

# FIELD REPORT

## LAND REFORM IN SOUTH AFRICA: OPTIONS TO CONSIDER FOR THE FUTURE<sup>1</sup>

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### 1 INTRODUCTION

The right to land has always been important in South African history. Various central issues are the subject of discussion in the present debate, such as the racial bases of legal rights to land; contribution of market-based land redistribution; restoration and compensation for historical injustices; access to farm land and land use efficiency; the broader socioeconomic circumstances in agriculture; food security issues; land tenure and land reform in the 'white' rural areas; what to do with land ownership in the traditional African areas; the position of farm workers; farmland encroachment by urban expansion; and urban and rural settlement, to name a few. Problem areas are, however, difficult to separate from each other. Even so, various commentators choose to address no more than one or two of these issues.

The paper begins with a brief assessment of some important characteristics of South African agriculture as well as land use, productivity, farming systems and food provision in South Africa. This is followed by a section on programmes for agricultural reform. Land reform will be considered as a central theme of such programmes. Proposals for the structuring of land reform will then be analysed.

### 2 SOME CHARACTERISTICS OF THE SOUTH AFRICAN AGRICULTURAL SECTOR

The overriding characteristics of the South African agricultural economy are its record of surplus production of food and fibre, its increasing flexibility in response to policy changes, agriculture's key role in development and the continuing skewed distribution of income and wealth in the sector (Van Rooyen *et al.*, 1992). The last of these is particularly noticeable in rural areas, where there is widespread poverty among Africans.

The principal causes of this inequality in agriculture are the various forms of discrimination, which have led to an extremely skew distribution of access to resources, markets and power. The net effect of this discrimination has been that African farmers (estimated at 1.2 million) are at present confined to farming in the homelands on 17 million ha, which constitutes 13 per cent of the total land. The white farmers (55,000, employing 1.1 million black workers), in contrast, farm on 102 million ha (of which 15.6 per cent is arable). These farms are served by a comprehensive and highly developed agri-support system, including physical infrastructure, extension, financing, cooperatives, marketing support and political lobbying power. The black farmers are not nearly as well served.

## **Land use Patterns**

The increasing flexibility of the farming sector is manifested in changing land use patterns and farm size and the workings of an active and robust land market. These changing land use patterns in commercial farming have been manifested differently in the different regions of the country. They are related to the policy changes through changes in relative product prices and factor costs, the cash flow position of farmers and shifts in tax incidence, etc. However, an important observation remains that there is relatively low cropping intensity in Natal and the eastern Transvaal, where the highest proportion of high-potential arable land is found. These regional changes in cropping patterns are also related to changes in the structure of farm size, which are discussed below.

Data on changes over time in farm size in South Africa are difficult to come by. Official data show an unambiguous trend towards larger farms and a smaller number of farmers in the commercial sector up to the beginning of the 1980s. Thereafter the picture becomes less clear. Any change in the trend would, however, be due to the aggregate effect of a number of more specific micro level and regional changes. Policy effects which would lead to downward pressure on farm size include the following:

- Changes to or abolition of the Subdivision of Agricultural Land Act
- A higher incidence of part-time farming and land rental (including share cropping) resulting from the need both to find other sources of capital and to use less capital.
- More intensive farming in high-potential areas as farmers exploit growing local and foreign markets, including the development of urban agriculture.
- Attempts to manage risk through mixed farming systems, i.e. by more intensive management in the high-potential areas.
- Distress selling of parcels of land in areas which have become vulnerable to the deregulation of controlled markets.
- The introduction of elements of labour legislation to farming which could result in innovations in the means of access to land, including farmer settlement, share cropping, and sectional title arrangements.
- The settlement of farmers on trust land.

There are, on the other hand, a number of factors which could put upward pressure on average farm size, including:

- Declining use of production inputs such as fertilizer and agro-chemicals, leading to more extensive farming.
- Switching out of crop production to livestock ranching in the more marginal cropping areas, including planted pasture.
- Switching to lower yielding but more drought-resistant crop cultivars.
- The expansion of the corporate farming sector.

### **The rural land market**

The rural land market and land transactions constitute an important element of any proposal for land reform. Since 1965, between 7561 and 14,889 deeds, between 3.1 million and 5.5 million ha of rural immovable property, have been transferred annually. The total area of transfers has remained remarkably constant at around 4 per cent of the total surface area in the commercial sector. The average size of land transfers has risen over time. The number of transfers dropped in the 1980s, both nationally and for most size categories; but there does not appear to be a corresponding drop in the total area transferred. Particularly in the upper size ranges of the market for rural land, transfers have remained relatively constant in number while areas transferred have increased.

Transactions involving smaller parcels dominated: Of the 8852 parcels transferred during 1990-91, 26.8 per cent were less than 19 ha in size, 26.7 per cent between 10 and 99 ha, 17.9 per cent between 100 and 299 ha, 10.4 per cent between 300 and 499 ha, 9.4 per cent between 500 and 999 ha, 5.1 per cent between 1000 and 1999 ha, and 3.6 per cent above 2000 ha. However, the frequency of recorded deed transfers of the smallest parcels is declining in relative terms. Transactions involving larger parcels dominated the total area transferred. Of the 3.2 million ha of land transferred during 1990-91, 0.6 per cent were parcels less than 19 ha in size, 3.2 per cent between 20 and 99 ha, 9.2 per cent between 100 and 299 ha, 11.2 per cent between 300 and 499 ha, 18.1 per cent between 500 and 999 ha, 19.5 per cent between 1000 and 1999 hectares and 38.3 per cent above 2000 ha.

Figure 1 shows the relationship between RSA real land prices and the percentage land transfers. It is evident from this figure that real land price is not the only factor influencing land transfers: a low percentage of land transfers is, for instance, associated with high land prices in 1977, while a low percentage of land transfers is associated with lower land prices in 1990.

In 1963 total leased land represented only 13.1 per cent of total land area; but in 1988 rented, leased and share-cropped land represented 19.5 per cent of the total surface area, with considerable regional variation: 26.9 per cent in the Orange Free State, 22.9 per cent in Transvaal, 17.3 per cent in the Cape and 15.7 per cent in Natal. Hattingh and Herzberg (1980) found that those who lease land are mainly farmers who already own land. Moreover, although the official statistics point to a relatively high rental rate of nearly 20 per cent of total area, in fact most rentals are between the older and younger generations of the same white family. Such rental arrangements are in actual fact pension schemes, and the proportions of genuine rentals can be as low as 5 per cent. It has been suggested that the low rate of genuine rentals at least partly reflects owners' fear that renters will 'mine' and destroy the fragile land.

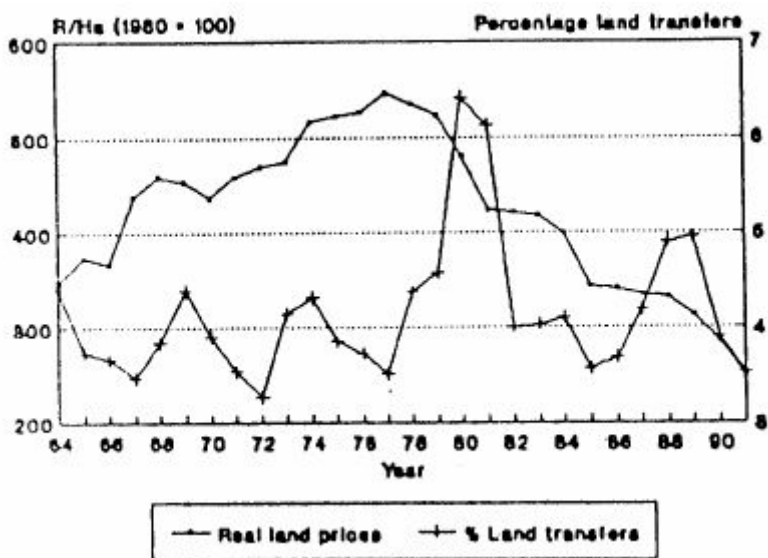


Figure 1. The effect of the percentage land transfers on real land prices (1964—91)

### Total Factor Productivity

A recent analysis of the multi factor productivity of the commercial agricultural sector is interesting (Thirtle *et al.*, 1993). Between 1947 and 1991 this sector achieved a growth of less than 1.5 per cent in factor productivity. Between 1947 and 1965 this growth rate was zero, increasing to 2.15 per cent during 1965-81 and 2.88 per cent during 1981-91. This trend is significant if compared with a growth rate of only 1.5 per cent for the economy as a whole between 1981 and 1991.

Furthermore, the key contribution of the agricultural sector is found in the forward and backward linkages and income and employment multipliers with the rest of the economy. This sector may be declining in terms of its direct contribution to gross domestic product (5 per cent of GDP) and agricultural employment creation (11 per cent of the economically active population). However, if the impact of this sector is analysed it is, for example, observed that R1 million invested in this sector creates twice the number of employment opportunities as investment in the industrial and manufacturing sectors. Labour-based business activities and support directed to small-holders are viewed as strategies which will expand labour and income linkages.

### Food Security

The present drought warrants a further perspective in view of its political, economic and welfare impact and the significance of the food issue. With respect to food security, two aspects are analysed. Firstly, total production and consumption of selected agricultural commodities for the period of 1980-89 show that in aggregate total production has outstripped total consumption. Self-sufficiency indexes for the various commodity groups show grain production to have an index value of 150, horticultural production

132 and livestock production 98, where an index value of 100 represents national food self-sufficiency.

However, national self-sufficiency is not the same as national food security, especially where there is skewed distribution of resources, access and income, as in South Africa. Despite food self-sufficiency, the 'food equation' relating food supply to consumption is not balanced. This is especially noticeable by the occurrence of hunger in rural areas, as most small-holders are net consumers of staples. Only 15-24 per cent of subsistence households generate their own food requirements. Marketed sales are also highly concentrated, with a small minority of households accounting for more than 80 per cent of the developing sector's sales. A large number of people (approximately 5 million) are not in a position to purchase basic food requirements. As many as 60 per cent of the South African population are below the poverty income level. This has important implications for food security and remedial actions to feed the poor. This imbalance is acutely accentuated by the recent drought. It is, however, not caused by the drought. There are indications that part of the commercial farming sector is operating less productively of late, and that the food-processing and distribution system is inefficient.

To achieve food security and poverty relief, and to increase income and employment, the agricultural sector must perform optimally. However, present farming in South Africa is experiencing constraints in performing on an efficient, equitable and sustainable basis. The restructuring of this sector is urgently required and must be viewed as essential to promote long-term growth and welfare. Political requirements will further demand changes towards greater participation of blacks in the agricultural economy. A reform programme will be viewed as an important instrument to promote reconstruction in the agricultural sector.

### **3 PROGRAMMES FOR AGRICULTURAL REFORM**

Proposals are now made to give effect to the principle of equality or opportunity, to structure a sustainable and efficient use of the production potential of the farming sector and to maximize forward and backward linkages. Within the framework of this programme an approach towards the structuring of land reform in agriculture is also presented (Brand *et al.*, 1993).

#### **Entitlement Actions**

Entitlement is defined as the legal command of resources in its widest context (Sen, 1985). Four principal areas of providing entitlement to farming resources as an element of an affirmative action programme can be identified. The first, which began in 1991, is that of removing the various laws which control access to land (the Land Acts of 1913 and 1936), including the Black Land Act (No. 38 of 1927) and the Group Areas Act (No. 36 of 1966). Other legislation, such as the Sub-division of Agricultural Land Act (No. 70 of 1970), will also have to be studied in terms of their effect on access to land.

The second proposed mechanism, namely legislation that facilitates various forms of land use security and exchange, land rental, tenancy agreements complementing land ownership and the reduction of transaction costs of disputes over land rights should receive major attention (De Klerk, 1990). The third legislative instrument is the extension of labour relations legislation to the agricultural sector, a matter that is

currently being investigated. The relevant laws will probably have to be adapted to the special circumstances of agriculture, i.e. timeousness of certain production activities and so on. The specific problems related to labour tenancy need to be addressed. The removal of legal barriers to service arrangements supporting black farmers is the fourth area of entitlement.

## **Policy Instruments and Empowerment Actions**

Empowerment implies the ability to make optimal use of available entitlements. There are a wide range of policy instruments available which could to some extent empower prospective farmers in terms of the above entitlements. These are:

### *Access to Land through Purchase*

Improved access to land by people historically deprived of this right will be especially important in any future agricultural system. However, agricultural land use should not only be directed by access considerations alone. The issues of appropriate support services, viable land use practices, etc., need to be considered. Of importance also are methods to provide access to land for residential purposes in urban and rural contexts. Many proposals have been made for state-supported land purchase schemes (Urban Foundation, 1990). Despite the merit of such proposals, lessons can be learned from the extensive experience with the process of consolidation and trust land transfer to the homeland area (Brand, 1990) and the resettlement programme in Zimbabwe (Vink and Louw, 1990). The principal lessons are that such land transfer programmes are lengthy, difficult to administer and increase land prices considerably. The creation of 'willing buyer-willing seller' transfer mechanisms probably represents the soundest approach to the problem of land redistribution. The extension of the financing facilities of the Land Bank and the Agricultural Credit Board to include African farmers is one possibility. Experience shows that the constraint often lies in the access to finance for land purchase rather than in its costs. Subsidies should be directed at reducing the transaction costs of access, rather than subsidizing the interest rate. These transactions costs include deposit requirements, conveyancing costs and loan administration costs. Prospective African farmers might find it difficult to use this access because of problems with the securing of guarantees and sufficient deposits. Matching grants and forms of government guarantees to support such farmers would constitute a further measure of affirmative action.

### *Other Forms of Access to Land use Rights*

Security of tenure and exchange of land usage is important to ensure optimal development and investment in land. The purchasing of land should not be the only form of access to land (use) rights. The opening up of land tenure rights should be supplemented by legal measures that ensure the leasing of land on a just basis and provide for alternative land use agreements. Equity sharing, sectional title and similar options are part of a bundle of rights to land which should be made available.

Obtaining security of land use rights (purchasing, leasing, etc.) by people who up to now have not had access to the land market because of restrictive legislation and its economic and other effects will require special measures. These measures would be characterized by appropriate terms and interest rates and should be aimed at the

reduction of the transaction costs linked to access. Access to land should also be complemented by measures aimed at access to all other resources, such as institutional support and agricultural services.

In this respect it is important that land use rights should be transferable so that land resources can be used by the most competent user. It is thus also necessary to review legislation such as the Act on the Sub-division of Agricultural Land, especially because the economic use of agricultural land resides in the operator and cannot be determined by law. The upgrading of access to security and tradeability of land rights in indigenous/communal land tenure areas should be considered as an important option.

Ecological and environmental factors are important in the correct use of land resources. In this respect it is important to take cognisance of the relative scarcity of high-potential agricultural land in South Africa. This high-potential land should be zoned for agricultural purposes only, while there should be strict guidelines for ecological conservation and correct use of this resource.

### *Restoration of Legal Rights*

Whereas this measure is important in the SA historical context, this is not an 'affirmative action' approach. However, support systems to assist with farming remain necessary once land restoration has been completed.

### *Infrastructure*

The physical infrastructure which serves farmers is not evenly distributed as regards either quantity or quality. Roads, dams, railways, electricity and communication links, for example, do not reflect regional comparative advantages in physical potential for farm production, while a spatial imbalance on racial lines is also observed.

It will be necessary to have a range of innovative adoptions to existing and new infrastructure to serve the needs of different types of farming systems in which, for example, small and part-time farmers will particularly need to be accommodated. An example here is the locality and type of food storage facilities. The issue would furthermore be to reduce transaction costs to participate in the market by introducing appropriate technologies and not hesitating to phase projects when fiscal constraints are being experienced. It is to be expected that most infrastructure funding will come from the public sector.

### *Farm Credit*

Farmers require credit for the purchase of intermediate and production inputs as well as for land purchase. Given the current institutional structure consisting mainly of the Agricultural Credit Board and the Land Bank, the sources of such credit will include cooperatives and the commercial banking sector. However, these institutions are not always properly geared or willing to provide credit to emerging farmers and part-time farmers. The requirement here will again be for innovative strategies which account for factors such as rural savings mobilization, the reduction of transaction costs inherent in rural financial markets, methods of credit extension, group credit schemes, lending and interest rate policy.

### *Extension, Research and Training*

Research to address technology problems in South African agriculture has largely been

geared to the needs of large-scale, full-time, owner-operator farmers, given existing commodity policies. South Africa has much to learn in terms of technology development for new farming systems in order to make such affirmative action programmes relevant. The experience with technology development and transfer to small-holder farmers in Zimbabwe and results from small farming systems research in South Africa could provide fruitful lessons.

A further example of affirmative action in this sphere refers to the training of black farm managers. A substantial proportion of farms in current commercial farming areas are not permanently occupied, and are often under the effective management control of black farm managers. Such a programme could also include the extension of ownership schemes to farm workers by farmers who are looking for alternative ways of accommodating farm labour into the entrepreneurial development process.

The accommodation of interested returning refugees and jobless people interested in farming through training and settlement programmes will provide productive socioeconomic upliftment actions.

### *Marketing Policy*

Some 70 per cent of South Africa's agricultural production by value is marketed through marketing boards constituted in terms of the schemes under the Marketing Act. In addition to these products other monopolistic mechanisms provide effective control over a whole range of products, with the control firmly vested in big business or in the hands of commercial farmers. It is evident that the representation of a wider range of interest groups on marketing boards including small-holders and black consumer groups will form an important component of an affirmative action strategy, as will representation as full members of agricultural cooperatives or on the boards themselves.

### *Production/marketing Rights*

Many of the marketing boards and other control bodies restrict access to markets through the use of quotas or permit systems (e.g. sugar, wine, red meat). These are usually motivated in terms of the need for orderly marketing. Much can be said in favour of or against the use of such instruments. They can, however, also be used to discriminate against certain types of farmers.

Here, again, it is evident that access to land is by itself not a sufficient condition for restructuring South African agriculture. Recent changes in the allocation of sugar quotas, where the position of small farmers in KwaZulu and KaNgwane has been specifically accounted for, are instructive examples of what can be achieved with affirmative action programmes.

*Equalizing Access to Lobbying Power and Grass Roots Capacity Building* Influence in the political market is an important mechanism to devise a comprehensive rural and agricultural development policy. The present agricultural milieu has to a large degree been influenced by lobby groups in terms of both direct and indirect intervention in the agricultural sector. Historically, white commercial farmers have had a disproportionate amount of political influence, as reflected in the electoral system and in the amount of the budget spent on them.

A non-discriminatory policy by the state towards representation by commercial, part-time, tenant and other lobby groups, however they wish to be represented, and of new and small black farmer lobby groups would be required. The promotion of 'grass roots'



capacities to interact and promote the views of the local environment must be equally supported.

### *Macroeconomic and Agricultural Policy*

The agricultural sector makes a key contribution to economic growth and development through the economy-wide stimulation of multipliers and forward and backward linkages. This is one of the reasons why the agricultural sector is particularly vulnerable to macroeconomic policy changes.

Policy analysis should be particularly sensitive to the impact of macroeconomic and agricultural policy changes on the well-being of small-holders. For example, the fixing of producer prices to reflect higher real levels may benefit some farmers. However, the majority of those in agriculture are not producing sufficient food to feed themselves. Increased producer prices, if reflected in increased consumer food prices, will therefore be to the detriment of a large number of rural communities and small-holders. The issue of exchange rate policy and agricultural competitiveness is also pertinent.

### **Institutions and Agricultural Restructuring**

The challenge to policy-makers is to devise a comprehensive rural and agricultural development policy which will provide for equitable access, without unduly distorting or compromising production efficiency. This policy should also clarify institutional responsibilities. Affirmative action programmes must essentially be viewed as socially necessary interventions that are targeted as short/medium term and are aimed at accelerating 'catching up' efforts. They should not be seen in isolation from long-term restructuring programmes towards a fair and sustainable farming system. The concept of the democratization of policy-making must also be viewed as an important feature of a future agricultural dispensation. The cornerstone of a rural policy must be to establish ownership and accountability at a local level. Empowerment at this level could be confirmed through financial support and responsibilities for planning implementation actions. The starting point for implementation of such an 'empowerment' strategy should be a recognition of the role of the public sector and that of the private sector and civil society in development and the role of community participation in planning and implementation. The state should, in general, confine its activities to public good types of activities such as setting the direction of policy, creating the regulatory framework within which the sector should operate and financing the provision of mass/bulk infrastructure and certain elements within research and extension. The state should also monitor and evaluate affirmative action programmes. Where the private sector is not willing or able to provide support services which are normally activated by the profit motive, such as short-term credit, commodity-specific farm extension and research, marketing services, input supplies, etc. because of the developmental nature of the clients, i.e. merit goods, a case can be made for their provision by public sector corporate institutions such as the Development Bank, the Land Bank and other development agencies, corporations and non-governmental organizations (NGOs). Most importantly, these institutions should focus on the needs of previously deprived groups as their principal target group to integrate them into the agricultural economy. Proper consultative measures should therefore be sought and strengthened. Civil society could

strengthen the position of local communities through various support measures, i.e. NGOs.

## 4 A FRAMEWORK FOR AGRICULTURAL LAND REFORM

### Structuring Land Reform

The above framework (Section 3) provides for the restructuring of the farming sector to achieve equity (redistribution of opportunities). It also promotes efficiency in resource use and farm produce markets. It is within this framework that the structuring of a South African agricultural land reform approach is proposed. The following aspects are dealt with:

#### *Objectives and Basic Considerations*

Objectives of (agricultural) land reform in rural areas should be to:

- (a) enable access to more land for all, especially those who lost or were previously denied such opportunities;
- (b) ensure that those who use such access to land are placed in a position to improve their quality of life and welfare position;
- (c) ensure that agriculture is restructured to optimize its contribution to economic growth, food security and sustainable rural development; and
- (d) attend to the needs of those who will either be negatively affected by agricultural land reform process or not included.

Reality, however, tends to impose trade-offs and compromises in any land reform programme. It can therefore be expected that a balance will have to be struck between efficient land use requirements and those of fair land redistribution in land reform so as to provide for a sustainable system in agriculture.

In answering the questions of where, when and how and under what conditions land reform programmes are expected to have the biggest impact, some realities need to be considered. The skewed distribution of current land ownership, unproductive farming practices and the unsustainable elements of current agricultural practice.

1. The reality that land reform is viewed as one of the major determinants of political change in South Africa. This perspective implies that it would be naive to expect that the sector can be restructured without specific account of the need to redress past injustices.
2. The need to maintain and strengthen agricultural productivity as a source of employment and income creation. For this purpose the concept of 'security of expectations' is of major importance to secure investment of monetary and human capital and innovation. Land tenure arrangements should therefore strengthen security of expectation conditions.
3. The need to introduce specific legal recognition of the principle of equity to land law, specifically to ensure fairness in the interpretation and resolution of disputes over land rights. Common law as it stands does not afford effective protection of tenants in disputes with landowners.
4. All parties in the debate attach an extra-economic value to land. The debate is an emotional one, and will remain so. Appropriate compensation measures will be required to assist those who will lose land rights.

5. Although black farmers have been relatively more disadvantaged than other farmers, there has also been discrimination against small farmers, women farmers, tenant farmers and part-time farmers in general.
6. Experience with state-controlled (non-market) land transfers worldwide shows it to be expensive, restrictive and ineffective. State land acquisition in South Africa, principally the trust land transfer programme, was costly and unproductive. The land market, supplemented by economic affirmative action and other programmes, will have to be the major instrument in a strategy to provide fair access to land.
7. Certain rural dwellers, notably the landless, might be adversely/positively affected by land reform measures. Safety nets should therefore be structured to accommodate possible 'losers'. Furthermore, land reform should not be restricted to agriculture. Urban-rural interaction needs to be assessed and non-agricultural programmes designed.
8. The present complex and uncoordinated administrative procedures and arrangements dealing with land reform matters. The lack of uniformity on the application of land laws in different areas of South Africa is a relevant case.

### *Constitutional Issues, the White Paper (1991) and the Constitutional Process of Land Reform*

The White Paper was discussed across a broad front during 1991. Whereas certain aspects of the paper met with approval other elements were hotly contested. The White Paper and the subsequent legislation did, however, influence the framework substantially, and some of these influences are attended to in the following discussion.

Various laws have been passed as anticipated by the White Paper. However, the proposed 'Rural Development Bill' has been referred back to the drawing board. The debate on the issues raised in this bill established the need for consultation and participation if any progress is to be recorded on these matters.

Legislative reform has still a long way to go to remove all discrimination regarding access to land. This includes the repeal of numerous proclamations and regulations which are still in force notwithstanding the repeal of the principal acts in terms of which such regulations and proclamations were passed.

The introduction of the Advisory Commission on Land Allocation (ACLA) dealing with historical land claims and the proposed Land Advisory Committee supporting the Minister of Regional and Land Affairs are recent developments following on the scrapping of the land acts. However, the indications are that land transfer arrangements have not been clarified sufficiently with all the major groupings involved to ensure broad-based support when the SA government considers transferring state land to local communities and individuals.

The transfer of state land brings to the fore some 'constitutional issues' with regard to reform during the present transitional phase. Attempts at drafting a constitutional framework should be considered as a major step in the right direction. Such a framework could provide principles, checks and balances to facilitate a broadly based and democratic land reform process which should, for example, encourage land reform opportunities that are presently emerging.

### **Criteria for Land Reform**

From these arguments the following criteria are proposed to assist in the design of an effective agricultural land reform programme:

- (i) Land reform programmes should visibly promote increasing numbers of black farmers to be integrated into the South African agricultural economy.
- (ii) Land reform programmes should activate local participation in the design of arrangements to promote access to land.
- (iii) Land reform efforts should capture the opportunities provided by market-based land exchange. Certain complementary support actions and safety net mechanisms through public sector interventions should reinforce market-based measures where required.
- (iv) Various forms of securing of tenure, i. e. private ownership, leaseholds, rights of occupation etc., must be activated in a land reform programme in order to establish 'security of expectations' among farm investors and land users.
- (v) Farmland reform programmes and support actions must be linked to efforts towards agricultural, economic and rural restructuring ensuring attention to the various complementary and supplementary arrangements.
- (vi) Urban-rural interaction must be attended to in order to structure a coherent land reform programme.
- (vii) Funding and institutional support arrangements should be 'target group' specific, where 'target groups' refers to both the recipients of support and the institutions providing support services.
- (viii) The market as major transfer mechanism could be supplemented through various measures to increase the supply of land for redistribution.
- (ix) Procedures for the administration of land reform programmes must be based on a common legal framework of reference. However, local circumstances should direct the application of such a framework.
- (x) Arrangements for the transfer of land subjected to disputed claims should be suspended pending resolution of dispute. State land must be included in this arrangement where applicable. Only 'clean' land should be considered for land reform programmes.

### **Options for Agricultural Land Reform**

The following options can be considered in a comprehensive South African land reform programme:

#### *Land Reform through Farmer Settlement*

Farmer settlement strategies imply (at least a degree of) transfer of rights to assets and decision-making to farmers. Prospective farmers can settle by buying or leasing land and other farm resources. The 'project approach' is often followed to structure the process of settlement according to a programme.

Commercial settlement projects (CSPs) have as their ultimate objective the establishment of productive commercial farmers through a system of coordinated support services. In some situations, farmers can be established as independent entrepreneurs right from the start of a project. Alternatively, farmers gradually become more independent in terms of a predetermined programme emphasizing counselling, training and 'learning by doing' approaches.

On these types of projects farmers are often supported by a cooperative type of service unit responsible for the management and delivery of support services such as input

supply, credit and marketing, processing training, extension and counselling. Regulatory and administrative arrangements are also centrally coordinated. Settlement actions can also be directed towards the accommodation of landless people, or communities whose land claims have been successfully accommodated.

In the case of South Africa, criteria for farmer settlement will greatly determine the impact of such programmes on the majority of those who were discriminated against and have to be included in the new agrarian order.

#### *Farmer Support Programmes (FSPs)*

A farmer support programme is different from a settlement programme as it is primarily directed at those already farming, i.e. small-scale, part-time, full-time, male and female. The programme is therefore a supply strategy attempting to alleviate constraints under which farmers are operating. In developing areas, and especially on lands under communal tenure arrangements, farmers operate under severe constraints ranging from a lack of appropriate infrastructure and support services to security of production rights.

An FSP approach to land reform should be viewed as a comprehensive package of institutional arrangements aimed at a wide range of rural dwellers. The elements required for an FSP correspond to those for a settlement project. The basic difference is that these services are directed at those who are already involved in farming. In addition, the realities of farming, especially in communal areas, requires that the level and nature of FSP elements be adapted to the needs, problems and resource base of these small-holder farmers.

A critical component that needs consideration in the FSP is how to identify cases of land hunger and have them dealt with, not necessarily by the FSP.

#### *Land Reform Through Private Land Acquisition (PLA)*

The direct transfer of land (and other assets) through the market is one of the most cost-effective processes of transfer. It will thus be strongly recommended that opportunities be created for the settlement of farmers through a system which will promote and facilitate normal land transfers through the market. SA Land Bank type of funding arrangement needs to be considered in addition to access to farmer support services. Even where the state is in possession of land, transfer to an individual must be viewed from the outset as a potentially very successful strategy. The financial dilemma which is presently manifest in commercial agriculture, and strongly accentuated by the recent drought, can provide opportunities for land reform. Various approaches whereby financial institutions such as the Land Bank, commercial banks and the state can intervene can be argued. Equity swap arrangements have been proposed by commercial banks. The exchange of indebted land to be used for land settlement programmes through debt settlement arrangements supported by the state provides some interesting and, under certain circumstances, viable options to the exacting financial troubles of land holders (Christodoulou and Vink, 1990).

#### *Broadening the Ownership Base (BOB)*

Land reform can be extended to accommodate various asset-sharing and transfer opportunities to landless groups. Farm workers, for example, can be included in profit-sharing arrangements, equity acquisition schemes, etc. Such arrangements will broaden the ownership base and will provide for opportunities to extend access to farming opportunities to farm workers. This will address a major problem experienced by these

workers, i.e. that of wealth accumulation and security. Broadening the ownership base should also be considered in communal tribal systems to enhance the security of expectations and exchange of land use rights.

### **Increase the Supply of Land through Administrative Support Measures (ASM)**

The above models argue increased access to land through market forces and 'willing buyer-willing seller' interactions. These models, however, may not provide sufficient land for reform purposes, which may activate various politically motivated responses (compare with the present Zimbabwe experience) and land invasions. One strategy could be nationalization. This approach, however, is not supported given the existence of alternative, less costly, methods to increase land supply. Another method is that of informal land invasion. The problem with this approach is that it will damage any trust in normal land market arrangements and create disincentives to invest in farming. Methods to entice 'willing sellers' to offer their land, through market transactions, for resettlement purposes need to be developed. Guaranteed 'pension schemes' and long-term rental schemes, tax incentives, etc. should rather be considered. The problem, however, becomes acute when 'willing buyers' are confronted by 'non-willing seller' land owners. Administrative support measures such as expropriation against fair compensation may have to be considered in such circumstances to avoid invasions. However, the emphasis should still be on market-based incentives and procedures to match demand and supply.

### **Restoration of Land Rights: Forced removals and historical claims—'dispute lands'**

An important area of action refers to the history of forced removals in South Africa, which is inextricably linked to the way in which the agricultural sector has developed. Some 1.3 million people were dispossessed of their rights to land in the white farming areas up to 1982. The need for appropriate administration and legal processes to address such claims is of vital importance in lending credibility to any land reform programme.

Apart from the specific restoration of land issues, it can be argued that a general restitution for the 'victims' of apartheid should include mechanisms to gain access to land. If such a policy is adopted, market-based mechanisms should be favoured. One example is the provision of matching grants up to a certain level to assist land access.

### **Safety Nets, Lifelines and Social Considerations**

Large numbers of poor rural dwellers are landless and live on very low levels of welfare. Opportunities to accumulate wealth are virtually non-existent, and their inability to participate in market actions creates particular problems. Land reform could easily bypass this class and will worsen their access to life support systems. Social security or safety nets through food programmes, income and labour-creation programmes, 'lifeline' water supply systems, etc. will have to be established to serve such groups. A particular problem in the implementation of safety net programmes is capacity at 'grass roots' level. Some NGOs are often structured to render such support. However, a proper support system for safety net programmes is still embarrassingly lacking in South Africa, as is

illustrated by present efforts to reach the poor through food aid and drought programmes.

## **5 A STRATEGY FOR LAND REFORM**

The optimal strategy for land reform will depend on many circumstances reaching 'constitutional comfort'. Present land tenure arrangements, the status of land and possible land claims and the maintenance of or even improved productivity must be viewed as important factors in this respect.

### **Land Status**

The following are proposed for consideration:

#### *Communal Tenure (Including Tribal Lands)*

Practical considerations dictate that an FSP approach be considered as optimal strategy on land under communal tenure arrangements, especially as no reallocation of land is required where many are already involved in some form of farming. Evidence from FSPs funded by Development Bank of Southern Africa (DBSA) shows that the provision of the appropriate farmer support services will activate market forces to generate an economic value for land and farm assets (DBSA, 1993). Such forces will encourage market-related land transactions, albeit such transactions will be constrained by a lack of proper land transfer institutions. The promotion of greater ownership to the asset base in these areas provides opportunities to secure individual land rights and to enhance land exchanges on an economic basis, i.e. activating the land market. On the other hand, a bureaucratic reallocation of tribal land necessary for land consolidation and farmer settlement on planned farming schemes must be viewed as a strategy with great conflict potential in communal areas. Farmer settlement project strategies are thus not recommended unless fully supported by a community and with proper compensation to those who need to relocate. The problem of landless persons on tribal land also needs to be addressed within an integrated development approach including access to land, small business and industrial programmes, urban settlement and appropriate poverty and welfare 'safety nets'.

#### *State-Owned Land*

Settlement projects and the selling of land to individuals and groups can be considered. Strategies should be directed to the provision of opportunities to fully fledged commercial farmers as well as emerging farmers or to support poverty alleviation. Landless persons could also be accommodated on such land through farmer and non-agricultural support programmes. 'Squatter' situations will require careful consideration, and a combination of models might be appropriate.

#### *Private Land*

Private land acquisition, farmer settlement and farmer support strategies can be considered. Where the government decides to acquire private land for the purpose of land reform and farmer settlement, the principle of just compensation should apply, while direct ownership of land by government should be avoided. Beneficiaries should

rather be supported to purchase land. Arrangements to broaden the ownership base to include landless farm workers through profit and equity-sharing schemes, lease arrangements, outgrower schemes, etc., should be seriously considered in commercial farming as measures to redistribute ownership while retaining expertise and productivity (McKenzie *et al*, 1993).

#### *Urban and Periurban farming*

An obvious area for providing access to land is to be found in urban and periurban farming, for small-holding. At present some 850,000 ha of land around towns and cities in South Africa is zoned as agricultural small-holdings (presently largely occupied by whites). Some 50 per cent of these are used mainly for farming purposes. This type of farming has two major attractions, namely the proximity of markets for the purchase of flowers, vegetables, dairy products, etc. Urban agriculture is therefore one of the major avenues through which relatively large numbers of farmers could gain access to land and farming opportunities in a relatively short period of time. What is being proposed is not restricted to current small-holdings, and changes in land use and ownership, but rather to additional potentially arable land surrounding the existing extended metropolis. The status of the land and the nature of farming will dictate the choice of farming model. Zoning to protect high-potential agricultural land from urban expansion needs to be instituted.

#### *Restitution and Historical Land Claims*

The process of restoring rights to land under dispute could focus on setting certain criteria, such as land in respect of which the previous occupants or owners or their direct descendants (first generation) can still be identified and who have not yet been compensated adequately; and where the land in question is in the ownership of the state.

Various proposals directed to the setting up of legal procedures to adjudicate conflicting claims to land rights in those cases where current ownership vests in parties other than the state must be noted and the Commission on Land Allocation serves as a reluctant case. However the high demands in terms of administrative costs, slow progress and the negative experience with such processes in South Africa but also experienced in other countries, e.g. Kenya and Zimbabwe, serve as a warning in viewing such institutions as a major instrument for land reform. These experiences indicate that it

would not be feasible to use this as a primary mechanism for land reform. Possible new inequities could also emerge in attempts to restore such rights. Complementary measures to be considered are the creation of access to alternative land, the fair compensation to affected groups and individuals and the provision of appropriately designed support programmes. The facilitation by the state of 'local option' solutions could also be considered i.e. negotiations and settlement of disputes at local level. A proper set of instruments and a 'bundle' of rights will facilitate such local options solutions. Transfer of land which is subject to disputed claims should be suspended pending resolution of the dispute. State land should be included where applicable in this moratorium.



## **Funding of Land Reform Actions**

The proposed future arrangements of land transfer funding are derived from the discussion on land reform and specifically the criteria discussed in Section 4. In terms of the criteria the objective of reform should be visibly to promote increasing numbers of black farmers to be integrated into the South African agricultural economy, that is the reform process is in essence a restructuring process and should, as already stated, be targeted in terms of financial arrangements. The financing intermediation needed will therefore be over the short, medium and long term.

The scrapping and changing of discriminatory legislation effectively broadened the client base of the traditional agricultural funding institutions. It is imperative to ascertain what financing is available to finance agricultural land transfers. This is a short-term endeavour with short to medium-term application. Based on the specific identification of target groups a prominent role for the public sector as a source of funding over the short to medium term is argued. This will be a positive action in effectively normalizing the agricultural environment. A number of sources can be considered for meeting short to medium-term financing needs for land transfer. This includes internal sources, public sector as a prominent sector (e.g. government, Land Bank, IDT) and private sector (e.g. commercial banks, Rural Foundation) within certain arrangements. It also includes external sources such as donor agencies. Such sources will contribute substantially when a South African consensus is reached. The concept of 'constitutional comfort' and a fair degree of consensus therefore apply.

Various measures to reduce the fiscal impact of land reform should be considered. Increased supply of land, realistic land values, grants, etc., should be considered. A contribution by beneficiaries is justified to enable a measurable advance of land redistribution programmes and 'stretching' the available land. Compensation to present land-holders is also justified, as they did not necessarily benefit from 'free' land acquisition but had to purchase land at market value.

Over the long term the specific objective is to normalize the financing and farming milieu in such a way that the traditional financing institutions can play a role over the whole farming spectrum. Also, in the long term the public sector will play a role as financier when the private sector will not, i.e. new entrants.

## **The Cost of Land Transfers and Registration**

The present system to promote land registration and the exchange of land use rights involves high financial and bureaucratic costs. In this context, it will be important to assess the situation in terms of the need for a more 'transfer'-friendly system based on local knowledge, the activation of local option negotiations and low financial cost systems. The extension to accommodate other forms of land security should be emphasized, i.e. leasing, share cropping and so on. The requirements of the industry must also be noted, as this could have an impact on the nature of systems. The requirements of agricultural financial institutions to establish some form of security to be in the position to provide financial support to farmers for land acquisition is a case in point.

In terms of the new Upgrading of Land Tenure Rights Act, land tenure rights which are upgraded in terms of this Act do not attract transfer or stamp duty. This could be extended to other land transfers as a form of affirmative action, but when this would be applicable, and to whom, will require consideration.

## Legal Aspects

- (i) Many pieces of legislation in the form of statutes, regulations and proclamations passed over the last 40 years have controlled and restricted access, occupation and use of land by blacks. The South African government has begun repealing this legislation but has still some way to go. Different legislation applied to different race groups. All legislation applicable only to blacks has to be repealed while legislation applicable to whites must be made applicable to all race groups.
  - (ii) The role of indigenous customary law needs to be considered.
  - (iii) Recognition of rights other than just ownership should be considered, e.g. occupation. Many communities simply want some form of security of tenure. Long leases of land with a right to renew such a lease are an option, but it is unlikely that a private owner of land would want to be tied to such a situation. The state, on the other hand, could do so.
  - (iv) Until the laws in respect of land are changed a land claims court is not going to be able to resolve all the problems relating to land disputes.
  - (v) The Advisory Commission on Land Allocation can also make proposals on the planning and development of land and this extends its role substantially further than just settling disputes. In the latter area alone, the Commission has a mammoth task.
  - (vi) The problem of different laws applying in different areas will have to be addressed. Many of the laws applicable in the self-governing territories are laws which were in operation in South Africa when the area was declared to be self-governing.
- (vii) Legislation concerning the subdivision of agricultural land and the Land Bank, the Agricultural Credit Board and, for example, physical planning, needs to be carefully studied to ascertain the constraints it puts on access by all to land and finance, etc.

Table 1. Options for agricultural land reform.

Status of land (legal, spatial, etc.)	Farmer Support (FSP)	Farmer settlement (FS)	Private land acquisition (PLA)
1 State land	***	***	***
2 Communal/tribal land	***	**	*
3 Privately owned land		***	***
4 Dispute lands	(***)	(***)	(**)

\*\*\* Highly recommended.

\*\* To be considered.

\* Future programme.

( ) Mediation and resolution a prerequisite.

Table 2. Options for agricultural land reform.

Status of land (legal, spatial, etc.)	Broadening the ownership base (BOB)	Administrative support measures (ASM)	Safety nets and non-agricultural programmes
1 State land	*		***
2 Communal/tribal land	***		***
3 Privately owned land	***	* *	**
4 Dispute lands	(**)		(***)

\*\*\* Highly recommended.

\*\* To be considered.

\* Future programme.

( ) Mediation and resolution a prerequisite.

## 6 A PROGRAMME FOR AGRICULTURAL LAND REFORM

### A package of Options and Mechanisms

Approaches to address the land distribution issue and to promote agricultural land reform in South Africa should combine agricultural policy, affirmative action programmes and various options. Access to farm land will require a selection of appropriate arrangements. This selection will depend on the nature of farming and the legal and spatial status of land. Tables 1 and 2 summarize the options for agricultural land reform. These options need to be clarified on regional and local levels.

### Administrative Structures to manage Land Reform

Administrative structures to manage the land reform programme outlined above have to be considered and established as a matter of urgency. Ideally, these structures should all flow from the constitutional provisions which will outline structures and powers to different tiers of government. It is necessary that interested parties should devise ways of how interim measures could be democratically approved and established to deal with urgent and pressing land matters.

### The Political Process of Land Reform

A political framework for setting in motion the process of land reform is important because it is principally through this political process that the proposals made in this document would be considered and resolved. Ideally, a democratically elected parliament is such a forum. But no such parliament presently exists. Various groups have asked for a democratic land forum that is representative of the main, preferably all, interested parties as a viable interim alternative. Many urgent land issues need attention now rather than later. Such a forum would help in dealing with such cases.

## Timing Considerations

It is often argued that some of the proposed instruments of action should be implemented in the short term (as an affirmative action programme) and some only in the longer term (as part of a restructuring programme). However, the nature of the instruments is such that the only criteria for the timing of implementation should be the available opportunities, availability of funds and institutional capacity. What is evident is that implementation should start as soon as possible. The different arrangements will then have either short-term or long-term effects.

## CONCLUSIONS

Agricultural land reform constitutes an important element in the future reconstruction process in South Africa. A firm grasp of the agricultural sector is required to devise effective land reform strategies. Land reform without agricultural reform will result in unproductive land use, declining food production and exacerbate rural poverty. When a flexible land reform programme consisting of various options is accompanied by a range of entitlement and support services and sound governance, rural prosperity and a productive farming sector can be envisaged in a future South Africa.

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