



**MINISTRY OF RURAL DEVELOPMENT AND LAND REFORM
DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM**

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1. Problem Statement

- 1.1 Instilling ***national identity, shared citizenship*** and ***autonomy-fostering service delivery*** are the primary reasons why the State must continue to invest in the transformation of land relations (systems and patterns of control and ownership of land) in our country.
- 1.2 The rationale behind state investment in, and the enduring demand for, land is to be found in the historical background of what has been described by some scholars as ***“accumulation by dispossession”***.
- 1.3 The current economic structure of South Africa, as a result of this historical process, has produced net factors which undermine the conditions for fostering social cohesion and development amongst those previously dispossessed of their land.

2. Vision for Land Reform

- 2.1 A properly re-configured ***single, coherent four-tier system of land tenure***, which ensures that all South Africans, blacks in general and Africans in particular, have a ***reasonable access to land with secure rights***, in order to fulfil their basic needs for housing and productive livelihoods.
- 2.2 ***Clearly defined property rights***, sustained by a fair, equitable and accountable land administration system within an effective judicial and ‘governance’ system.
- 2.3 ***Secure forms of long-term land tenure for resident non-citizens engaged in appropriate investments*** which enhance food sovereignty and livelihood security, and improved agro-industrial development.
- 2.4 ***Effective land use planning and regulatory systems*** which promote optimal land utilization in all areas and sectors; and, effectively administered rural and urban lands, and sustainable rural production systems.

3. Principles Underlying Land Reform

- 3.1 The principles which underpin land reform are three-fold:
 - (a) deracialising the rural economy;

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- (b) democratic and equitable land allocation and use across race, gender and class; and,
- (c) sustained production discipline for food security

3.2 The long-term goal of land reform is social cohesion and development. In this text, the concept '**development**' refers to shared growth and prosperity, relative income equality, full employment and cultural progress. '**Underdevelopment**' is the other side of this proverbial coin - poverty, income inequality, unemployment and cultural backwardness.

4. **Current Challenges and Weaknesses: Rationale for Change**

- (a) Land acquisition strategy / WBWS (a distorted land market);
- (b) fragmented beneficiary support;
- (c) beneficiary selection for land redistribution;
- (d) land administration / governance, especially in communal areas;
- (e) meeting the 30% redistribution target by 2014;
- (f) declining agricultural contribution to the GDP;
- (g) unrelenting increase in rural unemployment; and,
- (h) a problematic restitution model and its support system (communal property institutions and management)

5. **An Improved Trajectory for Land Reform**

5.1 In articulating this improved trajectory for land reform, a set of proposals is advanced, which attempts to:

- (a) improve on past perspectives, without significantly disrupting agricultural production and food security; and,
- (b) avoid or minimise redistribution and restitution which do not generate sustainable livelihoods, employment and incomes.

5.2 This trajectory is supported by the following:

- (a) a recapitalisation and development programme;
- (b) a single land tenure system with four tiers;
- (c) a Land Management Commission;
- (d) a Land Valuer-General;
- (e) a Land Rights Management Board, with local management committees;
- (f) properly aligned common property institutions (CPIs); and,
- (g) the Land Tenure Security Bill, 2010, which is an integral part of the Land Reform Programme (LRP).

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5.3 A single land tenure framework has been fashioned out, integrating the current multiple forms of land ownership - communal, state, public and private - into a **single 4-tier tenure system**:

- (a) State and public land: **Leasehold**;
- (b) Privately owned land: **Freehold**, with limited extent;
- (c) Land owned by Foreigners: Freehold, but **Precarious Tenure**, with obligations and conditions; and,
- (d) Communally owned land: **Communal Tenure**, with institutionalised use rights.

5.4 The communal land tenure system (the 4th Tier), because of (a) its complexity and, (b) the nullification of the Communal Land Rights Act (CLaRA) by the Constitutional Court, will be treated in a separate policy articulation.

5.5 Land Management Commission (LMC)

5.5.1 The LMC will be autonomous, but not independent, of the Ministry and Department. It will be accountable to the Ministry through the Department; and, will submit regular reports to the latter. A financial manager, accountable to the Department's Accounting Officer, will manage the finances of the Commission. The LMC will be composed of all stakeholders in land and persons appointed by the Minister because of their special attributes.

5.5.2 Functions of the LMC

- (a) Advisory – issues advisory opinions, research reports and guidelines on land management to all land related departments and state organs.
- (b) Coordination – ensures alignment, inter-linkages and coherence of disparate land management agencies, departments, spheres and other organs of state.
- (c) Regulatory - Manage the regulatory environment that ensures that lands are managed in a manner that will protect the quality and values.
- (d) Auditing – assures the integrity of the inventory of state and public lands including monitoring its uses.
- (e) Reference point.

5.5.3 Powers of the LMC

The LMC will have the power to:

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

- (f) seize or confiscate land gotten through fraudulent or corrupt means.

5.4 Land Valuer-General

5.4.1 Problem Statement

- (a) South Africa lacks a nationwide comprehensive, reliable and collated hub of property values;
- (b) absence of legislative framework to determine when 'market value' is one of the variables in determining values as opposed to being the only criterion;
- (c) probity of some of the valuation is questionable;
- (d) conflict of interest and malpractices;
- (e) improper or hurried valuations in order to meet deadlines or compliance planning; and,
- (f) a historical or mechanical approach to valuation.

5.4.2 Responsibilities of the Office of the Valuer-General

The Valuer-General will be a statutory office responsible for:

- (a) the provision of fair and consistent land values for rating and taxing purposes;
- (b) determining financial compensation following expropriation under the Expropriation Act or any other policy and legislation which is in compliance with the constitution;
- (c) the provision of specialist valuation and property advice to government;
- (d) setting standards and monitor service delivery;
- (e) undertaking market and sales analysis; setting guidelines, norms and standards required to validate the integrity of the valuation data; and,
- (f) creating and maintaining a data-base of valuation information.

5.5 Land Rights Management Board

5.5.1 The LRMB will be composed of representatives of sectors which hold rights to land and persons appointed by the Minister because of their special knowledge and capacity to provide professional services to the Board. The Land Rights Management Committees, on the other hand will be composed of representatives of residents in a specific rural environment or settlement, farm-workers and dwellers, commercial farmers, relevant municipal councils, government departments such as the DRDLR, Human Settlements, as well as the South African Police Service,

5.5.2 Functions

- (a) communication of legal reforms to farm owners, farm-dwellers and potential land beneficiaries;
- (b) build institutional capacity (inside and outside state institutions) to advise and support rights-holders and facilitate their active use of the law;

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- (c) in collaboration with the Deeds Registrar, develop accessible and efficient systems for recording and registering rights on land;
- (d) to encourage the primacy of social solutions to social problems and disputes; provide legal representation, where necessary, e. g. unlawful evictions; and,
- (e) to establish a co-ordinated and integrated support system for state, civil society and private sector participation in social, cultural and economic development measures in rural settlements.

5.5.3 Powers

The LRMB will have the power to:

- (a) establish and, or, dissolve Land Rights Management Committees (LRMCs);
- (b) set norms and standards for the LRMCs; delegate certain powers to the LRMCs;
- (c) enforce compliance with norms and standards, as well as land rights management policies and laws;
- (d) hear appeals on matters handled by the LRMCs; power to over-turn decisions of the LRMCs; and,
- (e) enforce respect for, and observance of, rights of fellow dwellers.

6. The Strategic Thrust of Land Reform

6.1 Land Reform is located within the CRDP, which is anchored by the following pillars:

- (a) a coordinated and integrated broad-based agrarian transformation;
- (b) an improved land reform programme; and,
- (c) strategic investment in economic, cultural, ICT and social infrastructure for the benefit of all rural communities.

6.2 While separate in the design, *rural development* and *land reform* are aligned at policy, programme and institutional levels to ensure coordinated service delivery. In the pursuit of agrarian transformation, the link between the *land question* and *agriculture is acknowledged* as the basis of the search for an economic rationale and a vision of a post-reform agrarian structure. Yet, demand for land may be for other productive but non-agricultural uses.

7. Land Reform Experience Elsewhere

7.1 Asia

7.1.1 **China** replaced the Commune System with a two-layer management system – household contract responsibility system and granting farmers self-management rights; it replaced monopoly over purchase and marketing, allowing farmers the right to exchange farm produce freely; and, it transformed the single collective ownership into various private ownerships, where the farmer can dispose of assets.

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7.1.2 **India** introduced the following reforms: it regulated sharecropping; provided legal protection against eviction; instituted a land ceiling Act; and provided homestead plots.

7.2 Latin America

7.2.1 **Brazil** embarked on selective expropriation with compensation; viable family smallholder farms receiving government support, serving domestic market, while large-scale commercial farms serve export markets; and, combined market-related strategies with traditional land management systems, in a complementary manner

7.2.2 **Mexico** had mixed experiences: nationalisation in 1910; redistribution in 1935; denationalisation in 1946; and, a peasant revolt in 1970 resulted in the take-over of land owned by foreigners, turning it into collectives.

7.2.3 **Chile** expropriated large farms in the 1960s, turning them into co-operatives for peasants and small farmers. There was a reversal in 1974, after the assassination of Allende, with the re-instatement of family farms. Regulatory reforms were introduced on land rentals and subdivisions in the 1980s.

7.3 Africa

On the African continent the **Egyptian** experience provides interesting lessons on land reform. Legislation was passed in the 1950s, limiting farm size to a maximum of 42ha per individual; limiting rental rates; and, setting minimum lease durations.

8. Challenges and Constraints

8.1 For the land reform programme to proceed rapidly and succeed, as it must, a number of challenges and constraints have to be confronted, and overcome. **The main challenges are:**

- (a) **entrenched vested interests**, in both commercial and communal land spaces;
- (b) **poor co-ordination and integration of effort** and resources among public institutions, and between public sector and private sector institutions; and,
- (c) **the main constraint is the poor capacity of organs of state to implement.**

8.2 These three elements constitute a complex risk-factor to any effective, equitable and speedy resolution of the land question. It will require time and an enduring, collective, national political effort to overcome them. Co-ordination and integration across all relevant organs of state and civil society is key to successful execution of a sustainable land reform programme.

9. Summary and Conclusion

- 9.1 Undoing the social, economic and cultural effects of centuries of discrimination and exclusion, on the basis of race, **will take time and an enduring national political effort.**
- 9.2 Challenges and constraints experienced over the last seventeen years, and lessons drawn from other countries across the world, show clearly that **there are no silver bullets to solving post-colonial land questions.**
- 9.3 A systems approach seems necessary and appropriate in addressing complex and emotive challenges such land reform. The failure to protect the rights and security of tenure of farm workers and dwellers is a good illustration of this point. There is a strong view that the real problem in land reform in general; and, in the protection of the rights and security of tenure of farm-dwellers, in particular, may be that of **a total-system failure (TSF)** rather than that of a single piece of legislation, e.g., Extension of Security of Tenure Act (ESTA).
- 9.4 In the case of farm-workers and dwellers, this failure would reflect in a number of aspects: inadequate articulation of policy and legislative regime to protect farm workers and dwellers; poor implementation of existing policies and legislation by organs of the state; weak enforcement of legislation by law-enforcement agencies; the judicial system not being worker-friendly in handling eviction cases; labour unions not organizing effectively on farms; non-complementary (almost adversarial) relationship between non-governmental organizations and state organs in addressing problems of farm-dwellers; and, poor or non-existent monitoring, co-ordination and communication amongst state organs, within and across the three spheres of government, and other interested parties, on matters negatively affecting the rights of farm workers and dwellers.
- 9.5 The following passage, directly and indirectly, quoting the first President of the African National Congress, Dr. J. L. Dube, has been taken from Heather Hughes' book, First President (2011). It addresses the hunger and need for land by African people. The situation has not changed much since the 1930s, when the sentiment was expressed by Dr Dube. **We must change it now!**

The points that Dube and his colleagues had made about the draft legislation (Natives' Representation in Parliament Bill, the Natives' Land Bill and the Natives' Council Bill) were incorporated and extended in his testimony to the Natives' Economic Commission....He had prepared a written submission on which he was closely questioned at great length in the hearing. Uppermost in his mind and, he said, in the minds of African people was the land issue. They needed far more of it, particularly those who could not afford to buy. The land ought to be purchased for them and handed over; all the African areas ought to be properly surveyed and divided into building plots, grazing grounds and gardens. People could pay a nominal rent for their plots.

GREEN PAPER ON LAND REFORM, 2011

“There are only one million of you and there are about six millions of us; and one million of you have three fourths of the land, and six millions of us have one fourth of the land. That is not fair....In asking (for more land) I do not think we are asking for charity; we have contributed to the development of South Africa with our labour...we have done our share in that respect, and in the matter of taxation, both direct and indirect”.

He vigorously fought off the commissioners’ views that Africans did not know how to use their land properly, that any more would just be wasted, that Africans multiplied too fast, that they had too many cattle:

“The black ox has nowhere to feed, and the white ox has all the pasture...I am sorry if I cannot make that clear to you”.

[Heather Hughes (2011). First President. A Life of John L Dube, founding President of the ANC]