



rural development & land reform

Department:
Rural Development & Land Reform
REPUBLIC OF SOUTH AFRICA

FINAL POLICY PROPOSALS ON “STRENGTHENING THE RELATIVE RIGHTS OF PEOPLE WORKING THE LAND”

STRENGTHENING RELATIVE RIGHTS OF PEOPLE WORKING THE LAND.

Policy Proposals: Final Draft. 21 February, 2014.

A. CONTEXT

The broad context for all rural development and land reform policies is the Constitution and the law of the Republic, particularly sections 25, 26, 27 and 36 of the Constitution. Secondly, it is the Freedom Charter (FC), which declares that 'South Africa Belongs To All Who Live In It, Black And White!' Thirdly, it is the National Development Plan (NDP). Fourthly, it is Agenda 21 of the United Nations.

Lastly, General Comment No.7 (1997). The right to adequate housing (Article 11 (1) of the Covenant): forced evictions

The tension to which these provisions are particularly pertinent, in the case of rural development and land reform, is the necessity to address historical land hunger, which could be absolute in most instances; and, extreme concentration of land ownership and control in a few hands, on the other hand.

The mandate of the Department of Rural Development and Land Reform is to mediate a 'just and equitable' redistribution of land across these two disparate and potentially conflictual patterns of land ownership and control.

The principles and the strategic thrust underlying land reform, as set out in the Green Paper on Land Reform, are as follows:

- (i) deracialising the rural economy;
- (ii) democratizing the allocation and use of land across gender, race and class; and,
- (iii) sustained production discipline for food security (and food sovereignty).

The strategic thrust, also set out in the Green Paper, is that land reform should be pursued with minimal or no disruption to food production and security.

The Department defines land reform inclusively of the following four functions or pillars:

- (i) restitution of land rights;
- (ii) redistribution of land;
- (iii) land tenure reform; and,
- (iv) development of the land.

It further defines the strategic objectives of land reform as two-fold:

- (i) that all land reform farms are 100% productive during the 2014-2019 Medium Term Strategic Framework (MTSF) period; and,
- (ii) rekindling the class of black commercial farmers which was deliberately and systematically destroyed by the 1913 Natives Land Act, re-enforced by other subsequent pieces of legislation enacted by successive Colonial and Apartheid regimes.

B. SOME POLICY PERSPECTIVES AND CONSIDERATIONS

The Draft Bill consolidating the Extension of Security of Tenure Act (Esta) and the Labour Tenants Act (LTA) seeks to deepen the security of tenure of farm-workers and farm-dwellers, *without threatening household food security and national food sovereignty*. This sensitive balance between security of tenure rights, on the one hand, and food security and sovereignty, on the other, must be maintained at all times.

For the benefit of people who have not had sight of the pertinent provisions of the FC, the NDP, Agenda 21 and General Comment No. 7 (1997), we highlight such pertinent provisions below.

Clauses of the FC:

Clause 3: The People Shall Share In The Country's Wealth!

The national wealth of our country, the heritage of South Africans, shall be restored to the people;

The mineral wealth beneath the soil, the banks and monopoly industry shall be transferred to the ownership of the people as a whole;

All other industry and trade shall be controlled to assist the well being of the people;

All people shall have equal rights to trade where they choose, to manufacture and to enter all trades, crafts and professions.

Clause 4: The Land Shall Be Shared Among Those Who Work It.

Restrictions of land ownership on racial basis shall be ended, and all the land re-divided amongst those who work it to banish famine and land hunger;

The state shall help the peasants with implements, seeds, tractors and dams to save the soil and assist the tillers;

Freedom of movement shall be guaranteed to all who work on the land;

All shall have the right to occupy land wherever they choose;

People shall not be robbed of their cattle, and forced labour and farm prisons shall be abolished.

Agenda 21:

In 1988, in the Global Strategy for Shelter to the Year 2000, adopted by the General Assembly in its

Resolution 43/181, the "fundamental obligation [of Governments] to protect and improve houses and neighborhoods, rather than damage or destroy them" was recognized.

Agenda 21 stated that "People Shall Be Protected By Law Against Unfair Eviction From Their Homes and Land." In the Habitat Agenda, Governments committed themselves to "protecting all people from, and providing legal protection and redress for, forced evictions that are contrary to the law, taking human rights into consideration; [and] when evictions are unavoidable, ensuring, as appropriate, that alternative suitable solutions are provided."

The National Development Plan:

Chapter Six of the NDP. Sums up the essence of an integrated and inclusive economy in the following 'Key Points':

- (i) Rural communities require greater social, economic and political opportunities to overcome poverty.
- (ii) To achieve this, agricultural development should introduce a land reform and job creation / livelihoods strategy that ensures rural communities have jobs.
- (iii) Ensure quality access to basic services, health care, education and food security.
- (iv) Plans for rural towns should be tailor-made according to the varying opportunities in each area. Intergovernmental Relations should be addressed to improve rural governance.

General Comment No.7 (1997):

In its General Comment No.4 (1994), the Committee on Economic, Social and Cultural Rights observed that all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. It concluded that forced evictions are, *prima facie*, incompatible with the requirements of the Covenant.

The term "forced evictions" as used throughout this General Comment is defined as the permanent or temporary removal against their will of individuals, families and /or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights.

In case where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality. The Committee considers that the procedural protections which

should be applied in relation to forced evictions include:

- (a) an opportunity for genuine consultation with those affected;
- (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
- (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;
- (d) especially where groups of people are affected, government officials or their representatives to be present during an eviction;
- (e) all persons carrying out eviction to be properly identified;
- (f) evictions not to take place in particularly bad weather or at night, unless the affected persons consent otherwise;
- (g) provision of legal remedies; and,
- (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

We, therefore, need to develop a system of incentives and disincentives to encourage those with vested interest in the land to conduct their relationship around land according to the dictates of these Clauses of the Freedom Charter, the National Development Plan, the UN's Agenda 21 and General Comment No.7 (1997), with whatever necessary adaptations here and there, as the case might be, given peculiar conditions and circumstances.

C. COMBINING SHARE-EQUITY WITH CO-MANAGEMENT

A combination of Share-equity and Co-management is the key to achieving this system of positive incentives and disincentives. This should be built into the current Draft Bill, so that it could assist government manage unintended consequences to the re-opening of land claims and the introduction of the Exceptions to the 1913 cut-off date for the Khoi and the San descendants, historical landmarks and heritage sites. These Exceptions need not fall under the framework of the Restitution of Land Rights Act (as amended).

As I understand it, put generally, the LTA provides the capacity to translate tenancy rights into the right to claim land restitution, as well as securing protection against eviction (with no reference to whether or not such eviction was justified or arbitrary), after a certain length of time working and residing on a farm. Even justified eviction (we must define, and differentiate between, arbitrary and legitimate eviction upfront) would require the evictor to ensure that the evicted has alternative residence.

The Share-equity Scheme could, and should, as circumstances might dictate, be complemented by the establishment of Sustainable Rural Settlements on land acquired either through share-equity rights accumulated by workers over time, as workers on farms, or, through state interventions.

The United Nations ascribes effectiveness of "sustainability" to the following conditions:

- (a) Socio-cultural development: health, education and recreation;
- (b) Economic development;
- (c) Environmental development;
- (d) Institutional / political support; and,
- (e) Morality and aesthetic relational values.

These Sustainable Rural Settlements would achieve at least three objectives:

- (a) secure the residential tenure of the farm-dweller/worker;
- (b) enable him/her to sell his/her labour-power across the fence, without fear of eviction; and,
- (c) strengthen his/her bargaining power in advancing worker rights and improving his/her conditions of living.

With the advent of the Land Rights Management Committees, which are multi-stakeholder platforms, the relations being created in these proposals should be easily managed.

But, there does not seem to be any sort of duty and responsibility placed on the worker-dweller to play their role in ensuring that their right of tenure to the land is earned; and, could be systematically defended. This is a serious gap, viewed against the Third Principle and the Strategic Thrust of land reform, as they stand now. South Africa is a constitutional democracy. Everybody's rights are enshrined in the Bill of Rights; and, our Courts guard the observance of these rights very jealously. But, in any constitutional democracy, rights are balanced with responsibilities.

The system we introduce, therefore, must take this necessary balance into cognisance. We have a system of rights and responsibilities; duties and services; and, opportunities and constraints, all of which hang on the authority of the constitution and the law.

D. WHAT IS TO BE DONE?

- (a) Protect and promote relative rights of people working the land.
- (b) The regime being proposed here is based on the relative contribution of each category of people to the development of defined land portions or farm units. The historical owner of the land automatically retains 50% of the land, while the labourers on the land assume ownership of the remaining 50%, proportional to their contribution to the development of the land, based on the number of years they had worked on the land.
- (c) The Government will pay for the 50% to be shared by the labourers, but the money will go into an investment and development fund (IDF) to be jointly

owned by the Parties constituting the new ownership regime. The Fund will be used to develop the managerial and production capacity of the new entrants to land ownership, to further invest on the farm as well to ay out people who wish to opt out of the new regime.

- (d) Keep the current regime of tenancy protection and derived rights, but balance that up by introducing a regime of duties and responsibilities which the worker-dweller must observe and comply with, in order to sustain the share-equity regime being introduced here.
- (e) All labourers who would have worked on a farm for ten consecutive years (but less than twenty-five years) of disciplined service, based on the regime of duties and responsibilities historically obtaining on the farm, the worker-dweller must be entitled to ten percent share-equity on the land, based on its market value.
- (f) Should the worker/dweller wish to leave the farm, after ten years of disciplined service, having earned the ten percent share-equity ownership of the land, he/she should be compensated to that extent, over and above whatever other rights were due to him or her, as an employee.
- (g) After ten years of disciplined service, the Farm Manager should, by force of law, introduce the worker-dweller to basic elements of farm management, reflective of the new relational dynamics.
- (h) After twenty-five years of disciplined service, the farm-worker/dweller should be entitled to twenty-five percent share-equity on the land. The same conditions, which define the relationship between the farmer and the worker/dweller, as set out in the relevant paragraphs above, hold in this regard as well.
- (i) After fifty years of disciplined service, the farm-worker/dweller shall be entitled to fifty percent share-equity on the land; and, all the conditions as set out in the relevant paragraphs above apply.
- (j) In the event a worker/dweller failed to comply with the regime, as set out in the contract of disciplined service, the Farm Management (reflective of the new regime) is obliged to take the matter up with the Land Rights Management Committee (LRMC). The LRMC has to consider the matter and advise on steps to be taken. In the event the decision is that the worker-dweller has to leave the farm, the Municipal Council must provide the farm-dweller with suitable accommodation, within a prescribed period.
- (k) If the farm-dweller had not completed ten years of service, the ordinary conditions provided for by the country's labour relations system will apply.

- (l) If the farm-dweller had completed ten years of service, and had earned tenancy rights, the LRMC has to take this into account if it determines that the farm-dweller had to leave the land.

These conditions should constitute a regime of the protection of relative rights on land, in alignment with the provisions of the Freedom Charter, the NDP and the United Nations Agenda 21.

E. HOW IS THIS WORKER-EQUITY GOING TO BE FINANCED?

There are two main sources of financing the worker-equity:

- (i) through the Land Reform Programme; and,
- (j) through own historical contribution by the worker.

The Land Tenure Act (and so should the consolidated draft of ESTA and the LTA) recognized the farm-worker's cumulative rights, based not only on the fact that a worker lived on the farm for a particular period, but on contribution he /she made to the development of the farm, through his / her labour power.

That labour power was never fully compensated for, in the form of wages. That much is clearly demonstrated by the vast difference between the affluence of the farmer and the abject poverty of the farm-worker.

The relative equity stakes recognize this full contribution, which the exploitative wages have denied the workers for all of those years. The contribution by the government is an attempt at restoring the dignity of the worker.

Contribution by the state must go to further development of the farm. With the acquisition of equity by farm-workers must come a fundamental change in the control mechanism of the farm.

The acquisition of equity is, and must be seen to be, a fundamental game-changer. It introduces co-management of the farm, based on relative equity-holdings and the capacity of each participant in production and management.

The equity-holders must establish an Investment and Development Fund (IDF) which must be representative of all equity-holders to the farm.

The Government (drdlr) will deposit its contribution into the IDF, not to the farmer, for that would be double compensation. He/she will benefit, like all others, from dividends allocated by the IDF. With

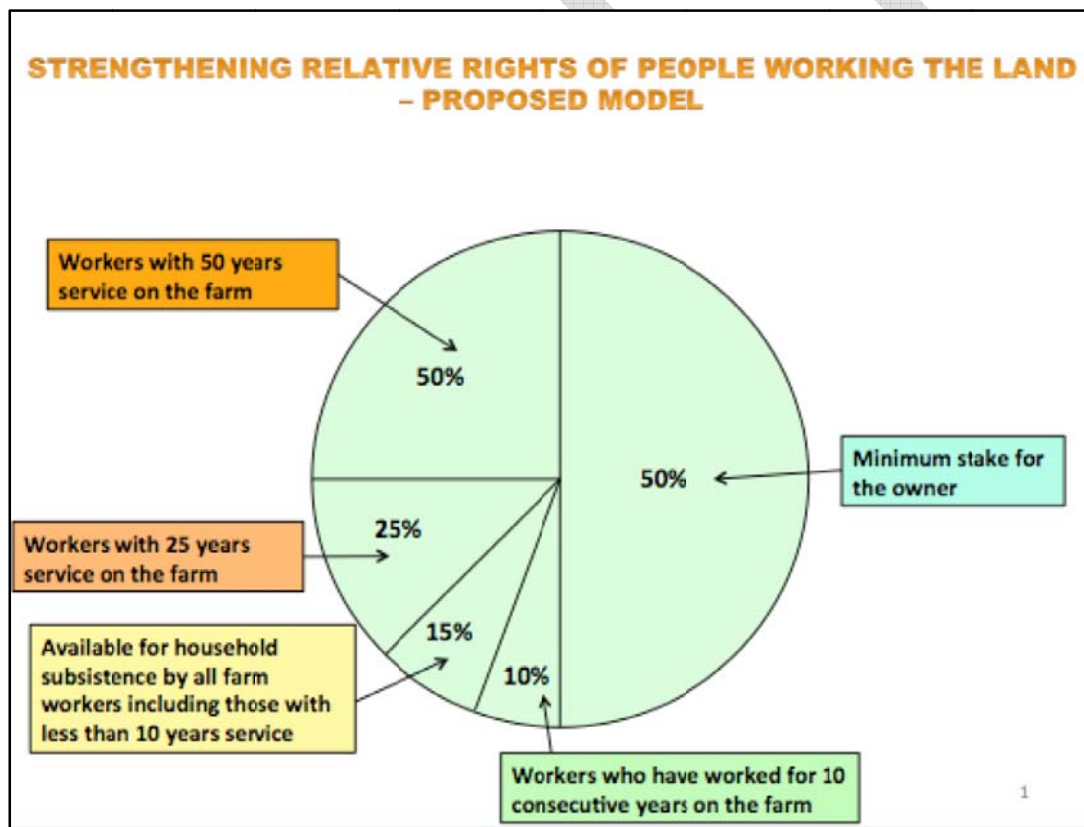
that contribution, the government earns the status of *Ex-officio* member of the management of the Fund; and, should be entitled to a single representative on it.

We are, therefore, introducing a system of collective ownership, based on relative equity-holdings. However, although the government has full speaking rights in the management of the IDF, it will not have voting rights. Those rights should be the preserve of the equity-holders.

F. EXPLANATORY NOTE

Figure 1 below is attempting to illustrate the workings of the Model described above. It is a graphic attempt at operationalising the constitutional principle of 'Just and equitable' re-distribution of land.

Figure 1: A Radical Redistributive Model For Land Reform



G. CONCLUSION

The Extension of Security of Tenure Act and the Labour Tenants Act were meant to strengthen the

security of tenure of farm-workers. They were meant to make it relatively difficult for the farmer or farm manager to evict farm-dwellers. At least not without due process! However, arbitrary evictions continue to be the order of the day. The policy measures introduced here, backed by several authoritative constraints, are meant to change the agricultural landscape fundamentally. What is being introduced here is not just a humane set of socio-economic relations; it is a redistributive model of agricultural growth.

These policy proposals are meant to strengthen the position of both the farm-worker and the farmer, as people working the land. These proposals recognize that both the worker and the farmer have vested interest in the land; and, both want to improve their living conditions through working the land.

There is a direct relationship between these policy proposals and the ANC's policy on the limitation of land holdings by private individuals and entities, now contained in the Agricultural Landholdings Policy Framework of the Drdlr. The Model can easily be adapted, where there is enough goodwill between a farmer and his or her employees, in the implementation of the land tenure model of 'Freehold with limited extent', and its cousin, land access and ownership by foreign nationals: 'A combination of freehold with limited extent and leasehold'.

The legal rights of these two important actors, in so far as they relate to the farm, are historically not equal. The farmer is, historically, the sole owner of the land and has full responsibility for its up-keep and maintenance, including ensuring that workers on the land have decent living conditions, are paid decent wages and he pays rates and income tax, while the farmworker does not carry such legal burdens. This relativity of rights and responsibilities is fully recognized.

However, these policy proposals introduce a new system of substantively recognizing the relative contributions of the farmer and farm-workers to the development of the farm as well as the integrality of their relative rights on the land - on the one hand, the farmer has original rights while, on the other, farm-workers have accumulated or secondary rights, as defined in the Land Tenure Act.

The moral basis for these proposals is that fellow South Africans who benefitted from the proceeds of the land dispossession wars and the race-based segregation policies and laws of successive Colonial and Apartheid regimes have a moral duty and responsibility to contribute to the restoration of justice and national reconciliation effort. Secondly, maintaining the current status quo is politically undesirable and unsustainable.

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