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**Submission on the Recapitalisation and Development Programme (RADP)**

The Centre for Law and Society was established in 1994 (under the name Law, Race & Gender Research Unit) as a research and training unit in UCT's Faculty of Law. Presently, the main project of CLS is the Rural Women's Action Research Programme (RWAR). RWAR is part of a wider collaborative initiative that seeks to support struggles for change by rural people, particularly women, in South Africa. RWAR focuses on land rights, but includes related issues of poverty, inheritance, succession, marriage, women's standing and representation in community structures and before traditional courts, rural governance, citizenship and access to human rights in general by rural women. An explicit concern is that of power relations, and the impact of national laws and policy in framing the balance of power within which rural women and men negotiate change at the local level.

In this context, we register our concern with the Recapitalisation and Development Programme (RADP), especially in relation to the detrimental effects it will have on land reform beneficiaries in rural areas. Read together with the Communal Land Tenure Policy<sup>1</sup> and recent developments following the re-opening of restitution claims, the Recapitalisation and Development Programme (RADP) is part of a pattern of laws and policies which infringe on the land rights of people in rural areas and privilege elite sectors in society, including traditional leaders. The RADP comes at a time when land tenure reform, land restitution and land redistribution are failing, and there is no integrated and comprehensive policy statement aligning the different aspects of land reform with one another and with rural development. Meanwhile, millions of South Africans still lack security of land tenure, especially those living in rural areas and in the former Bantustans. The budget for land reform is very limited, meaning that every cent must be spent carefully and must be directed towards worthy beneficiaries. Current laws and policies including the RADP are, however, diverting the valuable land reform budget towards elite interests.

To understand the effect of RADP on the rights of people living in the former homelands, it is essential to consult the new Communal Land Tenure Policy (September 8, 2014). The latest Communal Land Tenure Policy (CLTP) from 8 September 2014 proposes to transfer the 'outer boundaries' of 'tribal' land in the former Bantustans to traditional councils. Meanwhile, the families who actually have rights to this land – including occupation, use and access rights – would get only "institutional use rights". Families' use rights will be

<sup>1</sup> Department of Rural Development and Land Reform, 2014, *Communal Land Tenure Policy*, (published online 8 September 2014), <http://www.dla.gov.za/publications/land-tenure-summit-2014/file/2882-communal-land-tenure-policy-framework>



conditional on the title-owner's decisions (the traditional council). Furthermore, traditional councils together with investment partners will have the power to enter into tourism and mining ventures 'on behalf of the community'. This combination of manoeuvres will deprive families of all their substantive rights to land (such as rights to use and access fields, grazing land and forests), except the right to occupy the homestead. People in the former homelands will also be dispossessed of their procedural rights to land – that is, the ability to make decisions about the land to which they have occupation, use and access rights. Consultation with people on the ground will ring hollow and consent will be stripped away from them as traditional councils together with their strategic partners plough ahead with investment plans. Our partner organizations have had experiences of such structures on the platinum belt in North West and Limpopo. They provide a vehicle for elite alliances between traditional councils and politically connected BEE investors that fail to benefit the local people whose land and livelihoods are being destroyed by mining.

The CLTP's plan to transfer titles to traditional leaders and give them the power to conduct investment deals, is in breach of Section 25(6) of the Constitution as it amends people's customary land rights to the extent that they are extinguished. It also falls foul of the Interim Protection of Informal Land Rights 31 of 1996 (IPILRA), which holds that no one with informal rights to land (including customary rights of occupation, use and access) may be deprived of those rights without adequate consultation and compensation. By excluding people from adequate consultation in investment deals – as the CLTP and RADP do – these policies would remove the decision-making power that rights-holders have over land. It is a deep and serious form of dispossession and marks a betrayal of the values in the Freedom Charter and the Constitution which so many people fought and died for. In light of the CLTP, RADP takes funds that are meant to realise land reform beneficiaries' substantive rights by allowing them to make meaningful use of their land, and gives it instead to investment partners who usually have no rights to the land in question.

Since the period of the lodgement of restitution claims has been re-opened, there has been a flood of claims from traditional leaders, including in KwaZulu-Natal and the Eastern Cape. If land is transferred to traditional leaders through restitution claims, rather than to the individuals and groups who were dispossessed of land, it will undermine thousands of people's rights to restitution, as set out in Sections 25(6) and 25(9) of the Constitution and in the Restitution of Land Rights Act 22 of 1994. Furthermore, the partnerships that traditional leaders set up with investors will most likely be damaging, as they are proving to be on the platinum belt.

Through its focus on business plans and strategic partners, the RADP takes us down the same road. It allows strategic partners to act alongside traditional leaders to represent rural people, who are simultaneously deprived of their rights to represent themselves. It denies the substantive land rights of people living in rural areas, and breaches their procedural rights to have a say in how they want development on their land to unfold. Land reform beneficiaries do not need "managers" as Julius Malema has argued in a recent



statement to the media.<sup>2</sup> They need to be respected for their initiatives and supported in making those initiatives sustainable. It is doubtful that the RADP will do this.

### The cost inefficiency of RADP

According to the Minister of Finance's 2014 budget speech, R2.818 billion has been allocated to the Department of Rural Development and Land Reform budget, while R2.681 billion has been allocated to restitution. The re-opening of the restitution programme will put an enormous strain on an already tight budget allocation. The table below shows how the budget allocations for the Department of Rural Development and Land Reform's core programmes have actually declined since 2012.

**Table: Land Reform and Restitution budgets by financial year (in billion Rands)**

	2012/13	2013/14	2013 MTBPS	2014/15
Restitution	2.962	3.388	2.917	2.681
Land Reform (redistribution & tenure reform)	3.284	3.394	2.766	2.818

Sources: National Treasury 2012, 2013a, 2014: Estimates of National Expenditure. National Treasury 2013b: Medium Term Budget Policy Statement.

In light of DRDLR's fragile financial situation, the RADP must be considered very carefully. A report commissioned by the Department of Performance Monitoring and Evaluation (DPME), and prepared by Business Enterprises at the University of Pretoria, on the RADP in 2013 argues that at present land reform beneficiaries are not reaping the rewards for the amount of money being spent on the RADP:

*As stated previously, the RECAP budget amounts to 25% of DRDLR's baseline land redistribution and restitution of land rights budget and was about R3.3 billion for the 2012/13 financial year. Therefore, it is worth finding out whether there is value for money. Considering the 98 projects included in the evaluation, the efficiency of the RECAP programme, measured in terms of investment expenditure against results, is low. This is the case when spending per project is considered. On average, R2.8 million is spent per project in the six provinces included in the study. However, only 70% of the RECAP projects were generating income from agricultural production at the time of the evaluation, with a few of these projects being sustainable. This result is*

<sup>2</sup> 'An interview with Julius Malema', *The Star* (January 26 2015), <http://www.iol.co.za/the-star/an-interview-with-julius-malema-1.1809012>



*particularly weak for the Free State, where more than R3.9 million is spent per project and where only 54% of the projects recapitalised were generating agricultural income.<sup>3</sup>*

In light of the fact that the DRDLR's budget is very limited, and RADP is not adequate 'value for money', the evidence of money being diverted from land reform beneficiaries to strategic partners and rural elites is even more disheartening. The next section of this submission discusses these issues.

### **Effects of RADP on security of land tenure: problems for land restitution and land reform beneficiaries**

Under the DRDLR's new set of policies, the land rights of people living in the former homelands have been made more conditional and less secure. According to the new land policies the only way to acquire financial support for land received through a land reform programme is through the RADP. Restitution Discretionary Grants and Settlement Planning Grants have been discontinued. In order to receive a RADP grant you must prove you have a business plan and strategic partner.

### **Problems with the business plan requirement**

RADP requires that applicants must draw up a business plan to prove that they can use the land "productively". Without such a plan, they have little chance of receiving an RADP grant. "Productivity" is not defined, meaning that the determination in terms of the programme vest entirely in the discretion of officials. Furthermore, the RADP does not provide guidelines to how officials should exercise this discretion. This leaves the process open to arbitrary decisions and potential manipulation or misapplication by officials. In this way, RADP allow people less choice about their own livelihoods. In the case of restitution, the RADP's emphasis on *agricultural productivity* above all else infringes upon beneficiaries' rights to restitution. This is because meaningful use of land is impossible without a grant. But a beneficiary's ability to acquire a grant is dependent under the RADP model on a business plan or the existence of a strategic partner, rather than on proof of their right to restitution.

By making beneficiaries' ability to make a success out of their land conditional on cost and productivity, the implication of the new policies is that land ownership is neither appropriate nor allowed for the majority of people living in the former homelands. Instead ownership is reserved for a small elite, condemning most people to a system of provisional tenure and state leasehold that is essentially the same as the 'trust tenure' imposed by the South African Development Trust in terms of the 1936 Native Trust and Land Act.

<sup>3</sup> Department of Performance Monitoring and Evaluation, *Implementation Evaluation of the Recapitalisation and Development Programme (from its inception in 2010 to June 2013): Final Report* (10 October 2013), p. 93



Furthermore, according to the 2013 report on RADP, it seems that few beneficiaries have a say in drawing up their business plans. Many strategic partners write business plans for land reform beneficiaries, rather than supporting them in putting these together according to their needs and priorities.<sup>4</sup> In the Free State, the report found that many strategic partners inflated their budgets so as to reap more from the RADP.<sup>5</sup>

### Problems with strategic partners

There are huge problems with strategic partners' involvement in land reform projects. Considering the inequality in terms of economic and political clout that most partners have compared with land reform beneficiaries, partners are often able to control the direction of the land reform project. The 2013 report commissioned by DPME is damning of the role of strategic partners:

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*Among strategic partners and mentors, it appears that some of them are in RECAP solely to benefit financially and, therefore, pay little or no attention to contributing to capacity building of beneficiaries. In some instances, the strategic partner/mentors take over the management of the farms, reducing beneficiaries to mere employees or spectators.<sup>6</sup>*

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The report goes on to note that beneficiaries in North West and Free State are particularly unhappy with their strategic partners, raising serious questions about whether they are actually empowering or exploiting land reform beneficiaries.<sup>7</sup> The report investigated strategic partners attached to projects in Gauteng, North West, Limpopo, Eastern Cape, KwaZulu-Natal and Free State, found that the majority of strategic partners reside in Gauteng.<sup>8</sup> Many beneficiaries also commented that they had little control over their own RADP funds. According to the draft report mentioned above, many land reform beneficiaries were selected for RADP because a strategic partner was aware of their land claim or project, alerted the DRDLR to it, and suggested they become the strategic partner in that project. A number of beneficiaries said they felt strategic partners were "imposed" on them.<sup>9</sup>

The examples and evidence above hint at the widespread abuse of the RADP by strategic partners, who are often white commercial farmers, BEE business people and traditional leaders who also dabble in business. A relatively small group of strategic partners are essentially farming state subsidies. It is completely inappropriate for strategic partners to be imposed on land reform beneficiaries as a precondition for state support.

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<sup>4</sup> Ibid, p. 41

<sup>5</sup> Ibid, p. 28

<sup>6</sup> Ibid, p. ix

<sup>7</sup> Ibid, p. ix

<sup>8</sup> Ibid, p. 31

<sup>9</sup> Ibid, p. 32



### Recap disadvantages beneficiaries interested in projects other than agriculture

Parliamentary oversight committees have in the past raised problems with Recap's focus on agricultural productivity alone. In relation to restitution, the Parliamentary Ad Hoc Committee on the Legacy of the 1913 Land Act (some members of the current parliamentary committee on Rural Development and Land Reform were part of this group) pointed out that land reform is not about agriculture only, and productivity should not be measured in terms of commercial agricultural viability only. The Committee added that "it is vitally important that land reform should address the various needs of the beneficiaries, for example, those that want land for residential purposes".<sup>10</sup> Post-settlement support "should also not only be seen in terms of the Farmer Support Programme (FSP) or the existing Recapitalisation and Development Programme which targets farming with strategic partnerships".<sup>11</sup>

### Conclusion

The developments that have taken place under Recap fit the broader picture of elite capture in the sphere of land reform. Instead of redressing the terrible legacies of the dispossession of black South Africans of land, the Bantustan system and the persistent unequal distribution of land and resources in South Africa, RADP, like other land reform policies such as the new Communal Land Tenure Policy, removes power over land away from the majority of people in rural areas and places it in the hands of elites. Our partner organizations, such as the Land Access Movement of South Africa (LAMOSA), speak in their submissions to the lived experiences of their members, who have encountered many difficulties with the RADP.

<sup>10</sup> Parliament of the Republic of South Africa, *Report of the ad hoc Committee: Coordinated oversight on the reversal of the legacy of the Natives Land Act of 1913* (22 October 2013), p. 21

<sup>11</sup> *Ibid*