



CONCLUSIONS AND RECOMMENDATIONS 11

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Introduction

Radical reform that might transform property relations and restructure the agricultural sector has been severely circumscribed in South Africa – not only by the terms of the negotiated transition but also by broadly neo-liberal economic policy from the mid-1990s onwards. The latter involved the deregulation of the agricultural sector through the removal of key state functions such as price controls, marketing and heavily subsidised credit. If land reform is to be scaled up and form the centrepiece of an agrarian reform, a range of other policy changes will be required to alter production patterns and improve rural incomes. For this reason, moving beyond a market-based approach to land acquisition – which has received much attention of late – will need to be located within a wider policy shift.

This concluding chapter first outlines competing paradigms that could frame future policy. These are characterised by varying degrees of restructuring. Second, it sets out a few considerations, fleshes out some of the big choices and trade-offs to be made, and makes an argument in favour of a broad direction for land and agrarian policy. Third, it is argued that if the objective of land and agrarian reform is to maximise the number of livelihoods in agriculture and the contribution to poverty reduction, then a paradigm of substantial state intervention in markets (not only land markets) would be needed to enable new types and scales of production. This will require a clear role for a 'developmental state' and a new division of labour between the state and the private sector. While meeting a variety of needs, priority should be placed on those who are already engaged in production in some way, as a part-livelihood in the communal areas or around urban settlements, or in the form of employment on commercial farms.

Paradigm choices

At present, there is no vision for agrarian reform to guide land reform. Government policies and practices are at worst conservative (resisting change in the agrarian structure) and at best agnostic about what this process is to achieve (beyond the quantitative target of 30% of white-owned farmland). There is no specification, for instance, about whether reform is to alter the size distribution of landholdings, or technologies of production, or, indeed, what types of produce should be supported – despite national concerns about food security. Future policy in this area will need to outline a vision that clarifies which elements of the existing farming sector should be preserved and which should be transformed, which should be allowed to shrink over time and which should constitute a new engine of growth.

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Four broad approaches or paradigms can be discerned from debates about future policy on land and agrarian reform. They differ in their characterisations of the existing problem, their prognoses for agrarian change and their prescriptions for appropriate roles of state, market and community.

The *market-based approach* is characterised by a focus on commercial production, reliance on the market to determine which land is redistribution and what is produced on it, and a prominent role for the private sector in provision of support. Continuation of current trends and an unsupportive public policy environment for agriculture will probably lead to a growing gap between the structure of agricultural capital and land reform beneficiaries' enterprises. This would see a two-track path of land reform: commercial enterprises undertaken by groups of poor people (or better-off individuals), on the one hand, and the growth of joint ventures and strategic partnerships as a dominant form, on the other.¹

Gearing up with the private sector is characterised by the promotion of a range of types and scales of production by improving resourcing for post-transfer support, without extensive state intervention or restructuring of markets but, through partnerships with the private sector for the packaging and planning of projects and delivery of support, contributing to the de-racialisation of the existing farming structure to the benefit of a limited group of the better-off.²

The *developmental state approach* is characterised by restructuring in favour of smallholder family farming through state interventions in land, input supply and output markets, including through co-operatives, public investment in appropriate rural infrastructure and agro-industry, introduction of targeted production subsidies, and a substantially enlarged extension service, to create a mixed farming sector of which smallholder production is a substantial part, dominating in certain commodities.³

Radical restructuring is characterised by heavily punitive policy or legal measures to counteract the dominance of agribusiness, and the conversion of the agricultural sector in one of two directions: one dominated by smallholder production without a core of commercial farming⁴ or one dominated by state-controlled estate farming on nationalised land.⁵

Deciding what is possible, and where to focus policy proposals, requires an assessment of the current political parameters and the changes that are likely in the period to follow. This is a complex matter. For the purposes of this discussion, and debating which paradigm is to be pursued, four assertions are made as base assumptions (see Chapter 9).

First, the current impasse in land reform and its very limited contribution to poverty reduction and equitable development is a source of anger and frustration among the rural population, in particular,

¹ Similar to Scenario 1 in Chapter 6.

² Similar to Scenario 4 in Chapter 6.

³ Similar to Scenario 3 in Chapter 6.

⁴ Somewhat similar to Scenario 6 in Chapter 6.

⁵ Similar to Scenario 5 in Chapter 6.

a political embarrassment and poor investment from the point of view of the state, and a concern for agribusiness and the commercial farming sector, as well as other private sector actors. The market-based approach to land acquisition and, more generally, to agricultural development has lost some of its key supporters in recent years.

Second, the level of organisation and political voice of the rural poor is low, rural social movements are extremely weak and fragmented, and there has been a failure up to now to build strong alliances with the organised labour movement. Pressure ‘from below’ for radical restructuring remains weak.

Third, the established agricultural industry has expressed its vision for a de-racialised but structurally intact sector in its strategic plan drawn together in the Presidential Working Group. There are clear moves in the government towards greater reliance on the private sector to deliver land reform and to partner with new farmers, a role the state hopes to leverage through agricultural black economic empowerment (AgriBEE) and the Land and Agrarian Reform Project (LARP), as part of its strategy to ‘fast track’ land reform (DTI 2008; RSA 2008).

Fourth, over the past year or more, the ANC and its ascendant leadership and tripartite partners have been discussing the notion of a ‘developmental state’, which would intervene more strategically in the economy, spend more on supporting production and livelihoods in the ‘second economy’, impose stronger regulation on the ‘first economy’, and expand the public service, in order to transfer resources to the poor and to invest in areas of the economy considered catalytic of pro-poor growth (see, for instance, ANC 2007; Turok 2008). Agriculture is a key such area.

Some tentative conclusions follow. Only the most reactionary favour the current path of heavy reliance on markets, or argue that land reform should be abandoned. A paradigm of radical restructuring is also politically unfeasible in the current period, in view of the weakness of rural social movements and the power held and positions taken by both the state and the private sector. The argument for a stronger role for the private sector in shaping land reform and supporting production and marketing has gained ground through AgriBEE. However, the government recognises the urgency of making land reform (and rural development) work and is considering various interventions to restructure the economy by investing more heavily in the ‘second economy’ in order to tackle poverty directly. It seems that the paradigms of a ‘developmental state’ and ‘gearing up with the private sector’ are dominant. Elements of these may not be mutually exclusive, but policy will need to be clear on which approach the government is to take. AgriBEE and various industry agreements are already confirming the role of the private sector (DTI 2008).

One of the few points of convergence at the conference where the findings of this project were presented (and as argued in Chapter 2) was on the need for smallholder farming to constitute the focus of the government’s land reform and agricultural development initiatives in the future. This need not be to the exclusion of opportunities for black people to enter into medium- or large-scale farming, to partner with commercial farmers or become shareholders in farming enterprises or agribusiness. This is clearly a necessary dimension of transformation and demands for such opportunities are likely to increase over time with the growth of a black middle class. AgriBEE mechanisms to leverage concessions from the existing agricultural industry to respond to these needs must be strengthened and enforced. ‘Emerging’ farmers with the potential (and the resources) to ‘emerge’ into commercial production are favoured by private sector institutions, which have an obvious preference for supporting black capitalist farmers who will become counterparts in a white-dominated commercial farming sector – rather than poor people whose interests in, and uses of, land differ significantly from those of commercial farmers. This preference has been made explicit by the commercial farming establishment, which, through AgriSA, has identified a four-fold typology or ‘continuum’ of land reform projects, ranging from group-based and household labour-intensive production for livelihood

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purposes, through to small-scale marketing (such as commonage, smallholder cultivation or extensive livestock grazing), to more risky and capital-intensive commercial production by better-resourced groups, and finally to highly commercial enterprises, which it considers feasible only in the context of joint venture partnerships (AgriDev 2004). The agricultural establishment does *not* envisage itself supporting the first two categories, which it views as the sole responsibility of the state.

What is needed, then, is the definition of a clear division of labour between the state and the private sector

The more commercial end of land reform can be expected to have a much more limited impact on poverty reduction, and also to attract more support from the private sector than smallholder options. What is needed, then, is the definition of a clear division of labour between the state and the private sector in which the state prioritises small, resource-poor land users and supports their production for livelihood purposes – both for consumption and for sale. In the light of this argument, what is needed now is policy for a ‘developmental state’.

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

An agenda for agrarian reform

What distinguishes agrarian reform from land reform is that it goes well beyond the redistribution of land by restructuring production and restructuring upstream and downstream markets. The details of agrarian reform in South Africa still require elaboration in policy and public debate. However, some preliminary elements can be identified:

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

In most of the above areas, land reform has had limited impact. The retention of existing farm boundaries and the priority placed on continuation of existing land uses and production are key factors that shape the outcomes of land reform projects (Aliber & Mokoena 2004). A break from this, and an approach that privileges the needs of the poor, would place priority on access to land for food production for household consumption, in the first instance, with the aim of selling surplus and increasing the scale of production over time being a second and not an essential goal. This involves not only changing ownership patterns but also challenging the attachment to commercial and large-scale farming that is embedded in agriculture departments, financial institutions and elsewhere.

If this is to be the way forward, then alternative policies must enable:

- subdivision of farms to make possible smallholder units suited to the needs of poor land users;
- economies of scale in planning and infrastructure provision for small farmers, by acquiring land, dividing and allocating it at scale in areas of high demand;
- increasing overall state support to the agricultural sector and, within this, shifting priorities towards greater support for low-input small-scale primary production;
- subsidised inputs into production – including seeds and implements;
- sequencing interventions in input and output markets to support smallholder production;
- promotion of and public investment in agricultural co-operatives for input supply, processing and marketing;
- investment in transport and storage infrastructure, as well as irrigation infrastructure, to support smallholder production; and
- subsidised interest rates with a reasonable no-repayment window period.

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

Second, with deregulation and concentration of ownership has come growing vertical integration of value chains, putting more power in the hands of major buyers, particularly supermarkets. This means that in agricultural markets private regulation has substituted for the now-withdrawn public regulation (Bernstein 1996). Transforming agriculture, therefore, requires overcoming monopoly power in product markets and limiting the exposure of primary producers to risk due to fluctuations in input and output market prices. In the absence of the crucial role played by state-controlled agricultural marketing boards in the past, and presuming that these will not be reintroduced, the role of a developmental state will be to intervene in forms of *private regulation* of agricultural product markets that create barriers to entry for farmers who are poor, practicing low-input forms of production or operating on a small scale. A two-pronged approach will be needed: to support smallholders to meet these requirements, and to place positive obligations on market players to include smallholders as a growing proportion among their suppliers. This deserves to be the focus of investigation both by state players and in policy research.

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Recommendations: towards another countryside

In place of the existing market-based approach, which is agnostic on the question of what kind of change land reform is to bring about, this book makes an argument in favour of a specific strategy. The lesson of the past 14 years of land reform is the need for a new direction – a directive strategy – that will involve a greater degree of state intervention, planning and support; less reliance on markets; greater participation and decentralisation; and better coherence and integration between land and agricultural policies. The broad outlines of such a strategy are sketched in the recommendations that follow.

The commitment to strategy is essential for those who believe that policy should not be an eclectic collection of mechanisms.

Nevertheless, in some respects the recommendations that follow are not components of a neat and whole ‘alternative’; some recommendations are not entirely compatible with one another. Recommendations that do not converge are, on the one hand, subdivision of farming units and transfer of ownership of these to smallholder producers and, on the other, the call for a stronger state role in securing tenure, including the question (raised in Chapter 4) of whether the state should retain some role in holding land and investing public funds in administering land rights, in order to ensure that the poor can gain access to land without the costs and risks associated with private ownership. Clearly, this is a major choice for future policy, and it may be that different models will be appropriate in different agro-ecological regions and for different people involved in different types of production. These recommendations are intended not as blueprints but as options and directions for further elaboration.

Land use, production and land-based livelihoods

The recommendations on this theme, arising from Chapter 2, are divided into those that deal with land use planning itself; land uses and production regimes that should be prioritised; how land use should be regulated; systems of support for production and marketing; and monitoring and evaluation.

Planning for land use and livelihoods

Building on existing livelihoods

- The process of planning should start on the basis of existing livelihoods, resources and skills of beneficiaries at project inception – which is not currently required in all business planning terms of reference.
- Priority should be placed on land uses and production that provide possibilities for short-term benefits in terms of consumption and local sales (e.g. use of own livestock and cultivation of food crops for consumption).

Front-load planning

- Thorough facilitation of decision-making is needed prior to business planning or even, in the case of redistribution, prior to the identification of land.

- Demote the 'project' as the key unit of planning; plan at the level of household, project and area (i.e. economy), within the framework of national and provincial guidelines.

Planning imperatives

- Start with a socio-economic profile of beneficiaries and the variety of land needs.
- Attend to different interests in land among project participants (e.g. variation by gender, class, generation).
- Do not merely perpetuate existing production and land uses.
- Allow for individual household production alongside 'project' production.
- Diversify production (within agriculture).
- Diversify non-farming economic activities (i.e. diversification out of agriculture).
- Provide for value-adding to produce.
- Attend to low-input farming methods (i.e. reducing capital-intensity).
- Attend to market access and mechanisms to access markets.
- Attend to the dynamics of a start-up phase.

Promoting smallholder options

- The option of individual or household-based smallholdings should be promoted through *formal subdivision* of larger properties.
- The option of individual or household-based smallholdings should be promoted within group-based projects through *informal subdivision* of plots, with registered rights to discrete land parcels for residential and cropping purposes, and/or to a defined number of livestock on common grazing land.
- Diversify land uses to spread risk; where possible, extend into value-adding and provide for non-farm economic activities to generate income, particularly where agricultural activities provide a highly seasonal pattern of income and labour demand.

Clarifying rules for group-based projects

- Rules regarding the distribution of benefits in group-based projects should be formalised to define who shares in the produce and income from sales, and to what degree, or, in the case of joint ventures and strategic partnerships, access to employment and the timing and distribution of dividends.

Separating CPIs from operating enterprises

- In project design, a clear distinction should be drawn between communal property institutions (CPIs) as landholding entities and the land uses and/or enterprises (whether individual or collective) that take place on this land.

Priority areas for new land uses and production regimes

Smallholdings on high-potential land

- Promote smallholdings for production for consumption and for the domestic market, particularly in the high-potential regions of the Western Cape and KwaZulu-Natal.

- To overcome barriers to market access related to scale, two models should be prioritised:
 - small farmer co-operatives for processing and handling (and for primary production only where appropriate and the preference of beneficiaries), with state support; and
 - contract farming and/or with commodity organisations that can provide extension services and inputs as well as a secured market (see Adams in LAPC 1994).

Small producers of fresh produce for urban (including informal) markets

- Demarcate extended commonage for food production allotments around rural towns and villages, along with public investment in fencing, water supply and security for produce.
- Promote part-time production as an option to enable people to diversify their livelihood sources.

Mixed farming on medium-potential land

- Promote mixed farming on medium-potential land, particularly in areas dominated by grain production, such as the 'maize triangle', which have the potential to support both intensive food cultivation and livestock grazing.
- Options here could include subdivision into family-based smallholdings, or separate arable plots and common grazing land. Equipment-sharing schemes will be essential for those who embark on grain production.

Low-potential land for grazing

- This is a priority for the more arid areas of the country, where most poorer livestock owners have been restricted to limited commonage.
- Because of the extensive nature of livestock grazing in these areas, subdivision is not an optimal solution.
- Instead, priority should be placed on the extension of commonage, improvement of infrastructure, veterinary services and access to auctions and abattoirs.
- A key strategy for extending commonage is to acquire adjacent land and to invest in the fencing of camps.

Regulation of land use

Limit conversion of land use

- Impose limits on conversion of agricultural land to non-agricultural purposes and luxury developments like game farms, golf courses and exclusive housing estates, particularly in key areas such as coastlines, through the Land Use Management Bill.

Cut red-tape for the poor

- Remove the requirement of a business plan for smallholders; retain it for commercial enterprises including joint ventures.

Prioritise settlement

- Support settlement for smallholders (a dispersed pattern) to minimise 'straddling' and costly commuting between existing homes and newly redistributed land.
- Support settlement for 'communities' (in closer settlements) on redistributed land where joint

activities are to be undertaken, to allow for public provision of basic infrastructure and services (which may require registration of servitudes).

Support for production and marketing

Make agricultural support comprehensive

- Automatic provision of a basic core of funding and services on confirmation of land rights.
- Prioritise implements and inputs.
- Extend to subsidies for input supply.

Revamp agricultural support services

- Employ within the DoA agricultural economists and extension officers dedicated exclusively to smallholder production and marketing.
- Expand and reorientate the Agricultural Research Council towards low-input production.

State supported co-operatives

- Establish and support input supply and marketing co-operatives for small farmers – both to overcome barriers of scale and to build solidarity.
- Establish and support co-operatives in agro-processing, particularly to add value to produce of smallholders on high-potential land.

Make credit available on better terms

- Credit is needed on highly preferential terms, at discounted interest rates and with a zero-interest no-repayment window for the first few years, accessible through decentralised lending institutions.
- For banks, administrative costs have an inverse relation to the size of the loan (e.g. verifying collateral), and so they prefer to deal with larger borrowers.
- This requires the reintroduction of budgetary transfers to the Land Bank and subsidisation of other financial institutions to allow them to offer preferential rates through their institutions to a specific target group of small borrowers.
- The question of collateral will also be centrally important, and attention is needed to alternatives to land-as-collateral, as well as access to credit among members of legal entities.

Infrastructure

- Invest in fixed infrastructure, particularly for storage, sorting and packing, for smallholder producers.

Monitoring and evaluation

Build on the Quality of Life survey

- The Quality of Life survey should be refined and administered every two years, using the 2006–07 study as a baseline, by extending the sample each time to include newer projects, as well as returning to the same beneficiaries, in order to constitute a longitudinal panel data set.

Survey control groups

- Build into the Quality of Life survey control groups of those *not* acquiring land *and* established farmers in the same regions. This was not done in previous surveys.

Improve agricultural data collection

- Specify production from land reform sources and production in communal areas in the agricultural census and annual statistics.

Reintroduce land classification systems

- Create a single national land classification for regional planning and mapping, so that planning within political territories (districts) can be related to planning for agro-ecological zones.

Investigate multiplier effects

- Evaluate the impact of land and agrarian reform *beyond* the farm, to impacts on the local economy, using social accounting matrices but also qualitative methods to understand the wider impacts of land access among formerly landless households.

Land demand, targeting and acquisition

On the basis of the discussion in Chapter 3 of a 'proactive needs-based' land reform strategy, several recommendations for policy are indicated. These address how targeting of people and land should take place; how land identified for redistribution should be acquired; how compensation is to be determined; what sharing of information will need to happen; and how available state land is to be reserved for land reform purposes.

Targeting people and land

Identify land needs

The DLA should work with civil society organisations and local government to roll out a methodology for participatory land needs assessment, as a prerequisite for area-based plans in each district. This will require the extension of the current process, which has been outsourced to service providers, many of whom have no method for engaging with the varied needs for land.

Clarify national targets

Beyond the racial eligibility criterion in place in the redistribution programme, who is to be targeted is not clear. Nor is it clear what mechanisms will give effect to the commitment to prioritise 'marginalised groups' (women, farm dwellers, the disabled and youth). It is proposed that the following targets and mechanisms be adopted:

- 50% of (the value of) benefits should accrue to women, and at least 50% of beneficiaries should be women; and
- some income-based criterion should be used in the rationing of resources.

Prioritise land needs

Area-based planning should result in a typology of different land needs for identified categories of people, as well as a prioritisation of these land needs. If land reform is to be a pro-poor programme, needs should be prioritised in this order, which can be expected to reflect the range of land needs from the poorest to the less-poor:

- land for part-time cultivation of food for consumption and for livestock grazing;
- land for full-time production primarily for consumption; and
- land for full-time production primarily for sale.

Identify land for redistribution

Area-based planning should result in maps designating land to be acquired for redistribution, based on identified land needs. Priority attention should be given to the following categories of land:

- land surrounding rural towns;
- land adjacent to transport networks (road and rail);
- land adjacent to communal areas (former 'homelands');
- land in regions with potential for high-value smallholder production;
- land in districts with high levels of restitution claims; and
- land in low-rainfall areas suited to extensive, low-input livestock production.

Prioritise land needs of farm dwellers

Support access to land for farm workers and dwellers, not *instead* of employment, but, for those who have jobs, as a part-time activity to augment the meagre incomes that farm workers typically receive. Based on identified land needs, the state should negotiate with landowners to release portions of their farms for farm dwellers' own use and, if this cannot be secured, expropriate subdivided portions of larger farms for use by farm dwellers.

Accept new restitution claims

Since many potential claimants, quite possibly the majority, who were eligible in terms of the Restitution of Land Rights Act 22 of 1994 were unaware of the deadline or, for other reasons, did not lodge claims prior to December 1998, the Commission should re-open the claims process and embark on a second phase of land restitution. These claims need not be dealt with in the same way as claims to date, but could be dealt with within wider area-based planning approaches, enabling those with historical claims to be prioritised. However, this *should not jeopardise* existing, lodged claims. Claims submitted before the end of 1998 should be processed first, before those submitted in this second phase.

Acquiring land

Prepare to acquire land

Designate land required for redistribution by placing public notices and by informing owners by letter.

Move away from the one-by-one approach

When acting on designated land, acquire in bulk rather than in a phased approach, allowing for planning, subdivision, settlement and related start-up costs to happen at the same time.

Abolish the grant system

A rationing mechanism is required to ensure fairness. However, this should be achieved through placing a ceiling on the amount of land the state will acquire per household, rather than requiring people to apply for grants (which have declined in real terms over time and which bear no relation to the very varied market prices of land, infrastructure or operating costs).

Ceiling on land ownership

Instead of the popular call for ‘one-farmer, one farm’, which focuses on the *number* of farming units owned, a ceiling on the total *area* or hectarage owned by a single person or corporate entity must be put in place, and the size of land allowed should differentiate between different agro-ecological conditions. This should be the subject of a commissioned study. A land ceiling, even without enforcement, may lead to de-concentration. Expropriation of surplus land in designated areas of identified priority land need, combined with a highly progressive land tax that is punitive to very large landowners, could contribute to stopping or reversing the trend evident over the past 15 years towards consolidation of land ownership.

Use land markets

Impose a right of first refusal on designated land with a guaranteed offer of market price.

Negotiate to acquire land

Approach owners of designated land and offer market price for a limited period, after which the government will move to expropriate.

Expropriate land

Where owners of designated land refuse the government’s offer to buy at market price, the state should institute expropriation proceedings and offer compensation that is deemed ‘just and equitable’ in terms of the Constitution.

Foreclose on bad debt to state institutions

State institutions should foreclose on bad debt among established commercial farmers who own land already identified as needed for land reform. The state effectively owns this land already.

Promote donations

Promote and deal effectively with land donations – provincial offices of DLA should prioritise responses to such offers. Enable landowners donating land to use this towards their AgriBEE score.

Link water reform to land reform

Use reallocation of water rights to leverage land rights for the poor, reducing allocations to commercial farmers and increasing allocations to land reform beneficiaries and other small and poor users. Explore the allocation of water rights to farm workers and dwellers as a basis to leverage concessions from commercial farming enterprises in the form of (a) equity sharing and (b) access to land for workers’ own use.

Determination of compensation**Use constitutional criteria**

Compensation for expropriated land should be based on the five criteria listed in Section 25(3) of the Constitution, namely:

- the current use of the property;
- the history of the acquisition and use of the property;
- the market value of the property;
- the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and

- the purpose of the expropriation.

Defer payment for expropriated land

If capital budgets for land acquisition cannot keep up with the pace of land acquisition, options other than payment in full in cash should be explored. Payment in government bonds over a period of 5–10 years should be explored, particularly where large landowners with other enterprises are involved. The constitutional test of whether the manner and timing of payment is ‘just and equitable’ applies.

Amend the Expropriation Act 63 of 1975

Either amend this Act to bring it in line with the constitutional criteria, or replace it with a new Act, as it stipulates payment of market price and restricts expropriation to ‘public purposes’.

Information and partnerships

Monitor the concentration of land ownership

Monitor on an annual basis the trends in concentration of land ownership – a Gini co-efficient for the distribution of agricultural land.

Publication of land audits

Audits of ownership of both public and private land, and the identification of small parcels close to towns, are now essential. These should be made available for public scrutiny to assist in area-based land reform planning initiatives.

Division of labour between state and private sector

The state should remove itself from establishing equity schemes and large commercial enterprise projects, except where its involvement is strategically targeted to leverage substantial additional resources from private sector actors. These are areas in which the private sector has better expertise, and its contributions to these types of projects should be leveraged through AgriBEE, allowing state institutions (the DLA, DoA, Land Bank and municipalities) to focus exclusively on interventions that directly target the poor.

Public land

Moratorium on the sale of state land

No state land should be disposed of other than for land reform purposes, unless it can be established that there is no interest in this land from black South Africans, particularly those who are poor. This should apply to all categories of state land, including forestry land, coastal areas, municipal land, military land and land owned or controlled by parastatals, such as Transnet. In many instances, people already residing on this land have a strong interest and, arguably, rights that should be prioritised over other potential users or owners. State land earmarked for disposal should be publicly advertised through local radio stations and through community meetings to would-be beneficiaries, with a call for expressions of interest in access to this land.

Cancel leases on commonage

The leasing of commonage land to private commercial farmers should be stopped and existing leases cancelled. Municipalities will require information from audits as well as legal support to achieve this. Resource-strapped municipalities dependent on revenue from leased-out commonage should be compensated by the DLA for this loss of income, for a defined transitional period. Commonage should

be promoted, and the DLA should proactively approach municipalities to identify land that could be acquired for commonage.

Tenure arrangements and support for land rights⁶

Resettlement

Achieving tenure security on resettlement schemes, whether arising from redistribution or restitution programmes, requires a thorough reconceptualisation of resettlement, reduced emphasis on ownership, a more active role for the state in the allocation of individual plots (and possibly as nominal owner of land where appropriate), development of a detailed generic template for protection of individual and group rights that can be modified over time, and a comprehensive support programme for resettled farmers. An alternative vision of tenure security within resettlement schemes should address the following five broad areas.

Land acquisition

The state should play a central role in the identification and acquisition of land, and the initial allocation of individual plots, working closely with interested groups and individuals and encouraging self-organisation among intended beneficiaries.

Land allocation

Land acquired should not be limited to individual farm properties, but should be smaller or larger than one farm as appropriate. Similarly, allocation of individual plots should not be overly influenced by existing farm boundaries. In other words, consolidation and subdivision of existing holdings should be facilitated in order to match demand. This should include options for low-cost surveying and support for allocation of rights to households for residential and cropping land, accompanied by registration of these rights, maintenance of land rights registers and support for dispute resolution. Systems must be developed that allow for the entry of new members to group schemes, and the exit of old ones, so that the formal record corresponds as closely as possible to the situation on the ground.

Rights to individual plots

Rights to individual plots should vest in the approved occupiers, but not necessarily in freehold title, which places full responsibility for maintenance of title on the plot-holder, exposes the plot-holder to the risk of forfeiture in the case of bad debts secured against the land and complicates the future re-allocation of land. A new form of leasehold may be required that allows nominal ownership to remain with the state for a period while vesting substantive rights in the occupiers. To protect the rights of women and other household members, land should be registered in the name of all adult members. The definition of occupiers' rights and responsibilities, and the creation of an institutional framework that will actively support the rights of occupiers, should be the main focus of tenure reform in this area. There is a need for the development of a detailed, generic template as a basis for occupiers' rights under such circumstances, with provision for local adaptation, rather than expecting beneficiaries on every scheme to develop their own rules at the outset. Provision should be made for a transition to individual ownership at some future date, but this should not be seen as a necessary or inevitable outcome. Under this model, occupiers (effectively long-term tenants of the state, along Zimbabwean lines) are effectively independent of the group in so far as occupation and use of individual plots is concerned, but are free to engage in collective forms of production should they so decide.⁷

⁶ Edward Lahiff is the author of this section of the recommendations, which emerge from his analysis in Chapter 4.

⁷ Another occasion where collective structures are typically involved, and which will inevitably arise over time on resettlement schemes, is the re-allocation of land when an occupier dies or otherwise has no further need for the plot, or when a family member requires a new plot of his or her own. Provision could be made to give the collective a say in the allocation of unused land, but it seems unreasonable to expect existing schemes to take responsibility for meeting future needs (akin to the redistributive dimension in the existing communal areas). This could perhaps be better left to the individual household (e.g. through subdividing existing holdings), or to the state (through the acquisition of additional land for resettlement as the need arises), or even to individuals to take their chances on the open market (especially if the state's commitment to redistribution is reduced over time, as South African society 'normalises').

Communal resources

Where it is appropriate to hold resources in common – perhaps in the case of grazing lands – this should be subject to decentralised (local) management, but not necessarily ownership. It might make sense for individual occupiers on a number of adjacent farms to share certain resources, and management should vest in structures representative of all the users, supported by state officials (as in the evolving models in the communal areas of Namaqualand, or as applied on former South African Development Trust lands in the past). Again, there is a need for a detailed generic template for land administration and land rights in these circumstances to serve as a default until local modifications can be introduced by the users. This land could remain the nominal property of the state, as there is no compelling reason for transferring it in title to the group that manages it.⁸

Collective agriculture

Specific provision has to be made for resettlement schemes where there is a clear preference for collective land use, although this is likely to be in a small minority of cases. If the resource is to be used collectively, or leased out for collective gain, then it makes sense that it be held collectively. If no individual use of land is envisaged, and this is accepted by the members of the group, then collective management of the resource *is* appropriate. As with other forms of common property, however, there will remain a need for external support to the group, in terms of their business affairs and management of the collective resource and benefit stream. Again, it may be appropriate for nominal ownership of the land to remain with the state until the beneficiary group feels ready to take on this responsibility. Overall, however, a collective business venture – which, it must be stressed, is unlikely to be typical of land reform projects in South Africa – presents less of a challenge in terms of tenure reform than resettlement schemes based largely on individual (and possibly non-commercial) production, and may be better suited to outright ownership.

Farm dwellers

Achieving tenure security for farm dwellers requires urgent action to reduce the threat of eviction and to promote long-term and secure access to land for both residential and productive purposes, either on-farm or on suitable alternative land. As well as changes in policy and provision of additional resources on the part of the state, it will require renewed dialogue among farm dwellers, landowners and the state. Specific recommendations in this area follow.

Maximum enforcement of the current provisions of ESTA and LTA, pending new legislation

- Vigorous enforcement of all the provisions of the Extension of Security of Tenure Act 62 of 1997 (ESTA) and the Land Reform (Labour Tenants) Act 3 of 1996 (LTA) dealing with evictions will require a concerted effort by the DLA, South African Police Service, Department of Justice (and particularly the prosecution service), Legal Aid Board, municipalities and NGOs, with a view to reducing evictions to a minimum. This will require rapid response by land reform officials to all threats of eviction, provision of legal aid to occupiers, the obtaining of injunctions against abusive landowners, effective contestation of all applications for eviction orders and criminal prosecution of those who break the law.
- This, in turn, will require a significant increase in resources for the farm dweller programme within the DLA and the deployment of sufficient trained staff to all affected districts. The DLA, nationally, and the Minister of Land Affairs, will be required to give clear political and strategic leadership for such a campaign, including perhaps a joint ministerial directive from the Ministers of Justice, Safety and Security and Land Affairs.

⁸ Such an approach would inevitably be attacked by conservative elements as ‘expanding the homelands’ and reproducing the ‘problem’ (of state ownership of land) that CLRA and TRANCRAA were intended to resolve. Countering this argument would require challenging the foundations of existing policy as regards the reform of communal land, with a reduced emphasis on ownership and more on access to land, and the acceptance of a continuing role for the state in the administration of resettlement schemes.

- A moratorium on evictions has been called for repeatedly by organs of civil society. This is a far-reaching demand and will certainly face major legal and political obstacles. It is suggested that a campaign to ensure maximum enforcement of existing legal provisions not be neglected by those calling for a moratorium, if only as a short-term measure.

Amendment of ESTA

ESTA should be amended to:

- provide substantive statutory tenure rights to long-term occupiers and confer on them the status of non-evictable occupiers;
- extend the definition of long-term occupier to include any person who was born on a farm, has lived there his or her whole life, and is above a certain age (e.g. 45 years);
- offer additional protection to women and children who are dependent on men for their occupier status;
- protect (and ideally expand) the right of farm dwellers to maintain livestock and to access land for their own use (this could be linked to the AgriBEE scorecard, which requires 10% of land on farms to be made available to farm dwellers);
- specify the process by which farm dwellers can apply to upgrade their tenure *in situ* or to become freehold owners of a portion of the farm on which they live; and
- specify the entitlements to alternative land, and the process whereby it can be obtained, for those evicted from, or voluntarily leaving, farms.

In addition, proposals to ‘consolidate’ ESTA with the LTA should be treated with caution, as for over seven years they have been used to rebuff criticism of official inactivity and to avoid discussion of substantive issues. Rather, critical attention should be given to the specific needs of labour tenants and farm dwellers, which may be addressed through a range of policy changes and legislative amendments.

Establishment of a dedicated and well-resourced official programme on farm dweller tenure

- Promotion of farm dwellers’ rights will require the recruitment and training of additional staff and a significant reallocation of resources within the budget of the DLA.
- This will also require a reconceptualisation of the objectives and strategies of the official farm dweller programme – aiming to preserve and extend the rights of all farm dwellers and to provide sufficient land and other resources for farm dwellers to improve both their tenure security and their livelihoods in a sustainable manner.

Renewed dialogue among farm dwellers, landowners and the state

- At present, the state responds in a largely reactive way to threats of eviction. There is a need to engage proactively with farm dwellers to ascertain their needs and plan suitable and timely interventions.
- Farm dwellers themselves need to be mobilised if they are to bring effective pressure for reform. In this, they require support from trade unions, NGOs, political parties and others.
- A combination of radical rhetoric from politicians, the ready availability of court orders permitting evictions and a general neglect of farm dwellers by the state sends conflicting messages to landowners. It is far from clear, from the landowner perspective, whether the state expects them

to retain the maximum number of farm dwellers on the land, and will support them financially and otherwise in doing so, or is more interested in resettling farm dwellers in townships and agri-villages where they can be provided with housing and other services. There is a need for a clear and consistent message to be sent to landowners as to what is expected of them under the present circumstances, what assistance they can expect, and what the sanctions are for non-cooperation. Halting evictions and promoting long-term security of tenure on farms may also require the drawing up of agreements between the state and organisations representing farm dwellers and landowners.

Legal implications

Act 70 of 1970

The President should sign into law the Subdivision of Agricultural Land Act Repeal Act 64 of 1998.

The Land Use Management Bill

To limit conversion of agricultural land into non-agricultural uses (e.g. luxury developments), the Land Use Management Bill should be amended by placing specific requirements on municipalities to consult with local communities prior to such changes being approved.

Right of first refusal

This will be required to give the state the right of first refusal in all sales of agricultural land, and will need to stipulate a reasonable time period within which the state must either buy land offered for sale or waive its right to do so. In practice, this right should be invoked only in cases where land has been designated as required for redistribution, through area-based planning, where it is subject to a restitution claim or a labour tenant application, or where farm dwellers are residing on that land.

Social obligations clause

A clause affirming the right of landless people to public or private land they have openly occupied for five years, and which they are living on and using for their own livelihoods, without hired labour, would protect them from dispossession and amount to upgrading insecure tenure rights. This would confirm society's interest in the social utility of land. It may require constitutional amendment or could be accommodated under an amendment to existing legislation, such as through an amendment to the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998, though under current political conditions this is unlikely.

ESTA

If they are to advance the objectives of land reform, the long-awaited amendments to ESTA should: provide stronger substantive statutory tenure rights to long-term occupiers; extend the definition of this category to a wider range of occupiers; offer stronger independent tenure rights for 'secondary occupiers', particularly women; provide mechanisms to expand the rights of occupiers to use land for their own production; and specify the mechanisms for the 'developmental' process envisaged in Section 4 for the upgrading and extending of tenure rights, including to ownership.

Institutional implications

Institutional restructuring

To drive a process of agrarian reform, integrated frameworks, policies, budgets and delivery mechanisms will be needed. Two options are:

- existing government departments with single endpoint delivery mechanisms, for instance through one-stop shops; or
- a dedicated agency that plans and implements, which may imply the merging of the DoA and DLA.

Development of dedicated subdivision skills

- Agricultural officials should be instructed to facilitate the subdivision of agricultural land for the purposes of land reform projects.
- Given the increasing centrality of subdivision to the land reform programme, the DLA or DoA will need to acquire internal capacity to subdivide land, including land surveyors and conveyancers.
- This should minimise delays involved in tendering and securing external service providers, and enable subdivision to become a routine function.

Development of dedicated land acquisition skills

- A 'proactive, needs-based' approach to identifying and acquiring land for redistribution may require a specialist land needs and land acquisition team for each province, which would work with local communities, municipalities, landowners and other government departments to identify needs and plan for reform, and would move across the districts regularly to take forward this work.

Development of a dedicated tenure support function

- Tenure support must be established for the internal configuration of rights, including formal and informal subdivision, within land reform projects.
- There must be investment in institutional capacity for low-cost surveying and support for allocation of rights to households for residential and cropping land, a detailed, generic template as a basis for defining occupiers' rights, registration of these rights, maintenance of land rights registers and support for dispute resolution.

Financial implications

No detailed financial projections are provided as yet. However, it may be expected that a very substantial increase in public funding will be needed. Scaled-up redistribution and more substantial public support for settlement and production are likely to increase costs, but more cost-effective modalities may also be found. A proactive and needs-based approach to land reform will cost more than the current approach, and the implications in terms of staffing and operating budgets for implementing institutions will need to be defined. The cost of acquiring land is also uncertain, depending on whether compensation is determined at or below market price and if land markets are affected. For now, it is necessary to identify the areas in which further funds will be needed and to provide estimates for capital budget:

- *National agriculture budget*: these need to provide capital budgets for production support; capital budgets for support to input supply and marketing co-operatives; and current budgets for implementing agencies. If existing levels of support for land use, as of the 2008/09 financial year, were to be doubled, and extended to all land reform beneficiaries rather than a minority (i.e. tripled, based on estimates from the Comprehensive Agricultural Support Programme and the Micro-Agricultural Finance Initiative of South Africa), then capital budget lines would need to be increased six-fold. If, hypothetically, delivery were to scale up to 30% by 2014 (i.e. 13-fold),

then capital budget lines for agriculture would need to be increased 78-fold (National Treasury 2008a).

- *Provincial agriculture budgets:* current budgets for implementing agencies would need to rise by a similar order of magnitude.
- *DLA current budget:* proactive land acquisition will involve a substantial increase in staffing of the DLA (or other implementing agencies), at provincial and district level, plus the creation of a highly skilled and resourced land acquisition negotiations team and the establishment of dedicated skills and resourcing for a farm dweller programme. This will require a substantial injection of state resources, though filling existing (and vacant) posts can potentially address some of this shortfall.
- *DLA capital budget:* substantially increased capital budgets will be needed to acquire land, whether through negotiation or expropriation and for settlement support. If acquired at the current market rate, the cost of 30% of agricultural land with fixed improvements only would be R22.9 billion at 2004 prices (DoA 2006). However, the cost of 30% of land with improvements, implements, vehicles and livestock would be R38.8 billion – more than 31 times the current (adjusted) capital budget of R1.24 billion for land reform (excluding restitution) (National Treasury 2008b). In other words, a six-fold increase in the budget would be required over the coming five years (National Treasury 2008b, 2008c). However, all of this is contingent on whether the state chooses to drive down prices to minimise these costs, by paying below the market level of compensation suggested in the Constitution, by choosing alternatives to paying compensation in cash and upfront, or paying market-price in full.

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