

PRESENTATION TO THE PORTFOLIO COMMITTEE: RURAL DEVELOPMENT AND LAND REFORM

23 MAY 2012



**rural development
& land reform**

Department:
Rural Development and Land Reform
REPUBLIC OF SOUTH AFRICA

BACKGROUND

- The review of the “Willing Seller-Willing Buyer” (WSWB) document arose out of recommendations proposed at the Land Summit in 2005.
- The Land Summit affirmed the following **key points** which Government and other stakeholders had begun to flag as areas needing a rethink by both policy makers and implementers of land and agrarian reform:
 - Confirmed 30% target of redistributing white-owned agricultural land;
 - land reform is necessary not only to undo the injustices of the past but also to contribute towards economic transformation;
 - need to change approach in order to deliver land at scale and in an orderly manner



LAND SUMMIT KEY POINTS

- The state needs to assume a proactive and leading role in ensuring accelerated and sustainable land and agrarian reform.
- The state's capacity and resources need to be substantially enhanced in all three spheres of government
- Government needs to be capacitated to target beneficiaries
- Achievement of 30% target requires strategic partnerships
- New approach to land reform must also ensure that farm-dwellers derive benefits from land reform and the scale of evictions and the ongoing violation of human rights on farms must receive urgent attention
- Land reform should be decentralised
- State needs to conduct a land audit on private and state land and make this information publicly available
- state must regulate the ownership of land by foreigners



BACKGROUND/LAND SUMMIT ISSUES

- The abovementioned points were among the proposals analysed during the review of the WSWB approach from 2006.
- First draft was available in 2008 and then reviewed during 2009-2010. In 2009, the Department of Land Affairs (DLA) was reconstituted into the Department of Rural Development and Land Reform.
- The Land Summit proposals, including work done by the previous “DLA” following the Summit, were considered as part of the development of the Green Paper on Land and Agrarian Reform.
- In the absence of approved alternatives to the WSWB, the DRDLR had to consider “sharpening” its existing acquisition strategy, the Proactive Land Acquisition Strategy (PLAS).



KEY FINDINGS OF THE WSWB

➤ METHODOLOGY

The methodology adopted during the review process was essentially a desktop exercise, evidence from two limited case studies undertaken by three academics and anecdotal evidence collected through telephonic interviews from 1 provincial land reform office. The results therefore were not conclusive enough to formulate concrete policy recommendations.



KEY FINDINGS OF THE WSWB

➤ Re-statement of the rationale for the review

- The thrust of the rationale for the review of the WSWB principle remains. However, the ANC's' Polokwane Conference resolutions, adopted in 2007, can be considered a clear arbiter for change in land policy
- The conference recognized that the WSWB *"has constrained the pace and efficacy of land reform"* and that *"the market is unable to effectively alter the patterns of land ownership in favour of an equitable and efficient distribution of land"*.
- The resolutions reiterate the following proposals of the Land Summit:
 - the use of expropriation "where necessary" in accordance with the Constitution;
 - Introduction of a special land tax and other progressive tax measures; and
 - Repeal of any legislation which impedes the subdivision of agricultural land and other policies which promote the concentration of land and the under-utilisation of land.



KEY FINDINGS OF THE WSWB

➤ The Meaning and Operation of 'Willing Buyer-Willing Seller' in the Context of Land Reform

- The document discusses at length the meaning and operation of the term WSWB in the context of the land reform programme and deduces that land reform transactions are in many respects not 'normal real estate transactions'.
- The document also noted that prices per hectare paid in the restitution programme were significantly higher than normal market transactions in those areas. In contrast, a farm land price trend analysis revealed that prices paid for land by the Department for land redistribution beneficiaries tended to be below market prices, IN SOME CASES, for reasons that are not clear but could be based on 3 possibilities:
 - inferior quality of land purchased through the programme;
 - poor state of infrastructure on farms led to sellers lowering prices; and
 - pace of redistribution in certain areas that tempered the markets in those areas.



KEY FINDINGS OF THE WSWB

➤ The proposed models

- The document evaluates the following 11 models in terms of impact, implementation and broader consequences:
 - Model A: Increasing the Use of Land Expropriation
 - Model B: Offering Below-market Compensation
 - Model C: The State's Right of First Refusal
 - Model D: Imposition of Land Ceilings and the Principle of "One Farm-One Farmer"
 - Model E: Imposition of a Land Tax
 - Model F: Regulation of Foreign Land Ownership in South Africa
 - Model G: Scrapping Restrictions on the Sub-division of Agricultural Land
 - Models H and I: 'Use it or lose it' and 'retiring farmer buy outs'
 - Model J: Proactive Land Acquisition
 - Model K: Concentrated Land Purchasing.



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KEY FINDINGS OF THE WSWB

- The document state that the models, though not mutually exclusive and some could be used as a suite of options together, could have the following effects:
 - avoid the market mechanism altogether;
 - increase land availability;
 - reduce prices by means of reducing the value/profitability of agriculture; and
 - reduce prices/increase availability by means of improving beneficiaries'/state's bargaining effectiveness.
- Without advocating for a possible combination of models, the document seems to favour:
 - Expropriation;
 - Proactive Land Acquisition;
 - Concentrated Land Purchases; and
 - Right of First Refusal
- This does not mean the others are excluded, the strategic relevance of these is how they complement each other and focus on area-wide acquisitions to capitalise on economies of scale



KEY FINDINGS OF THE WSWB

➤ *Expropriation*

- In relation to expropriation, the issue of compensation has always presented a conundrum.
- Clear policy directives need to be put forward to enable the state to meet its redistributive goals within the ambit of section 25(3) of the Constitution.
- The compensation formula currently used in expropriation cases focuses on section 25(3)(c) *the market value of the property* and (d) *the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property*, of the Constitution. The document mentions 1 variable that could be looked at as a possible amendment of the compensation formula: *A land reform discount*



KEY FINDINGS OF THE WSWB

➤ *Proactive Land Acquisition*

- The Proactive Land Acquisition Strategy (PLAS), which began implementation in 2007, is a complementary mechanism for conducting redistribution, in which land is acquired by government in advance of identifying the specific individuals who will benefit from it.
- land acquired by means of PLAS is generally private land purchased in line with the willing buyer-willing seller principle
- PLAS allows for means of tapping into the markets that are not so readily available through the demand-led approach.
- PLAS has been used to negotiate purchase of large commercial farms in areas where land demand among aspirant land reform beneficiaries is particularly high. Many such areas are found along the periphery of the former homelands
- Another particular area where PLAS has particular potential is in areas with a high concentration of labour tenancy. The Qedusizi/Besters initiative in KwaZulu-Natal is proof of the efficacy of this approach.



KEY FINDINGS OF THE WSWB

➤ *Concentrated land purchasing*

- there are some areas of the country where land reform has proceeded relatively swiftly, inviting the question as to what accounts for these instances. Research indicates that in some of these cases there was a deliberate strategy to focus on a particular area (e.g. Elliot District, Eastern Cape);
- There are three significant common denominators in these cases:
 - i) negotiations between land owners and buyers tended to happen collectively rather than individually;
 - ii) at least for a while, the process was self-sustaining if not self-reinforcing, either pushing land prices down or suppressing their increase; and
 - iii) owners felt that the payments on offer were 'fair'. In effect, what happened in these cases was that a 'buyer's market' was created. There appears to be anecdotal evidence (not verified) in these cases that landowners have not been overcompensated.



KEY FINDINGS OF THE WSWB

➤ *Right of First Refusal*

- At the National Land Summit, held in Johannesburg in 2005, participants resolved that in order to fast track land reform, the state must have the right of first refusal (ROFR) in all land sales. This is currently done in terms of the subsidised housing programme.

- The Right of First Refusal :

- would empower the Minister of Rural Development and Land Reform to have greater control in relation to the sale of agricultural landholdings;

- may prevent private land owners and land reform beneficiaries from holding onto prime agricultural land for speculative reasons;

- would contribute to the land reform target of redistributing 30% of commercial agricultural land by 2014;

- may level the playing field with the government taking on the role of a “proactive buyer” to make informed purchases for sustainable land reform. This approach may work well in places where markets are especially thin such as in the Western Cape.



APPLICABILITY OF RESEARCH TO GREEN PAPER PROCESS

- The current Green Paper process requires a much more evidence-based approach, more in depth case studies and research. The Minister has set up a consultative body, the National Reference Group (NAREG) to discuss, refine and influence policy and legislative proposals made by the Department. Six workstreams emerged from this consultative body structured along the following six themes:
 - Office of the Valuer-General
 - Land Management Commission
 - Land Rights Management Boards
 - Three Tier Tenure System
 - Communal Property Associations
 - Communal Land Tenure



APPLICABILITY OF THE RESEARCH/

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- Workstreams have been meeting since October 2011 and consist of representation from organized agriculture (AGRISA, AFASA, NAFU, NERPO, TAU, etc), Agri-Business Chamber, other national government departments such as CogTA, Public Works, Department of Agriculture, Forestry and Fisheries, land reform beneficiary representatives, National House of Traditional Leaders, CONTRALESA, academics and independent consultants/researchers.
- Workstreams have presented policy, strategy and legislation proposals to the NAREG twice since October 2011.
- Some of the models presented as part of the WSWB are being further researched as a combination or suite of tools to sharpen land acquisition, lower land prices and result in sustainable land and agrarian reform through the Green



Paper workstream process. These include:

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APPLICABILITY OF THE RESEARCH/

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- Land ceilings:
- Progressive land taxes (partially complete research)
- Targeted expropriation (including proposed legislative amendments to the Expropriation Act) and proposed price determination formula (not yet complete)
- Efficient and long term use of state land through the PLAS (policy being revised) coupled with Recapitalisation and Development Policy
- Foreign Land “ownership” legislative measures (policy and bill- first draft available in June 2012)
- Equity schemes and partnership models (research completed and policy being revised)
- Institutional reforms:
 - » Land Management Commission
 - » Land Rights Management Boards
 - » Office of the Valuer-General



CONCLUSION

➤ The following policy proposals will be finalized, *inter alia*, as part of the 2012 Legislation Programme :

- Foreign Land Ownership;
- Land Management Commission;
- Land Rights Management Boards; and
- Office of the Valuer-General

THANK YOU.

CONTACT DETAILS:

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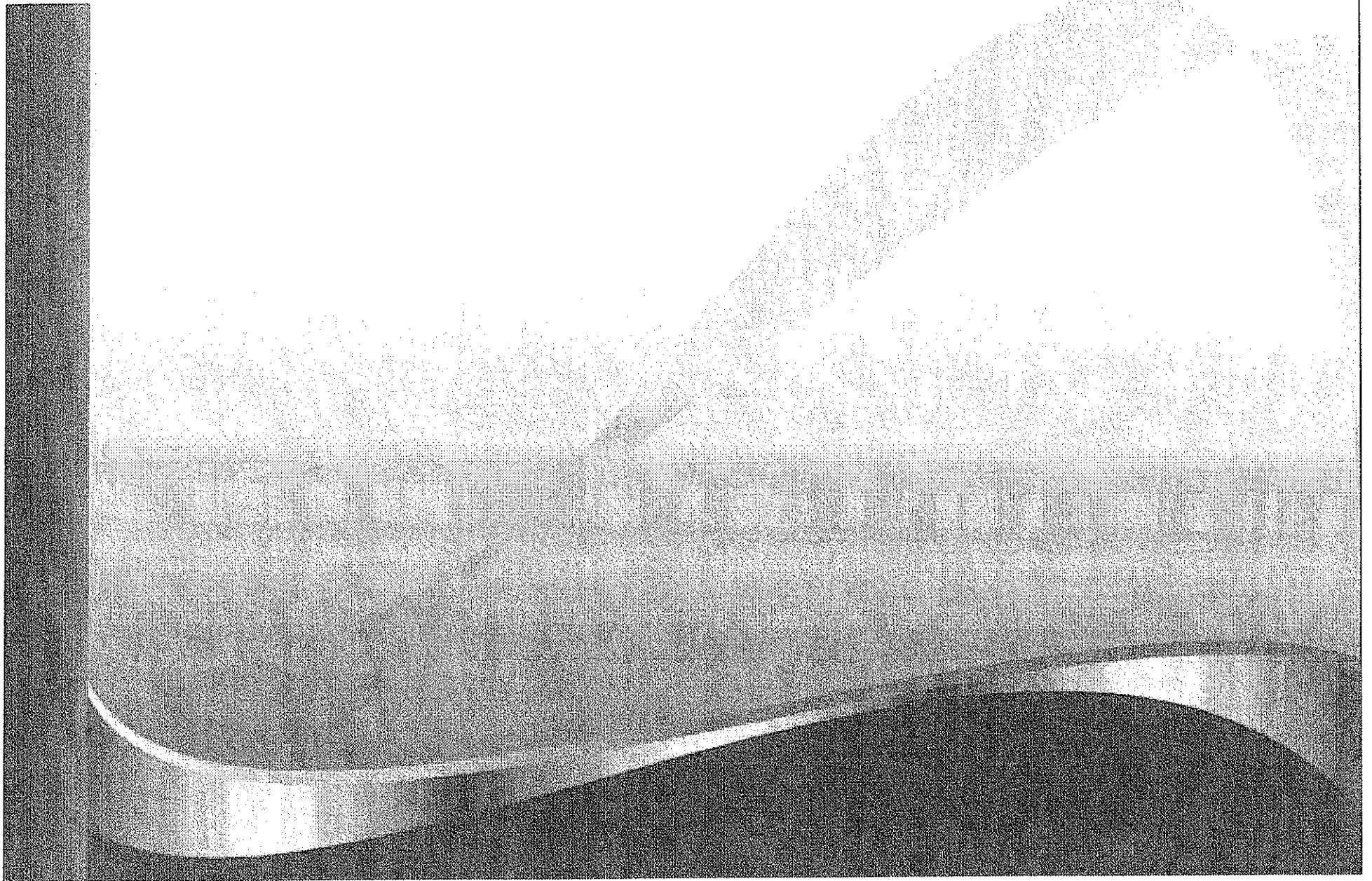
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