

# DRAFT GREEN PAPER ON LAND REFORM

DEPT OF RURAL DEVELOPMENT & LAND REFORM

25 August 2011



rural development  
& land reform

---

Department:  
Rural Development and Land Reform  
**REPUBLIC OF SOUTH AFRICA**

# Key Policy Questions

- ‡ Why should the State continue to invest in transforming land relations?
- ‡ How important is land reform in South Africa today?
- ‡ Is South Africa still primarily an agrarian society?
- ‡ With the extent of the historic dispossession and transformation of the majority of the dispossessed into wage-workers, is there an agreement about:
  - the demand for land in South Africa? and
  - the purpose and prospective beneficiaries of land reform?
- ‡ Can land reform represent a radical and rapid break from the past without significantly disrupting agricultural production and food security?

# Policy Statements

- ‡ Instilling *national identity, shared citizenship* and *autonomy-fostering service delivery* are the primary reasons why the State must continue to invest in the transformation of land relations (systems and patterns of control and ownership of land).
- ‡ The rationale behind State investment in, and the enduring demand for, land is to be found in the historical background of what has been described by some scholars as “*accumulation by dispossession*”. (Arrighi G, Aschoff N & Scully B. *Accumulation by Dispossession and Its Limits: The Southern Africa Paradigm Revisited*. St Comp Int Dev (2010) 45:410–438)
- ‡ The current economic structure of South Africa, as a result of this historical process, has produced net factors which *undermine the conditions for fostering social cohesion and development amongst those previously dispossessed of their land*.

# Vision For Land Reform

- ‡ A properly re-configured **single, coherent *four-tier system of land tenure***, which ensures that all South Africans, blacks in general and Africans in particular, have a ***reasonable access to land with secure rights***, in order to fulfil their basic needs for housing and productive livelihoods;
- ‡ ***Clearly defined property rights***, sustained by a fair, equitable and accountable land administration system within an effective judicial and 'governance' system;
- ‡ ***Secure forms of long-term land tenure for resident non-citizens engaged in appropriate investments*** which enhance food sovereignty and livelihood security, and improved agro-industrial development;
- ‡ ***Effective land use planning and regulatory systems*** which promote optimal land utilization in all areas and sectors; and, effectively administered rural and urban lands, and sustainable rural production systems.

# Land Reform Principles

The **principles** which underpin the new approach to sustainable land reform are:

- ‡ *Deracialisation of the rural economy;*
- ‡ *Democratic and equitable land allocation and use across gender, race and class; and*
- ‡ *Strict production discipline for guaranteed national food security*

# New Trajectory

- ‡ A set of proposals is advanced which attempts to:
  - † break from the past without significantly disrupting agricultural production and food security; and,
  - † avoids redistribution that does not generate livelihoods, employment and incomes.
  
- ‡ This trajectory is supported by:
  - † a strategy and a funded development programme – the a recapitalisation and development programme;
  - † a single land tenure system with four tiers;
  - † a Land Management Commission;
  - † a Land Valuer-General;
  - † a Land Rights Management Board, with local management committees;
  - † properly aligned common property institutions (CPIs); and,
  - † the Land Tenure Security Bill 2010, which is an integral part of the Land Reform Programme (LRP).

# Strategic Thrust

- ‡ Land Reform is located within, and informed by our CRDP which is in turn hinged on a three-pronged strategy:
  - † coordinated and integrated broad-based agrarian transformation,
  - † an improved land reform programme, and
  - † through strategic investments in economic and social infrastructure that will benefit entire rural communities.

# Strategic Thrust

- ‡ While separate, *rural development* and *land reform* are aligned at policy, programme and institutional levels to ensure coordinated service delivery.
- ‡ In the pursuit of agrarian transformation we acknowledge the link between the *land question* and *agriculture* as the basis for the search for an economic rationale and a vision of a post-reform agrarian structure. Yet, demand for land may be for other productive but non-agricultural uses.



# General Policy Weaknesses

- ‡ Land acquisition strategy / WBWS (a distorted land market);
- ‡ fragmented beneficiary support;
- ‡ beneficiary selection for land redistribution;
- ‡ land administration / governance, especially in communal areas;
- ‡ meeting the 30% redistribution target by 2014;
- ‡ declining agricultural contribution to the GDP;
- ‡ unrelenting increase in rural unemployment; and,
- ‡ a problematic restitution model and its support system (communal property institutions and management)

# Communal Tenure

- ‡ dealing with the CLaRA unconstitutionality;
- ‡ role of traditional authorities in relation to local government;
- ‡ the role of local government in the administration and regulation of land in communal land areas;
- ‡ Role of CPA and other institutions in Communal areas; and
- ‡ the measures facilitating the provision of services to communities on communal land.

# ***Key Land Reform Policy Components: Review Issues***

- ‡ the acquisition of land for redistribution;
- ‡ the definition and qualification of beneficiaries,
- ‡ land rights and tenure in various contexts for citizens and non-citizens;
- ‡ land settlement and production models;
- ‡ Land rights and tenure issues and policy in varied contexts (e.g. freehold, leasehold, permits, common property tenures, state property, trust land, informal rights) and
- ‡ State support to productive land.

# 3-Tier Tenure System

## ‡ 3-Tier Tenure System

- † State & Public Land: Leaseholds;

- † Private Land: Freehold Title with limited extent;  
and

- † Foreign-owned land: Precarious title with  
regulatory limitations, obligations and conditions

## ‡ Communally-owned land will be mixed uses with institutionalised use rights (to be dealt with separately)

# *State & Public Land*

- ‡ The *creation of a separate and different public land management dispensation for local government and the absence of statutory mechanisms to compel the three spheres of government to consult one another in the event of intended disposals, have given rise to a paralysing fragmentation which impacts negatively on service delivery and accountability.*
- ‡ The current fragmentation makes it possible for any sphere of government, or any custodian in any sphere of government, to dispose of any property which could have been utilized to achieve service delivery objectives by another.
- ‡ The immediate thrust of leasehold tenure on State and Public land is that the State be able to keep land in State hand.

# *Private Land*

- ‡ South Africans continue to exercise freehold rights over land;
- ‡ Regulatory limitations be placed on the freehold titles held by South Africans in respect of:
  - † prime and unique agricultural land, sustainable utilisation of land, subdivision of rural/agricultural land;
  - † non-resident ‘absent-landlord’ properties, land quantity restrictions, special consent and approval regimes on selected controlled land, right of 1<sup>st</sup> refusal, etc

# 3-Tier Tenure System

## **Foreigners**

- ‡ Section 25 (5) of the Constitution proclaims that: *the state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.*
- ‡ In order to fulfill the Constitutional obligation imposed by section 25 the Government must be able to answer the questions:
  - † *To what extent are policies of the State conducive to enabling “citizens gain access to land”?*
  - † *Who owns the land of South Africa?*
  - † *Are those owning the land using the land for the greater interest of South Africa? and*
  - † *Are the current ownership patterns sustainable to guarantee national interest including food security?*

# Foreigners

- ‡ Sale of land to foreigners no longer to be freehold titles but be leasehold titles subject to limiting regulations;
- ‡ Regulatory limitations be placed on the leasehold titles held by foreigners in respect of;
  - † Strict compliance with obligations and conditions;
  - † Partnership by foreigners with South Africans in respect of land-based investments in the country;
  - † *Exclusion from sensitive and national security* land such as communal, coastal, heritage, rural, agricultural, environmentally-sensitive, security-sensitive, and border lands; and,
  - † *controlled transactions* such as transactions valued at a prescribed threshold, non-resident 'absent-landlord' properties, and land quantity restrictions be subject of special consent and approval regimes



# Land Management Commission

- ‡ The LMC will coordinate and monitoring the execution of land management functions by all state and public land custodians to ensure compliance with the agreed policy of government on land management.
- ‡ The LMC will act the following capacities: (a) advisory; (b) coordination; (c) regulatory; (d) auditing; and (e) reference point.

# Office of Valuer-General

## *Problem Statement*

- ‡ South Africa lacks a nationwide comprehensive, reliable and collated hub of property values;
- ‡ absence of legislative framework to determine when 'market value' is one of the variables in determining values as opposed to being the only criterion;
- ‡ probity of some of the valuation is questionable;
- ‡ conflict of interest and malpractices;
- ‡ improper or hurried valuations in order to meet deadlines or compliance planning; and,
- ‡ ahistorical or mechanical approach to valuation.

# Office of Valuer-General

The Valuer-General will be a statutory position responsible for:

- ‡ the provision of fair and consistent land values for rating and taxing purposes;
- ‡ determination of compensation following expropriation under the *Expropriation Act*;
- ‡ the provision of specialist valuation and property advice to government;
- ‡ Setting standards and monitor service delivery;
- ‡ Undertaking a market and sales analysis;
- ‡ Setting guidelines, norms and standards required to validate the integrity of the valuation data; and
- ‡ Creating and maintaining a data base of valuation information.

# Land Rights Management Board

- ‡ The LRMB will be composed of representatives of sectors which hold rights to land and persons appointed by the Minister because of their special knowledge and capacity to provide professional services to the Board.
- ‡ The Land Rights Management Committees, on the other hand will be composed of representatives of residents in a specific rural environment or settlement, farm-workers and dwellers, commercial farmers, relevant municipal councils, government departments such as the DRDLR, Human Settlements, as well as the South African Police Service

# Land Rights Management Board

## *Functions*

- ‡ communication of legal reforms to farm owners, farm-dwellers and potential land beneficiaries;
- ‡ build institutional capacity (inside and outside state institutions) to advise and support rights-holders and facilitate their active use of the law;
- ‡ in collaboration with the Deeds Registrar, develop accessible and efficient systems for recording and registering rights on land;
- ‡ to encourage the primacy of social solutions to social problems and disputes; provide legal representation, where necessary, e. g. unlawful evictions; and,
- ‡ to establish a co-ordinated and integrated support system for state, civil society and private sector participation in social, cultural and economic development measures in rural settlements.

# Conclusion

- Undoing the social, economic and cultural effects of centuries of discrimination and exclusion, on the basis of race, **will take time and an enduring national political effort.**
- Challenges and constraints experienced over the last seventeen years, and lessons drawn from other countries across the world, show clearly that **there are no silver bullets to solving post-colonial land questions.**