

# HIGH LEVEL PANEL ON THE ASSESSMENT OF KEY LEGISLATION AND THE ACCELERATION OF FUNDAMENTAL CHANGE

## REPORT OF WORKING GROUP 2 ON LAND REFORM, REDISTRIBUTION, RESTITUTION AND SECURITY OF TENURE

### ROUNDTABLE 5

#### “LAND REDISTRIBUTION” (Kempton Park, 1 November 2016)

#### 1. INTRODUCTION

Roundtable 5 was held in Kempton Park on 1 November 2016, on the theme of land redistribution. The Working Group was addressed by six invited experts who presented papers on different aspects of land redistribution and then participated in subsequent discussion sessions. The speakers represented government, research and academic institutions, civil society organisations and organised agriculture. The presentations were as follows:

- The Department of Rural Development and Land Reform (DRDLR) was represented by **Mr Bonginkosi Zulu** on behalf of the Director-General, Mr Mdu Shabane. His presentation focused on an overview of land redistribution in South Africa, highlighting policy objectives, programme adaptations, and performance trends to date.
- **Prof Ruth Hall**, from the Institute for Poverty Land and Agrarian Studies at the University of the Western Cape (PLAAS) presented an analysis of the programme for redistribution of land and budget trends; i.e. how budget has been internally allocated for different purposes and programmes, e.g. land acquisition, settlement support through the ‘Recap’ and other programmes. The presentation responded to the following questions: the impacts on delivery of land; status of the state leasehold policy and implementation insights - what works in practice? What is the significance of the ‘trusteeship’ approach, and what needs to be done to secure tenure and livelihoods? What models have been promoted and what alternatives could be considered?
- **Prof Charles Machethe**, from the University of Pretoria, addressed the questions of post-settlement support for land reform beneficiaries, in particular implementation of the CASP, MAFISA and the Recapitalisation and Development Programme (henceforth ‘recap’). In the main, Prof Machethe reflected on some of the key factors that enhance or inhibit agricultural production after land redistribution, and further highlighted possible alternatives to current settlement support programmes.
- **Inkosi Zolile Burns-Ncamashe**, a senior traditional leader from the Eastern Cape, discussed the land question in the communal areas of the Eastern Cape with a focus on the meaning of Section 25(6) in the context of land rights in former homeland areas.

- **Ms Annelize Crosby**, of the AGRISA (organised agriculture group) presented commercial farmers' perspectives on land redistribution, i.e. support to land redistribution and its beneficiaries, options for land reform and agricultural development.
- **Mr Brian Wittaker**, of Vumelana Advisory Group presented the land scenario planning exercise report, reflecting on different land reform scenarios and policy implications.

Presented below is a summary of the discussion during the round table session which is arranged thematically due to the overlap of focus by the presenters. Where necessary, reference to designated speakers is made to highlight key arguments and points made by experts. One should however note that the input by Inkosi Zolile Burns-Ncamashe focused on communal areas and the meaning of Section 25(6) in the context of land rights in former homeland areas, a topic more relevant to the Round Table on Communal Land Tenure. The input is thus omitted from this report.

This report concludes with a list of the legislation referred to in the discussions, and a collation of recommendations.

## **2. Background to the programme of land redistribution**

The presentations by Mr Zulu (DRDLR) and Prof Hall (PLAAS) complemented each other in the sense that Mr Zulu outlined the constitutional imperative for land redistribution and matched the constitutional imperatives with relevant government programmes (1994 to date). Prof Hall tracked the policy trajectory, exploring patterns and shifts in policy intentions and outcomes.

The following paragraphs draws mainly on Prof Hall's presentation, and to a certain degree Mr Zulu's, and summarises the background and trajectory of redistribution.

- The basis for a programme of land redistribution is Section 25(5) of the Constitution which states that "The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis."<sup>1</sup>
- As stated in the 1997 White paper on South Africa's Land Policy, this programme ought to "provide the poor with land for residential and productive purposes in order to improve their livelihoods."<sup>2</sup> This policy stance was in sync with the earlier policy documents of the ANC, i.e. The Reconstruction and Development Programme (RDP) which states that 'Land is the most basic need for rural dwellers.
- The redistribution programme is a direct intervention to transform patterns of landownership in South Africa that resulted from apartheid policies which pushed millions of black South Africans into overcrowded and impoverished reserves, homelands and townships. This included large-scale eviction of farm

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<sup>1</sup> RSA (1996) Constitution of the Republic of South Africa

<sup>2</sup> DLA(1997) White Paper on South Africa's Land Policy

dwellers and labour tenants from their land and homes. In contrast, the rest of the countryside was reserved for occupation by whites, supported to develop capital intensive agriculture.

- The RDP policy recognised that only a tiny minority of black people can afford land on the free market'.<sup>3</sup> It further proposed that a programme of land reform should be the central and driving force for rural development.
- Redistribution ought to have been a demand-driven programme aimed at '...supplying residential and productive land to the poorest section of the rural population and aspirant farmers. As part of a comprehensive rural development policy, it must raise rural incomes and productivity, and must encourage the use of land for agricultural, other productive or residential purposes.'<sup>4</sup>
- Over the years, redistribution of land has been reinterpreted under different policy directions, such as GEAR and currently the NDP, setting targets such as the creation of a class of black commercial farmers, with a greater role for private sector partners, a fundamental shift from the original idea of land redistribution targeting the poor. This policy direction can be traced from both the Land Redistribution for Agricultural Development sub-programme (LRAD) and the Proactive Land Acquisition Strategy (PLAS). This discussion will be pursued in the report.

Ms Annelize Crosby, from a commercial farmer perspective, raised the following issues:

- The policy intent in the 1997 White paper on Land Reform was that "The purpose of the Land Redistribution Programme is to provide the poor with land for residential and productive purposes in order to improve their livelihoods."
- She noted that there was an ongoing debate relating to the purpose of the redistribution programme, mostly polarised between a pro-poor approach as suggested in the White Paper, and an approach which focuses on the creation of a class of black commercial farmers as recent policies like the LRAD and PLAS have put forward. However, there are those that are taking a middle line, suggesting that perhaps the programme should address farmers of all scales and acknowledge that the poor need land for a range of purposes.

### **3. Key legislation**

The legislative context outlined by Mr Zulu (DRDLR) was similar to that outlined by both Prof Hall and Ms Annelize Crosby of AgriSA except to note that Prof Hall critically examined the extent to which some of those laws have assisted South Africa in processes of transformation of patterns of land ownership and production systems.

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<sup>3</sup> African National Congress. 1994. *The Reconstruction and Development Programme*. Johannesburg: Umanyano Publications, page 19.

<sup>4</sup>ANC, 1994: 19-20.

The laws governing acquisition of land for redistribution can be summed up as follows:

- The Constitution of the Republic of South Africa (1996) enjoins Parliament to put in place legislative mechanisms that foster **equitable** land access. In 1993, **the Provision of Land and Assistance Act, (Act No 126 of 1993)** was enacted but later amended by the **Provision of Land and Assistance Amendment Act (Act No.58 of 1998)**, to enable disposal of property and the provision of financial assistance, as well as maintenance of property for land reform purposes.
- In terms of Section 10(2) of Act 58 of 1998, 'The laws governing land use, the subdivision or consolidation of land, or the establishment of townships, shall not apply to land contemplated in this Act unless the Minister directs otherwise in writing.' Prof Hall pointed out that Parliament has passed the Subdivision of Agricultural Land Act Repeal Act, (Act No 64 of 1998) which sought to repeal certain laws that stopped the subdivision of agricultural land, especially the Subdivision of Agricultural Land Act 70 of 1970. However, the repeal act that would have made sub-division much easier has not yet come into operation as then President Mbeki did not fix a date upon which this legislation will come into operation.
- Mr Zulu reported that the target was to redistribute 30% of white-owned agricultural land in the first five years of democracy, adjusted to 30% by 2014. Between 1994 and 2016, about 4.7 million ha – about 5288 farm units - were acquired and redistributed in terms of three policy instruments – SLAG, LRAD, PLAS, benefiting 122 889 households (of 236 050 beneficiaries)<sup>5</sup>.
- Given the criticism of the pace of land reform and the cost of land acquisition, the property valuation Act, which sets up an office of the Valuer-General was passed. This legislation sought to ensure that all land acquired by government was not exceeding the market value of the property, and that all compensation paid for acquisition of land was 'just and equitable'.

#### **4. Key issues raised by invited experts**

This section highlights some of the key critical issues that the experts raised with regard to redistribution of land. The inputs will be structured in three sections, i.e. *legislative/policy framework, scale and pace of land redistribution - acquisition, farmer/settlement support.*

##### *(i) Legislative/policy framework*

Prof Hall summed up the legislative context for redistribution as follows:

The key legislation driving redistribution of land is the Provision of Land and Assistance Act, 126 of 1993. It empowers the Minister to designate land for

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<sup>5</sup> DRDLR (2016) – The stats are based on tallied statistics recorded as at 31 March 2016.

settlement purposes and to provide financial assistance and settlement support to people acquiring land. In terms of the objects of the Act, it has three broad focus areas for land redistribution, i.e.

- Designation of certain land;
- Regulation of the subdivision of such land and the settlement of persons thereon;
- Rendering of financial assistance for the acquisition of land and to secure tenure rights; and
- Provides for matters connected therewith.

A close reading of Act 126 would show that it is a permissive rather than prescriptive piece of legislation. The 2008 amendments of Act 126 broadened the categories of property to be acquired, including moveable and immoveable property. The act enables the acquisition, maintenance, planning, development and improvement of property and enables the Minister to delegate these powers to state *and* non-state entities. A key development was provision for the establishment of a 'separate unit' or 'trading entity' to 'maintain separate and itemized financial accounts and accounting records in respect of each agricultural enterprise or separately administered portion of immovable property which it acquires, manages, disposes of, or leases'.

'Policy and procedures for expropriation of land in terms of the Provision of Land and Assistance Act 126 of 1993 and the Extension of Security of Tenure Act 62 of 1997' was adopted as policy in 1999. To date, the 'Gildenhuys Formula'<sup>6</sup> on compensation has been in use. However, the Office of the Valuer-General (OVG), using a new expropriation law, and jurisprudence from the courts, could provide certainty and clarity on calculation of a 'just and equitable' compensation. Given this context, and some inputs from the panel of experts, especially Prof Hall's presentation, the key issues arising from the discussion on the legislation (between Working Group and the invited experts) can be summed up as follows:

- The programme of land redistribution and development support is under-legislated<sup>7</sup>, in the sense that only one piece of legislation drives this fundamental and very foundational principle for the fundamental transformation of South African society.

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<sup>6</sup> Refer to the 'Gildenhuys Formula' on how compensation has been calculated:

*Compensation = C - k<sub>0</sub>(B-A) - E<sub>1</sub>\*k<sub>1</sub> - E<sub>2</sub>\*k<sub>2</sub> - E<sub>3</sub>\*k<sub>3</sub> ... where:*

*C is the present day market value of the property,*

*k<sub>0</sub> is the inflation factor related to land acquisition, based on the CPI*

*B is the market value of the property at the time of acquisition,*

*A is the actual price paid at the time of acquisition,*

*E<sub>1</sub>, E<sub>2</sub>, E<sub>3</sub>, etc., are the historical values of infrastructure and interest rate subsidies received, and*

*k<sub>1</sub>, k<sub>2</sub>, k<sub>3</sub>, etc., are the corresponding inflation factors for these subsidies, based on the CPI.*

<sup>7</sup> Provision of settlement support has often been neglected, neither DAFF nor DRDLR has taken this function seriously, and there has been lack of coordination, hence the collapse of many of the land reform farms.

- The fact that there has not been a date on which Act 64 of 1998 (the Repeal of the Subdivision of Agricultural Land Act) would come into operation indicated a policy direction in regards to land reform – which many have regarded as a shift from a pro-poor stance.
- The meaning of section 25(5) has not in the past 20 years been interpreted judicially. What constitutes adequate measures to ‘enable citizens to gain access to land on an equitable basis’? There is no existing jurisprudence as far as we are aware related to this right that forms the constitutional basis for land redistribution.
- There is a need for mechanisms to enable the state to acquire land in a manner that is just and equitable. Section 25(2) provides for expropriation of land in terms of a law of general application for a public purpose or in the public interest (which includes the nation’s commitment to land reform).
- Expropriation is subject to compensation which is just and equitable, reflecting an equitable balance between the public interest and the interests of those affected. Government has not implemented this section in full (i.e. all circumstances cited in the constitution) <sup>8</sup>.
- The Constitution is an enabling instrument, rather than an obstacle, to faster and less costly, redistribution. It does not prescribe market prices for land acquisition. It provides for consideration of a range of circumstances in relation to the property in question (how it was acquired, current use, state subsidy, market value of the farm)
- The establishment of the Office of the Valuer-General is a direct response to the critique of the market-based land reform. It is an attempt at clarifying how the value of the land would be determined.
- Uncertainty still exists about how section 25(3) of the Constitution should be interpreted, especially in relation to the history of acquisition, market value, past subsidies, current use and the purpose of expropriation or the purpose of future use.

*(ii) Scale and pace of land redistribution*

This section draws on inputs by Mr Zulu, Prof Hall and Ms Crosby.

- As stated above, government’s target was to redistribute 30% of white-owned agricultural land by 2014. The official statistics presented before the Working Group by Mr Zulu is that between 1994 and 2016, about 4.7 million ha – about 5288 farm units - were acquired and redistributed in terms of three policy

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<sup>8</sup> Compensation take into consideration all the relevant circumstances including

- (i) the current use of the property;
- (ii) the history of the acquisition and use of the property;
- (iii) the market value of the property;
- (iv) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
- (v) the purpose of the expropriation.

instruments – SLAG, LRAD, PLAS, benefiting 122 889 households (of 236 050 beneficiaries)<sup>9</sup>.

- Analysis by Prof Hall is that the total land area for SA is 1 223 320 100 ha, the former homelands occupying a mere 17 112 800 ha and former white RSA 105 267 300 ha. Commercial farmland accounts for 86 186 026 ha, therefore 30% of commercial agricultural land amounts to 25 855 808 ha. Given the total figure of 4.7 m ha redistributed, the state has only been able to redistribute 5.46% of commercial farm land (*note that this figure excludes land acquisition under the restitution programme*). It is quite evident that the scale and pace of land redistribution has not met the initial targets for reasons that are explicated elsewhere in this section.

*How should beneficiaries be selected, and what exactly is the practice?*

- Both Prof. Hall and Ms Crosby noted that the 1997 White Paper states a very clear target for redistribution, i.e. a pro-poor programme. It had a bias in favour of the marginalized and the needs of women in particular. With both LRAD (2001) and PLAS (2006 onward), a policy shift toward a class of commercial farmers has been a focus of the programme, abandoning its pro-poor means tested SLAG approach for a range of reasons, include the much criticized 'rent-a-crowd' grant system of pooling resources together by large groups to enable them to acquire farms.
- The LRAD programme, focused on a commitment to farm, and the ability of the applicant to make an 'own contribution' in cash or in kind while it reiterated that it still targeted 'marginalised groups': women, farm workers, disabled and youth. The PLAS programme, on the other hand, sought to acquire strategically placed land to redistribute to black South African with a view to creating a class of emerging farmers. This is reflected a fundamental shift from original policy intents as well as the Freedom Charter ideals (i.e. targeting residents of Bantustans and farm workers/dwellers and tenants)

*What do we know about the actual selection of beneficiaries?*

- The DRDLR has established a *National Land Allocation and Recapitalization Control Committee* (NLARCC) to govern allocation of land in terms of policy prescripts. Based on empirical research, Prof Hall reported that researchers are unable to find evidence of proper governance of land allocation as required by policy: i.e. (i) that the recommended lessees should have been selected from an updated district database of potential beneficiaries (a database maintained by Director: Land Reform), (ii) In the absence of a district database of potential lessees, the Director: Land Reform shall apply transparent mechanisms to

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<sup>9</sup> DRDLR (2016) – The stats are based on tallied statistics recorded as at 31 March 2016.

ensure that such a database exists. Such mechanisms may include advertisements in local newspapers.’

- In the absence of a means test and leveraged grant, there is no way to assess the degree to which the purported target beneficiaries are in fact being targeted, and which of these target groups are being prioritised. Prof Hall stated that it is difficult to determine the degree to which land redistribution is a programme for:
  - ‘the rural poor, farm workers and women in particular’ or
  - ‘emerging commercial farmers’ or
  - urban-based businesspeople (empirical evidence suggest that this category, not mentioned in policy, was evident among beneficiaries).

In view of these debates among the experts, the following bullet points sums up the conversations between experts and HLP members.

- Mechanisms for acquisition and disposal of land for land reform purposes have been a subject of much wider debate within policy and academic circles; i.e. the market-based land reform based on the willing buyer-willing seller. For purposes of this review, greater scrutiny of Section 25(5) of the Constitution is vitally important.
- Overall trend of performance of the programme shows that the performance of the programme has not been a steady one, only reaching its peak in 2006/07 with redistribution of about 500 000 ha and has been in decline since then, reaching just over 100 000 ha in 2015/16.
- What of the budgets?  
Noted shifts from SLAG, then LRAD and currently PLAS. Whilst PLAS has been used to acquire large tracts of land, such farms have not been transferred to beneficiaries, rather they are owned by the state and leased out to potential farmers. As can be expected, this benefits a few, mainly aspiring black commercial farmers or emerging black commercial farmers. The programme has been criticised for a lack of pro-poor focus and its focus on agricultural development rather than on the multiple livelihoods that were intended under the earlier land redistribution policy.
- As will be demonstrated below, the budget allocation to acquiring land for redistribution has steadily decreased or been diverted to programmes other than land acquisition. Allocation for land reform as a share of the total government budget has been less than 1%, contradicting the notion that land reform and rural development are top priorities of government. In fact, the total budget allocation for land acquisition has been in decline over the last six years<sup>10</sup>.
- There are no measures in place for Parliament or the public to assess whether the right to equitable access to land is being realised, or the land reform budget is instead being diverted to politically connected elites<sup>11</sup>.

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<sup>10</sup> See commissioned research paper by Ruth Hall

<sup>11</sup> Source: Portfolio Committee Reports & research evidence, DPME reports



- The Subdivision of Agricultural Land Act 70 of 1970 limits when and how the subdivision of agricultural land may happen, and was originally intended 'to curtail the fragmenting of agricultural land into uneconomic units'. The Subdivision of Agricultural Land Act Repeal Act 64 of 1998 – was never signed into law by the president(s). Section 10(3) of the Provision of Land and Assistance Act 126 of 1991 exempts land reform projects from restrictions on subdivision – but does nothing to promote subdivision. Very few subdivisions have taken place for land reform purposes.
- Subdivision is a precondition for intensifying land use in countries with a highly skewed distribution of land ownership, such as South Africa, where underutilization of agricultural land is considered to be substantial. The result: while policy has repeatedly aimed to support small-scale farmers, little or nothing has been done to create small farms.

#### *Constraints to redistribution, land prices, institutional and design constraints?*

- *Land prices:* Land prices have been increasing yet the budget allocation for land redistribution has been in decline. Whilst a debate about the WSWB has been raised, Ms Crosby suggest that the Constitution does not prescribe this approach, in fact it provides for expropriation of land with compensation that is just and equitable which has not been used. In the WSWB, she also shows that there has been more land on the market to meet the demand for land reform, suggesting that land redistribution has not been funded adequately over the years.
- *Institutional constraints:* The DRDLR is not well capacitated to carry out its mandate. For example, during the previous reporting period (2015/16 financial year), 10% of funded posts were vacant, and the land reform directorate had a vacancy of 23%. Further, the process to decentralise land reform were reversed under the PLAS.
- *Design constrains:* 'One consequence of the South African practice of WBWS is that properties are acquired and transferred one-by-one, and a farm or business plan has to be drawn up for each land transfer. This practice in effect militates against the possibilities of smallholder farming. The employment of a separate consultant and drawing up of detailed business plans would hardly be economically justifiable for one smallholding.

#### *PLAS and Leasehold as a tenure model*

- Market-based purchase continues, but state leasehold has replaced the original private ownership model.
- But with what consequences? Research evidence from the EC shows that no 'beneficiaries' had documented tenure rights (from 2013 to 2016; some acquisitions dated from 2007/08).

- The extension of leases from 3 years to 50 years was not communicated to any beneficiaries in our sample.
- The absence of secure land rights impedes production support: other state (and private) institutions refuse to deliver services, lend or invest in their land uses.
- Beneficiaries in strategic partnership projects lack control over land, capital & production.
- Farm workers face increased tenure insecurity and livelihood uncertainty – in some cases, all farm workers lost their jobs when farms were acquired. Some were promised they would be ‘beneficiaries’ but were unable to get leases. Others are paid below minimum wage as ‘beneficiaries’ on strategic partnership projects.

#### *State leasehold (reflections)*

- Land reform in the past 20 years has gone from prioritizing secure tenure as a basis for poor black South Africans to make their own land-use decisions to a highly prescriptive managerial approach that contributes to the privileging of sustaining commercial land use over providing secure tenure and preference for wealthy beneficiaries or agribusinesses.
- Land reform is now governed by ‘productionism’ that has altered the foundational logic of redistribution.
- While the state is playing a more interventionist role by purchasing land itself, it is not challenging the supremacy of private property but rather becoming a significant player in the land market.
- Expectations of commercial production (to use the land) mitigate against secured land access for the poor.
- When beneficiaries clearly cannot invest in and operate commercial farms, they are sidelined in favour of agribusinesses that can do so.
- The result is a two-tiered land reform in which some (white-owned) agribusinesses garner handouts from the state, while poor families and communities who have accessed state land are left with insecure tenure and livelihoods.
- Without redistribution of power and wealth to those who are the ostensible beneficiaries

#### *(iii) Farmer/settlement support*

This section is anchored on a presentation by Prof Machethe, complemented by Prof Hall and Ms Crosby.

- The most common support services are: agricultural finance, infrastructure, market access and extension. The current programmes of the DRDLR, i.e. Recapitalization and Development Policy Programme (Recap), focuses on finance and infrastructure development. Market access and extension are left to the so-called strategic partners or mentors with little or no government monitoring or oversight (a critical weakness of the programme).

- Between the DAFF and DRDLR, there have been numerous initiatives for agricultural support. To mention some, CASP, MAFISA and RECAP. CASP seeks to enhance provision of support services to promote and facilitate agricultural development.
  - MAFISA aims to empower micro and small-scale entrepreneurs and farmers to improve their livelihoods and develop their businesses.
  - RECAP provides technical and financial support to farms in distress to increase production, commercialisation, employment, and food security.
- There has been lack of coordination of DAFF and DRDLR regarding these funding and support initiatives. In some cases, there was lack of clarity in relation to the target groups, resulting in less take up of some of the programmes in DAFF or elsewhere in government.
- Based on some empirical research evidence, drawn on selected case studies, Prof. Machethe outlines the impact of the three programmes as shown in the Table below.
- Notable was the difference between MAFISA and Recap in terms of impact on job creation. MAFISA was more efficient in creation of jobs rather than Recap, which cost a lot more.
- What the evidence shows is that where support is provided, there is positive change and impact.

Table – Review of support programmes

Programme	Impact				
	production	income	employment	Food security	Service delivery
<b>CASP</b>	Increased agric. Production, e.g. livestock increase (296%).	Income from agric. production increased by 40%.	Employment per farm increased (11-16 FT workers; 6-14 for PT)	Insufficient progress but 49% produce more food and eat more regularly.	Access to information improved by 11% but insufficient. (47% continue to experience marketing challenges after CASP)  17% reported improved access to extension services  Challenges: appointment of service providers and quality of infrastructure.
<b>MAFISA</b>	Increased diversity of agric. production.	-	Jobs created at low cost (16080 jobs created through 2448 loans averaging R14 400 per job created).	-	-

<b>RECAP</b>	<p>Increased agric. Production, e.g. livestock no. increased by 23%, area cultivated by 57%).</p> <p>Whilst 70% of farms were productive, only 30% were sustainable.</p>	<p>Financial situation of beneficiaries improved (57%).</p> <p>&lt; 30% of the farms had zero income</p> <p>Average annual income from agricultural production per farm = R2.05m.</p>	<p>No. too small, yet positive (540 additional jobs on 98 projects, 429 part-time, R0.588m/job).</p>	<p>Improvement (47% have more food of better quality).</p>	<p>Limited improvement in market access for beneficiaries.</p> <p>Capacitation of beneficiaries remains low, skills transferred by strategic partners is not effective (skills transfer minimal).</p> <p>Improved access to infrastructure (funding ranged from 0 – R10m+ per project).</p>
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For purposes of the assessment of redistribution, this section addresses Recap, primarily because of its proximity to land redistribution and the fact that the money comes from funds allocated for land acquisition (i.e. 25% of the total allocation for acquisition).

*The following paragraphs draws mainly on Prof Hall's presentation.*

- Recap replaced all previous forms of funding for land reform in 2009, including all forms of funding for settlement support for those having land restored through restitution. Its rationale is that many land reform projects have been unsuccessful because of inadequate and inappropriate post-settlement support and are in 'distress', and thus in need of further injections of funds. It also provides financial support to black farm owners who are not land reform beneficiaries, and to producers in communal areas.
- Beneficiaries are 'prioritized' in accordance with the four categories listed in the State Land Disposal Policy (SLDP). The DPME evaluation of the policy and its implementations suggested that there was no clarity about criteria for selection. Beneficiaries of the policy must have business partners recruited from the private sector to work closely with them, as mentors or 'co-managers', or within share-equity arrangements, or as part of contract-farming schemes.
- As discussed earlier, there has been a steady policy shift away from a programme targeting the poor to commercially-oriented programme whose intent is to create a class of black commercial famers.
- The DPME evaluation found that the policy has resulted in multi-million recap projects where there are no beneficiary selection criteria and virtually no return on investment in relation to job creation. This study shows that more than R463,000 was spent per beneficiary and that it costs more than R588,000 to create each job<sup>12</sup>. The most worrying finding was in the Free State Province where more R3.9 million has been spent per project (with only 55% of the

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<sup>12</sup> DPME (2013)

projects recapitalised generating income from agriculture), R1.02 million is spent per beneficiary. RECAP spending is not associated with the creation of a single full-time job.' (DPME – UP, 2013. 94). The study concluded that Recap was inappropriately designed and poorly implemented, and that it does not constitute effective use of available resources or value for money.

Overall critique of farmer support programmes, including CASP, MAFISA, and RECAP could be summed up as follows:

- Poor programme design, group farming model
- Lack of coordination between and within DAFF and DRDLR and support not being comprehensive. For example, a focus on production and less attention to market access.
- Neglect of supporting the multiple livelihoods strategies of the poor, and tying the poor to unsustainable business models of land reform, e.g. strategic partnerships with little or no returns on investment.
- Resources thinly spread due to wide scope and coverage; and funding not always based on needs but on 'one size fits all' in some programmes.
- Insufficient capacity building contributing to lack of sustainability of assisted farms.
- Unclear or no selection criteria for farmers and limited involvement of farmers in decision-making, in terms of funding and running of the farming enterprises.
- Diversion of project budgets at provincial level and lack of oversight of monitoring of conditional grants to provinces

From organised agriculture's perspectives, the following concluding remarks were made (draws on inputs by Ms Crosby).

- Financing is a critical aspect that needs to receive urgent attention if South Africa is serious about sustainable land reform.
- Provision of Beneficiaries will have to receive a lot of post-settlement support and this costs money – it is estimated that two-thirds of the cost of land reform should go towards post-settlement and one third towards the acquisition of the land.
- The financing need not and should not come only from government – innovative partnerships for financing between government and the private sector should be explored.
- We need a clear vision on what it is that we want to achieve with land reform in this country – such a vision is currently lacking.
- We need policy certainty and we need to place all land reform programmes within a clear and simple framework for land reform. Also we need to address the fears of current landowners and investors in the agricultural sectors.
- There needs to be a bigger emphasis on sustainability of land reform projects and we need to be pragmatic about this.
- Transfer titles and do away with state ownership - this is what true empowerment is about.

## Reflection on the four scenarios for land reform in South Africa.

Brian Wittaker of Vumelana Advisory Fund presented the scenarios arising from the work that the group has been doing. This enabled the HLP members to reflect on the direction of land reform and key policy choices to be made.

Table 2: Some challenges

Economic, political and social pressure is rising	Land reform promises more than it delivers
<ul style="list-style-type: none"> <li>- Economic growth is slow.</li> <li>- Poverty and inequality cast a shadow over the young democracy.</li> <li>- The ruling party is under rising political pressure.</li> <li>- Businesses are in decline, with farming particularly hard hit.</li> <li>- The rural poor struggle to secure the necessities of life in the face of severe drought and water shortages.</li> </ul>	<ul style="list-style-type: none"> <li>- Expectations are rising on the back of government promises to accelerate and expand land reform.</li> <li>- Much of the rural land that has been transferred is not benefitting the new owners.</li> <li>- Failures in agriculture intensify worries about food security.</li> </ul>

Table 3: Four scenarios that describe how South Africans might respond to the challenges that land reform presents.

Scenario	What it represents	Context
Connection and capture	<p><b>Land as power</b></p> <ul style="list-style-type: none"> <li>- <i>Very few, mainly politically connected and the elite will gain ownership and access to land.</i></li> <li>- <i>This is done at the expense of ordinary people</i></li> </ul>	<ul style="list-style-type: none"> <li>- harsh economic conditions</li> <li>- rising power of traditional leaders</li> <li>- weak CPAs and other institutions</li> <li>- growing political pressure on the ruling party.</li> </ul>
Market power and concentration	<p><b>Land as a productive asset</b></p> <ul style="list-style-type: none"> <li>- <i>Land reform that is driven by modernisation, and drifting away from the people – elitist</i></li> <li>- <i>Emphasis on commercialisation, and helping fewer people, especially those that want to farm commercially without broadening ownership to small farmers and local communities</i></li> </ul>	<ul style="list-style-type: none"> <li>- <i>slow growth, deepening poverty and rising inequality</i></li> <li>- <i>declining public resources</i></li> <li>- <i>rising pressure on the government</i></li> <li>- <i>dwindling support for the ruling party</i></li> <li>- <i>growing demands from an expanding urban population.</i></li> </ul>
Occupation and confiscation	<p><b>About taking back the land</b></p> <ul style="list-style-type: none"> <li>- <i>Driven by populism, for example statements like return the land to the people, notions of stolen land etc.</i></li> <li>- <i>illegal land occupation leading to confiscation without</i></li> </ul>	<ul style="list-style-type: none"> <li>- <i>slow growth, deepening poverty and rising inequality</i></li> <li>- <i>declining public resources and rising pressure on the government</i></li> <li>- <i>dwindling support for the ruling party and an expanding urban</i></li> </ul>

	<i>compensation (made possible by constitutional amendment of Section 25.)</i>	<i>population.</i>
Hard bargaining and compromise	<b>About sharing the land</b> - <i>Inclusive approach to land reform with a pro-poor orientation</i>	- <i>Poverty and inequality persist and growth is slow.</i> - <i>Gradually global conditions ease.</i> - <i>Social compacts between strategic partners pave the way for increased growth in South Africa.</i>

The HLP reflected on these scenarios and pointed to worrying patterns emerging in the discourse and narratives about land reform. For example,

- Recap as discussed above, its target group.
- Lack of funding for the poor, no pro-poor orientation of land redistribution.
- Populist statements about Section 25 as an impediment to land reform without evidence to support it.

## KEY CONCLUSIONS

- *Constitution requires 'equitable access' – yet no law defining equitable access*
  - Land redistribution is slowing down dramatically.
  - Budgets in decline, affecting the rate of land delivery which has also been in decline as funds are diverted to other purposes rather than acquisition of land (eg. NARYSEC, RECAP, AGRIPARKS)
  - Therefore no measures for Parliament or public to assess whether right to equitable access to land is being realised, or land reform budget is instead being diverted
- *A policy shift away from land reform beneficiaries owning land to holding 'conditional use rights' that can be revoked if land not 'productively' used (at the discretion of officials).*
  - Does not provide for ownership of land, only after 50 years. (farmers over the age of 40, can only take ownership of land at 90 years)
  - Neglect of various categories of beneficiaries i.e. Households with limited or no access to land (including land for subsistence production; Small-scale subsistence farmers that sell part of the produce at local markets (farming on communal land); medium-scale commercial farmers with an aptitude to expand but constrained by land or other resources; Large-scale commercial farmers disadvantaged by location size of the land and resources but with potential to grow.
  - Major capacity problems, leases not issued, beneficiaries in limbo.

- *Steady policy shift away from targeting the poor to commercial farmers, to multi-million recap projects where there are no beneficiary selection criteria and DPME has shown virtually no return on investment in relation to job creation*
  - Selection of beneficiaries not transparent, (both PLAS and RECAP)
  - Funds for Recap mostly accessible through commercial partners
  - Anecdotes of elite capture of land redistribution (the extent of this challenge is unknown due to lack of reliable M&E)
  - Diversion of state resources to ‘strategic partners’ rather than beneficiaries.
  - Agri-Parks – about infrastructure development - tender opportunities – not redistribution of land
  - DPME report highlights serious problems with recap – no beneficiary selection criteria
  
- *Some of the critical limitations to the programme of land redistribution as articulated through commissioned research, round table discussion with experts and raised by members of the public during the public submissions are:*
  - Long-winded bureaucratic process for land redistribution through the PLAS programme
  - Limited funding and group projects associated with the earlier land redistribution project.
  - Major shift away from land reform beneficiaries owning land to holding ‘conditional use rights’ that can be revoked if land not ‘productively’ used – at discretion of officials in dysfunctional department.

## **5. LEGISLATION REFERRED TO IN SUBMISSIONS**

- Constitution of the Republic of South Africa (1996)
- Provision of Land and Assistance Act, (Act No 126 of 1993)
- Provision of Land and Assistance Amendment Act (Act No.58 of 1998),
- State Land Disposal Policy
- Recapitalisation and Development Policy

## **6. RECOMMENDATIONS**

Some elements of an entirely new approach could include:

- Review Act 123 to clarify ‘equitable access’ and provide for post-settlement support in legislation
- Participatory and consultative local processes in which people wanting or needing land are able to shape decisions, based on their own situations;
- Leasehold, which does not transfer land and wealth to people, should be reviewed; it does not constitute land redistribution as the black farmers are tenants and not owners.
- Moving away from state land purchase on the open market towards targeted acquisition of land (offered for sale, or through negotiated sales or where needed, expropriation) based on coherent local area-based plans, in suitable



locations, with subdivision of plots to sizes suited to specific people's needs, taking into account infrastructure and water availability;

- Prioritisation of access to public land, especially municipal commonages, that can help people living in towns and villages improve their livelihoods through keeping livestock or cultivating, while retaining an urban base;
- Secure tenure (or title) without conditions regarding how they use the land;
- Provision of basic land use and farming support such as fencing, bush clearing, water pumps, tractor services, extension advice and training to *all beneficiaries who need these*, without them having first to develop commercial business plans and employ mentors or enter into strategic partnerships so often ill-suited to their needs or interests