

# 1 LAND

In order to report efficiently on the objectives outlined in Chapter 3, they have been clustered into logical groupings and structured into , as outlined below and discussed accordingly in the sections that follow:

- Inclusive land use planning to ensure equitable land rights
  - Planning and development of land resources involving all land stakeholders, including indigenous and landless population; strengthened role of land administration systems so as to guarantee land use rights and legal security of tenure (Chapter IV, 40(h)).

## 1.1 Inclusive land use planning to ensure equitable land rights

### 1.1.1 Progress

Land productivity is intricately linked to social, political and environmental issues and for this reason South Africa has implemented an integrated approach to sustainable land management. This is being implemented through a number of different programmes aimed at both resource management and socio economic development.

The **Constitution of the Republic of South Africa, Act No. 108 of 1996, places a duty on government to ensure equitable land distribution among South Africans**, thereby addressing the injustices and consequences of the racially segregated 1913 Land Act. The land and agricultural reform process promises to increase equity and job creation amongst South Africans, stimulating economic and social development.

As a result of the legacy of inequitable land distribution in South Africa, during the first decade of democracy and ongoing, there has been a strong focus on land reform delivered through restitution, tenure and redistribution. Considerable progress has been made in terms of putting legislation, policy, systems and procedures in place for land reform which is being implemented through three programs; namely restitution, tenure and redistribution.

- **Tenure Reform:** The tenure reform programme seeks to validate and to harmonise forms of land ownership that evolved during colonialism and apartheid. It is an attempt to redress the dual system of land tenure in which whites owned land as private property as opposed to communal land allocation among blacks. The majority of rural blacks lived and still live on communal land, registered as the property of the State under the erstwhile South African Development trust.
- **Restitution:** Land restitution forms the second pillar of the land reform programme. It aims to provide redress to victims of racial land dispossession and thus contribute to equitable redistribution of land in the country. The imbalances in land ownership were created by the apartheid policies and legislation of forced removals such as the infamous Natives Land Act,

1913 (Act No. 39 of 1913). The nature of restitution is determined by three broad categories of the effects of land dispossession - namely, dispossession leading to landlessness, inadequate compensation for the value of the property, erosion of human dignity and hardships that cannot be measured in financial or material terms. Some communities, such as the Makuleke of the Kruger National Park, gained land rights in protected conservation areas through the restitution process and are developing tourism development strategies.

- Redistribution: Land redistribution was conceived as a means of opening up the productive land for residential and agricultural development. The national government set itself a target of redistributing 30% of the country's commercial agricultural land (about 24 million hectares) by 2014.

The initial targets were ambitious and key changes have occurred, thereby improving land delivery year by year. The following describes the development in each area.

During the period between 1995 and 1999 only 41 of 79 696 claims were settled under the **Restitution of Land Rights Act (No. 22 of 1994)**. This slow settlement of claims was attributed to the compulsory resolution of all land claims within the Land Claims Court. An amendment of the Restitution Act in 1999 gave powers to the Minister to accept the outcome of the negotiations process and settle the land claims through section 42D of the Act. This led to an exponential increase in the number of claims settled from 41 in 1999 to 75000 in 2008. The tenure programme has been the slowest and most difficult aspect of the South African land and agrarian reform programme to date. This is due to the complications that exist in the former homeland and communal area where communities and individuals reside on state land, and therefore have no security of tenure. The promulgation of the Communal Land Rights Act No 11 of 2004 (CLARA) on 14 July 2004, has assisted in the transfer of communal land (currently held by the state) to communities and individuals who reside on and have rights to that land. It is anticipated that this programme will provide security of tenure to just under 20 million people (DLA & DoA; 2005).

In 2001 the land redistribution program was improved making it more flexible, decentralised and broadening its target group to include emerging farmers. The redistribution programme includes three components, namely:

- Agricultural Development – to make land available for agricultural purposes;
- Settlement- to provide people with land for settlement purposes; and
- Non-agricultural enterprises- to provide people with land for non-agricultural purposes such as eco-tourism projects.

The flagship program of redistribution has been the **Land Redistribution and Agricultural Development sub-programme (LRAD)**; aimed at firstly transferring land to specific individuals and groups, and secondly improving peoples access to municipal and tribal land, primarily for grazing purposes. LRAD promotes:

- Black people (African, Coloured and Indians) increased access to agricultural land;
- A relief to congestion occurring in overcrowded former homeland areas;
- Improved nutrition and incomes for the rural poor;
- A way to address the legacy of past racial and gender discrimination;
- Structural change over the long term;
- Stimulate growth from agriculture;
- Stronger linkages between farm and off-farm income generating activities;
- Opportunities for young people who remain in rural areas;
- Beneficiaries to improve their economic and social well being
- More productive use of communal land; and
- Environmental sustainability of land and other natural resources.

It is evident that this programme is strongly geared towards achieving the JPOI targets and commitments. Three case studies in this regard are included in Box 4.

**Box 4: Land reform case studies**

- KwaZulu Natal: The Qedusizi/Besters initiative has established a bottom-up area-based land reform and enterprise development program in an area primarily engaged in beef production. The key stakeholders, the Department of Land Affairs (DLA), the Besters Farmers Association (BFA), and their farm workers have collaborated in identifying land and people to be settled and working with them to negotiate both the purchase of the land and establishing and implementing the resettlement model through the LRAD sub-programme. 199 *muzis* (extended family households)<sup>1</sup>, representing 993 adult beneficiaries, a population of roughly 2,500 people in total, have acquired ownership of 14 farms (14728 ha in total). Mpumalanga The Noanesi community of Mbombela received their 296ha which has potential for a bush camp/ conference centre;
- Eastern Cape: Mkambati land claims falls under the Integrated Sustainable Rural development Programme (ISRDP) node of the O.R. Oliver Tambo District Municipality. The project restored 17 400 ha to the seven villages that make up the Mkambati Land Trust. The total cost of the project was R44.5 million. The restitution award is a combination of physical restoration, rights to a nature reserve and an eco-tourism project, and monetary compensation; and
- The Mosely project which is an LRAD farm situated in Barberton has 41 beneficiaries and the farm is 68 hectares in size. A Half a hectare greenhouse has been built. There are three boreholes operating in the farm from the previous owner.

In 2006, the Department initiated the Proactive Land Acquisition Strategy (PLAS) to contribute to the higher path of growth, employment and equity. The approach is primarily **pro-poor and its main advantages are:**

- Accelerate the land redistribution process;
- Ensure that the DLA can acquire land in the nodal areas and in the identified agricultural corridors and other areas of high agricultural potential to meet the objectives of ASGISA;
- Improve the identification and selection of beneficiaries and the planning of land on which people would be settled; and
- Ensure maximum productive use of land acquired.

More than 100 farms have been purchased for labour tenants, evicted farm workers and for some commercial farming purposes through this strategy since May 2006.

A **Panel of Experts on Foreign Ownership of Land (PEFOL)** was commissioned by the Minister of Agriculture and Land Affairs in 2004 to assist Government in understanding the extent of ownership of land in the country by citizens and foreigners, the legal and policy

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<sup>1</sup> A plot of land (*kraal*) including a number of separate but related extended family households common throughout Zulu settled land. The head of the *muzi* controls access to resources and manages social relations.

landscape, the policies and legislative framework in selected representative foreign countries on the matter; and to point to possible policy, regulatory and legal reforms for consideration by the Government..

The report was subsequently approved by cabinet but implementation of the recommendations has been delayed pending further research into the options in its findings.

In response to the limited progress made with regard to increasing access to land, the Department of Land Affairs has further proposed the implementation of an integrated approach to land management. Incorporated into this approach would be:

- Area Based Plans are proposed as the fundamental tool for the integration and alignment of land reform with the strategic priorities of the provinces, municipalities and other sectors. The Area Based Plans will be an integral part of the IDP, and will serve as a catalyst for land related developments at a Municipal level.
- The development of appropriate information systems (including land indicators, Geographic Information Systems (GIS) etc.)
- Capacity development initiatives;
- Participation of previously marginalised groups into decision-making; and
- The consideration of the impacts of climate change on land resources.

On land use planning, the country is working hard to address the apartheid spatial inequalities, improve land use decision making processes and provide technical support to Municipalities. To this end the Land Use Management Bill (LUMB) has been developed, which is intended to, amongst others, rationalise existing laws and systems which are inefficient and provide directive principles (equality, efficiency, etc) and enhance co-ordination, commitment of resources, implementation and monitoring. Some aspects of the Bill are currently being piloted in Northern Cape and Limpopo Provinces.

The registration of title deeds plays a major role in supporting the implementation of land reform, housing and other development initiatives in the country. When there is a problem in the deeds registration environment, there are adverse effects in the overall economy. Land registration information supplied from the Deeds Registration System database plays a vital role during the preliminary investigative stages of any land delivery initiative. There are nine Deeds Registration offices in the country; a project for the digital registration and documentation of title deeds is currently being worked on.

The country is also providing national mapping, aerial photography and other imagery, integrated spatial reference frameworks and other geo-spatial information in support of the national

infrastructure and sustainable development, in compliance with the Land Survey Act, 1997 (Act No. 8 of 1997). Furthermore, to provide professional and technical services in support of land reform and other public services. The provision of accurate, up to date and accessible maps and other geo-spatial information, imagery and an integrated spatial reference framework is very critical to enhance planning and monitoring of land reform, national infrastructure and sustainable development, nationally and regionally.

### **1.1.2 Challenges and opportunities**

Significant progress has been made in South Africa with regard to land tenure issues in improving land productivity, while lesser progress has been made in terms of reducing the impacts of land degradation. As a possible consequence of the land tenure focus, limited progress has been made in:

- Putting in place stronger partnerships specifically with organs of civil society to accelerate the pace of land delivery to the land reform beneficiaries;
- Escalating land prices make it difficult for the beneficiaries of the land redistribution programme to acquire land on the open market. In addition, the willing buyer-willing seller principle is also problematic as the state becomes the only buyer in the market, which affects its bargaining power. The new regulatory measures (policy for land ceilings and land tax) will address this problem by empowering the state to intervene in the land market on behalf of landless and resourceless persons;
- Promoting women's equal access to and full participation in land decision-making; affecting new land rights and access to land and development opportunities;
- The outstanding restitution claims can be categorised as 'rural' claims and by implication mostly claims for restoration of rights in land. The nature of these claims are complex due to the number of role players involved, and claims are targeted at highly productive, capital intensive farms. Restoration of rights in land also require proper consideration of the sustainability of the projects in terms of post settlement support and sustainable development;
- Planning and development of land resources and the development and use of land-use indicators and related monitoring systems.
- Information systems and the use of GIS for integrated planning and management of land resources.
- Implications of climate change on land resources.
- Promoting women's equal access to and full participation in land decision-making; gender mainstreaming of all land policies and strategies.

The Department of Land Affairs has worked closely with the Department of Agriculture, both at the national level as well as the provincial level, in the development of the Land and Agrarian Reform Programme (LARP). This programme provides a new Framework for delivery and collaboration to accelerate the rate and sustainability of transformation through aligned and joint action by all involved stakeholders. It creates delivery paradigm for agricultural and other support services based on a “One-Stop Shop” concept of centres located close to farming and rural beneficiaries. LARP is project number 7 of the 24 Apex of Priorities of government, which priorities are aimed at fast tracking delivery towards the realisation of the Millennium development Goals (MDGs). The objectives of LARP include the following:

- a) Redistribute 5 million hectares of white-owned agricultural land to 10 000 new agricultural producers
- b) Increase Black entrepreneurs in the agribusiness industry by 10 %.
- c) Provide universal access to agricultural support services to the target groups.
- d) Increase agricultural production by 10-15% for the target groups, under the LETSEMA-ILIMA Campaign<sup>2</sup>.
- e) Increase agricultural trade by 10-15% for the target groups.

By redistributing land, increasing tenure security and black entrepreneurship, improving access to support services, and increasing production and trade, LARP will directly contribute to the overall goals of the Agricultural Sector Plan, namely participation, global competitiveness and sustainability, and the objects and aims of White Paper on South African Land Policy.

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<sup>2</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.

**Table 1: Challenges and opportunities for land reform in South Africa**

<b>Land programme</b>	<b>Challenges</b>
Restitution	<ul style="list-style-type: none"><li>• Capital to ensure sustainable development</li><li>• Institutional problems and governance at the level of community property institutions</li><li>• Exorbitant land prices, which makes land reform costly and unaffordable</li><li>• Frivolous claims/ misrepresentations and community disputes</li><li>• Ensure sustainable settlement of land and an integrated approach</li><li>• Lack of business experience and post settlement support</li></ul>
Redistribution	<ul style="list-style-type: none"><li>• Exorbitant land prices</li><li>• Failure of the Willing-buyer willing seller policy</li><li>• Limited use of expropriation as a mechanism for land acquisition because it is a lengthy and tedious process;</li><li>• Reform of land markets to create a level playing field for small and large scale farmers;</li><li>• Limited private sector involvement</li></ul>
Land tenure	<ul style="list-style-type: none"><li>• Implementing the scale of the CLARA programme;</li><li>• harmonisation of tenure legislation such as the Extension of Tenure Security Act, Prevention of Illegal Evictions and Occupation Act and the Labour Tenants Act;</li><li>• Gender inequalities;</li><li>• State-owned forests;</li><li>• Mineral rights ownership.</li></ul>

Land degradation is a possible unintended consequence of the land reform process. Communal farmers are different to commercial farmers as they use animals for other functions such as ritual slaughter, bridal payments etc. For this reason higher densities exist on communal land resulting in increased degradation of land. These issues have been dealt with in Section 4.4 and 5.1.

The Department has worked closely with member states to establish a SADC Land Reform Facility; which seeks to coordinate and facilitate support for formulation of land and agrarian reform policy and legislation with special reference to resource mobilization and policy support, capacity building, research and information and communication. Some of the examples of areas of cooperation include the following; strengthen customary land boards/committees; strengthen lands registration/formalization systems; expansion of land surveying capacities; design proactive land reform (land acquisition); design post-settlement support systems; land use plans (regional, district and village); and strengthen national land (reform) administration. Some short term projects will include; establish comprehensive land institutions directory; establish land experts database; SRSLRTSF website/specialized databases; annual consultative land conference;



programme and project implementation design documents (land policy, information, training); sharing existing available information; support implementation of submitted projects; design research agenda and “call” for proposals and; finalize detailed phased (5 year) plan.