department to attend the stakeholder meetings. However, in most cases, these nominees do not attend the stakeholder meetings. Consequently planning and implementation is negatively affected in the process.

#### **4 12 8 Mentorship, joint ventures and strategic partners**

A few of the land reform projects have involved the use of strategic partners, joint ventures or mentors as a form of support in their projects in an attempt to promote sustainable development.

The business models adopted, or planned, in land reform projects have two main dimensions: first, the type of land-use, be it agricultural, conservation, mining or other; and secondly, the form of socio-economic arrangements associated with that land-use. The socio-economic arrangements may include direct participation of beneficiaries in agriculture, employment as workers in a commercial venture, or receipt of a share of profits via a communal property institution without any direct involvement in land-use.<sup>366</sup>

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<sup>366</sup> Lahiff E *Business Models in Land Reform* PLAAS University of the Western Cape (2007) 3.

It must be cautioned that the adoption of business models must be carefully selected since each project has different dynamics and unique characteristics that must be considered before a specific model that was applied in one project can be replicated in another project.<sup>367</sup>

Four broad models of land-use can be identified from the emerging literature on land reform, which cut across the various economic sectors of agriculture, forestry, tourism, conservation and mining. They are as follows:

- Individual (or household) access to land, typically for small-scale agricultural production and natural resource harvesting.
- Group access to, or control of, land (by either the entire CPI or a sub-group within it), typically for larger-scale agricultural production or tourism activities.
- Joint ventures with external parties (that is, non members of the CPI), to engage in a range of agricultural or tourism activities.
- Contractual arrangements with external parties, whereby effective control of some or all of the resource is handed over for a specific period of time, with little or no direct involvement by CPI members, in return for some form of payment (for example, rental, share of profits, etc.).<sup>368</sup>

The more common model currently being used in land reform projects would be the group access to land for large scale agriculture as in the case of the Bjatladi community claim.<sup>369</sup> The use of joint ventures and mentors are on the increase. Joint ventures are entered into between commercial companies (or other institutions) and individuals who can commit certain resources to the venture and be held contractually responsible for their side of the agreement. However joint ventures may also have disadvantages, in terms of sharing of profits and loss of autonomy since in many joint ventures land is leased to the joint venture partner

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<sup>367</sup> Tilley S and Lahiff E *Bjatladi Community Restitution Claim*. Cape Town PLAAS University of the Western Cape and Sustainable Development Consortium (2007) 28.

<sup>368</sup> Lahiff E *Business Models in Land Reform* PLAAS University of the Western Cape (2007) 3.

<sup>369</sup> Lahiff E *Business Models in Land Reform* PLAAS University of the Western Cape (2007) 6.

solely for the use of the enterprise to be conducted and the beneficiaries of land reform have limited or no access to the land. Each type of joint venture must therefore be critically evaluated in terms of its merits to ensure that maximum benefit goes towards the land reform beneficiaries.

Mentorship can be provided in the form of the strategic partner in a joint venture or simply by persons who are experienced farmers or the previous land owner of a commercial farm purchased for the beneficiaries of land reform. Mentorships are therefore mostly common in agricultural projects. The mentors guide and train beneficiaries of land reform on farming skills, pack house, human resources, livestock farming, finance, etc.

Mentorship should be provided in a structured and formal manner and should be governed by agreements between the beneficiaries, government departments and the mentor.<sup>370</sup>

#### **4 13 Final remarks**

It is contended that in order to achieve the objectives of land reform one has to look at it holistically and not focus merely on restoring rights, securing tenure or providing access to land. What also needs to be restored is the capacity of people to survive economically and socially, the capacity to enjoy economic independence and growth, identity and a sense of belonging, thereby restoring their dignity.<sup>371</sup>

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<sup>370</sup> *Sustainable Restitution Support-South Africa Restitution Operational Strategy: Partnership for Sustainable Pre-and Post settlement support* SADC Centre for Land related, Regional and Development Law and Policy university of Pretoria (2010) 65

<sup>371</sup> Ziqubu N *Redress, Social Justice and Reconciliation. Practical Experiences from AFRA's Work with Specific Restitution Claims in KZN*. Association for Rural Advancement (2006) 11; Hall R, Kleinbooi K and Mvambo N "What Land Reform has Meant and Could Mean to Farm Workers in South Africa" Paper presented at the *SARPN Conference on Land Reform and Poverty Alleviation in Southern Africa* Pretoria (2001) 10; Sachikonye L M *The Situation of Commercial Farm Workers after Land Reform in Zimbabwe* A Report Prepared for the Farm Community Trust of Zimbabwe (2003) 11.



## CHAPTER FIVE

### POST-SETTLEMENT SUPPORT IN TERMS OF THE INTERNATIONAL EXPERIENCE: ZIMBABWE, AUSTRALIA AND BRAZIL

#### 5 1 INTRODUCTION

The provision of agricultural land to land reform beneficiaries without the necessary support in terms of farming, farm management and financial administration skills leads to land which remains unused and unproductive. Without adequate finance for improvements and production costs, access to markets, networks, relationships and water rights, or a bankable business model that takes producer prices and market trends into account, is, as we noted in the previous chapter, tantamount to setting beneficiaries up for failure.

The majority of the recent land reform programmes (more specifically, the market-based approach which came to the fore internationally during the 1990s) have tended to focus on land acquisition and less on the requisite settlement support that should accompany it.<sup>372</sup> In this chapter an indication will be given of experiences in international land reform as far as the provision or lack of post-settlement support is concerned and the consequent impact on land reform projects.

The key lesson that can be drawn from a range of countries studies is that, irrespective of the political or historical milieu, the transfer of land alone is not sufficient and requires buttressing by settlement support provision from a range of institutions and sectors. In the absence of ongoing support and capacity building, new land owners will run the risk of being set up to fail. For development activities on acquired land to be sustainable and to impact positively on the lives of beneficiaries, a comprehensive, responsive and on-going interaction between

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<sup>372</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 1.

those requiring and determining the support they require and those who provide such support is required.<sup>373</sup>

However, before drawing conclusions on the valuable information that can be attained through the study of international experience on land reform and the provision of post-settlement support it is important that note be taken of the specific circumstances in each country. Different policies and principles underpinning land reform in different countries have led to the application of various types of institutional arrangements and adoption of various styles in the provision of post-settlement support.<sup>374</sup> Therefore it is not necessary that the type of post-settlement support provided in one country will suit the type of projects in South Africa

Five salient lessons to emerge from international experiences in land reform are summarised as follows<sup>375</sup>:

- *The speed of implementation of the programme.* One characteristic of a successful programme is rapid implementation. In the absence of fast paced programmes, a combination of excessive bureaucracy, over centralisation of the process and legal challenges is likely to render the programme ineffective
- *Economic viability of the farm models.* Before a reform programme is implemented, there must be a careful assessment of the models or livelihood options available to rural households. In other words the models should indicate whether the persons resettled on the land have sufficient land size and quality to provide at least the target income. Further, in computing the costs and benefits, other assistance and infrastructure necessary to generate the income should be planned.

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<sup>373</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 41.

<sup>374</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 2.

<sup>375</sup> Kirsten J F and Van Zyl J *Approaches and progress with land reform in South Africa* (1999) 337.



- *Political acceptability and legitimacy of the programme* .There must be a consensus across the spectrum of political opinion that the programme is both necessary and the most acceptable way of achieving the stated goals. Land reform programmes are not irreversible, particularly where this consensus has not been achieved.
- *Clear definition of the role that the public sector can and will play*. The proposed programme must be evaluated in light of an understanding and acceptance of the roles that the public sector can and must play, and what should be best left to the non-governmental sector. Programmes that have relied entirely on the public sector in the belief that it is the only one capable of maintaining integrity, delivering services, determining needs, and managing the process have been failures.
- *Land reform is only one part of the comprehensive programme of economic reconstruction*. The redistribution of land is necessary, but not sufficient to guarantee the success of a development programme. There is the need for additional services - infrastructure, markets, incentives, health - to be considered and access provided. These considerations are necessary both to sustain higher productivity subsequent to reform and to include others who may not benefit from the direct provision of land.

What follows is an assessment of land reform in countries such as Zimbabwe, Australia and Brazil as far as it relates to the background of land reform, institutional arrangements that support land reform as well as post-settlement support - the presence or the absence and its impact on land reform.

The above countries were chosen because they have a similar history in terms of the background to land reform. Their programmes also display the provision of settlement support to land reform beneficiaries which could be useful to our own land reform programmes with regard to better systems to provide post settlement support to land reform beneficiaries.

## 5 2 ZIMBABWE

### 5 2 1 A brief history on the background leading to land reform

Rhodesia, the name by which Zimbabwe was formerly known, was derived from Cecil Rhodes, a British colonist, under the British South Africa Company (BSAC). Spurred on by the “gold rush” in neighbouring South Africa the white farmer population first came to Southern Rhodesia in the 1890s. Nearly 200 farmers, artisans, miners, soldiers, doctors, and others — the so-called Pioneer Column — plus more than 300 policemen arrived under the flag of the BSAC.<sup>376</sup>

Prior to 1890 Zimbabwe was a thriving country rich with deposits of gold. However, this source had become almost depleted over the many years. The Shona and the Ndebele tribes were the more prominent indigenous people living on the land at the time. Chief Lobengula who had defeated the Shona tribe soon found himself having to deal with Cecil Rhodes and the BSAC. He signed a contract giving up mineral rights to his land in exchange for guns, ammunition and money.<sup>377</sup>

Due to the BSAC not generating enough profit through mining members of the Pioneer Column turned to farming and agricultural activities. In the process they further dispossessed the indigenous people of their land and in turn forced them into labour or into tribal reserves.<sup>378</sup>

In 1918 the Judicial Committee of the Privy Council in London ruled that the land of Southern Rhodesia was owned by the Crown and not by the BSAC. In 1923 the British held an all-white referendum in Southern Rhodesia, and the settlers voted to become a self-governing rather than company-run territory.<sup>379</sup>

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<sup>376</sup> Tirivangani T *Law, Land Reform and Social Justice: A Case for Zimbabwe* Author House (2004) 12.

<sup>377</sup> Tirivangani T *Law, Land Reform and Social Justice: A Case for Zimbabwe* Author House (2004) 23; Motshobana E *History of Zimbabwe* online Bulawayo1872.com accessed 19 January 2010..

<sup>378</sup> Lebert T *An Introduction to Land and Agrarian Reform in Zimbabwe* National Land Committee. Land Research Action Network (2003) 2; Moyo S “Land Reform in Zimbabwe: The First Ten Years” in Tracy S (ed) *Land Reform in South Africa: Constructive Aims and Positive Outcomes – Reflecting on Experiences on the Way to 2014* KAS (2009) 41.

<sup>379</sup> Tirivangani T *Law, Land Reform and Social Justice: A Case for Zimbabwe* Author House (2004) 29.

As in South Africa the colonial powers implemented legislation which divided Zimbabwe along racial lines through the Land Apportionment Act of 1930. In terms of this Act, 50.8% of the land was reserved for white settlers. The bulk of the land was on the arable central highlands. The majority indigenous African population was allocated 30% of the land which was of poor quality and became known as African reserves or communal areas. The remaining 20% was owned either by commercial companies, the colonial government (Crown Land) or was reserved as conservation areas.<sup>380</sup> An analysis of the Land Apportionment Act shows that:

The original idea of the Land Apportionment Act was that the cities, towns, commercial areas would be exclusively white domains with no African living in them. African urban areas-sprawling townships where poverty stood out stark contrast to conspicuous wealth of the white were in an amendment to the Land Apportionment Act in 1941, which divided the country into four areas, European, Native, Forest and unalienated land.<sup>381</sup>

The indigenous people fought for their land and eventually an internal settlement was concluded on 3 March 1978, followed by general elections in April 1979 under a new Constitution. It provided 75 seats for blacks and 25 seats for whites in Parliament and the country was renamed Zimbabwe Rhodesia.<sup>382</sup>

The British Conservative Party later reneged on its promise to recognize the majority government and instead demanded further negotiations, involving all internal and external political parties which culminated in the Lancaster House Agreement,<sup>383</sup> a stepping stone towards land reform in Zimbabwe.

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<sup>380</sup> Lebert T "An Introduction to Land and Agrarian Reform in Zimbabwe" in Rosset P et al (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 2.

<sup>381</sup> Martin D and Johnson P *The Struggle for Zimbabwe: The Chimurenga War* Zimbabwe Publishing House (1981) 53.

<sup>382</sup> Motshobana E *History of Zimbabwe* (1872).

<sup>383</sup> Southern Rhodesia Report on the Constitutional Conference held at Lancaster House, London September - December 1979 online <http://www.rhodesia.nl/lanc1.html> Accessed on 16 February 2011.

## 5 2 2 Settlement support provisions before land reform

During the period before land reform white settlers not only had the pick of land in the best agro-ecological regions of the country, but they were also supported by massive state intervention in the development of the farming economy. This took place by means of extensive communication and marketing infrastructure in commercial farming areas and state funded subsidies and loans.<sup>384</sup>

The lands that belonged to the indigenous people on the other hand lacked development in terms of roads, soil improvement, drainage, etc. Government policy at the time favoured the more productive white commercial farms through training support, direct grants, loan guarantee schemes, and funding for agricultural research. Rural road building programs also favored white farming areas.<sup>385</sup>

## 5 2 3 Land reform in Zimbabwe

After the Lancaster House Agreement was concluded, Zimbabwe attained democracy and independence. At this time whites, who constituted 3% of the population controlled 51% of the country's farming land (44% of Zimbabwe's total land area), with about 75% of prime agricultural land under the Large Scale Commercial Farming (LSCF) sector (and hence inaccessible to the black majority).<sup>386</sup>

One of the first issues on the agenda of the Zanu Patriotic Front party was to address the inequitable distribution of land. However, the party's hands were tied by the Lancaster House Agreement which had the following resolutions:

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<sup>384</sup> Lebert T "An Introduction to Land and Agrarian Reform in Zimbabwe" in Rosset P *et al* (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 3.

<sup>385</sup> Land Reform in Zimbabwe, Wikipedia, Free Encyclopedia, January 2009.

<sup>386</sup> Weiner D *et al* "Land Use and Agriculture Productivity in Zimbabwe" 1985 vol 23(2) *Journal of Modern African Studies*; Riddell R *The Land Question: From Rhodesia to Zimbabwe* Institute for International Relations (1980) 3; 44.

- The British Government agreed to fund reform on a willing buyer, willing seller principle. Farmers who were unwilling to stay in Zimbabwe would be bought out by funds provided by the British through the Zimbabwean government.
- The new Zimbabwean government could not seize white-owned land for the first ten years of independence.
- Britain provided 44 million pounds to the government for land resettlement projects <sup>387</sup>

In so doing the objectives of the land reform programme were as follows:

- To create political stability and an acceptable property rights regime;
- To promote economic growth through wider equity and efficiency gains from land redistribution; and
- To promote national food security, self-sufficiency and agricultural development through labour intensive small farmer production, optimal land productivity, and returns to capital invested. <sup>388</sup>

In March 1981 the Zimbabwe Conference on Reconstruction and Development (ZIMCORD) took place. International nations pledged about \$1.45 billion in economic aid to be disbursed over a three year period beginning in July of 1981. <sup>389</sup>

The ZIMCORD document set out a three year plan for land reform. The three major priority areas for the Zimbabwe government were:

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<sup>387</sup> Southern Rhodesia Report on the Constitutional Conference held at Lancaster House, London September - December 1979 *chapter 16* <http://www.rhodesia.nl/lanc1.html> Accessed on 16 February 2011.

<sup>388</sup> Lebert T "An Introduction to Land and Agrarian Reform in Zimbabwe" in Rosset P et al (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 5; Fowale T J *Zimbabwe after the Lancaster Constitution: Analyzing the "Willing-seller, willing-Buyer" Clause of Lancaster* [http://zimbabwe.suite101.com/article.cfm/zimbabwe\\_after\\_the\\_lancaster\\_constitution](http://zimbabwe.suite101.com/article.cfm/zimbabwe_after_the_lancaster_constitution) Accessed on 16 February 2011. See also Moyo S "Land Reform in Zimbabwe: The First Ten Years" in *Land Reform in South Africa: Constructive Aims and Positive Outcomes – Reflecting on Experiences on the Way to 2014* KAS (2009) 44.

<sup>389</sup> Dougherty E A *ZIMCORD Conference Documentation* African Studies Association (1981).

- Post war recovery programmes;
- Land settlement and rural agricultural development which involved land redistribution; and
- Training and technical assistance.

During the first phase of the land reform programme the Government of Zimbabwe sought to provide infrastructure in accordance with its professed socialist egalitarian philosophy that emphasised increasing access to services and productive capacity of rural communities. Land redistribution was thus regarded as a major rural development thrust through which these services and developments could be realised by the hitherto landless and poor sectors of the population.<sup>390</sup> A greater emphasis was placed on planning and support and funding was provided to assist with infrastructure (agricultural and social such as schools, clinics, roads, etc). Additional support to land reform beneficiaries was provided in the form of training and technical assistance. Research has shown that the provision of extension advice was a statistically significant explanation for the success of farmers in the phase one settlement in Mashonaland Central.<sup>391</sup>

Further success during this phase could be attributed to the various resettlement models used which targeted mainly the landless, war veterans, the poor and commercial farm workers on abandoned farmland that required infrastructural and productivity revival.<sup>392</sup>

Phase one was also characterized by an abundant land supply (farms abandoned during the war and farms coming on to the market as white settlers left after

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<sup>390</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 30.

<sup>391</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 30; Moyo, S “Land Reform in Zimbabwe: The first ten years” in *Land reform in South Africa: Constructive aims and positive outcomes – Reflecting on experiences on the way to 2014* KAS (2009) 48.

<sup>392</sup> Lebert T “An Introduction to Land and Agrarian Reform in Zimbabwe” in Rosset P et al (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 16.

independence)<sup>393</sup> as well as funding that came from the British government which facilitated planning for a large number of beneficiaries.<sup>394</sup>

Phase 2 of the land reform process commenced with the gazetting of 1,471 farms for compulsory acquisition in 1997.<sup>395</sup> During this phase - 1998 to 2004 - the target was to acquire 5 million hectares to benefit the landless poor, disadvantaged groups such as women and the more experienced and established individual farmers. Due to the slow pace of redistribution and with pressure from landless blacks mounting in a declining economy, President Mugabe announced that he would seize approximately 1,500 white-owned farms.<sup>396</sup>

This phase 2 was, therefore, characterised by greater scarcity of land for resettlement, reduced resource availability on the part of government as well as rejuvenated demand for resettlement land by communal land households and other prospective beneficiaries. As a result, this phase exerted greater demands on the government in terms of outputs, infrastructural needs and support services.<sup>397</sup> With land being scarce and the demand being high President Mugabe intended to amend the Constitution to allow his government to compulsorily acquire land without compensating the land owners. The compulsory acquisition was aimed at underutilised and derelict land. The landless people were officially encouraged to occupy white farms and received support and backing from the government, the army and the police. This led to violent attacks on white farm owners and their black workers, resulting in many deaths. Termed the social justice driven acquisition program, Zimbabwe was thrown into economic decline, due to the land invasions. Donor funding decreased and problems were

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<sup>393</sup> Lebert T "An Introduction to Land and Agrarian Reform in Zimbabwe" in Rosset P et al (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 6.

<sup>394</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 30.

<sup>395</sup> Lebert T "An Introduction to Land and Agrarian Reform in Zimbabwe" in Rosset P et al (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 5.

<sup>396</sup> Schleicher A *Land Redistribution in Southern Africa* News Hour 14 April 2004 Accessed on 15 January 2010; Tirivangani T *Law, Land Reform and Social Justice: A Case for Zimbabwe* Author House (2004) 151.

<sup>397</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 30.

experienced with implementing the land reform programmes in a sustainable manner.<sup>398</sup>

Following the phase two land reform was the Fast Track land reform process. This phase was characterized by a completely command driven approach.<sup>399</sup> It was notable in that targets were increased to 9 million hectares to benefit 160, 000 beneficiaries under the A1 model (accelerated intensive resettlement) and 51, 000 small to medium scale indigenous commercial farmers. As of mid-November 2001, about 160,000 families had been resettled on 3,074 previously large-scale commercial farms covering about 7.3 million hectares.<sup>400</sup> This programme had within a very short period of time, in effect, enabled a wholesale transfer of high-value and high-potential land from the white commercial farming sector to predominantly smallholder black farmers.<sup>401</sup> Unfortunately these redistributions did not contain an element of sustainability. Although “legitimate beneficiaries” such as peasant workers were allotted small plots, they were not given any farm training, “no money to buy seeds, not even a spade.”<sup>402</sup>

#### **5 2 4 Institutional arrangements**

During the first two phases the Department of Rural Development was responsible for the implementation of the land reform programme through resettlement management and development teams based on the national land policy and the Land Acquisition Act of 1992.<sup>403</sup>

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<sup>398</sup> Schleicher A *Land Redistribution in Southern Africa* News Hour 14 April 2004 Accessed on 15 January 2010.

<sup>399</sup> Chiremba S and Masters W. "The Experience of Resettled Farmers in Zimbabwe" 7 no 2&3 *African Studies Quarterly* <http://web.africa.ufl.edu/asq/v7/v7i2a5.htm>. Accessed on 21 January 2010.

<sup>400</sup> Chiremba S and Masters W. "The Experience of Resettled Farmers in Zimbabwe" 7 no 2&3 *African Studies Quarterly* <http://web.africa.ufl.edu/asq/v7/v7i2a5.htm>. Accessed on 21 January 2010.

<sup>401</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 31.

<sup>402</sup> De Villiers B *Land Reform: Issues and Challenges: A Comparative Overview of Experiences in Zimbabwe, Namibia, South Africa and Australia* KAS (2003) 22.

<sup>403</sup> For more information on the Act see Rugege “The Right of Access to Land and its Implementation in Southern Africa: A Comparative Study of South Africa and Zimbabwe Land Reform Laws and Programmes” 2004 *Law, Democracy and Development* 243.



The resettlement officers, as project managers, interacted directly with beneficiaries during the processes of beneficiary selection, settler mobilisation for communal services, general scheme development and solicitation of other agencies' services. There was direct interaction between the team and the beneficiaries in the so called planning phase where the selection of beneficiaries took place, a general scheme for communal services was developed and services were sourced from the relevant agencies.<sup>404</sup>

The government also established 57 Rural District Councils (RDC) as the key governing institutions in the rural areas and they were guided by the Rural District Councils Act of 1998. The RDCs operated with the district council area and were responsible for formulating long and short term policies to promote development in the council areas as well as to prepare annual development plans. In addition, RDCs were mandated to develop and maintain infrastructure in council areas, and have the authority to charge and collect revenue.<sup>405</sup> Due to the chaotic manner under which redistribution began to take place under the Fast Track land reform programme, the RDC was not successful in executing its tasks. This was due to the lack of clearly defined policies, implementation procedures, roles and responsibilities, and checks and balances within the framework of fast-track land reform.<sup>406</sup>

The function previously exercised by the resettlement officers as project managers was now taken over by district administrators, extension workers or district development fund technicians who lacked the knowledge of the extension officers and were incapable of enforcing or making decisions when ever there was conflict amongst the community members.

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<sup>404</sup>Gonese F T and Mukora C M *Beneficiary Selection, Infrastructure Provision and Beneficiary Support* University of Zimbabwe (undated).

<sup>405</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 31.

<sup>406</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 31.

The table below summarises the four models of land reform that were implemented during the land resettlement programme<sup>407</sup>:

Table 4: Models of land reform in Zimbabwe

(MODEL A)	(MODEL B)	(MODEL C)	(MODEL D)
Intensive settlement on an individual family basis	Village settlement with cooperative farming	State farms with out-growers	Commercial grazing for communal areas
<p>Beneficiaries receive cropping land (of 10 to 65 Ha) and access to Communal grazing land (of 55 ha or equivalent depending on the agro-ecological Region).</p> <p>Land was acquired by the state (usually in the form of large commercial estates) with plots being redistributed to beneficiaries.</p> <p>Tenure was in the form of three annual permits – settlement, cultivation and grazing.</p> <p>Settlers (beneficiaries) had to give up their rights to land in the trust /communal areas they came from.</p> <p>The bulk of land reform (over 80 per cent) in the 1980's and 1990's took place through this model.</p>	<p>Designed to take over existing large commercial farms, with farm production then being co-operatively organised (with decision-making through committee).</p> <p>Credit was accessed by the cooperative, and income allocated either to individual families or allocated for farm development.</p> <p>Approximately 50 of these cooperative schemes were set up, although many subsequently folded.</p>	<p>Involved the intensive resettlement of beneficiaries around a core estate.</p> <p>The estate provided settlers with certain services, and settlers in turn provide labour for the estate.</p> <p>Cropping land within this scheme was allocated on an individual basis, with settlers also gaining access to grazing land, which is managed communally.</p> <p>A professional farm manager manages the core estate.</p> <p>This model was not extensively implemented.</p>	<p>This was implemented in the arid area south of Zimbabwe). Commercial ranches were purchased next to communal land.</p> <p>Livestock was then purchased from these neighbouring trust areas and allowed to fatten on the ranch before being sold.</p> <p>The thinking was that this would enable communal farmers to reduce grazing pressure on communal lands.</p> <p>This model was not extensively implemented.</p>

<sup>407</sup> De Villiers B *Land Reform: Issues and Challenges: A Comparative Overview of Experiences in Zimbabwe, Namibia, South Africa and Australia* KAS (2003)10-15; Rugege "The Right of Access to Land and its Implementation in Southern Africa: A Comparative Study of South Africa and Zimbabwe Land Reform Laws and Programmes" 2004 *Law, Democracy and Development* 255-257; Lebert T "An Introduction to Land and Agrarian Reform in Zimbabwe" in Rosset P et al (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006); Marongwe N *Redistributive Land Reform and Poverty Reduction in Zimbabwe*" A Working Paper for the Research Project on "Livelihoods after Land Reform" PLAAS (2007) 4; 6; 7.

Model A above was further sub divided in to the following:<sup>408</sup>

#### Model A1 (Village type settlement)

This is a translocation type of resettlement with the village type of settlement. Settlers are allocated individual residential and arable plots, but share common grazing, woodlots and water plots. Each household is allocated 5 hectares for arable land and a small portion is left aside for communal grazing.

#### Model A2 (Commercial farm settlement scheme)

The land reform model A2 is aimed at increasing the participation of black indigenous farmers in commercial farming through the provision of easier access to land and infrastructure on full cost recovery basis.

### **5 25 Settlement support provisions under the land resettlement programme**

Under the phase 1 land reform programme, beneficiaries were provided with start-up tillage services and inputs for half a hectare for each family. Since families were receiving five hectare plots it meant that beneficiaries had to supplement the balance of the funding required either by providing their own inputs or sourcing funding from financial institutions.<sup>409</sup>

In the two-year action plan for the phase 2 land reform and resettlement program, the government proposed that the Agricultural Finance Corporation (AFC) would

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408Progress Made So Far In Line With The Current Land Reform Programme <http://www.lands.gov.zw/current%20events/progress%20inline%20with%20current%20reform%20prog.doc>

<sup>409</sup> Chiremba S and Masters W. "The Experience of Resettled Farmers in Zimbabwe" 7 no 2&3 *African Studies Quarterly* <http://web.africa.ufl.edu/asq/v7/v7i2a5.htm>. Accessed on 21 January 2010.

provide credit for development and working capital under its Farm Input Credit Scheme.<sup>410</sup>

Funds were also received by the beneficiaries through the Grain Marketing Board (GMB) and through the Agricultural Development Bank (AGRIBANK). The Agricultural Development Assistance Fund (ADAF), is a spin off from the Agricultural Finance Corporation which provided credit to new farmers to ensure that there was productivity.<sup>411</sup>

Initially all aspects of the land reform resettlement program were reported and recorded. In Phase 1 projects were distinctly identified and they had clear pre-approved project plans in place before land could be handed over to beneficiaries. The responsible department was therefore accountable for reporting on progress regarding actual implementation and financial spending on the said projects more especially also because of donor funding that was provided to ensure implementation of the land reform program, therefore there had to be accountability internally and externally.<sup>412</sup> Later with the “demise” of the role of the extension officers, this process of reporting and recording of information was no longer in practice. This has created a lack of monitoring and evaluation tools in place therefore making it difficult to be able to learn from what has been implemented in terms of resettlement of beneficiaries on redistributed land.

Unfortunately the fast-track strategy ultimately focused more on the allocation or redistribution of the land resource and less on the infrastructure and supportive framework and services that could facilitate or complement effective agricultural

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<sup>410</sup> Kinsey B and Binswanger H “Characteristics and Performance of Resettlement Programs: A Review” 1993 vol 21(9) *World Development* 1477; Chiremba S and Masters W. "The Experience of Resettled Farmers in Zimbabwe" 7 no 2&3 *African Studies Quarterly*<http://web.africa.ufl.edu/asq/v7/v7i2a5.htm>. Accessed on 21 January 2010.

<sup>411</sup> Chiremba S and Masters W. "The Experience of Resettled Farmers in Zimbabwe" 7 no 2&3 *African Studies Quarterly*<http://web.africa.ufl.edu/asq/v7/v7i2a5.htm>. Accessed on 21 January 2010.

<sup>412</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 33.

productivity and consolidate community development.<sup>413</sup> Besides, with the lack of support from foreign countries and lack of donor funding, Zimbabwe experienced serious economic decline during this period. Sufficient resources were therefore not available to be able to meet the demands of the beneficiaries now occupying farms under the land reform program.

In the early resettlement stages extension coverage was virtually universal and helped resettled farmers make a major shift in production technology. However, with the later phases it became limited or non-existent. This is due to the decrease in funding and resources provided to the extension officers to carry out their work as well as because of the limited capacity of the extension officers.<sup>414</sup>

The 'vacuum' that developed in the land policy field could have been prevented had the government taken steps in the following areas:

- Proper community-based land management, which should have included communities in decision-making processes.
- Improved education programmes and channels of communication.
- Equality in access to resources such as land and credit facilities.
- Clear tenure rights, which had as their aim security of tenure.
- The need for "strong institutional capacity and [an] equally strong policy of political and economic empowerment to bring the population within the planning and decision making framework of the resettlement programme"<sup>415</sup>

On a positive note the lack of the extension officers had a positive result. Beneficiaries themselves played the role of the resettlement officers by

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<sup>413</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 32.

<sup>414</sup> Chiremba S and Masters W. "The Experience of Resettled Farmers in Zimbabwe" 7 no 2&3 *African Studies Quarterly* <http://web.africa.ufl.edu/asq/v7/v7i2a5.htm>. Accessed on 21 January 2010.

<sup>415</sup> De Villiers B *Land Reform: Issues and Challenges: A Comparative Overview of Experiences in Zimbabwe, Namibia, South Africa and Australia* KAS (2003) 19.

undertaking local scheme administration and attending to the local needs through management structures.<sup>416</sup>

It is therefore evident that funding and training were provided through government. Simultaneously, however, beneficiaries were expected to make a contribution, either to supplement the funding, use their own skills and resources and use locally made building materials in the construction of road, schools, clinic, houses etc. Resettled communities were later also able to access credit finance through the Rural Housing Program but this was repayable by them selling agricultural produce.

## **5 2 6 Conclusion**

The Zimbabwean land reform process has gone through three major phases, each having unique characteristics:

- Lancaster House (1980–1990), during which the main elements were market-driven acquisition, the return of exiles and displaced persons, priority on the accelerated resettlement programme, availability of donor funds to assist with reform, huge increases in small farmer activity, main distribution of marginal and under-used land. 60% of land since independence was distributed during the first decade.
- Post-colonial land reform (1990–2000), during which the main elements were a different legal order the first steps of a social justice-driven acquisition programme, economic decline and drought, reduction of donor funds to a trickle, increased criticism of nepotism in the allocation of land, problems experienced with implementation programmes to sustain land reform, increased farm invasions and occupations, real distribution well below targets.
- Land invasion and occupation (2000– ), during which the main elements area general absence of a clear and sustainable land reform policy, a legal framework that enables the taking of land

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<sup>416</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 31.

without due process, termination of international aid, inadequate resources, large-scale illegal occupation, environmental degradation, economic decline, famine and no training.

The resettlement process has been described as “chaotic” with little attention to implementation or support services such as clinics, schools and roads.<sup>417</sup> What it does demonstrate is the complexity of land reform, the difficulty in turning back the clock of past injustices and the impact that a lack of resources can have on the acquisition and post-settlement processes.<sup>418</sup>

On a positive note though the land reform programme has allowed for access to land to many deserving landless people, however, the necessity of providing post-settlement support and necessary resources to the land reform beneficiaries must be considered as a matter of urgency.

## **5 3 AUSTRALIA**

### **5 3 1 Brief background information on history of land reform**

Europeans began settling in Australia in 1788. For the next two centuries Europeans settled on most of Australia’s fertile land, displacing hundreds of thousands of aboriginal people.<sup>419</sup> The British believed that the land was *terra nullius* - land belonging to no-one - which may be taken into occupation by the first people to discover it.<sup>420</sup> In this way the British dispossessed the aboriginal people of their land and referred to all land as Crown Land. This acquisition was then recognised by other European powers.<sup>421</sup>

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<sup>417</sup> *Zim crisis hits Mugabe’s reforms* News24.com, 6 December 2002.

<sup>418</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 33.

<sup>419</sup> Altman J C *Sustainable Development Options on Aboriginal Land: The Hybrid Economy in the Twenty-first Century* Centre for Aboriginal Economic Policy Research Australian National University [http://hdl.handle.net/1885/40104\\_3](http://hdl.handle.net/1885/40104_3) Accessed on 16 February 2011. See also *Aboriginal Land Rights Acts 1993-2008* Microsoft Corporation ©1993-2008.

<sup>420</sup> *Mabo Native Title* <http://www.mabonativetitle.com/home> Accessed 15 January 2009.

<sup>421</sup> *Aboriginal Land Rights Acts 1993-2008* Microsoft Corporation ©1993-2008.

During the dispossessions many aboriginal people were killed by European settlers or died of diseases and many more were simply pushed elsewhere. They were forced into reserves to live under poor conditions whilst the courts of the land continued to ignore their rights in land claiming that they had lost their traditional rights when the British took over.<sup>422</sup>

This situation continued until the 1960s and 1970s when the aboriginal people demanded fair treatment through various public protests. In 1963 the Yolngu aboriginal community of Arnhem Land, in the Northern Territory, presented a petition to the federal government protesting bauxite mining on its traditional lands. In 1966 aboriginal workers at Wave Hill cattle station in the Northern Territory went on strike for several months to publicize the terrible working conditions and wages of aboriginal people in rural industries. The government therefore had no option but to reconsider its treatment of the aboriginal people as by now the protests were attracting much attention.<sup>423</sup>

### **5 3 2 Land reform in Australia**

The Federal Government decided to establish a commission in 1973 to investigate and report on how land rights could be granted to the aboriginal people. This culminated in the passing of the Aboriginal Land Rights (Northern Territory) Act of 1976.<sup>424</sup> Subsequently large tracts of land (more than 40%) in the Northern Territory were transferred to the aboriginal people. The ALRA also made it possible for other aboriginal communities to claim land, provided they met the criteria - to prove that they had a spiritual bond to the land prior to the European settlement. They also had to prove that the spiritual connection still continues till today. Land claims had to be lodged by June 1997.<sup>425</sup>

The ALRA provided for the grant of traditional aboriginal land in the Northern Territory to Aboriginal Land Trusts which held the land for the benefit of the

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<sup>422</sup>Wyatt B *Retrieving Lost Ground – Pastoral Access Principles for the Goldfields* Address Brisbane 20 July 2004; *Aboriginal Land Rights Acts 1993-2008* Microsoft Corporation ©1993-2008.

<sup>423</sup>*Aboriginal Land Rights Acts 1993-2008* Microsoft Corporation ©1993-2008.

<sup>424</sup> Hereafter referred to as "ALRA". See also De Villiers B *Land Reform: Issues and Challenges: A Comparative Overview of Experiences in Zimbabwe, Namibia, South Africa and Australia* KAS (2003) 90.

<sup>425</sup>*Aboriginal Land Rights Acts 1993-2008* Microsoft Corporation ©1993-2008.



traditional aboriginal owners.<sup>426</sup> Land was therefore owned communally and came with conditions. These were that the land could not be alienated or mortgaged and there was the imposition of consent requirement in the case of the grant of a lease. These conditions were put in place to ensure that land that was redistributed remained in the name of the aboriginal people for generations to come.

In addition to statutory land rights, native title rights have been recognised since the decision of the High Court of Australia in *Mabo v Queensland (No 2)*.<sup>427</sup> The decision rejected the doctrine that Australia was *terra nullius* at the time of settlement with the implication that absolute ownership of land at that time vested in the Crown. Instead the Court held that the common law of Australia recognises a form of traditional native title.<sup>428</sup>

The facts in the *Mabo* case were briefly as follows: In the case the plaintiffs sought declarations that the Meriam indigenous people were entitled as owners, possessors or occupiers of the Murray Islands to use the land and that the State of Queensland had to respect their rights. The native inhabitants lived in native communities at the time of occupation and handed their property from father to son, generation after generation. In order to succeed they had to prove that they had rights that could be enforceable against the Crown and that these rights existed at the time of colonisation. The defendant argued that the land was peacefully annexed to British dominion as *terra nullius* because for all legal purposes it was not inhabited. The court held with a majority of six to one that the Meriam people did indeed have rights prior to colonisation and that those rights could still be enforced against third parties.<sup>429</sup>

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<sup>426</sup>Permanent Forum on Indigenous Issues Sixth Session New York 14-25 May 2007 Item 3 of the Provisional Agenda Special Theme: Territories, Lands and Natural Resources.

<sup>427</sup> (1992) 175 CLR 1.

<sup>428</sup>O'Donnell K *Traditional Lands: the Case of Nature Divided* savanna links, 24. [http://savanna.ntu.edu.au/publications/savanna\\_links\\_issue24.html?tid=33813](http://savanna.ntu.edu.au/publications/savanna_links_issue24.html?tid=33813) (2003); Strelein I *Defining Native Title: the Mabo Decision* (2007). For a critical analysis of the arguments of the Court regarding *terra nullius* refer to Ritter D "The 'Rejection of *terra nullius*' in *Mabo*: a Critical Analysis" 1966 *Sydney Law Review* 3-33.

<sup>429</sup>*Mabo v Queensland (No 2)* (1992) 107 ALR 1 See *Aboriginal Land Rights Acts 1993-2008* Microsoft Corporation

Subsequent to the court ruling the federal government passed the Native Title Act of 1993.<sup>430</sup> A tribunal was set up in terms of the act in order to preside on land claims and if it found a claim to be legitimate a native title to the land was granted to the Aboriginal community and not to individuals.

Land claimants and beneficiaries in Australia are faced with a number of difficulties, quite different from those in South Africa. Native title has to be proved through a litigious process where claimants must demonstrate that their laws and customs have survived sovereignty and that the said laws and customs continue to exist till today and are still being adhered to.<sup>431</sup> This practice is due to the government unwilling to develop a sensible land reform policy.<sup>432</sup>

The aboriginal people are not happy with the manner and pace in which reforms in land ownership have been taking place since there is too much red tape, the burden of proving their claim lies with them, the claims process is very long and expensive since it has to go to court where there is always huge opposition from mining and agricultural companies currently on the land.<sup>433</sup> As a result very few claims have been settled and the aboriginal people still remain socio-economically disadvantaged. It would seem that the government does not support the land restorations because Australia's economy depends on the mining of bauxite, aluminium, gold, diamonds and uranium.<sup>434</sup>

The Australian government therefore needs to seriously review its land reform programmes so as to provide socio-economic benefits to its previously disadvantaged people.

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<sup>430</sup> Hereafter referred to as the "NTA".

<sup>431</sup> Section 223 (1) (b) of the Native Title Act. The Court in *Western Australia v Ward* (2000) FCA 191 case found that a physical connection or continued use was not required for purposes of determination of native title, but that the nature of occupation and use could be indicative of the type of rights that forms part of the 'bundle'.

<sup>432</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 23.

<sup>433</sup> De Villiers B *Land Reform: Issues and Challenges: A Comparative Overview of Experiences in Zimbabwe, Namibia, South Africa and Australia* KAS (2003) 90.

<sup>434</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 23.

### 5 3 3 Institutional arrangements

There are four main institutions that fulfil a key role in the operation of the NTA. The main objectives of the NTA are to provide for the recognition and protection of native title, to establish ways of dealing with native title, to establish mechanisms and procedures for the determination of native title and to provide for the validation of past acts that may be impacted upon due to the existence of native title.<sup>435</sup> The four institutional arrangements are covered under sections 63, 56-57, 81 and 202 of the NTA:

The four institutions are

- Federal Court – Office of the Attorney General;
- National Native Title Tribunal;
- Representative Bodies; and
- Prescribed Bodies Corporate.<sup>436</sup>

The Preamble to the NTA also states the following regarding the acquisition of land:

It is also important to recognise that many Aboriginal peoples and Torres Strait Islanders, because they have been disposed of their traditional lands, will be unable to assert native title rights and interest and that a special fund needs to be established to assist them to acquire land.<sup>437</sup>

The Land Fund and Indigenous Land Corporation (ATSIC Amendment) Act 1995 was enacted to provide for a land fund to benefit aboriginal people in general, and in particular those whose native title had been extinguished. The Indigenous Land Corporation<sup>438</sup> was hence established as an independent statutory authority to assist with the “acquisition and management of an indigenous land base”.<sup>439</sup>

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<sup>435</sup>Section 3 of the Native Title Act

<sup>436</sup> De Villiers B *Land Reform: Issues and Challenges: A Comparative Overview of Experiences in Zimbabwe, Namibia, South Africa and Australia* KAS (2003) 90.

<sup>437</sup>Native Title Act Preamble

<sup>438</sup>Hereafter referred to as the “ILC”.

<sup>439</sup> De Villiers B *Land Reform: Issues and Challenges: A Comparative Overview of Experiences in Zimbabwe, Namibia, South Africa and Australia* KAS (2003) 119.

### **5 3 3 1      *Federal Court***

The Federal Court receives claims for native title. Claims are lodged by person/s representing a group of aboriginal people and a claim may not be lodged on land where a native title already exists and on urban and freehold areas. A copy of the claim is then submitted to the Registrar of the Federal Court who provides a copy of the application to the Registrar of the National Native Title Tribunal.<sup>440</sup> If more than one claim is lodged for the same area, these are considered as overlapping claims and are dealt with in one hearing. This normally goes to mediation first to try and minimise overlapping claims and to arrive at negotiated settlements.<sup>441</sup>

### **5 3 3 2      *National Native Title Tribunal***

The NNTT is established in terms of section 63 of the NTA. Besides receiving and dealing with claims for mediation, it also fulfils the role of registering claims received and conducts arbitration. It also has to keep a record of all successful claims.<sup>442</sup>

### **5 3 3 3      *Representative bodies***

Section 202 of the NTA provides for the establishment of representative bodies—or land councils as they are also known. These have a wide range of functions such as assisting the aboriginal people in their native title claims, research and preparation of claims and assisting in the mediation and settlement and negotiation of claims. The representative bodies play an important role where there are overlapping claims since it is the body charged with making all reasonable efforts to ensure an agreement is reached between the parties thereby minimising the number of overlapping claims in the area. The representative

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<sup>440</sup> Hereafter referred to as the “NNTT”.

<sup>441</sup> De Villiers B *Land Reform: Issues and Challenges: A Comparative Overview of Experiences in Zimbabwe, Namibia, South Africa and Australia* KAS (2003) 106.

<sup>442</sup> De Villiers B *Land Reform: Issues and Challenges: A Comparative Overview of Experiences in Zimbabwe, Namibia, South Africa and Australia* KAS (2003) 109.

bodies are funded by the Commonwealth (federal government) but due to limited funding it has not been able to fulfil its functions as expected.<sup>443</sup>

### **5 3 3 4      *Prescribed bodies corporate***

Sections 56-57 of the NTA provide for the establishment of prescribed bodies corporate<sup>444</sup> to hold the native title on behalf of successful claimants in trust.

A PBC has a wide range of other functions such as the following:<sup>445</sup>

- Acting on behalf of the native title holders in matters affecting their rights and interests—it gives the group a legal persona to enter into agreements, sue and be sued;
- Keeping a list of all members of the native title group;
- Ensuring that decisions affecting the native title are made in a manner that complies with corporate and internal procedures;
- Developing, recording and implementing policies and procedures adopted by the group;
- Becoming party to Indigenous Land Use Agreements.

The PBC has not been able to perform its activities optimally due to the lack of funding and also because it is perceived as being a culturally inappropriate body to many native title holders.<sup>446</sup>

### **5 3 3 5      *Indigenous Land Corporation***

Added to the above four institutions is the ILC which is an independent statutory body established in 1995 by Commonwealth legislation. Its focus is on development planning and support and it conducts a number of land acquisition programmes including a Cultural Acquisition Program (CAP) as well as an

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<sup>443</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 25.

<sup>444</sup> Hereafter referred to as “PBC”.

<sup>445</sup> De Villiers B *Land Reform: Issues and Challenges: A Comparative Overview of Experiences in Zimbabwe, Namibia, South Africa and Australia* KAS (2003) 111.

<sup>446</sup> De Villiers B *Land Reform: Issues and Challenges: A Comparative Overview of Experiences in Zimbabwe, Namibia, South Africa and Australia* KAS (2003) 112.

Environmental Acquisition Program (EAP) for environmental benefits to indigenous people. This is done in conjunction with partnerships and joint ventures with the state, environmental authorities and other important role players.<sup>447</sup>

The ILC further has land management initiatives which focus on managed use, care and improvement of land including:

- Group-based planning (sound cultural, environmental, social, economic goals);
- Enterprise development (sustainable and viable including not-for-profit initiatives);
- Regional development (benefits which accrue to local indigenous people);
- Management of land held in trust/ to be transferred to indigenous people; and
- Co-ordination and research to ensure sound land management and enterprise development.<sup>448</sup>

So far the ILC has purchased 160 properties involving 5 million hectares or more benefiting 600, 000 beneficiaries. Funding is derived from the Indigenous Land Fund which is a public trust account that provides funding to the ILC, NNTT and land councils.<sup>449</sup>

The ILC has a Regional Indigenous Land Strategy (RILS) and National Indigenous Land Strategy (NILS) which can be seen as an example of supply-led land reform in which land is identified, acquired and developed together with claimants and it plays a dual role of assisting the aboriginal people with land acquisition and detailed planning in terms preparing business and developmental plans for the land. Professional services such as capacity building, technical assistance,

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<sup>447</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 24.

<sup>448</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 24.

<sup>449</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 24.

facilitation and development of management structures are all done with the assistance of the ILC.<sup>450</sup>

### 5 3 4 Settlement support provisions

The stability of Australia is not threatened by the lack of effective land reform, but its credibility as a leading democracy is eroded by the apparent inability or unwillingness to deal with the land aspirations of aboriginal people.<sup>451</sup>

Institutions and mechanisms are in place to provide settlement support provisions such as assistance with land acquisitions, pre-planning of business and developmental plans, capacity building, technical assistance, funding, facilitation and planning of management structures. However, beneficiaries do not really have an opportunity to make use of them as they are faced with the legalities of first having their claim approved and settled by the government.<sup>452</sup>

Other challenges experienced by the ILC during the land use planning phase include lack of skills and training on the part of beneficiaries receiving the land. Some beneficiaries lacked commitment or were involved in community conflict. To overcome this the ILC proposed training and capacity building for beneficiaries as a solution. The poor quality of the land that was acquired for the beneficiaries was another challenge. Most of the lands acquired were unproductive, resulting in beneficiaries not being able to optimally use the land. To turn projects around the ILC embarked on a property-by property remediation programme involving critical issues such as domestic water for resident population, stock water, accommodation, capitalisation and commercial viability.<sup>453</sup>

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<sup>450</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 24.

<sup>451</sup> *Aboriginal Land Rights Acts 1993-2008* Microsoft Corporation.

<sup>452</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 28-29.

<sup>453</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 25.

Of special note, however, is the acquisition of land by claimants that are currently used as national parks or conservation areas. Australia has created a legal framework to deal with claims on national parks and conservation land, which is mainly based on the land title being given to claimants, but the land having to be leased back by the community. Management of the land is done jointly by the claimants and the park management and access to the park by claimants is limited.<sup>454</sup> Australia's considerable experience with joint management and contractual park arrangements has enabled it to take specific steps to develop and improve support provision in conservation areas. These have included attention being paid to the following:<sup>455</sup>

- Emphasising the importance of cultural conservation and non-Western management practices;
- Increasing flexibility regarding habitation and resource use in protected areas;
- Using innovative approaches to increasing income from tourism, possibly capitalising on cultural attractions;
- Employing creative approaches to raising community employment levels;
- Facilitating involvement with external agencies to raise employment and training levels;
- Ensuring legislation, contracts and joint management plans are up to date, and providing appropriate support for equitable joint management;
- Recognising and supporting the dynamic nature of joint management; and
- Facilitating equitable power-sharing through innovative joint management board structures, employment strategies and conflict resolution mechanisms.

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<sup>454</sup> De Villiers B *Land Reform: Issues and Challenges: A Comparative Overview of Experiences in Zimbabwe, Namibia, South Africa and Australia* KAS (2003) 103.

<sup>455</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 28.



## 5 35 Conclusion

The study of Australia highlights the importance of the state providing sufficient funding to the relevant institutions within land reform to ensure that they function as mandated. Secondly, the planning that must take place before land is handed over to beneficiaries may serve to be useful in our land reform programme. This will ensure that land reform is not only about the provision of land to beneficiaries but also about sufficient settlement planning to be done by the department, the relevant role players and beneficiaries so that the land is used sustainably.

Professional assistance in the form of planning, consultation, facilitation, design, management structure, capacity building, business planning, technical assistance, funding and implementation is provided and the necessary structures have been established to engage with communities around their support needs.<sup>456</sup> However, very few beneficiaries may have access to these resources if the existing legislation around land reform is to continue.

## 5 4 BRAZIL

### 5 4 1 Brief background history to land reform

Brazil is the fifth largest country in the world with 3,287,000 square miles of land and 150 million inhabitants.<sup>457</sup> From the time the Portuguese settlers set foot on the land, there has been a struggle for land by its native inhabitants. The native people were displaced from the very beginning. This was done by the Portuguese King without even consulting the native people living on the land. An estimated five million Brazilian Ameridians who were the real owners of the land were displaced.<sup>458</sup> To date very few of the original inhabitants have official rights to their land.<sup>459</sup>

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<sup>456</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 29.

<sup>457</sup> *History Online* <http://www.christusrex.org/www2/mst/history.html> accessed on 16 February 2011.

<sup>458</sup> *History Online* <http://www.christusrex.org/www2/mst/history.html> accessed on 16 February 2011.

<sup>459</sup> Stang D *Struggling for Sustainable Development in the Brazilian Amazon* Executive Summary School of International Service, American University, Washington, DC (2005).

After Brazil gained independence from Portugal in 1822, it became a little easier for small scale farmers to occupy and farm land and to later request property from the government. However, in 1850 when the Land Law was passed it was to the detriment of the small scale farmers since the Land Law provided that land could only be acquired through purchase at a public auction for cash. Small scale farmers could not afford to acquire land in this manner whilst the elite landowners continued to enlarge their farms and enrich themselves.<sup>460</sup>

This situation became worse in the 1970's and 1980's with the introduction of wheat, soybean and coffee shrubs into the economy. Soybean plantations for instance required less workers and therefore workers were laid off and the rural poor became poorer whilst others moved to urban areas. Since 1985, the number of small farms has decreased from over 3 million to less than 1 million, resulting in the migration of millions of rural poor to the slums and fringes of urban centres.<sup>461</sup>

Today there are between 215 and 241 indigenous groups in Brazil. Few of the original inhabitants of Brazil have official rights to their land.<sup>462</sup> The history of the original inhabitants of Brazil has been one of land dispossession by government policies and private developers. Roughly 1% of the population controls about 47% of the territory. 60% of farm land is under-used, while there are 4.5 million rural households with little or no land. It is estimated that about 1.5 to 2.3 million families have the desire and ability to become family farmers.<sup>463</sup> Farms in excess of 1,000 ha make up only 1.6% of all farms but take up 53% of the total agricultural land, as large estates continue to be further consolidated.<sup>464</sup>

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<sup>460</sup> *Timeline of Brazilian History* Library of Congress Country Studies Projects <http://www.chagala.com/ibla/brazil/timeline.htm> Accessed on 16 February 2011; *History Online* <http://www.christusrex.org/www2/mst/history.html> Accessed on 16 February 2011.

<sup>461</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 10.

<sup>462</sup> Stang D *Struggling for Sustainable Development in the Brazilian Amazon* Executive Summary School of International Service, American University, Washington, DC (2005).

<sup>463</sup> *Project Appraisal Document on a Proposed Loan in the amount of Euro 218.2 Million (Us\$202.1 Million Equivalent) to the Federative Republic Of Brazil for a Land-Based Poverty Alleviation Project I Document of the World Bank* (November 6) 2000 6

<sup>464</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 10.

As a result of the unequal distribution of land there exists social instability and inequity, landlessness and poverty. Brazil's income inequality is also among the highest in the world, illustrating the clear connection between wealth, power and land in Brazil.<sup>465</sup>

#### **5 4 2 Land reform in Brazil**

The organized struggle for a federally directed programme of land reform began a decade prior to the military takeover in 1964. Unions called Peasant Leagues were established in the 1940's and in 1956 the invasion of property by the landless took place. They distributed the land amongst the workers. Between 1961-1964, President Joao Goulart was in power. He intended to take control of 9% of the agricultural land and distribute it to 150,000 peasants. Due to the eventual *coup* by the military this plan never materialized.<sup>466</sup>

Military dictatorship ended in Brazil in 1985. The president Jose Sarney realized that there was a need for a modern land redistribution plan. The government made the following diagnostic of the peasantry at the time:

Without possibility of access to land, the [rural] worker cannot improve his living conditions. He cannot introduce new techniques, or change cropping patterns aiming at improving productivity. Without accessing land, he cannot have access to credit, technical assistance, improved marketing conditions. The experience of those countries which already passed through a successful agrarian reform process shows that a modification of land pattern, allied with an efficient agrarian policy, is favorable both for rural workers as well for the State.<sup>467</sup>

The president proposed that plots of land be distributed to 1.4 million peasants over a five-year period. However, the plan failed because he had abolished the

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<sup>465</sup> Stang D *Struggling for Sustainable Development in the Brazilian Amazon* Executive Summary School of International Service, American University, Washington, DC (2005).

<sup>466</sup> *History Online* <http://www.christusrex.org/www2/mst/history.html> accessed on 16 February 2011.

<sup>467</sup> Groppo, P "Agrarian reform and land settlement policy in Brazil" Historical Background. Land Tenure Officer, Systems Analysis. Land Tenure Service (SDAA) FAO Rural Development Division. 2006.

Agrarian Reform Ministry as part of his budget cuts. As a result only 77,300 peasants families were given land.<sup>468</sup>

Prior to this the Landless Peasants' Movement (*Movimento dos Trabalhadores Rurais Sem Terra*)<sup>469</sup> started to put pressure on the government by participating in land seizures. This was because of the slow pace of land reform and the lack of state support to new land owners. Since 1985 the MST has been organizing Brazil's poor by educating them about land reform and how to recover idle land. This was done in two steps: the first was to educate families about their land rights because under the Brazilian Constitution, the state reserves the right to expropriate agriculturally viable property which remains unused. The second step was for MST to identify the land that is not being used and then obtain a request from the government for the land to be expropriated. Should government not respond then the MST takes over that land and gives it to the peasants so they can live, work and cultivate the land.<sup>470</sup>

Gilmar Mauro, a member of the MST, further describes the role of the movement as follows:

There is a great and urgent need to restructure Brazil's land tenure system in order to guarantee access to land, promote equitable social and economic development, and insure the citizenship of the rural population. We believe that our struggle for land reform, occupying and cultivating large tracts of idle farmlands, democratises access to land as well as to our society and government.<sup>471</sup>

Guided by the slogan "Occupy, Resist and Produce," the MST initiated a direct action model of land reform wherein landless peasants occupy an unproductive

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468 Groppo, P "Agrarian reform and land settlement policy in Brazil" Historical Background. Land Tenure Officer, Systems Analysis. Land Tenure Service (SDAA) FAO Rural Development Division. 2006.

469 Hereafter referred to as "MST".

470 Tilley S International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries PLAAS University of the Western Cape (2007) 10; History Online <http://www.christusrex.org/www2/mst/history.html> Accessed on 16 February 2011.

<sup>471</sup> History online <http://www.christusrex.org/www2/mst/history.html> Accessed on 16 February 2011.

parcel of land, petition the Brazilian government for land rights, and operate the settlement as a collective enterprise.<sup>472</sup>

Between 1995 and 1998 the Brazilian government settled more landless families on expropriated land than it had in the previous 30 years, an effort that would not have been possible without 'the continual, large scale public pressure applied by the MST strategy of land occupations'.<sup>473</sup>

The MST used existing government policies of 1964 when the government of the day realized that large landholdings contributed to rural poverty, decreased productivity and hindered development, and it established the 1964 Land Statute, which gave the Brazilian government the legal right to expropriate large landholdings deemed unproductive. This statute was strengthened when the Brazilian Constitution was rewritten in 1988, in which Article 186 states that land has a "social function." Private property, including land, will only be recognized if it contributes to the well-being of Brazilian society, including both owners and workers. Drawing on this constitutional clause, the MST organizes and implements occupations of unproductive lands in order to force the government to purchase the land from landowners for redistribution to the landless poor. At the same time the constitution only allowed for land owners to contest the amount of compensation and not the compensation itself which resulted in increased land being made available for the land reform programme.<sup>474</sup>

Another important decree was signed in 1993 (law 76) which defined faster legal procedures after expropriation of rural properties for the land reform programme. Also due to the difficult economic context at the time agricultural activities were

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<sup>472</sup> Frank, J Two Models of Land Reform and Development – Brazil Z Magazine November 2002 paragraph 2

<sup>473</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 11.

<sup>474</sup> Kenfield, I *Broadening the Discourse of "Negotiated Land Reform": A Comparison Between Land Reform Projects in South Africa and Brazil* University of California Small Farm Program ICARRD Contribution Paper (2006) 4-5.

strongly affected which resulted in many large landowners offering their estates for the national programme of land reform.<sup>475</sup>

It must be noted that the MST model is not based simply on land occupations but there is a lot of planning and preparation, including agricultural training that is given to the beneficiaries before the actual occupation and MST also ensures that the beneficiaries also receive post acquisition support.<sup>476</sup>

Aspects such as food security, food sovereignty, and how these relate to individual sovereignty, social justice, local economies and the protection of local environments define how the MST decides on its agricultural production systems.<sup>477</sup>

### **5 4 3 Institutional arrangements**

In Brazil the institutional arrangements for land reform are carried out by the ministries of land and agriculture.<sup>478</sup> The state has adopted a decentralized approach to both land reform and its associated settlement support and has introduced the “Territorial Development Approach” which aims at targeting local areas in which economic opportunities for small scale farmers are to be enhanced and where links between urban and rural and between districts and municipalities will be emphasized. The idea is to create a situation whereby government programmes are better linked horizontally and where links are forged between government and civil society.

The expropriation method of land reform is administered by the Federal Land Reform and Colonization Institute. MST identifies farms for expropriation and the role of the National Institute of Colonisation and Agrarian Reform – INCRA

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<sup>475</sup> Navarro, Z *Expropriating land in Brazil: Principles and policies* WBI Brazil Land Reform Expropriation workshop version (unknown) 5-6  
[www.sarpn.org.za/documents/.../Expropriating\\_land\\_Brazil](http://www.sarpn.org.za/documents/.../Expropriating_land_Brazil)

<sup>476</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 8.

<sup>477</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 8.

<sup>478</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 10.

(*Instituto Nacional de Colonização e Reforma Agrária*) is to verify the eligibility of farms for expropriation. The whole process of expropriation of land and identification of beneficiaries are approved by INCRA at federal level.

This method of land reform has not been very successful since many owners contest the listing of their farms for expropriation. About 50% of owners go to court and contest valuation, thereby making expropriation very costly. Pressure from the social movements has seen an increase in land reform. Since 1995 to 2005 over 750,000 families have been resettled on nearly 30 million ha of land compared to lackluster performance in the 30 years before 1995 where only 218,033 families resettled on about 10 million ha.<sup>479</sup>

The second land reform programme is the land credit (*Crédito Fundiário*) programme which is a market based land reform programme. It is implemented by the state and compensation is based on voluntary agreement between owners and beneficiary associations. District screening committees such as the labor unions and civil society first screen farms and beneficiaries and then there is a technical evaluation. The state committee for sustainable rural development now approves projects. This is characterised by broader partnership/ownership since it also includes civil society in the decision making. The price of the property identified for land reform is agreed on after it is evaluated by government and civil society including the National Confederation of Agricultural Workers - CONTAG (*Confederacao Nacional dos Trabalhadores na Agricultura*).<sup>480</sup>

This form of negotiated, market-assisted programme was first piloted in the state of Ceara (US\$10m) as a component of Ceara Rural Poverty Alleviation Project. It benefited 700 families by means of reallocating 23,377 ha at a cost of R\$11,657 per family. The programme was then extended as a federal land reform and poverty alleviation project to four other states in Northeast Brazil (US\$150 m). This benefited 17,000 families with 442,000 ha at a cost of R\$11,200 per family.

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<sup>479</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 10.

<sup>480</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 10.

Currently the programme has been extended to 14 states under the Land-Based Poverty Alleviation Project at a cost of US\$436m of which US\$200 million is a World Bank (IBRD terms) loan. The goal is to benefit one million families in five and a half years. Co-ordination of the programme is done by a technical unit at the federal level.<sup>481</sup>

One of the dangers inherent in the decentralized approach is that it gives a great deal of power to local elites. The mayor of a municipality or town, for example, could be in a powerful position to make far-reaching decisions about land allocation and the identification of beneficiaries based on his or her party-political allegiances.<sup>482</sup>

#### **5 4 4 Settlement support provisions**

A number of external support agencies have assisted Brazil in its land reform and support programmes. An example is the Food and Agriculture Organisation (FAO) which has provided technical support to the country's agrarian reform and development of sustainable family farming strategies through a series of projects. These include the Agrarian Policy and Sustainable Development Guidelines for Small Family Farming, Guidelines for Agrarian Policies and Sustainable Development for Household Agriculture, Integration of Gender Perspective in the Agrarian Reform Sector and the National Plan for Agrarian Reform.<sup>483</sup>

There has also been assistance from the World Bank in introducing the market based land reform approach as well as providing financial and technical

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<sup>481</sup> *Project Appraisal Document on a Proposed Loan in the amount of Euro 218.2 Million (Us\$202.1 Million Equivalent) to the Federative Republic Of Brazil for a Land-Based Poverty Alleviation Project I Document of the World Bank* (November 6) 2000 42

<sup>482</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007).

<sup>483</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 11.



assistance to assist with pre and post acquisition of land by the land reform beneficiaries.<sup>484</sup>

In addition, local and international NGOs assist in capacity building and in the delivery of post-settlement technical support in farm production, marketing and effective livelihood diversification.<sup>485</sup>

#### **5 4 5 Business plan and funding**

Before land may be handed over to land reform beneficiaries there must be proper development plans in place. In practice, however, this does not happen. This is confirmed in a study that external actors who assist with the preliminary planning and post-acquisition support, have instead focused on land purchase negotiations and the immediate post-land transfer activities, such as resettlement, since beneficiaries were moving onto new land which did not have previous settlements.<sup>486</sup>

In terms of the market based land reform approach, funding is provided by the government for land acquisition purposes. This funding is given to the beneficiary who has to use this amount to buy land and the balance is kept as grant funding for development purposes.<sup>487</sup> This system is not working, since beneficiaries end up buying land that is cheap and therefore of poor quality and potential. As a result grant funding becomes insufficient since most of it has to be used to first provide basic services, such as electricity and water on the property before actual implementation of development plans may take place. This situation impacts on the quality of the land which beneficiaries are able to acquire and the extent to

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<sup>484</sup> *Project Appraisal Document on a Proposed Loan in the amount of Euro 218.2 Million (Us\$202.1 Million Equivalent) to the Federative Republic Of Brazil for a Land-Based Poverty Alleviation Project I Document of the World Bank* (November 6) 2000 29,32

<sup>485</sup> Quan J *Land Access in the Early 21st Century: Issues, Trends, Linkages and Policy Options* FAO Livelihoods Support Programme Working Paper no 24 (2006).

<sup>486</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 12.

<sup>487</sup> Borras S M "Questioning Market-Led Agrarian Reform: Experiences from Brazil, Colombia and South Africa" *Journal of Agrarian Change* 373, 380

which they are able to address their own post-acquisition needs.<sup>488</sup> It is, therefore, imperative that extension officers provide the required pre and post acquisition support to make projects sustainable.

Funding of land reform projects is a challenge. Beneficiaries prefer to rely on funding from the government. In any event private and public finance institutions refuse to assist beneficiaries with funding for the land reform projects because of the land have limited value and potential.

In Brazil the World Bank has a matching grants assistance program known as the Northeast Rural Development Programme (NRDP). Under the NRDP, which was initiated in 1995, projects are proposed by communities to a municipal council, which includes 80% representatives from civil society, and is thus not dominated by local political or executive authorities.<sup>489</sup> In the project self selected beneficiary groups identify eligible agricultural lands for purchase and negotiate directly with the sellers. They obtain long terms financing for the purchase of the land from the federal counterpart funds and matching grants for complementary investment subprojects and technical assistance from the World Bank to improve the productivity of the newly acquired land and establish new residence there.<sup>490</sup>

Friends of the Earth, an NGO working in several parts of the Brazilian Amazon, launched its programme by using the health effects of fire as an entry point that cuts across social differentiation.<sup>491</sup> This helped to bring together a range of stakeholders and role players to be able to agree on a plan for effective fire control

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<sup>488</sup> Deininger K *Making Negotiated Land Reform Work: Initial Experience from Colombia, Brazil and South Africa* World Bank Policy Research Working paper no 2040 (1999); *Community-based Land Reform Implementation in Brazil: A New Way of Reaching out to the Marginalized?* Paper presented at the GDN conference in Bonn Germany, (December 1999) <http://www.gdnet.org/bonn99/confpapers.f1ml>.

<sup>489</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 11.

<sup>490</sup> Childress M D and Munoz J A *Brazil land based poverty alleviation project agricultural and rural notes* Land policy and administration Issue 31 February (2008) 2

<sup>491</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 11.

and at the same time giving them the opportunity to discuss other controversial issues relevant to them all such as land.

Brazil also has a highly developed statistical monitoring and evaluation system in place. However the statistical information needs to capture qualitative and quantitative information pertaining not only to the impact of land reform on beneficiaries but also the sustainability aspect of the projects.

#### **5 4 5 Conclusion**

The case of Brazil highlights the role of rural social movements in ensuring that attention is paid to aspects of post-settlement support and in planning and developing the content of such activities. The state's decentralised approach to land reform and its associated settlement support provision through the 'Territorial Development Approach' provides useful pointers for application elsewhere. It also suggests ways for government programmes to be linked horizontally and for links between government and civil society to be forged. The state's reliance on the private sector to address extension and other post-settlement support services, however, has not brought the benefits that were anticipated.

#### **5 5 Comparisons and conclusion**

The following are the general observations and comments on the experience of land reform in Zimbabwe, Australia and Brazil in relation to South Africa.

The policy, legal, financial and administrative basis for land reform is not clear to all concerned. None of the four countries has a well developed vision or policy in place that will guide departments, beneficiaries and other role players when problems are experienced in implementing land reform. They also lack clearly identified objectives and/or outcomes that could serve as an effective guide for the

management of land claims, land acquisition, securing of tenure and support programmes at a national, regional and local level.<sup>492</sup>

If the aims and goals of land reform and in particular land distribution are not clear there is a high likelihood of people interpreting the outcomes and the implementation in different ways. To some, the main aim of land distribution may be to rectify past injustices with an emphasis on the return of or access to ancestral land; to others the return of ancestral land may be of lesser importance than the creation of employment; some may see relief from rural poverty on the basis of self-sufficient agricultural activities being the main aim, while others may view the expansion of those who have already demonstrated themselves as being capable land managers as being the primary purpose.<sup>493</sup>

From the international experiences captured above, the objective of post-settlement support in land reform differs from country to country and varies in scope and intensity, depending on the historical, social, political and economic paradigm in which it is being implemented.<sup>494</sup>

It is evident that a key element that impacts upon the way in which land restoration is approached is whether land reform is market-driven, non-market driven or a combination of the two<sup>495</sup> which in turn impacts on the provision or not of settlement support. Market-driven reform means that new tenants or the state have to acquire land on a willing buyer–willing seller basis. Non-market driven reform is where the state opts for a policy of expropriation whereby land is taken (with or without adequate compensation) for redistribution. It could also include packages to assist new tenants to find their feet, establish their businesses and support them for a period of time. Non-market driven reform has the benefit that government can decide where and when it wants to expropriate land, but if

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<sup>492</sup> De Villiers B *Land Reform: Issues and Challenges: A Comparative Overview of Experiences in Zimbabwe, Namibia, South Africa and Australia* KAS (2003) 141.

<sup>493</sup> De Villiers B *Land Reform: Issues and Challenges: A Comparative Overview of Experiences in Zimbabwe, Namibia, South Africa and Australia* KAS (2003) 144.

<sup>494</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 41.

<sup>495</sup> De Villiers B *Land Reform: Issues and Challenges: A Comparative Overview of Experiences in Zimbabwe, Namibia, South Africa and Australia* KAS (2003) 3.

abused, as in Zimbabwe, it has obvious implications for democratic standards and economic development and stability.<sup>496</sup>

In terms of the market based land reform approach Brazil provides funding for land acquisition purposes. This funding is provided to the beneficiary who has to use it to buy land and the balance is kept as grant funding for development purposes. The amount used to buy land must be paid back.<sup>497</sup> The reverse is happening in South Africa where land is purchased for the beneficiaries of the land restitution programme and that amount does not have to be repaid by the beneficiaries. The beneficiaries under restitution also receive further grants for development assistance and resettlement. The problem in South Africa, however, is that land reform beneficiaries have difficulty in securing additional funds from a financial institution since their title deeds have conditions preventing them from doing so unless prior permission is received from the Minister.<sup>498</sup> What is meant here is that beneficiaries who receive title to land in terms of the land reform programme are not allowed to use the land as collateral to receive a loan which can be used as additional funding, unless prior written permission is received by the Minister that the said land can be used as collateral.

Any successful land reform programme has to accommodate the need for a combination of large-scale commercial operations as well as family or small based undertakings. However, experience shows that land reform programmes tend to favour large scale commercial operations that involve consultants and technical business plans but in many instances lack ownership from the beneficiaries themselves. Without a sincere and well grounded commitment or the culture to co-operate, large-scale corporations or undertakings can fail dismally. Australia has also been witness to aboriginal people being encouraged to submit detailed commercial business plans to demonstrate how they would develop commercial enterprises on pastoral stations, while in many instances their land needs are far more basic and aimed at family-based subsistence and cultural activities. In

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<sup>496</sup> De Villiers B *Land Reform: Issues and Challenges: A Comparative Overview of Experiences in Zimbabwe, Namibia, South Africa and Australia* KAS (2003) 3.

<sup>497</sup> Borras S M "Questioning Market-Led Agrarian Reform: Experiences from Brazil, Colombia and South Africa" *Journal of Agrarian Change* 373

<sup>498</sup> Template purchase and sale agreement and settlement agreement of the CRLR.2005 -2010

Zimbabwe, research indicates that differences in land use needs were as follows: some youth (safari's and tourism); war veterans (return of lost lands); farm workers (security of tenure and communal land and acquired land); urban males (pre-urban plots, residential land); urban females (residential and business plots, rural croplands).<sup>499</sup> It can be assumed that in South Africa communities have similar differences in terms of their land needs.

For development activities on acquired land to be sustainable and to impact positively on the lives of beneficiaries, a comprehensive, responsive and ongoing interaction between those requiring and determining the support they require and those who provide such support is needed.<sup>500</sup>

It is crucial to determine with clarity which government department is ultimately responsible for the overseeing and implementation of (a) land reform and (b) support services following the restoration of rights in land. In all the above studies a fragmented approach has caused delays and poor focus, which in turn has led to failure. Zimbabwe is a classic example where intra-departmental factions and conflicts impacted and contributed to the failure of projects.<sup>501</sup> In Australia there is no federal or state agency that has as its main focus - land reform and there is no intergovernmental agency to oversee land reform. In Brazil the Territorial Development Approach is used as well as reliance on partnership between government, civil society and the private sector – which has not yielded the benefits that were expected.

Besides the necessary political will and allocated budget for land reform and support provision, there are a range of factors and pre-conditions which need to be present in order for useful approaches adopted elsewhere in the world to have applicability and relevance to the South African context such as:<sup>502</sup>

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<sup>499</sup> De Villiers B *Land Reform: Issues and Challenges: A Comparative Overview of Experiences in Zimbabwe, Namibia, South Africa and Australia* KAS (2003) 145.

<sup>500</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 41.

<sup>501</sup> De Villiers B *Land Reform: Issues and Challenges: A Comparative Overview of Experiences in Zimbabwe, Namibia, South Africa and Australia* KAS (2003) 83.

<sup>502</sup> Tilley S *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* PLAAS University of the Western Cape (2007) 41.

- Integration of settlement support within the broader development and land reform agenda;
- The extent to which beneficiaries have experienced an ongoing attachment to the land and the rural environment;
- The extent to which agricultural production plays a role in the economy;
- Decentralisation and institutional arrangements for support provision
- the presence of social cohesion and organisation in rural communities and social movements;
- The ratio of land to population density and settlement patterns of rural communities.

If rural livelihoods are to be improved through land reform it is necessary to pay attention not only to the immediate support needs of claimants but also to wider agrarian reforms. These would include infrastructure development, technical support, the provision of credit and access to finance as well as the regulation of input and commodity markets in ways that favour and support small-scale farmers and new landholders.

It is evident that each country has its own land reform programme and models, institutional arrangements and settlement support provisions. However, what is most important is that transfer of land alone is not sufficient to bring about the required reforms in terms of poverty reduction and sustainability. It requires the provision of settlement support with assistance from the state. In South Africa this would be the DRDLR, other government departments such as the DoA, the Department of Mineral Resources, the Department of Labour, the Department of Environmental Affairs, the Department of Human Settlements, NGO's, municipalities and the beneficiaries themselves. The support provided must include training, capacity building, funding, provision of basic services such as transport, education, water, etc.

## CHAPTER SIX

### CONCLUSIONS AND FRAMEWORK FOR ACHIEVING SUSTAINABLE POST-SETTLEMENT SUPPORT

#### 6 1 Analysis of the data

Judging from the information captured, the review of the two programmes of land reform in relation to the provision of post-settlement support and the in- depth case studies it is clear that there is no formal, well-structured post-settlement support provision in land reform projects. There is thus concrete support for the quote, referred to at the beginning of this research, that a serious shortcoming in the land programme is the weakness of after-settlement support and the consequent failure of many transfers to result in sustainable use of the land, impacting on the country's overall agricultural productive capacity.<sup>503</sup>

The lack of post-settlement support to land reform beneficiaries has been attributed as the cause of the failure of the land reform projects. Therefore, post-settlement support is necessary for land reform projects to be successful and sustainable.

The evidence and reviews done include:

- An overview of the advent of the land reform programme and the changing development environment in which it operates;
- An analytical review of the evidence to identify key post-settlement support initiatives in restitution and redistribution projects and the key issues currently impacting on the provision of effective post-settlement support after the transfer of land and
- Key learnings from a comparative review of the international experience from three countries.

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<sup>503</sup> *Towards a Fifteen Year Review Synthesis Report* (2008) <http://www.thepresidency.gov.za/pebble.asp?relid=1135> 29. Accessed on 10 January 2010. See also Du Plessis W, Pienaar J and Olivier N "Land Matters 2008(2)" 2008 2 *SAPL* 103-104.



The areas of concern derived from the above include:

- i. Land and agrarian reform has not been part of a broader, integrated rural development process.
- ii. There is no clear identification or guidelines on whose role it is to provide post-settlement support.
- iii. No clear roles and responsibilities exist of different government institutions in the provision of post-settlement support
- iv. There is no partnership and integration between the Departments of Land Affairs and Agriculture as well as between other relevant government departments, non-governmental service providers, NGOs and the private sector (working in silos)
- v. The majority of the land reform beneficiaries in the rural areas are unskilled and lack the experience and expertise to develop and utilize the acquired land. Limited effort is made to provide training as an aspect of post-settlement support.
- vi. There is a lack of ownership of projects by beneficiaries. This can be attributed to the “rent a crowd” strategy under LRAD where applicants have been put together to increase the “kitty” in an *ad hoc* manner. This results in a lack of group cohesion. Another reason for the lack of ownership of projects is because business plans are drawn up by consultants who seldom take into account the needs of the beneficiaries. Business plans should be drafted by a person with the necessary expertise and it should be done in consultation with the beneficiaries and their needs must be taken into account. By getting the beneficiaries to be involved it creates a sense of ownership of the project with them and hence they are able to buy into the business plan that will be drawn up for them.
- vii. The majority of the projects did not have proper business plans in place.
- viii. Funding is a challenge. Although grants are approved in restitution projects they cannot be used until a business plan is in place indicating how the funds will be spent. It could therefore be inferred that because there were no business plans in place there was no

proper implementation of the plans and beneficiaries could not access and spend the grants that were approved for their projects. This was evident in 50% of all projects studied.

- ix. Due to the lack or insufficient funding in some projects, beneficiaries could not procure essential equipment for production. This was evident in 50% of projects
- x. No profiling of beneficiaries was done during the planning stage of the project in order to assess the land use needs of the persons who were to receive title to land. The same applies to obtaining information in relation to the socio-economic position of claimants in terms of employment, literacy levels, earning capacity, gender, access to government services (water, sanitation, electricity, roads, transport, schools, police stations, parks, clinics, hospitals, social grants, post and telecommunications), earning levels, type of work done by males and females and the age groups, crime and violence in the area, youth and HIV/AIDS issues in order to assist with proper planning of projects
- xi. The project management of projects was poor in the sense that in most cases identification of important role-players and stakeholders is done too late in the process
- xii. There are challenges with CPIs<sup>504</sup>. Difficulties arise with legal entities which are dysfunctional and not capacitated due to the constitution being poorly understood, land use rights not being clear or the constitution does not indicate how benefits are to be shared amongst the beneficiaries
- xiii. There is a lack of monitoring and evaluation of the projects as a whole to be able to reflect on them in terms of progress and achievements and identifying training needs
- xiv. There is a lack of basic services to land reform beneficiaries who are mostly situated in the rural areas such as transport, electricity, water, etc.

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<sup>504</sup> De Villiers *Land Reform- A Commentary* KAS (2008) 8

- xv. There is no coherent or sufficient national land use policy that can guide the actions of specific departments or levels of government in dealing with problems experienced by new landowners

In October 2003 the Regional Land Claims Commission (RLCC) in Limpopo established the Partnership for Sustainable Land Reform Development which comprises a diverse group of strategic partners. Funding was sought and obtained from the Development Bank of Southern Africa, the Canadian International Development Agency (CIDA) and the Southern African Development Community (SADC), the Centre for Land-related, Regional and Development Law and Policy (CLRDP) based at the University of Pretoria. The World Bank made technical assistance available. The output from this initiative was a publication entitled the *Operational Framework for Post-Settlement Support Interventions*.

The pilot programme<sup>505</sup> addressed the efficacy, efficiency and effectiveness of providing co-ordinated governance post-settlement support to the beneficiaries of land reform. The study indicated that a distinction needs to be made between challenges at governance level and those at project level, the most important of which are set out in the table below:<sup>506</sup>

Table 5: Challenges at governance and project levels

Post-settlement challenges at governance level	Post-settlement challenges at project level
-Insufficient emphasis on post-settlement and lack of an existing comprehensive post-settlement strategy	-Absence of effective social facilitation in pre- and post-settlement to prepare beneficiaries for responsibilities/realities

<sup>505</sup> The SADC CLRDP in South Africa (funded by CIDA), with the assistance of South African experts and a number of Canadian experts (coordinated by the Centre for Property Studies in New Brunswick, Canada), implemented and tested the Operational Framework in three restitution communities, namely: the Mashishimale community in Limpopo Province, just outside Phalaborwa; the Nkumbuleni community situated near Pietermaritzburg in KwaZulu-Natal; and the Ebenhaeser community located near Vredendal in the Western Cape.

<sup>506</sup>Geyer C and Van Rooyen A “Co-ordinated Governance Support and Training: the Sustainable Restitution Support – South Africa Programme” in *Land Reform in South Africa Constructive Aims and Positive Outcomes - Reflecting on Experiences on the Way to 2014* 26–27 August 2008 Roode Vallei Country Lodge, Pretoria South Africa KAS (2009) 100-101.

at national level.

-Inadequate institutional links between pre-settlement planning and post-settlement implementation.

-Lack of institutional awareness about the potential impact of land reform projects on local and provincial socio-economic development.

-Ad hoc decentralisation and poor integration of land reform projects in provincial and local planning and budgets (in concrete terms and deliverables).

-Absence of customised (needs specific) post-settlement support mechanisms at local (community) level.

-Random cooperative governance and interdepartmental coordination at project level.

-Poor communication, data and information sharing among stakeholders involved in post-settlement implementation and support intervention.

-Poor monitoring and evaluation systems in place to oversee projects' restitution progress.

-Administrative constraints: lack of human resources/capacity, high staff turnover rate and cumbersome procurement procedures at RLCCs

pertaining to land ownership. Settlement support staff at the RLCC are inadequately trained in social facilitation to deal with and contain complex community dynamics affecting governance and project development, and preparing reality checks for beneficiaries.

-Lack of consistent, integrated project development in terms of a broader economic, social and environmental sustainability context.

-Varied quality of completed business plans (if available) and poor adherence to business plans by communities.

-Lack of continuous and relationship-based advisory services (e.g. single-use, in-and-out consultants, service providers and government interventions).

-Inadequate project management capacity and relevant technical skills among beneficiaries to start up desired income-generating projects.

-Ad hoc provisioning of capacity-building and training programme beneficiaries.

-Inadequate capital/resources, infrastructure within communities to start up projects.

-Insufficient provision of relevant capacity-building and training programmes to beneficiaries.

-Insufficient monitoring and evaluation of project developments in resettled communities.

-Unrealistic community expectations linked to lack of economic and feasibility assessments of selected projects and community-centred approaches in pre-

	<p>settlement planning.</p> <p>-Complex community dynamics and governance deadlocks stalling development and land use initiatives.</p>
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In 2006, the erstwhile DLA, with support from Belgian Technical Co-operation, commissioned the Sustainable Development Consortium to develop a strategy for post-settlement support.<sup>507</sup> This culminated in the Settlement and Implementation Support<sup>508</sup> Strategy. The SIS strategy proposals also highlighted the need for land reform to be joint programme of government with active participation from all role players (government, land reform beneficiaries, civil society and the private sector).<sup>509</sup> The strategy draws on the provisions of the Intergovernmental Relations Framework Act.<sup>510</sup> It proposes that there must be ongoing support to institutions in terms of land rights management, training and strengthening of capacity of beneficiaries and also improved access to social development benefits, finance and markets. All of this to be done in a sustainable manner, ensuring integrated natural resource management.<sup>511</sup>

The research for this dissertation as well as other research all point to the same conclusions with regard to post-settlement support. All of the above evidence highlights that there are four main areas which must be addressed in order to provide effective post-settlement support. These are:

- Functional alignment and spatial integration.
- Social, institutional and capacity development.
- Integrated natural resource management and sustainable human settlements.
- Livelihoods, enterprise development and business support

<sup>507</sup> Lahiff E *Land Reform in South Africa: A Status Report 2008* Programme for Land and Agrarian Studies (PLAAS) University of the Western Cape (2008) 37,38

<sup>508</sup> Hereafter referred to as "SIS"

<sup>509</sup> Sustainable Development Consortium Settlement and Implementation Support (SIS) Strategy for Land and Agrarian Reform in South Africa Department of Land Affairs 2007 xvi.

<sup>510</sup> Act 13 of 2005

<sup>511</sup> Sustainable Development Consortium Settlement and Implementation Support (SIS) Strategy for Land and Agrarian Reform in South Africa Department of Land Affairs 2007 xvi.

Against this background a framework for effective and sustainable post-settlement support in land restitution and land redistribution in South Africa is required. This is set out below:

## **6 2 A framework for effective and sustainable post-settlement support**

Each of the four main areas which must be addressed in order to provide effective post-settlement support will be described, where after an indication will be given either of how it is being addressed or how it should be addressed in the South African situation where sustainable post-settlement support of land reform projects is required.

### **6 2 1 Functional alignment and spatial integration**

#### **6 2 1 1 Focus**

The focus is on institutional arrangements to deliver post-settlement support. Government departments, municipalities, NGO's, other government departments (such as the DoA, Department of Human Settlements, Department of Water Affairs, Department of Labour, etc), civil society, etc must work together in the planning and post-settlement support processes in an area based approach.<sup>512</sup>

#### **6 2 1 2 Outcomes**

In order to provide effective post-settlement support, it is important that land reform must be acknowledged as "every body's business." The emphasis is that land and agrarian reform should be placed at the centre of local government ensuring that all projects are embedded in the Integrated Development Plans

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<sup>512</sup> Area based approach is based on the identification of start up districts in each province to ensure that land reform projects are included within municipal IDP's and spatial development frameworks and is supported by government departments in line wit their respective legislative mandates.

(IDPs), in the Local Economic Development Plans and in the Provincial Growth Development Strategies.<sup>513</sup>

The way in which this can be achieved is for a lead department to take the responsibility of co-ordinating the facilitation of the various aspects of post-settlement support to land reform beneficiaries to ensure that diverse land and support needs are met. To this end the Department of Rural Development and Land Reform was established. The objectives of the DRDLR are agrarian transformation, rural development and land reform.<sup>514</sup> The four outputs that have emerged for the department are the following:<sup>515</sup>

- Sustainable land reform
- Food security for all
- Rural development and sustainable livelihoods
- Job creation and skills training, including a job creation model

In order to achieve the above outputs the department developed the *Comprehensive Rural Development Programme*.<sup>516</sup> The CRDP is aimed at being an effective response against poverty, food security and lack of social cohesion amongst rural communities thereby contributing to sustainable development interventions as far as land is concerned.

The DRDLR is headed by the Minister of Rural Development and Land Reform with eight branches (some of them newly created to provide the institutional framework). These branches are Restitution, Land Reform, Geo-spatial planning, Technology Development and Risk and Mitigation Services, Social Technical, Rural Livelihoods and Institutional Facilitation,<sup>517</sup> Rural Infrastructure

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<sup>513</sup>Xingwana L *Launch of Settlement and Implementation Support Strategy and Agrarian Reform* Speech at the Launch of the Settlement and Implementation Support (SIS) Strategy for Land and Agrarian Reform in South Africa Pretoria (2008).

<sup>514</sup>*Department of Rural Development and Land Reform Comprehensive Rural Development Programme* 2009

<sup>515</sup>*Department of Rural Development and Land Reform Strategic Plan 2010-2013* 6.

<sup>516</sup>Hereafter referred to as the "CRDP".

<sup>517</sup>Hereafter referred to as "STRIF".

Development,<sup>518</sup> Cadastre, Support Services and Office of the Chief Financial Officer. Of these STRIF and RID require explanation.

STRIF consists of four Chief Directorates: Social Organization and Mobilization, Technical Support, Skills Development and Nurturing, Rural Livelihoods and Food Security and Institutional Facilitation and Mentoring. The responsibilities are the following:

**(i) Chief Directorate: Social Organization and Mobilization**

This Chief Directorate is primarily responsible for the promotion of a participatory approach to rural development to ensure that the rural communities are able to take full charge of their collective destiny. The participatory approach is used to assess the needs of the rural communities through the profiling of the households and communities. The needs assessments are conducted through the participatory rural appraisal methods which also offer the opportunity to the communities to prioritize their needs. It is also responsible for social organization which is a critical building block for social cohesion.<sup>519</sup>

**(ii) Chief Directorate: Technical Support, Skills Development and Nurturing**

This Chief Directorate provides technical support to the institutions and structures established in the rural communities through skills development and capacity building. The unit determines skills levels of the rural communities through the household profiles and develops training programmes aligned to interventions and economic opportunities. It is also responsible for the implementation of the job creation model which is aimed at improving the households' basic needs, as well as at promoting economic livelihoods. The job creation model further entails the empowerment of the rural communities through skills transfer to develop artisans and enable the communities to start their own enterprises.<sup>520</sup>

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<sup>518</sup> Hereafter referred to as "RID".

<sup>519</sup> *STRIF Components and Functions* <http://intranet.ruraldevelopment.gov.za:8080/DLA-> STRIF Accessed on 20 February 2011.

<sup>520</sup> *STRIF Components and Functions* <http://intranet.ruraldevelopment.gov.za:8080/DLA-> STRIF Accessed on 20 February 2011.



### **(iii) Chief Directorate: Rural Livelihoods and Food Security**

This Chief Directorate is responsible for the improvement of the rural livelihoods through promoting economic development and development of rural enterprises. Building strategic partnerships is very important to this task and the unit must work with partners from the private sector, state owned enterprises and international organizations. Central to this task is the facilitation of value added services such as agri-processing and the establishment of village industries and enterprises. It is also responsible for coordinating and facilitating food security interventions in collaboration with relevant stakeholders in food security.<sup>521</sup>

### **(iv) Chief Directorate: Institutional Building and Mentoring**

This Chief Directorate is responsible for facilitating and building and mentoring institutions in rural communities. This function involves the identification of existing institutions and assessment of needs, including building new institutions to ensure sustainable development in rural communities. It is responsible for the establishment and facilitation of community structures such as the Council of Stakeholders as well as the establishment and capacity building of cooperatives. The mentoring of these institutions is the direct responsibility of the unit.<sup>522</sup>

RID is primarily responsible for ensuring the roll-out of physical infrastructure programmes in the CRDP sites and that the delivery of this infrastructure takes place in an integrated and well-coordinated manner, within available budgets and timeframes. It consists of three chief directorates which are divided according to regions:<sup>523</sup>

- i) Region 1: Eastern Cape, Northern Cape and Western Cape.
- ii) Region 2 :North West, Limpopo and Gauteng.
- iii) Region 3: Free State, Mpumalanga and KwaZulu Natal.

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<sup>521</sup> *STRIF Components and Functions* <http://intranet.ruraldevelopment.gov.za:8080/DLA-> STRIF Accessed on 20 February 2011.

<sup>522</sup> *STRIF Components and Functions* <http://intranet.ruraldevelopment.gov.za:8080/DLA-> STRIF Accessed on 20 February 2011.

<sup>523</sup> *RID Components and Functions* <http://intranet.ruraldevelopment.gov.za:8080/DLA-> RID Accessed on 20 February 2011.

In implementing the CRDP the Minister of the Department of Rural Development and Land Reform must co-ordinate and communicate with key government departments through the above branches. These include first, the Department of Provincial and Local Government (DPLG) whose principal responsibilities in relation to land reform include creating enabling frameworks to ensure that land reform is addressed as an integral part of municipal IDPs. Secondly, there is the DoA whose principal responsibilities are to put in place farmer support and development programmes and promote household food security, provide extension and veterinary services, operate CASP, manage agricultural risk, including drought and animal health hazards, and putting in place systems of drought and related relief; and ensure sustainable agriculture and land use practices including eradication of invasive aliens through the implementation of legislation such the Conservation of Agricultural Resources Act.<sup>524</sup>

In order to be able implement the principal responsibility areas other government departments must also be brought on board, such as the Department of Human Settlements (to provide housing ownership subsidies and rural housing subsidies), Department of Education (to ensure that all learners have access to primary and secondary school facilities, pre-school and adult literacy) Department of Labour (to assist with provision of training programmes and enforcing the Labour Relations Act), Department of Health (ensuring access to mobile and fixed health facilities), etc.

Civil society, NGO'S, agricultural unions, current land owners, financial institutions and private companies also form part of the key stakeholders in the provision of effective post-settlement support to land reform beneficiaries. The department must bring on board these key stakeholders, early in the planning process.

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<sup>524</sup> 43 of 1983.

## **6 2 2 Social, institutional and capacity development**

### **6 2 2 1 Focus**

Social, institutional and capacity development will ensure that the correct land rights and management institutions (CPIs) are put in place and supported to fulfil the key objectives of the land reform programme. Strategies must be put in place to ensure that membership and rights are clearly defined. It also highlights what must be done to promote social development and acquisition of key skills by beneficiaries.

### **6 2 2 2 Outcomes**

The government must provide holistic planning and implementation support, particularly in the area of monitoring and capacity building for CPIs and the beneficiaries thereof.

Essential elements include:

- The need for improved and detailed profiling of the capabilities, social and material assets, livelihood strategies, needs, risk and vulnerability coupled with an assessment of social coherence and group functionality of the land reform beneficiaries. This would serve as the basis for appropriate planning to provide effective post-settlement support.
- Provision must be made for capacity building of the land reform beneficiaries by experts in the field, of the various CPIs available. Land reform beneficiaries must understand the need for the institution, their roles and responsibilities in terms of holding and managing the land in common.
- There should be continuous subsequent provision of support to the members and those responsible for managing the new land-holding entity to enable them to carry out their functions.

- There should be a plan in place to rescue ailing and dysfunctional CPI's. A well-resourced programme to support existing CPIs which have fallen into difficulties, and to ensure that newly established CPIs are well supported. This should be combined with legislative amendments and regulations where appropriate.
- Capacity building and support should ensure that the constitutions of CPI's are clear and understandable to all its members, that each members rights are clearly defined and where commercial entities are set up, the manner in which benefits are to be shared must also be addressed.
- Profiling would ensure that proper planning is done in terms of overall training and skills development of beneficiaries in relation to the respective land uses that would be carried out in the projects.

### **6 2 3 Integrated natural resource management and sustainable human settlements**

#### **6 2 3 1 Focus**

The focus is on what must be done to promote an integrated approach to land use planning and the management of natural resources to ensure sustainable development.

#### **6 2 3 1 Outcomes**

In a number of projects, serious environmental concerns have emerged. These range from settlements located in environmentally sensitive areas, poor sanitation facilities (e.g. adjacent to watercourses), pollution of ground and surface water, poor management of wetlands, inadequate waste management facilities, un rehabilitated mining sites, uncontrolled spread of invasive alien species, cutting of protected trees and forested areas, ploughing of virgin soils, and heavy pressure on grazing resources. Many of these problems are the result of an inadequate

assessment of the capability of natural resources to sustain the needs of the numbers of land and agrarian reform participants.

In most land reform projects environmental assessment plans and feasibility studies are not conducted. Where they are conducted their recommendations are seldom implemented or are left till late in the planning process. The DLA has obligations in terms of NEMA and a host of related legislation to integrate environmental planning and monitoring into land reform. To this end the erstwhile DLA had an environmental planning policy and guideline document which were approved by the Minister in 2003, however they remain unimplemented in most projects as the focus has been more on the meeting the target of redistribution of 30% of agricultural land by 2015.

Most of the land reform projects may include the management of natural resources in areas such as the following:

- human settlement and services- planning must be done in line with the Integrated Sustainable Rural Development Strategy.<sup>525</sup>
  
- water resources and wetlands - the municipal legislative framework concerning developmental duties, land reform and commonage management plans are clearly expressed in terms of section 152(1) of the Constitution which must be implemented:  
The objects of local government are—
  - (a)...
  - (b) to ensure the provision of services to communities in a sustainable manner;
  - (c)...
  - (d) to promote a safe and healthy environment; and
  - (e) to encourage the involvement of communities and community organisations in the matters of local government. ;
  
- grazing arable land and common property resources - in order to prevent soil degradation note must be taken of the vulnerability of our soils to degradation. There should not be over-exploitation of the limited carrying

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<sup>525</sup>The Presidency *Integrated Sustainable Rural Development Strategy* (2000).

capacity to meet growing food requirements and use must be made of appropriate farming methods.

- forest and woodland resources; protected areas, biodiversity and threatened species- memoranda of understanding were negotiated with DEAT and DWAF in this regard. Restitution settlements in particular on protected area settlements or forestry and conservation land have models in place for joint co-management of the land. Although ownership vests with the claimants, their access to and use of the land is restricted and the settlement agreements allows for a co-management agreement which is developed between claimants and the conservation authority to manage the reserve into the future.

- mineral resources- are covered by the Minerals and Petroleum Resources Development Act.<sup>526</sup> Currently it ensures that mining companies on land restored to land reform beneficiaries must have labour and social development plans to benefit the beneficiaries and it also ensures that mining should be conducted in a sustainable manner.<sup>527</sup>

## **6 2 4 Livelihoods, enterprise development and business support**

### **6 2 4 1 Focus**

To ensure that there are strategies in place for improved livelihoods based on the needs of the land reform beneficiaries, better access to markets and financial assistance is required.

### **6 2 4 2 Outcomes**

In most land reform projects, beneficiaries have not benefited from the land reform programme in terms of improved livelihoods. This has been attributed to poor

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<sup>526</sup>28 of 2002.

<sup>527</sup>Sections 2, 37, 38, 39, 41, 42 and 43.

support in terms of preparing of business plans, lack of access to markets and credit. Business plans are normally drawn up without taking into account the needs of the beneficiaries. Consultants normally draw business plans which are based more on economic benefits, favouring large scale farming operations ignoring individual and household needs.<sup>528</sup> As a result beneficiaries do not take ownership of their projects.

It is therefore proposed that consideration should be given to individual and household needs and small scale farming in an effort to alleviate poverty and strengthen food security. Plans should be accompanied with the necessary support service to beneficiaries, including the provision of training and skills in the respective areas of development or enterprises proposed for the project.

A few projects have been successful because of the involvement of strategic partners, joint ventures and mentors who were able to assist the land reform beneficiaries in terms of providing funding, improved access to markets and sharing of skills and training in various areas such as finance, farming methods, new technologies in farming, human resource management, etc.

Under the branches Land Reform and Restitution, the CRDP has necessitated that the current approaches be overhauled and new approaches be adopted as far as the sustainable development of land reform projects are concerned.

Taking all the above into consideration, the DRDLR has prioritised the re-capitalisation and development of all distressed land reform projects implemented since 1994. This will address the main concern of this dissertation which is “the necessity of post-settlement support in land reform projects”. The CRDP principles will also be adopted in the implementation of outstanding claims and new land reform projects to ensure that there is sustainable development.<sup>529</sup>As part of this project the department will undertake a massive campaign to mobilize

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<sup>528</sup> Hall R “Land Reform in South Africa: Constructive Aims and Positive Outcomes” – *Reflecting on Experiences on the Way to 2014* Conference held on 26-27 August 2008 (Seminar Report no. 20) KAS (2009) 11.

<sup>529</sup> *Department of Rural Development and Land Reform Strategic Plan 2010-2013* 12, 16, 17.

all social partners and forge strategic partnerships, to ensure that all available capacity in the sector is galvanized to contribute towards the effective provision of post-settlement support and sustainable development. Commodity organizations and agribusiness, retired/experienced farmers will be engaged to assist with farm assessments; provide skills training, mentorship and day to day farm management. Risk sharing will be encouraged through co-management and share equity arrangements with beneficiaries.

The department will conduct farm assessments, due diligence exercises and develop credible development plans as conditions for support, through social contracts with all beneficiaries. 25% of the department's baseline allocation budget will be set aside for the purpose of the recapitalisation project. Other funding will also be received from the DoA, Forestry and Fisheries and provincial equitable share of relevant provincial government departments. Re-capitalisation will also be extended to struggling black farmers who are not able to meet their obligations with the Land Bank and other financial institutions.<sup>530</sup>

The department will establish strategic partnerships to provide technical support to all struggling land reform projects, by working together with the DoA, Forestry and Fisheries, The Department of Water Affairs, the Land Bank and social partners in the private sector.

All of the above is being co-coordinated by the Chief Directorate: Re-capitalization projects within the DRDLR and its main aim is to increase production, guarantee food security, graduate small farmers into commercial farmers, establish rural development monitors and create employment in the agricultural sector.<sup>531</sup>

Despite the new mandate and the development of the CRDP as the institutional framework to provide effective post-settlement support and sustainable development in land reform, one question still remains unanswered in my mind. Which branch in DRDLR is going to be responsible for providing post-settlement

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<sup>530</sup> *Department of Rural Development and Land Reform Strategic Plan 2010-2013* 17.

<sup>531</sup> *Department of Rural Development and Land Reform Land News* vol 7(5) October –November 2010 4.



support to new projects emerging from the settlement of the outstanding claims or new entrants in the LRAD or PLAS sub programmes? If this issue is not clarified soon there will be a danger of rolling back on the limited gains that government has made thus far and the possibility of reverting to working in silos.

In conclusion, in terms of the objectives of land reform as captured in the *White Paper on South African Land Policy*,<sup>532</sup> land reform is not only measurable in terms of equity in respect of access to land but also on alleviation of poverty and improvement of the overall quality of life of the beneficiaries in a sustainable manner. If a land reform programme is well designed and managed, it can have a large impact on equity as well as productivity.<sup>533</sup>

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<sup>532</sup> African National Congress The *Reconstruction and Development Programme: A Policy Framework* Umanyano Publications (1994) 20-21.

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*Mphela v Engelbrecht* 2005 2 All SA 135 (LCC)

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### **SOUTH AFRICA**

<b>NO.</b>	<b>YEAR</b>	<b>SHORT TITLE</b>
	1879	Native Locations Act
	1894	Glen Grey Act
	1908	Native Occupation of Land Act

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21	1895	Squatter Laws Act
27	1913	Native Land Act
21	1923	Native Urban Areas Act
18	1936	Native Trust and Land Act
46	1937	Native Laws Amendment Act
25	1945	Black (Urban Areas) Consolidation Act
41	1950	Group Areas Act
67	1952	Blacks Abolition of Passes and Co-ordination of Document Act
19	1954	Blacks Resettlement Act
46	1959	Promotion of Bantu Self-Government Act
36	1966	Group Areas Act
43	1983	Conservation of Agricultural Resources Act
126	1993	Provision of Land and Assistance Act
200	1993	Constitution of the Republic of South Africa (Interim Constitution)
22	1994	Restitution of Land Rights Act
67	1995	Development Facilitation Act
28	1996	Communal Property Associations Act
108	1996	Constitution of the Republic of South Africa
107	1998	National Environmental Management Act
28	2002	Minerals and Petroleum Resources Development Act
18	2005	Intergovernmental Relations Framework Act

## **AUSTRALIA**

Aboriginal Land Rights (Northern Territory) Act, 1976

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**ZIMBABWE**

Rural District Councils Act, 1998

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