**ANNEXURE A of NA-QUES 2136 OF 2015**

# A Comparative Assessment of Land Ceiling in Selected Countries and Lessons for South Africa’s Proposed Reforms – “Freehold with Limited Extent”

### SUMMARY DOCUMENT AND POLICY OPTIONS

### Lessons for South Africa: Strategic and Policy Implications

**21 March 2012**

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# Brief Comparative Overview of Countries Reviewed – Land Ceilings

Land ceiling is set to govern the amount of landed property allowed, and any areas of land that exceed the ceiling are expropriated. [[1]](#footnote-1) Land ceiling on land holdings implies fixing of the maximum size of a holding that an individual cultivator or a cultivator family may possess. Beyond this maximum size, all land belonging to the landlord is taken over by the government to be redistributed among landless labourers.[[2]](#footnote-2) Imposition of land ceiling was expected to benefit the tenants who worked on the land, hence resulting in fuller utilisation of land and labour leading to enhanced output.[[3]](#footnote-3)

The ceiling determines the extent of the redistribution. High ceiling affects only a few landlords and is, therefore, easier to initiate; however, in such cases only very little land is available for distribution. The lower the ceiling is, the greater the opposition that will be met with since larger farms are affected.[[4]](#footnote-4) In some countries, ceiling laws exempt intensively cropped areas (fruit plantations, intensive animal keeping) in order to promote the desired conditions in accordance with the agrarian policies (Pakistan, Iran). For similar reasons, a higher ceiling is set in certain cases for owner-cultivated land than for rented land (Japan).[[5]](#footnote-5)

The reform laws frequently include a stipulation that in future the fixed ceiling may not be exceeded, for example by buying additional land or by inheritance. The farming of previously uncultivated land (Korea) may occasionally be exempted. In some cases, the permitted land ceiling is lowered in several stages so as to make the measures less radical, and thus lower the resistance. Inversely, some countries discuss whether to abolish or raise the ceiling after having reached an advanced level of development (Taiwan, Korea).[[6]](#footnote-6) In response to the structural inequities that marked India’s land ownership patterns, one facet of land reforms that was advocated was the imposition on ceilings on agricultural holdings.[[7]](#footnote-7) Arguments in favour of land ceiling in India are sustained by the principal objective of attaining equity and efficiency in India’s agricultural sector. In some instances, emphasis on ceiling of agricultural holdings was taken up predominantly as a redistributive measure.

There are strong links between inequality of asset distribution and poor macro economic performance. This fact suggests that reform of the property system is one of the most important issues faced in any attempts to reduce poverty. While there are many routes to poverty alleviation, all are subject to distortions induced by inequality, and one of the main components is the skewed distribution of property. Land and immovable property are often the most important elements in an individual family’s asset portfolio. Countries with a high Gini index (measure of national income inequality) usually have a grossly unequal distribution of land and property ownership. For example, those with the highest Gini index are Brazil (60.7), Nicaragua (60.3), South Africa (59.3), Colombia (57.1) and Chile (56.7) (World Bank, 2003) – which are all countries with a legacy of unequal land distribution.[[8]](#footnote-8)

Redistributive policies that entail subdivision of large farmlands into smaller family managed units are considered particularly meaningful in developing countries where extreme inequality in the land distribution co-exists with deep rural poverty.[[9]](#footnote-9) Studies in countries from Sierra Leone to India and Malaysia show that growth in agriculture makes a significantly larger contribution to overall economic growth than growth in other sectors, such as industry.[[10]](#footnote-10) Growth in agriculture also has a disproportionately positive impact on poverty levels. The centrality of agriculture, particularly smallholder farming, as a key driver of poverty alleviation strategies, was formally recognised in the World Development Report, 2008.[[11]](#footnote-11)

### Comparative Summary of the Impact of Land Ceiling

As reviewed in the study, although it is difficult to generalise on the overall impact land ceiling has had in agricultural production, income distribution, and poverty alleviation, there are states within India that have experienced agricultural growth and a substantial redistribution of land. Of significance is that land ceilings averted the re-aggregation of land concentration. Most of the discussions on land ceiling have concentrated on the distributional (equity) aspects of the measure. Literature review in this aspect of land reform has affirmed the view that the successful implementation of land reform requires efficient administration and legislation that is retroactive.[[12]](#footnote-12) However, it is crucial to acknowledge that land reform is as difficult an economic exercise as it is a political undertaking, since it involves a realignment of economic and political power. Those who are likely to experience losses under reform naturally resist reallocation of power, property, and status. The landholding class, therefore, is not likely to vote itself out of possession. Hence, one cannot underestimate the complexity of the task at hand in terms of land ceiling reforms. However, the political will of the landowning class is as much a challenge to the redistributive process as are the existing legal and structural dimensions of the current landholding regime.[[13]](#footnote-13) For instance, within the context of South Africa, the issue of entrenched vested interests in the commercial and communal farming areas as a possible challenge to land reform is aptly noted in the 2011 Green Paper on Land Reform in South Africa.[[14]](#footnote-14)

In a context where political will to enforce land ceiling is low, coupled with poor legal and institutional frameworks to undertake land ceiling, circumvention, contestation, corruption, litigation and limited supply of surplus land from the ceiling threshold are normative attributes that characterise the ceiling exercise in some of the countries reviewed in this study. Consequently, the dissonance between the policy objectives that underpinned land ceiling and the outcome of the ceiling exercise serves to offer insightful lessons for countries contemplating land ceiling. Such lessons would relate to a careful consideration of the requisite factors that must be given serious and due consideration if land ceiling is to be implemented and its redistributive and economic potential is to be actualized. This observation is made on the basis that cross-country comparative studies offer insightful lessons for other countries to draw from in contemplating similar reforms, and not necessarily to out rightly discard potential reforms such as land ceiling solely on the basis of limitations experienced elsewhere.

Various countries have imposed land ceilings with different levels of success. The primary reasons used for imposing land ceilings have been to break down large land holdings; in some cases prevent their emergence and to ensure that there would be more land available for distribution in a land reform programme. The analysis in the comprehensive section of this report delves into the experiences of land ceilings of eight selected countries, namely Mexico, Chile, Zimbabwe, Taiwan, the Philippines, Romania, Egypt and India. These countries have implemented land ceilings in varying context and scope. The cardinal case study used in this report is India. The choice of India is made on the basis that it is one of the few countries in the world that have implemented ceiling programmes on a huge scale and over a prolonged period of time (post 1950s – current).

A common theme that underpinned the need for land ceiling in these countries is the high levels of land inequality that preceded their land ceiling programme. In countries such as Chile and Mexico there were serious revolutionary pressures from peasant farmers who were exploited on landlord properties. In these countries, land was under the ownership of a few wealthy landlords, leaving the majority of the country confined in peasantry without access to land ownership. The desire to own land stirred up widespread revolutions in these countries. This forced governments to implement land ceiling practices where land was expropriated from these landlords and redistributed to the landless peasants across the country.[[15]](#footnote-15)

In other countries land ceiling reforms were driven by governments due to under-utilization of land by landlords who owned oversized properties.[[16]](#footnote-16) In Romania land was expropriated by the government from absentee landlords and foreign citizens.[[17]](#footnote-17) In Taiwan, the government was driven into land ceiling practices by the immigration of people from Japan to Taiwan after World War II which saw the population of Taiwan rising to over seven million, with the mainlanders accounting for over a fifth of the total population. In the Philippines social and economic inequalities and disparities triggered rural and peasant unrest which in turn forced the government to enact a land ceiling programme to address these imbalances.

In Egypt, on the eve of the 1952 Revolution, ownership of land was heavily concentrated in a few hands, more so than in the twenty preceding years. About 0.1 per cent of owners possessed one-fifth of the land and 0.4 per cent controlled one-third, in contrast to the 95 per cent of small owners with only 35 per cent of the land. In addition, 44 per cent of all rural inhabitants were landless.[[18]](#footnote-18) The common theme in all these countries was that the land ownership inequalities were unsustainable and had to be redressed to prevent social unrest in the future.[[19]](#footnote-19) In India, more than half of the population (nearly 63%) own smallholdings of less than 1 hectare, with large parcels of 10 hectares of land or more in the hands of less than 2 per cent. The absolute landless and the near landless (those owning up to 0.2 hectares of land) account for as much as 43 per cent of total peasant households.[[20]](#footnote-20) To achieve the objectives mentioned hereto, India has passed a significant body of land reform legislation.[[21]](#footnote-21) In addition to dealing with land inequality patterns, land ceiling was aimed at stirring the growth of agricultural production, income redistribution and poverty reduction.

Given this historic context, land ceilings were implemented with the aim of redressing the historical imbalances of the colonial era. These countries had a history of land inequality that affected the social and economic aspects of daily life in all these countries. In addition, it was hoped that increased agricultural production, poverty reduction and equitable income distribution would be realised as a result of the ceiling exercise. The countries hoped to achieve this by incentivizing the beneficiaries of the land reform through financial support, administrative and technical support. Overall, one recurring objective inherent in the ceiling exercise was to end or curtail the power of the landlords. An example of this was in Taiwan. Zhang (2003)[[22]](#footnote-22) stated that “….the new government of Chiang Kai Shek undertook the development of the Taiwanese economy with significant help from the United States.” The government set out to liberate the peasantry and get rid of the class of local landed gentry (the landlords) with whom they had no political connection.

To achieve the overall objectives of land ceiling, a medley of legislation was promulgated. The legislations differed regarding the extent to which they specified the ceilings as well as the amount of exemptions they offered to the landed lords. An example of the differences would be that in countries such as Taiwan the legislation i.e. “Land to the Tiller” was very specific in the land cap, which was limited to 2.9 hectares[[23]](#footnote-23) with no exemptions while some countries such as Mexico, India, Egypt and Chile allowed for flexible land caps – depending on the crops grown as well as on regions. The land caps in countries such as Mexico, India and Chile had loopholes which actually allowed some landlords to circumvent the land capping exercise; the other extreme was that the Taiwanese legislation was tightly developed and difficult to circumvent.

In India, the legal gaps in the ceiling laws and the time it took to enforce the laws provided an opportunity for land owners to circumvent the ceiling law. For instance, the outstanding example of this legal weakness was the insistence on adopting the family as the unit for the application of the ceiling law with allowance for members of the family in excess of five. Land owners in many occasions were able to sub-divide their land and register it among members of their family in order to circumvent the ceiling law. [[24]](#footnote-24) In all the eight countries reviewed, the ceiling thresholds and conditions underpinning ceiling excercises were not static. A number of subsequent reviews of the ceiling levels and conditions underpinning ceiling were changed over time, either through change in the political administration of the respective countries or reviews undertaken to assess the efficacy of the ceiling programme.

One of the common challenges which these countries faced, was litigation from the landowners. Chile, Mexico, Romania and the Philippines were countries which faced most of these legal battles, particularly because their land reform policies contained clauses which gave the aggrieved landlords opportunities to seek legal recourse. In India, the importance of the role that litigation played in frustrating implementation is evident from the fact that as of 1992 out of the 7.28 million acres that had been declared as surplus and as much as 1.16 million acres (16%) were involved in litigation.[[25]](#footnote-25) Due to this historical legacy to circumvent the ceiling laws, a bill to reopen old cases under the Land Ceiling Act was adopted by the Indian Assembly in August 2011. The Ceiling of Land Holdings (Amendment) Bill, 2011 introduced in August 2011, aims to reopen past cases in which landlords declared false information and are enjoying vast extent of lands. Legal heirs enjoying surplus agricultural land will have to face the law for the offence committed by their father or grandfather.[[26]](#footnote-26)

The absence or limited availability of credit to assist the beneficiaries of the land capping programme was also a serious challenge which was not unusual.[[27]](#footnote-27) For instance, land reform in Chile and Latin America in general is seen by many authors as incomplete. The exercise of imposing land ceilings is seen as having focused more on ensuring that the landless had access to land rather than focusing on the efficiency of land usage. The agrarian reform exercise in Chile particularly between 1965 and 1973 was seen as lacking supporting programmes. There were few supporting programmes to ensure the efficient use of the land which had been reallocated. The imposition of land ceilings may have been a good policy to ensure that more land was expropriated for the landless but the absence or the presence of a few supportive initiatives proved to be a negative for the agrarian reform programme.[[28]](#footnote-28)

The land capping and land reform exercise in the Philippines was full of challenges and there were a number of significant lessons learnt from it. The first lesson was that there was need for comprehensive packages of support services to the tenants and the other landless people before access to the land could be transformed into growth and productivity. The same support services were seen to be essential in ensuring that food security was attained from the beneficiaries of the land redistribution exercise. The second lesson learnt was that the participation of all sectors, i.e. the landlords, the government agencies, the private sector and civil society were important in ensuring that the land reform programme was a success. The absence or lack of participation of some of these sectors would negate the momentum of the land capping exercise and result in a slowly implemented land reform programme.

In Philippines, the impact of the land capping exercise on the output showed that access to land alone would open growth opportunities for the beneficiaries but it would not translate into productivity. Access to credit, capital and technology among other things were also essential for the beneficiaries to ensure productivity on their newly acquired land. The effectiveness of land capping in both reducing the inequalities and in increasing the level of agricultural output was seen in the land reform programmes in the Philippines, particularly after 1980. The output increased from 1995 for rice production and the output for corn also slightly improved. This shows that with enough government assistance there are positive externalities to be derived from the land reform policy.

Poorly crafted legislation was also a common challenge which these countries faced in implementing land ceilings. In some cases there was undue influence from the landlords who actually were involved in passing legislation which affected them. Examples of countries such as these are Chile, the Philippines and Mexico.[[29]](#footnote-29) The change in government in these countries created discontinuity and this hampered the impact of the legislation, as each administration would completely overhaul the previous land reform laws. Fragmentation of land was a challenge which surfaced because of land ceilings. Countries such as Romania, Egypt and Taiwan which had a smaller ceiling threshold, experienced fragmentation problems as their land caps were very small and they had created many smallholder farmers through the land capping exercise.

The varied results in implementing land ceilings reveal the risky nature of the exercise. Policy makers need to assess and consider all the likely scenarios and simultaneously measure the pros and cons of the process before implementing the land ceilings. The Chilean example of the military government of Pinochet implementing a partial reversal of the land ceilings after their limited success, gives us a practical indication of the risks involved in ceilings which are implemented without a careful assessment of the results. The issue of compensation is a lesson noted from the land ceilings in all countries under analysis. Certain countries managed to handle this issue better than others. It is difficult to determine what is deemed a fair compensation amount. The Philippines is an example of a country which obtained input from the varied stakeholders in determining a fair price for the land acquired. Mexico, India, Chile and the Philippines experienced notable delays and in some cases unsuccessful land reform because of the wrangling between the landlords and the implementing agencies over the “fair”price of the land.

In India, several enactments relating to land reforms were successfully challenged in Law Courts on the grounds that they abridged the right to property granted by Article 19(1)(7) of the Constitution or that they provided inadequate compensation. Of the major loopholes that existed in the first phase of legislations, the following were more serious.[[30]](#footnote-30) The enactment of the ceiling laws was preceded by a protracted debate spread over several years. This gave landowners plenty of time to dispose of the land that would have been declared surplus. Landowners have challenged the law through written petitions in the High Court.[[31]](#footnote-31)

Beyond the challenges of litigation in India, the absence of reliable land records in India as well as Philippines made implementation difficult. The inadequacy of the administrative set-up which often colluded with powerful landowners, also led to poor implementation. Another weakness was the general apathy of the potential beneficiaries of the ceiling law. In most areas they were passive, disorganised and inarticulate.[[32]](#footnote-32)

India’s land reform experience is a cautious reminder that adopting well-intended laws, by itself does not guarantee good results. From the perspective of most rural poor, India’s land reform laws have not had the desired effect; and some legislative provisions have resulted in perverse and unintended consequences.[[33]](#footnote-33) Overall, approximately 3% of cultivable land was distributed as a result of land ceiling in India.

In India, significant land redistribution was experienced as a result of land ceiling in four states. Beyond west Bengal, three states showed a significant change in land ownership in the decades following reform. In Assam, where 5.9 per cent of operable land was distributed, the wealthiest 20 per cent went from owning 73 per cent of land to 53 per cent between 1953 and 1982, while the lower 40 per cent went from owning statistically 0 per cent to 5 per cent of the land area – a clear success. In Jammu and Kashmir, where 17.77 per cent of land was distributed, the wealthiest 20 per cent owned 60 per cent of land in 1953 but dropped to 44 per cent in 1972. However, by 1982 their share had increased to 54 per cent. The lower 40 per cent went from owning 4.9 per cent of the land in 1953, to 14.6 per cent in 1972, and dropped to 8.9 per cent in 1982.

In Kerala, the most densely populated state in India[[34]](#footnote-34) where just 1.47 per cent of operable land was distributed[[35]](#footnote-35), the wealthiest 1 per cent owned 26 per cent of land in 1953, while the lower 40 per cent held just 3.49 per cent. By 1982, the top 1 per cent held 14 per cent of the land while the lower 40 per cent had increased their share to 8.29 per cent. While this may seem strange considering the relatively small amount of land redistributed through the ceiling, it is explained by the fact that the legislation establishing the ceiling also abolished tenancy, resulting in a large amount of the land in large holdings being distributed to the tenants and leaving less land above the ceiling.[[36]](#footnote-36) In West Bengal, 34 per cent of all agricultural households have received ceiling-surplus land and a number of studies have documented the importance of the ceiling-surplus distribution, in both bettering the livelihoods of beneficiaries and promoting agricultural growth and stability in the countryside.[[37]](#footnote-37) The total amount of ceiling-surplus land distributed to individual beneficiaries amounted to approximately 3 per cent of India’s agricultural land.[[38]](#footnote-38)

The state’s relative success was based on several factors. First, the law has fewer loopholes than do most other state land reform laws. Second, the state government’s political will led to more effective implementation. Finally, the state government’s emphasis on distributing the benefits equally, materialised and the emphasis on distributing the benefits widely (but in smaller plots) led to increased grassroots support for the process. With regard to the implementation of land ceiling laws, West Bengal’s share of total surplus land distributed was almost 20 per cent of the all-India despite the fact that the state accounts for only about 3 per cent of India’s land resources.[[39]](#footnote-39)

Comparatively, in Egypt, close to 14% of the cultivable area was redistributed as a result of the land ceiling exercise. The agrarian reforms implemented in the 1950s and 1960s allowed a maximum land holding of 100 and then 50 feddans. Whatever exceeded that limit was distributed to landless families. However, these reforms did not significantly correct the already very skewed distribution of land holdings. Even after the full implementation of the land reform acts, more than 50 per cent of all agricultural land was still in the hands of less than 7 per cent of all farmers.[[40]](#footnote-40)

In Philippines, between 1987 and 1993 over 430,000 hectares of land were redistributed while another 1.2 million hectares were redistributed between 1995 and 2001.[[41]](#footnote-41) A 2001 World Bank report notes two important outcomes of the ceiling and redistribution.[[42]](#footnote-42) The direct beneficiaries of the distribution have experienced an increase in income and productivity, and are more likely to invest in physical and human capital in comparison to non-beneficiaries.

While in most states the ceilings have not led to a significant government redistribution of land, it is crucial to note that land ceilings have served a useful role in preventing a further excessive concentration of land.[[43]](#footnote-43) In countries facing high-levels of structural inequities in land ownership, land ceiling may be one possible avenue to explore in averting unabated accumulation of land by a minority. The reviews undertaken in this study firmly indicate that land ceiling has the potential of preventing re-aggregation of land holding among a minority few.

Despite many flaws and loopholes in practice, some studies do credit land ownership ceilings in preventing new large ownership consolidations after land reform.[[44]](#footnote-44) In Japan and Korea, success in prevention of re-aggregation of land may be attributed as much to the availability of attractive investment opportunities outside agriculture and to non-economic factors such as attachment to land as to the ceilings on land holdings. Ceiling imposed *following* a land reform that results in fairly homogeneous holdings might be more effective and distortionary in preventing massive re-concentration of land.[[45]](#footnote-45) The land ceiling implementation is considered by some to be a success as it likely halted any further concentration of land ownership. Such a view is aptly noted in Appu’s (1996) assertion that even:

……in the context of the significant growth in agricultural production since the late sixties there would have been a scramble for the purchase of agricultural land resulting in greater concentration in the ownership of land but for the existence of ceiling laws.[[46]](#footnote-46)

For instance in India, large holdings, those over 10 hectares, accounted for almost 29 per cent of total operable land in 1960, but had fallen to 23 per cent by 1980. This indicated that the land reform may have had an effect on long-term distribution, even though not directly redistributing significant amounts of land. In comparative terms, Egypt experienced a similar outcome with regard to averting the re-aggregation of land holdings as a result of land ceiling. For instance in 1984, a slight reduction was evident in the area owned by the upper stratum of those with fifty or more *feddans*. However, the number of small owners, those with fewer than five *feddans*, increased to nearly 3.29 million in 1984 from 2.92 million in 1961, while the area they owned dropped from 3.17 million *feddans* to 2.9 million *feddans.*[[47]](#footnote-47) In essence, holders with fewer than five feddans (1feddan= 1.038 acres or 0.42 hectares) increased and so too did their overall proportion of land. Estates larger than 200 feddan disappeared. Although large ceilings on land holdings held by individuals were lowered to 100 feddan, families could still own 300 feddan.[[48]](#footnote-48) This suggested that land fragmentation worsened, as a result of the continual division of land among heirs in accordance with Islamic inheritance laws. The problem of fragmentation continued unabated because land reform laws in Egypt never had a land consolidation component as in Jordan, for example.[[49]](#footnote-49)

### Summary Overview of Land Ceiling in Selected Countries

### India

1. Art. 39 of the constitution which, among other things, provides: (a) that the ownership and control of material resource of the country should be distributed in a manner that serves the common good; and (b) that the operation of the economic system does not result in concentration of wealth and means of production. Art. 39 forms the bedrock that defines the superstructure of the land reform legislation the country is rooted in. In the first 5-year plan, the objectives of the land reforms were; to (i) reduce disparities in income and wealth particularly in rural areas; and (ii) provide security to tenants.
2. The ceiling laws were enacted and enforced in two phases. The first phase covered the period 1960-72 (before the National Guidelines were laid down) and the latter phase was implemented since 1972 to present - after adoption of the National Guidelines.[[50]](#footnote-50) Legislation for imposition of land ceiling and acquisition of the surplus land were enacted by most states in the 50s and 60s.
3. Most of the discussions on land ceiling have concentrated on the distributional (equity) aspects of the measure.
4. Land reform is as difficult an economic exercise as it is a political undertaking, since it involves a realignment of economic and political power. Those who are likely to experience losses under reform naturally resist reallocation of power, property, and status.
5. In a context where political will to enforce land ceiling is low coupled with poor legal and institutional frameworks to undertake land ceiling, circumvention, contestation, corruption, litigation and limited supply of surplus land from the ceiling threshold are normative outcomes.
6. Key challenges cited in ceiling outcome:
* Governments paid inadequate compensation for the land taken, which made the programmes unpopular with landowners;
* Landowners used gaps and loopholes in the laws to their advantage;
* States often distributed the relatively small amount of land obtained in relatively large parcels, benefiting only a small percentage of landless families;
* Outdated and incomplete land records complicated the implementation of the ceiling legislation.
1. In post-independent India, land reforms have been a major instrument of state policy to promote both equity and agricultural investment.
2. As at 2002, state governments had declared 7.37 million acres of land as exceeding the ceiling. Of that land, the state governments had taken possession of 6.50 million acres and had distributed 5.39 million to a total of 5.64 million households. The total amount of ceiling-surplus land distributed to individual beneficiaries amounted to approximately 3 per cent of India’s agricultural land.
3. Despite the legal, political and institutional challenges - in states where more than 5 per cent of the operational arable land was distributed (e.g. Jammu, Kerala, West Bengal, Kashmir and Assam), there was a notable reduction in landless communities/tenants’ share of land ownership.
4. Results of a nationally representative survey of approximately 5000 rural households interviewed in 1982 and again in 1999 reveal that land reforms had a positive impact on livelihoods. In particular, households in states that implemented tenancy reforms and land ceiling legislation experienced higher growth in income, asset accumulation, and childhood education than did those in states with lower levels of land reform effort (World Bank Citation - 2009).
5. Beneficiation of reforms unequal – ceiling laws often induced landowners to transfer land to relatives and to rent land to better-off tenants who had the capacity to farm the land more effectively – this reflects the resilience of the structures of power that gave rise to the problem in the first place.
6. The threat of ceiling seems to have prevented further expansion of large holdings, and there is little doubt that the redistribution of even very small plots of homestead land has brought substantial benefits to the poor. Large holdings, those over 10 hectares, accounted for almost 29 per cent of total operable land in 1960, but had fallen to 23 per cent by 1980.
7. There are three states in which more than 5 per cent of the operational land was distributed: Jammu & Kashmir, West Bengal, and Assam. All three states saw some shift in land concentration as a result of the reforms. Jammu and Kashmir - redistributed 17 per cent of its operated area, West Bengal 16 per cent and Assam 5 per cent. The state’s relative success was based on several factors:
* the law has fewer loopholes than do most other state land reform law
* the state government’s political will led to more effective implementation
* the state government’s emphasis on distributing the benefits equally materialised
1. West Bengal’s success story vindicates the view that there is no contradiction between some measure of egalitarianism and efficiency. As regards implementation of land ceiling laws, West Bengal’s share of total surplus land distributed was almost 20 per cent of the entire country although the state accounts for only about 3 per cent of India’s land.
2. Landowners resisted the implementation of these reforms by directly using their political clout and also by using various methods of evasion and coercion, which included registering their own land under names of different relatives to bypass the ceiling requirements.
3. The lack of accurate, update records of rights in land is widely noted to be a major constraint on the effective implementation of land ceiling reforms. In many instances, land allotted to the rural poor under the ceiling laws is not in their possession since corresponding changes in ownership were not made in the records of rights.
4. The laws failed to provide for fair compensation to landowners.
5. The balance of power in rural India was heavily weighed against the landless and the poor and this made the implementation of land-ceiling laws a difficult exercise.
6. Detailed literature review in this aspect of land reform has affirmed the view that the successful implementation of land reform requires efficient administration and legislation that is retroactive and the political will to effectively enforce the law.

### Chile

1. Legal challenges to the expropriation of the land by the landowners were common.
2. Dependency ties created by transferring the land to the peasants meant that the state had to finance the agricultural inputs and other requirements for the upkeep of the beneficiaries of the land reform. The exercise of imposing land ceilings has rather focused on ensuring that the landless had access to land rather than focusing on the efficiency of land usage. There were few supporting programmes to ensure the efficient use of reallocated land. The imposition of land ceilings may have been a good policy to ensure that more land was expropriated for the landless, but the few supportive initiatives proved to be a negative for the agrarian reform programme.[[51]](#footnote-51)
3. The multiple claims on land after the partial reversal of the land capping system by the military government of Pinochet.
4. Circumvention of the law: The actions taken by landowners to avoid the land ceiling legislation during Eduardo Frei’s administration resulted in an estimated 58 large estates with land size of 60 000 hectares being subdivided. The government reacted to this practice by passing Law 16.465 that prohibited this practice. The law made it compulsory for the State Planning Agency for Agrarian Reform (CORA) to give approval for any subdivision of the landowner’s estates before they were implemented. Legal battles were mounted to fight this legislation and the net effect of the litigation was that the exercise of agrarian reform took longer than initially envisaged.
5. The legislation on agrarian reform in Chile faced a lot of opposition before it was passed, partly because there were fears that the compensation packages for landowners would be unfair. Chile’s compensation packages provided cash compensation for improvements on the land and this allowed for the investment in agriculture to increase during the 1960s. The main lesson to be learnt from this exercise is that land ceilings are less likely to face opposition if the affected parties receive fair compensation.
6. The Chilean experience on agrarian reform and land ceilings also proves the importance of land administration capacity in implementing the programmes. To determine the land which was to be kept by the landowners as *reservas* as part of the land capping agreements, the presence of competent land administrators would have been necessary. The creation of decentralised arbitration tribunals by the governments in Chile between 1965 and 1973 is a typical example of the type of administration required for the successful implementation of the land reform exercise.

### Mexico

1. Political interference was the greatest challenge to the land ceiling exercise in Mexico. The political elite were against the land redistribution and capping exercise and as a result they perpetrated violence on supporters of the reform.
2. A weak legislative law saw the wealthy and elite influencing government to evade the land ceiling exercise as they took advantage of the loopholes in the law. As a result of this they were able to short circuit the redistribution process to a large extent with some of their properties being excluded from expropriation.
3. The uncertainty revolving around holding-size ceilings applied to private farmers caused reluctance to invest in their land for fear of expropriation. Private farmers are permitted by law to own a maximum of 100 hectares of irrigated land or the equivalent of the other types of land.
4. Land holding size restrictions and land ceilings in Mexico severely hampered the private farm productivity sector. The restrictions on parcel leasing constrained productivity in *ejidos* by making it difficult for landowners to engage in off-farm activities, thereby limiting access to external income which lead to lower investment on the land.
5. As a result of considerable land transfer from the private sector to the *ejidal* sector between 1959 and 1969, the *ejidal* share in total national crop land (excluding land owned by private farms under five hectares) increased from 46 per cent in I959 to 57 per cent in I969.
6. Land ceiling practices can lead to employment creation, food security (through increased agricultural productivity) and reduced exploitation by landlords.
7. Efficient land ceiling and land reform programmes should complement land transfers with adequate financial aid to help improve income distribution. The land reform programme in Mexico provided inadequate access and timely delivery of credit and inputs to the newly resettled farmers and this has hampered optimal agricultural growth in the Mexican *ejidos.*

### Romania

1. One issue, which is mentioned in most literature on Romania’s land reform, is the creation of fragmented smallholder farms (similar to Egypt’s land ceiling outcome). These farms are seen as less efficient in producing output in comparison to large-scale farms. The maximum cap on the land allowed to families also tends to encourage peasant farming rather than commercial farms, therefore there is need to address the size of these land caps in future.
2. Weak legal framework which was susceptible to abuse by politically elite.
3. Opposition from the owners who had land which faced expropriation.
4. The land ceilings also led to land fragmentation. This meant that land was held by many small landholders. Most of these landholders practiced subsistence farming rather than commercial farming and this led to declining output in agriculture. Fragmentation also led to the reduced use of the arable farm land. Individual households account for 81 per cent of land under private ownership with average land holding sizes of 2 ha. Agricultural practices in these individual households are generally subsistence and they have few connections to input and output markets

### Egypt

1. The redistributive effort with the imposition of ceiling involved only one sixth of the cultivable land.
2. The fixation of ceiling at a high level with a variety of retention provisions limited the envisaged impact of the reforms.
3. Reforms did not significantly correct the already very skewed distribution of land holdings.
4. After the full implementation of the land reform acts, more than 50 per cent of all agricultural land was still in the hands of less than 7 per cent of all farmers.
5. There was a slight reduction in the area owned by the upper stratum of those with fifty or more *feddans*. However, the number of small owners, those with fewer than five *feddans*, increased to nearly 3.29 million in 1984 from 2.92 million in 1961, while the area they owned dropped from 3.17 million *feddans* to 2.9 million *feddans.*

### Philippines

1. The absence or limited availability of financial support by the governments before Marcos was a hindrance to the reform and land capping exercise.
2. Opposition from the landlords who faced expropriation. The landlords opposed the land reform programmes and the land capping systems from their earliest days in the early 20th century. The landlords either worked though the legislative process (a significant number of them had seats in the legislature) to ensure that the proposed bills which came to the legislative house, were never passed into law or through legal challenges against the appropriations and expropriations of land.
3. The loopholes which appeared in certain legislation which was crafted, ensured that some landlords avoided giving land beyond the legislated limit to the state.
4. The absence or limited availability of financial support by the governments before Marcos was a hindrance to the reform and land capping exercise. Land caps were introduced in the administrations of Garcia and Magsaysay but they offered little financial support to the implementing agencies to ensure that the process was carried through successfully and at a faster pace.
5. The generous land caps offered by the first land reform legislations which had land ceilings in them were an additional challenge to the land reform and the success of the land ceilings programmes. The government of Magsaysay in passing its land ceiling legislation, put a cap of 1 024 hectares for private farms other than rice and its smallest limit was 300 hectares for contiguous private rice land. This made capping limits ineffective and had no incentive in accelerating the land reform programme. The generous limits on land caps were mainly done to silence the discontented voices of the landless but because they were ineffective, they only worsened the situation.
6. The necessity of implementing administrators who understand the concerns of the beneficiaries was a lesson which came to the fore during the land reforms in the Philippines. The bureaucrats whose way of operation frustrated the peasants, were seen as stumbling blocks and they were seen as people who were more focused on legality and process rather than achieving the aim of reducing the inequalities in the land distribution.
7. Another lesson which was highlighted by the land capping exercise in the Philippines was the determination of what a fair price was when compensating the landlords. Disputes arose between the implementing agencies and the landlords whose land was to be taken, because their assessment of a fair value was not always the same. The disputes in some cases ended up in litigation and this delayed the land reform programmes.
8. The effectiveness of land capping in both reducing the inequalities and in increasing the level of agricultural output was seen in the land reform programmes in the Philippines, particularly after 1980. This shows that with sufficient government assistance there are positive externalities to be derived from the land reform policy.

### Taiwan

1. An immediate result of Taiwan’s land reform and ceiling exercise was an increase in the number of owner-cultivators and a greater concentration of small (less than one hectare) farming units, although demarcation of landholdings countered some of the effects of fragmentation. Increased production, lowered purchase prices for land, and limitations on rents brought about increased incomes for both owner-operators and tenants. Agricultural productivity was augmented during the decade following land reform as new production incentives led farmers to intensify their labour and capital investments.
2. The valuation of land in the Taiwanese land reform caused friction from the disgruntled landowners. There was however little recourse for the landlords because the conditions were dictatorial and there was no room for negotiation.
3. The reform also helped Taiwan to avoid the already limited economic resources being monopolised by the traditional rural dominant class (landowners) and economy being dominated by a rent-seeking capitalist class.
4. The Taiwan experience shows that a land reform and ceiling exercise may have effects that expand beyond the scope of the agricultural sector. Multiplier effects of the land ceiling and reform exercise can lead to an industrialisation of a country through input demand in the land reform sector. It is important to note that land reform can lead to positive impacts that include redistribution of income. Land ceiling practices as is typical in most countries where they are implemented, lead to reduction in land holding sizes with most household and farm units having an average of between 1- 3 ha. This however increases the number of people with access to land.
5. The necessity of a government’s full commitment in the land reform is a lesson which we learn from Taiwan. The KMT government was firm and decisive in ensuring a more equitable land distribution tenure system. Law that supported this was put in place and they ensured that the installed land caps were respected. The importance of property rights in ensuring that a land ceiling exercise is done effectively, is a lesson to be learnt from the Taiwanese experience.

### Zimbabwe

1. Failure to adhere to the limits imposed by the legislation and failure to ensure that there was compliance with the land capping rules.
2. The limited assistance of the beneficiaries from the government

### International Lessons for South Africa: Policy Options with regard to Land Ceilings

In South Africa, discussions on land ceilings are viewed as a possible tool to enforce one of the pillars of the 4-tier tenure reforms proposed in the Green Paper, namely “Freehold with limited extent”. A number of possible proposals under discussion are what tools to deploy to give effect to “Freehold with limited extent” pillar of the proposed tenure reform. A possible combination of proposals ranging from land tax, right of first refusal, leasehold, and land ceiling are likely to offer the most appropriate tool/s to deploy in ensuring regulatory oversight in so far as “freehold tenure with limited extent” is concerned.

Land reform in the last 17 years (1994-2012) has not markedly changed the legacy land tenure relations inherited by South Africa in 1994. Efforts towards redistribution through an unregulated land market that is touted “robust” have failed to meet the expected targets of land reform. The pace of acquiring prime arable land has been a tardy process (with the exception of PLAS) with varied interpretations emerging with regard to the analysis of the challenges faced in land acquisition. At the epicentre of this debate is the criticism levelled at the Willing Buyer Willing Seller (WBWS) which is cited as a key encumbrance in achieving a speedy acquisition of prime arable land for land reform purposes. To those who disagree with this assertion, the land market system is indeed robust and not the problem, but rather the institutional context (state capacity, evaluation, limited state resources etc.) under which the WBWS is embedded in. Unregulated land markets bestow unequal veto powers to land owners, and in a context of land reform programme, this is bound to create sub-optimal outcomes with respect to the overall goals of land reform:

‘willing buyer, willing seller’ model……..effectively granted land owners absolute discretion over participation in the land reform programme. This discretion applies most directly in the areas of land redistribution and farm workers’ tenure reform, but it also heavily influences the rights-based restitution process, which, in theory and in law, falls outside the ‘willing buyer, willing seller’ paradigm. While there is certainly an active land market in South Africa, there is reason to believe that much of the land being transacted is not available to land reform beneficiaries.[[52]](#footnote-52)

Given the aforementioned, and of significance to our discussion on land ceiling as a possible measure of effecting “freehold with limited extent” are a series of questions that we must engage in: Will land ceiling if implemented in conjunction with other land reform proposed tools (e.g. Right of First Refusal) actualise the objectives and vision of the Green Paper on land reform and the three principles that underpin it – namely deracialising the rural economy, achieving equitable and democratic access to land and production discipline? Equalizing land access as a precursor to increasing agricultural production and poverty reduction are key factors that have incentivised the debates in support for land ceilings in countries that have implemented these programmes. With South Africa’s historic legacy on land inequality, and an increasing pattern towards land consolidation among a few, land ceiling is possibly one of the various tools of land reform to deploy in averting further land consolidation.

The 2011 Green Paper on land reform firmly acknowledges land and agrarian reform as a fundamental pillar to the democratisation process in its bid to resolve racial, gender and class contradictions in South Africa. Land reform is conceived as one of the central development interventions in dealing with the legacy of apartheid. Pursuant to this recognition, the Green Paper defines sovereignty in terms of land and that the debate about agrarian change, land reform, and rural development must begin with a frank discussion on land tenure relations if the apartheid spatial geography is to be dismantled. Thus, the need to provide security of tenure for all South Africans is considered a fundamental aspect of development. The broad developmental thrust of the Green Paper is evident in its invocation of concepts such as “shared growth and prosperity, full employment, relative income equality and cultural progress”[[53]](#footnote-53) of which the Green Paper is intended to achieve. As averred in the Green Paper, its vision of land reform is underpinned by:

A re-configured single, coherent *four-tier system of land tenure***,** which ensures that all South Africans, particularly rural blacks, have a *reasonable access to land with secure rights***,** in order to fulfil their basic needs for housing and productive livelihoods.[[54]](#footnote-54)

Other key elements of this vision is the formulation of clearly defined property rights and e*ffective land use planning and regulatory systems* which promote optimal land utilisation in all areas and sectors; and, effectively administered rural and urban lands, and sustainable rural production systems. This vision is underpinned by three key principles[[55]](#footnote-55):

(a) de-racialising the rural economy;

(b) democratic and equitable land allocation and use across race, gender and

class;

(c) a sustained production discipline for food security.

It therefore follows that one of the manifest objectives of the proposed tenure reforms is to reverse the structural inequities of land ownership and its antecedent poverty in the rural areas. As noted in the three principles underpinning the Green Paper, the re-alignment of the tenure relations in South Africa must compliment and not compromise production discipline. The attainment of equity objectives with regard to land access should not therefore be equated as a compromise to production discipline in agriculture. Rather, a useful entry into such a discussion is to interrogate the requisite tools required to enforce the envisaged changes in tenure reform that will aide in a holistic realisation of the three principles framed by the Green Paper.

This observation acquires greater urgency when interrogated against the backdrop of South Africa’s agricultural set-up, namely increasing land consolidation patterns and the limited availability of arable land. Thus far, discussions on land ceilings have proven a contentious issue. Part of the discussion and debates levelled against land ceiling are about the uniqueness of South Africa’s agriculture. It is increasingly argued that South Africa’s agricultural sector exhibits certain particularities (agro-ecological features, limited arable land) and specific sets of challenges (lack of subsidies, economies of scale etc.) that may lead to its demise, if significant reforms (e.g. land ceilings) aimed at achieving equity outcomes are enforced at the expense of production efficiency. The growing consolidation of prime agricultural land in the hands of a few agricultural enterprises and commercial farmers is argued as a logical outcome of the difficulties facing South Africa Agriculture in a context where subsidies have ceased to exist.[[56]](#footnote-56) The need for economies of scale (i.e. through consolidation) is justified on the grounds of optimal production that needs to be secured for commercial viability purposes. **Notwithstanding the merits or demerits of such an argument, the trend towards land consolidation clearly negates the broad principles and underlying philosophy that informs the 2011 Green Paper**.

The 2011 Green Paper explicitly recognises the land situation in South Africa as an outcome “accumulation by dispossession” and consequently calls for the development of a tenure programme that “satisfies most, if not all, South Africans”[[57]](#footnote-57) and in a manner that does not compromise production discipline. If carefully managed, international case studies have vindicated the positive causality that exists between equity outcomes and efficiency gains. In addition, the Green Paper briefly highlights current challenges and weaknesses of the land reform programme, and recognises that land is needed for purposes other than agricultural production.[[58]](#footnote-58) Notably, the 2011 Green Paper identifies the dominant Willing-Buyer/Willing-Seller (WSWB) land acquisition strategy as one of the core weaknesses of the current land reform programmes and in addition the entrenchment of vested interests as one of land reform’s main challenges.[[59]](#footnote-59) Comparative analysis attests that land ceilings have been imposed in contexts where structural inequity to land ownership is high. Attainment of equity and production efficiency has often driven the impulse towards land ceiling as the case was in India. It has also been shown that imposing land ceilings is a challenging exercise despite notable gains registered in some states in India as well as other countries considered in this study.

With increasing concentration in ownership of landholding in South Africa, land ceiling could possibly halt this trend if set at a higher threshold to avert unabated accumulation of freehold agricultural land. For instance, one of the principal changes is the increasing concentration of farm ownership over time. In 1996, it was estimated that South Africa had 60 000 farm units. By 2002, this had reduced to 45 000 units.[[60]](#footnote-60) A key trend showing rising inequality since 1994 is the consolidation of ownership of farmland into fewer hands. This trend is largely due to consolidation of landholdings into larger units of ownership and production, as farms are acquired by neighbours and become part of a larger farming enterprise, as agri-businesses buy up farms in specific areas. These farming units may consist of separate farms that are operated as a single unit; in many instances, a single owner (whether an individual or a company) owns more than one farming unit. In essence, land consolidation is antithetical to land reform[[61]](#footnote-61) and if left unchecked through the absence of regulatory tools (e.g. ceiling laws, right of first refusal, land tax), it could perpetuate the inherent limitations of having a “robust” unregulated land market which by all intent and purposes cannot complement the overall objectives of land reform. Targeted land acquisition can therefore be implemented through a variety of instruments. This option if implemented in conjunction with other tools, will seek to give effect to the suggested aims of instituting “Freehold with limited extent”.

## Table 1: Number of Farming Units

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Year** | **1993** | **1996** | **2002** | **2007** |
| **Number of farming units** | 57980 | 60938 | 45818 | 39966 |

Source: Census of commercial agriculture 2002 and 2007, Abstract of Agricultural statistics 2011

Table 1 shows the distribution of farming units for 1993, 1996, 2002 and 2007. Between 1993 and 1996 there was an increase in the total number of farming units. From 1996 there was a decline in the number of farming units from 60938 to 39966 in 2007.

## Figure 1: Number of Farming Units per Province

Source: Census of commmercial agriculture 2002 and 2007, Abstract of Agricultural statistics 2011

Of significance to figure 1 is that in all the provinces indicated, there is a notable decline in the number of farming units from 1993 to 2007. This drop corroborates the fact that there is an increase in farm size concentration over the years.

## Figure 2: Distribution of Farming Units 2007

Source: Census of commercial agriculture 2007

Figure 2 shows the proportional distribution of farming units in each province out of the 39 966 farming units used in the 2007 census. The Free State had the largest proportion of farm units with 19%, closely followed by the Western Cape that had 17% of the farming units. Gauteng had 4% of the total number of farming units, the smallest proportion compared to the other provinces.

Increase in land consolidation and capitalisation accentuates the stark bi-modal character of South Africa’s agricultural sector. One sector has large farms, freehold tenure, capital-intensive farming systems and a well-developed input, processing and wholesale sector. On the other hand, the small farm sector is characterised with a traditional tenure system, labour-intensive farming systems, subsistence orientated and a poorly developed output, processing and wholesale sector.[[62]](#footnote-62) In the South African context, people in the resource-poor sector reside in the former homelands. Smallholder farming, still located mostly in the former homelands, is an impoverished sector dominated by low-input, labour-intensive forms of production. Up to 2.5 million households subsist in this sector having been relegated to farming on 13 per cent of the agricultural land in the former homelands. It is estimated that about 92 per cent of them engage in agriculture mainly for food production and the remaining engage mainly for income purposes. 61 per cent of the small holders are women.[[63]](#footnote-63) This duality in South Africa’s agriculture is further evident in the fact that 80 per cent of agricultural output is produced by approximately 25 per cent of producers, of which 51 per cent have a turnover below R300 000 a year.[[64]](#footnote-64) This is a duality that mirrors the extent of inequities that has marked South Africa’s tenure rights regimes. It is also a structural duality reminiscient of South Africa’s pre-1994 apartheid spatial geography and its impact on the agricultural and landownership landscape.

Alongside this consolidation of land parcels, another process of consolidation appears to be underway in the distribution of agricultural capital in primary production and up- and downstream industries. In addition, input trends have changed as production has become more capital-intensive and less labour-intensive,[[65]](#footnote-65) clearly notable in the decline of farm employment (1994 to 2010). For instance, according to the census of commercial agriculture, the number of paid farm employees has decreased since 1993 from 1 093 265 to 770 993 in 2007. Although agriculture is a diminishing sector, it is still significant in the South African economy constituting the country’s most labour-intensive export sector. The government has identified the agricultural value chain as one of the six key “job drivers” that are expected to create five million new jobs by 2020.

Given the aforementioned, equitable access to tenure security to all South Africans is therefore one of the hallmarks that underscores South Africa’s Green Paper on land reform (2011), and proposals made with regard to land ceilings are aimed to advance the three principles that inform the Green Paper, namely equitable tenure, production discipline and deracialisation of the rural economy. Above all, the constitutional basis of the proposed reforms will advance the obligations bestowed on the state by the Constitution:

*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 equitable basis (Section 25(5)).[[66]](#footnote-66)*

### Policy Options

### 1. Enact Land Ceilings in conjunction with other land reform policy instruments aimed at averting unfettered concentration of agricultural land holdings

Arguments in favour of land ceiling as noted in the international case studies reviewed in this paper suggest that land ceilings are a potential tool to use in conjunction with other land reform tools in averting the unregulated concentration of agricultural land ownership. Obviously, such a discussion must be informed by the experiences noted in countries that have pursued land ceilings in contexts of high inequities to land ownership. Land ceiling could be imposed as a possible tool to prohibit unregulated acquisition of arable land by non-South Africans and South Africans. In addition, land ceilings may discourage excessive acquisition of prime agricultural land and incentivise the release of prime agricultural land into the market and discourage land hoarding for speculative purposes. Indeed, the principal lesson gathered from the international reviews undertaken on land ceiling confirms that land ceilings discourage uncontrolled acquisition and concentration of prime agricultural land by a minority. If ceiling laws were to be instituted in conjunction with other tools of land reform (e.g. right of first refusal), its principal role would be to halt the uncontrolled consolidation of agricultural land. Ceiling thresholds may also be instituted to curb or regulate the acquisition of agricultural land by non-South Africans. This approach would obviously minimise the complexities and controversies that accompany the promulgation of ceiling laws at lower thresholds, and would allow the state to use ceiling (in a minimal way) to complement similar objectives of new proposals, such as the “Right of First Refusal” and along with regulations that will be instituted on foreign land acquisition. With regard to the current work undertaken by the “Right of First Refusal” sub-committee, a proposal is made in consonance to the broad policy option undertaken herein:

If the state were to be given a right of first refusal, this should be limited to sales of agricultural land above a certain threshold e.g. on properties larger than 1000 hectares. This would not be unduly burdensome for landholders generally and could facilitate the acquisition of strategic commercial agricultural land for land reform purposes.[[67]](#footnote-67)

In addition, the Draft position paper on policy and legislation to regulate land access by non-South Africans acknowledged land ceiling as one of the measures to institute:

To provide for conditions that foster access of South African citizens to land; to regulate the conditions under which non South Africans acquire and hold interests in sensitive South African land and land assets; to provide for the disclosure of land holdings by non-residents and certain juristic persons; to provide for the imposition of land ceilings; to provide for the state’s right of first refusal; and for related matters.[[68]](#footnote-68)

Controlled land transactions will enable legislative cover for the possible imposition of land ceilings, and the special protection or “warehousing” of specified rural, agricultural, environmentally-sensitive, security-sensitive, and border lands.[[69]](#footnote-69)

In instances where the right of first refusal and legislation to regulate land access by non-South Africans is implemented, ceiling laws could constitute a criterion to regulate arable land acquisition. In addition, if land ceiling is to be implemented in conjunction with other policy instruments such as the land tax, then the ultimate objective of averting unabated acquisition and concentration of agricultural land will be actualised. This will facilitate Government’s efforts in the acquisition of prime and strategic agricultural land. A Right of First Refusal could be exercised on agricultural land that exceeds a high threshold set at 1 000 hectares. Other possible instruments to institute as strategies to acquire prime agricultural land is through the implementation of a land tax on land exceeding 1 000 hectares.

Enacting ceiling laws at a higher threshold will avert the difficulties associated with implementing exemption clauses, and normative shortfalls associated with these programmes with regard to circumvention, corruption, litigation and compensation payments. Imposing high ceiling thresholds will impact on current large scale-land owning structures and leave the smallholder farmers unaffected. Instituting ceiling levels at a lower threshold will affect medium scale and small scale farmers.

One lesson learnt from the Romanian, Taiwanese and Mexican experience is the necessity of having limits which are neither too big nor too small. Small land caps lead to fragmentation of land which could reduce the efficiency in land usage, as small farms make commercial farming less viable. On the other hand, large land caps reduce the amount of land available for distribution thus negating the purpose of land reform. Fragmentation is seen as a problem because it creates physical problems, operational difficulties and social externalities which are difficult to work with. [[70]](#footnote-70)

Therefore to deal with the increasing structural duality noted in South Africa’s agricultural sector, instituting a ceiling cap at a higher level will not only halt this trend (land consolidation) but also impact positively on land equalization in the long term. The fact that there are no encumbrances by way of regulatory instruments to monitor and prohibit where necessary the unfettered acquisition of prime agricultural land, implies that land consolidation is bound to continue unabated. In addition, the type of ceiling method proposed is bound to simultaneously complement the 3-pronged principles of the Green Paper – equitable and democractic tenure rights to all, while sustaining production discipline and deracialisation of the rural economy.

In addition, other nuances such as complex ownership structures that may underpin ownership of established commercial farms (complex shareholding structures) deserves careful consideration. To avoid circumvention and unnecessary litigation by land owners, the legal and institutional framework that underpins land ceiling must be clearly formulated and devoid of shortfalls. In West Bengal, India, one of the foremost attributes of its success was its effective legal and institutional machinery coupled with a strong political will to ensure enforcement, which led to more than 5 per cent of its cultivated land being redistributed to deserving households.

In implementing land ceiling, one will have to take into account whether to institute a differentiated approach to ceiling. Rationale of such an approach will have to be made while taking into account questions of commercial viability. If the overall thrust of the ceiling exercise is to allow the state the veto to regulate acquisition of prime agricultural land, then discussions around whether communal and state land is to be exempted from this exercise are areas of further discussion.

Justification for creating exemption categories that could be commodity sector specific, regional specific, agro-ecological specific, land-use specific or ownership type specific (e.g. shareholding enterprises) must be made and this often generates controversy from the landowning class. This was evident in India[[71]](#footnote-71) where landowners challenged the law through written petitions in the High Court. They argued that the law was discriminatory in character since a distinction had been made on grounds of the description of land.

To avoid the normative challenges that faced land ceiling in countries reviewed in this study, the imposition of land ceiling must be underpinned by an effective and clearly defined legal and institutional framework that will not be open to manipulation, circumvention and unnecessary litigation. The proposed Land Management Commission should play a strong oversight role in this regard along with the proposed Office of the Valuer General. However, in the main, a consensus is emerging that land ownership concentration and the concomittant increase in the average ownership of land per agricultural enterprise is on the rise.[[72]](#footnote-72) Currently, there are only an estimated 30 000 farmers left in South Africa down from 60 000 fifteen years ago. This averages out to approximately 1 500 hectares per farming unit in 2010 up from 750 hectares at the time of South Africa’s political transition.[[73]](#footnote-73) It is hoped that a more reliable figure will be available once the audit of private leasehold land is completed and this will further advance arguments on the applicability of ceiling laws.

As noted in the international reviews,[[74]](#footnote-74) land ceiling policies have been introduced in a number of countries in Asia, Latin America and Eastern European countries in an attempt to correct and prevent structural disparities in land holdings. In India, land ceiling affected only certain types of land, generally agricultural, rather than being a ceiling on total land holdings in the country. The research undertaken thus far suggests that laws limiting the amount of land that an individual, family or entity can hold can be difficult and complicated to implement and often fall short of their intended equity goals. Nevertheless, research shows that with a strong commitment to implementation and a willingness to commit investments in smallholder agriculture, ceilings can revitalise the agricultural sector, contribute to poverty reduction and be instrumental in stemming trends of increasing accumulation of land assets and widening disparity. The review also indicated that land ceilings have been implemented most effectively in cases where there is a serious commitment on the part of the government both to enforce the ceiling and to effectively redistribute the land.[[75]](#footnote-75)However, for ceiling to be effective, it should be used in conjunction with other tools of land reform that can enhance the pace of acquisition of arable land, and be accompanied by an effective institutional and legal infrastructure capable to actualise the objectives of the ceiling law. The beneficiaries of the surplus land declared should have adequate support to ensure their success in farming.

Despite the legal and institutional complexities that were noted in some of the countries that instituted land ceilings, it is evident that land ceilings can yield positive impacts for equity and growth with proper policy formation, which has generally included additional land reforms such as tenancy abolitions. In Taiwan, land ceilings used in conjunction with tenancy reforms helped transform the national economy and benefited agricultural families to the extent that by the 1960s, rural households were sufficiently secure financially to enable a saving of 20 per cent of their earnings. In West Bengal, India, the enforcement of land ceilings laws has contributed significantly to a **trend of land moving from large-holders to small-holders, reversing the trend seen in the rest of the country**. In the Philippines, beneficiaries of the land ceiling have higher incomes and lower rates of poverty than non-beneficiaries, evidencing the importance of land distribution to rural communities. These are all clear indications of the potential positive impacts of land ceilings.[[76]](#footnote-76)

However, to be successful, land ceilings require investments in smallholder agriculture, as well as strong political will for success to be possible. In order for a policy to be effective, circumvention measures must be mitigated to the fullest extent possible. Land information systems must be effective not only at determining the true owners of land at the time the policy goes into effect, but also at continually monitoring land transactions to ensure current recordkeeping. In addition, the judicial system’s interference must be limited to avoid having legal proceedings tie up significant amounts of ceiling-surplus land. Exceptions to the ceiling must be narrowly tailored to avoid the same. In the interim, proposals on the formation of the Valuer General Office and Land Management Commission suggest that some of the requisite conditions stated hereto can be addressed through the proposed mandate of the Land Management Commission and the Office of the Valuer General Office.

In West Bengal, India, the stringent enforcement of land ceiling laws has contributed significantly to a trend of land moving from large-holders to small-holders, reversing the trend seen in the remaining country. This is a clear indication of the potential positive impacts of land ceilings.[[77]](#footnote-77)

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### 2. Do not impose Ceiling Laws on Agricultural land holdings[[78]](#footnote-78)

In terms of the submissions made to the work stream sub-committee on land ceiling, arguments not in favour of land ceiling have been made on the basis that the costs associated with ceiling outweigh the expected benefits. Equity attainment through land ceiling is seen as a possible compromise to productivity. However, this view is open to debate, as it seeks to assume that equity attainment in relation to land ownership may potentially undermine the capability of South Africa’s agriculture to operate optimally. The costs incurred in terms of the implementation experience – litigation, circumvention, corruption, poor legal and institutional infrastructure to enforce ceiling laws vindicate the view that ceiling may not achieve its intended objectives.

Although land ceilings are easier to legislate than, for example, a land tax, there are difficulties in determining the maximum or minimum, size of land holdings (i.e. the economies of farm size). Firstly, the notion of setting a maximum or minimum land size to achieve maximum returns, is based on fixed prices and constant technology, neither of which is valid in agricultural production. Input and output costs change constantly. Secondly, optimum land size will be influenced by land types, land use, the productive value of the land, access to infrastructure, transport and markets, access to capital and credit, management and experience, as well as the general ecology of any particular area. Optimum land sizes will thus differ from country to country, or between different areas in a particular country.[[79]](#footnote-79)

Ceiling laws have been expensive to enforce, have imposed costs on landowners who took measures to avoid them, and have generated corruption, excessive rent seeking,[[80]](#footnote-80) tenure insecurity, and red tape.[[81]](#footnote-81) Submissions received from Agri-SA and the Agricultural Business Chamber have expressed reservations with regard to the implementation of the ceiling programme. Arguments advanced in this regard by Agri-SA and Agricultural Business Chamber include:

* The introduction of a land ceiling is not likely to contribute to the release of significant amounts of land in South Africa.
* Ceilings on land ownership have been imposed primarily to facilitate the breakup of large farms and the associated sales of land to small producers. Even where such measures have had a strong economic and social justification and where conditions for implementing them should have been favourable, ownership ceilings have had only a marginal impact. In India, for example, 35 years of ceiling laws have, in all but three states, transferred less than 1 per cent of the agricultural area to the target group.
* Agri SA is opposed in principle to any restrictions on the ownership of agricultural land. The sizes of farming enterprises are dictated by a number of external climatic and economic factors. Land ceilings have proven to be very difficult to administer in other countries and may also result in all sorts of unintended negative consequences. Macro economic factors, farming systems and individual ability and needs should be allowed to dictate farm size. The artificial regulation thereof will, from an economic perspective, be sub-optimal and therefore counterproductive. There is a very real danger that land ceilings may negatively impact on food security, particularly if macro-farms are targeted.
* It needs to be noted that South Africa has limited high potential agricultural land and that large parts of our country is quite arid.

**ANNEXURE B OF NA-QUES 2136 OF 2015**

**THE AGRICULTURAL ECONOMY OF SOUTH AFRICA AND THE IMPLICATIONS OF A POTENTIAL LAND CEILING POLICY AND LEGISLATION ON THE BROADER ECONOMY**

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##### **Introduction**

The aim of this report is to assist the Department of Rural Development and Land Reform (DRDLR) to determine the status quo of agriculture in South Africa and then to provide an analysis of such information in relation to potential outcomes of agricultural land ceilings which are viewed as a tool to enforce one of the pillars of the 4-tier tenure reforms proposed in the Green Paper, namely “Freehold with limited extent”.

The underlying thrust behind “Freehold with limited extent” is captured within one of the key elements of the vision of land reform as averred in the Green Paper namely, “clearly defined property rights and effective land use planning and regulatory systems” (DRDLR, 2011). The vision is underpinned by three key principles, (i) de-racialising the rural economy, (ii) democratic and equitable land allocation and uses across race, gender and class, and (iii) a sustainable production discipline for food security. It therefore follows that one of the manifested objectives of the proposed tenure reforms is to reverse the structural inequalities of land ownership and its antecedent poverty in the rural areas. Moreover, Kariuki, (2012) also noted that the realignment of the tenure relations in South Africa must compliment and not compromise production discipline. The attainment of equity objectives with regard to land access should therefore not be equated as a compromise to production discipline in agricultural (Kariuki, 2012).

With the aforementioned as background, a section on the factual situation of agriculture in South Africa was prepared as a ‘first phase’. However, it should be noted that data limitations influenced the originally scope as provided by DRDLR. With this in mind, section 1 report on matters including:

1. the various categories of agricultural land and the respective surface areas per province;
2. the amount of arable agricultural land per province;
3. the amount of agricultural land currently under cultivation and used for livestock and ranching per province;
4. number of commercial farmers;
5. farm consolidations;
6. change of agricultural land use to non-agricultural uses;
7. commodity-specific agricultural production;
8. commodity-specific average farm income;
9. economic units per commodity and locality;
10. the extent and value of registered mortgages and other forms of real and alternative / substitute security instruments in favour of the Land Bank, other development finance institutions as well as private commercial financial institutions;
11. Economic viable size of farming units in different areas of South Africa, taking in consideration the different production enterprises, geographic and agro-climatical conditions.

The second phase builds on the first, with information that is used to provide the DRDLR with comprehensive information and evidence-based recommendations on the potential contribution of land ceilings in terms of equitable access to agricultural land, optimal sustainable use of agricultural land, enhanced food security and poverty alleviation. This phase consists of three sections with the first (second in the report) dealing with an international overview in terms of the success of land ceilings in other parts of the world taking into consideration- production output, contribution towards land distribution/ ownership, income generation and employment.

In the second section of phase 2 (third section in the document) the factors that affect farm size are discussed.

In the third section of phase two (fourth in the report), the potential impact of land ceiling legislation in South Africa is discussed. The focus was placed on amongst others:

1. Potential impact of ceilings on aggregate production;
2. Influence of ceilings on income generation with specific reference to improvements, household income, aggregate income etc.;
3. Potential impact on the agricultural- and food products trade balance;
4. The potential contribution of ceilings legislation towards land ownership as well as gaining wide spread access to land through distribution thereof;
5. The potential impact in terms of investment and capacity improvements; and
6. The potential impact towards production, increase access and use, and the degree to which the “demand” of historically disadvantaged persons will be met.

Finally, the document concludes with a fifth section i.e. summary and recommendations.

## Recommendations

Given the above the most important recommendation is that land ceilings should not be implemented as the results show that it has not delivered the desired results in other countries and the cost of implementing it, can be very high due to its unintended consequences e.g. disinvestment, lower production with a subsequent loss in jobs, lower competitiveness of the sector, loss in agriculture’s contribution to the balance of trade etc.

This does not help as the challenges with regard to the pace and success of delivery of the land reform process remains. According to Christiansen (1996) five salient lessons emerge from international experience in land reform:

* **The speed of implementation of the programme**. In the absence of fast paced programmes, a combination of excessive bureaucracy and over-centralisation of the process and legal challenges is likely to render the programme ineffective.
* **Economic viability of the farm models.** Before implementation there must be careful assessment of the models or livelihood options available to rural households. That is, the models should indicate whether the persons resettled on the land have sufficient land size and quality to provide at least the target income. Further, in computing the costs and benefits, other assistance and infrastructure necessary to generate the income should be planned.
* **Potential acceptability and legitimacy of the programme.** There must be a consensus across the spectrum of political opinion that the programme is both necessary and the most acceptable way of achieving the stated goals.
* **Clear definition of the role that the public sector can and will play.** Programmes that have relied entirely on the public sector in the belief that it is the only one capable of maintaining integrity, delivering services, determining needs, and managing the process have been failures.
* **Land reform is only one part of a comprehensive programme of economic reconstruction.** The redistribution of land is necessary, but not sufficient to guarantee the success of a development programme. There is a need for other services – capital, infrastructure, training, advise, support, etc to sustain productivity subsequent to reform.

According to Kirsten and van Zyl (1999) the Land Reform Programme has strong political acceptability and legitimacy, with a consensus across the spectrum of political opinion that the programme is necessary. However, according the same two authors it falters on the following points:

* The speed of implementation of the programme is slow due to a combination of excessive bureaucracy and over-centralisation of the process, which render the programme ineffective.
* Economic viability of the farm models has not been adequately addressed in that livelihood options available to resettled households generally indicate that they have insufficient land size and quality to provide at least the target income. Moreover, other assistance and infrastructure necessary to generate the income is not readily available to beneficiaries.
* There is no clear definition that the public sector can and must play, and what should best be left to the non-governmental sector. International evidence has shown conclusively that such programmes that have relied entirely on the public sector is the belief that it is the only one capable of maintaining integrity, delivering services. Determining needs, and managing the process, have failed.
* The need for additional services – infrastructure, markets, incentives, advise, training etc – to be considered and access provided, has not received adequate attention. These considerations are necessary both to sustain productivity and to include others who may not benefit from the direct provision of land.
* Changes to the legal environment have been aimed at establishing the rights of particular marginalised groups. However, some major impediments have not been addressed yet, for example the Sub-division of Agricultural Land Act which is still in place.

Against the above it is not surprising that the South Africa Land Reform Programme has not lived up to expectations and has failed to obtain the redistribution targets. The objectives of increased efficiency and equity, increase growth and poverty reduction also appear to have failed. The challenge is thus to find ways and means to put the programme of redistributing land back on track both in terms of its pace and success of delivery.

### 5.3.1 Improving the pace of delivery

There is a clear and urgent need to get land reform back on track. We need to find our way to a more optimistic future for land and agriculture than those that seem likely at present. It is clear that this better future will need to be based on a bold plan: leadership, courage, and vision are required to turn around the current situation and convince the sceptics that land reform is achievable (CDE, 2008). It is therefore recommended that the pace of delivery of land reform is increased by addressing the areas identified above. In addition to this the following also needs attention:

* It is critical that outstanding land restitution claims be dealt with speedily. This will improve confidence in the agricultural sector and boost investment.
* Land already transferred must be brought back into production. Post settlement support plays a crucial role in this regard.
* It is essential that a comprehensive audit of the natural resource base in South Africa with specific reference to land use and ownership is conducted preferably by an independent international institution.
* Dynamic budgets, linked to the natural resource base, needs to be developed.
* Meaningful partnerships with the private sector can help improve the pace of delivery by improving the effectiveness of implementation mechanisms
* Capable, skilled and committed government officials who execute the policy and programmes are needed.
* Market led land redistribution has the ability of correcting injustices of the past without negatively affecting food security. It is therefore of critical importance that market mechanisms and incentives play a pivoting role in land redistribution policies.
* A selection criteria model, similar as the one recently developed by AMT, that will improve the success rate of land redistribution must be developed. Careful selection and on-going training and mentoring of beneficiaries and mentors will ensure high agricultural productivity.

#### 5.3.1.1 Black Economic Empowerment

Black Economic Empowerment is a strategic and systematic intervention that is focused on addressing the economic inequalities in the South African Economy. It is an initiative that has as its objective to broaden the economy and to ensure that everyone, especially those that were previously disadvantaged, gains from it. The same and similar requirements are reflected in the Agri BEE document. Within the Agri BEE document much emphasis is placed on the co-ownership of and access to the total infrastructure within primary agriculture. The main focus is on: access to land, access to existing infrastructure, access to inputs, financing, expertise, training and marketing.

With this in mind, new codes were implemented in 2007 and states that businesses with turnovers of between R 5 million and R 35 million will be classified as Qualifying Small Enterprises (QSEs). These businesses have to adhere to four of the seven scorecard elements contained in the codes and can choose which three to ignore. Businesses with a turnover of more than R 35 million have to adhere to all seven scorecard elements while a business with a turnover of less than R 5 million is exempt from BEE.

Therefore, large farming units realising an annual turnover of more than R 35 million are already faced with a type of land cap policy. This policy however, will not affect production and food security as severely as the case might be when an actual land ceiling policy is implemented all while still providing access to land, infrastructure, inputs, financing, expertise, training and marketing.

#### 5.3.1.2 Equity Sharing

Another way that may increase the pace of delivery whilst maintaining production is that of aquity sharing. Equity share schemes are a business model which provides new producers with the opportunity to engage with commercial farmers. According to Van Schalkwyk *et al.,* (2009), several agricultural equity sharing projects exist within the borders of South Africa. Moreover, several forms of partnerships exist and the advantages and disadvantages are more or less the same. Advantages of the proposed institutional structure include (Townsend and Ngatea, n.d. and Van Schalkwyk *et al.,* 2009):

1. The fact that knowledge can be accessed immediately. Within the equity sharing framework, the new entrant or beneficiary will be able to access local knowledge from the commercial farmer with whom the agreement is set.
2. Capital can be made available. In this case, commercial farmers may/ should introduce capital into the farming business. This capital injection is required for establishment and operation cost over the first year of operations.
3. Risks are spread. Linked to the spread of financial risk is also a reduction of production risk for the new entrants, as the commercial farmer brings a lot of experience and know-how to the farming practices.
4. In-service training can take place. Equity sharing will allow for the new partner to engage in production activities under supervision or with guidance from the commercial farmer, enabling the new entrant to learn by doing. This holds the potential to significantly reduce transaction cost, compared to a situation where the new entrant engages in production on his own, as mistakes could be kept to a minimum with the guidance of the commercial farmer.
5. Existing markets can be spread. The equity sharing framework present a means from where production practices could be expanded, as new entrants are likely to introduce new land. This might allow the newly formed partnership to spread the existing market by adding value to their produce through trademarks, etc.
6. The pace of development is much quicker. As stated, mistakes could be kept to a minimum, enhancing the potential for success. Moreover, new entrants or partners will also be able to learn by doing under the supervision of the commercial farmer, reducing transaction cost and contributing towards the success of development in the province.
7. All parties want to make a profit. All parties will therefore try their best to ensure optimal profit.

According to Townsend and Ngatea (n.d.) and Van Schalkwyk et al., (2009), the disadvantages of equity sharing are as follow:

1. Full ownership is not possible with new entrants or beginner farmers that will have shares in the farming operation,
2. Beginner farmers can possibly be dictated to in decision-making: New entrants or beginner farmers might lack the knowledge or know-how in certain aspects of farming, which may make it easy for well established farmers or partners to dictate the decision making. Although this approach in some cases could be beneficial in terms of eliminating potential production losses, etc. it is not the best means of guiding the new entrant or farmer. The beginner farmer should have the opportunity to participate meaningfully in the decision-making process as this will assist in the learning process as well as establishing a feeling of ownership.
3. The danger of a total take-over exists if the co-operation agreement has not been carefully drawn up.
4. Developers normally make the biggest contributions and only minority shareholding is available for them.

However, certain conditions for successful partnerships in an equity share scheme need to be adhered to. According to the OECD, (2006) and Van Schalkwyk *et al.,* (2009), these include that:

1. Parties must trust each other;
2. An outside partner must be fully informed regarding the long-term objectives of the partnership. This will ease the process of decision making and planning, as all parties involve will understand the rationale behind the process of decisions and planning;
3. Partners must have sufficient capital at their disposal to finance the project. Finance and access to finance should be seen as probably the most important aspect of getting the partnership and subsequently the business going. Without capital no production practices will be able to commence, making it unattractive for anyone to get involved;
4. Cooperation agreements must be completed and understood by everyone. It is important that there are guidelines as to how operations, funding, etc. will be approached and managed. This will reduce the potential of future conflict and failure;
5. Parties must be satisfied with agreements that are reached. Dissatisfaction will almost definitely lead to the failure of the partnership;
6. All parties must be fully informed regarding the negotiation process as well as the performance of the partnership after the agreement has been reached;
7. A seizure programme must be in place and be implemented;
8. Fair profit-sharing must take place. It is important that the arrangements around profit sharing are clear before production commences. This relates closely to the long-term objectives of the business, meaning that the role-players involved should decide whether all profits will be paid to the partners as agreed upon or whether a certain percentage will be kept for improvements, expansion or replacement of stock, machinery, etc.

**ANNEXURE C OF NA-QUES 2136 OF 2015**

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