

DFIDSA Process Towards Developing a Programme of Support on Land Issues in South Africa

A Scoping Study of Current Freehold and Farming Communities in South Africa

Final Report

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McIntosh Xaba & Associates (Pty) Ltd



*A partnership of institutional and development
research and facilitation specialists*

<http://www.mxa.co.za>

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Project Team



Richard Clacey
Anne Vaughan
Mark Ingle
Andrew Cochrane
Debbie Newton

With

Jan Barnard
Anthon Cartwright

Contact:
P O Box 61221
Bishopsgate
4008
T (031) 5634335
F (031) 5634334
Email: mx@mx.co.za
Web: <http://www.mx.co.za>

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List of Acronyms

ABC	- Agri Business Chamber
ADR	- Alternative Dispute Resolution
AFRA	- Association for Rural Advancement
ANC	- African National Congress
BCEA	- Basic Conditions of Employment Act 75 of 1997
BEE	- Black Economic Empowerment
BRC	- Border Rural Committee
CASP	- Comprehensive Agricultural Support Package
CBO	- Community Based Organisations
CCMA	- Commission for Conciliation, Mediation and Arbitration
CDI	- Cooperative Development Initiative
CIB	- Central Image Base
CRLR	- Commission for the Restitution of Land Rights
CPIs	- Community Property Institutions
CRLS	- Centre for Rural Development Studies
DFID	- Department of International Development
DLA	- Department of Land Affairs
DOA	- Department of Agriculture
DOL	- Department of Labour
EEA	- Employment Equity Act 55 of 1998
ESTA	- Extension of Security of Tenure Act 62 of 1997
FOA	- Forest Owners' Association
GDP	- Gross Domestic Product
GNU	- Government of National Unity
HSRC	- Human Sciences Research Council
IDP	- Integrated Development Plan
ISRDP	- Integrated Sustainable Rural Development Programme
ISRDS	- Integrated Sustainable Rural Development Strategy
KZN	- KwaZulu-Natal
LEAP	- Legal Entity Assessment Project
LPM	- Landless Peoples Movement
LRA	- Labour Relations Act 65 of 1995
LRAD	- Land Redistribution for Agricultural Development
LRCF	- Land Reform Credit Facility
LSU	- Large Stock Unit
LTA	- Land Reform (Labour Tenants) Act 3 of 1996
MIDNET	- Midlands Rural Development Network
NAFU	- National African Farmers Union
NAU	- Natal Agricultural Union
NDA	- National Department of Agriculture
NGO	- Non Governmental Organisation
NGWA	- National Wool Growers Association
NLC	- National Land Committee
NSIF	- National Spatial Information Framework
PLAAS	- Programme for Land and Agrarian Studies
PLRO	- Provincial Land Reform Offices
SAHRC	- South African Human Rights Commission
SASA	- South African Sugar Association
SATGA	- South African Timber Growers Association
SAWGU	- South African Wattle Growers Union
SDA	- Skills Development Act
TAU	- Transvaal Agricultural Union
WFP	- Women on Farms Project

1 Introduction

This report is one of three scoping studies commissioned by the Department of International Development (DFID) to find out about land issues in South Africa. Respectively, the three scoping studies cover the communal areas, current freehold and farming communities, and peri-urban and urban areas. In focusing on current freehold and farming communities, this study examines the critical land issues as they affect this client category. Due to the short time frame, the research for the report has been largely based on the review and analysis of secondary material complemented by consultation with key stakeholders

There are three key elements to the conceptual framework that has underpinned the formulation of this report. Firstly, the study has tried to adopt a pro-poor perspective. This has meant identifying and considering land issues as these impact on the poor. Secondly, the study has attempted to take cognisance of the meaning of sustainable livelihoods, which is understood as the enhancement of the current standard of living without undermining the natural resource base. The livelihoods approach is a tool of analysis or methodology and is asset based. The commonly included assets are physical, human, social, financial and natural. Thirdly, markets have been regarded as institutions that are shaped and structured by economic, political and social factors. There has been a concern to reflect (however briefly) on the current operation of formal and informal markets in land, labour, products and finance.

The backdrop to this report is a significant programme of intervention in the land sector instituted since the first democratic election in 1994. The new government moved quickly to effect land reform in terms of three essential pillars – land restitution, land redistribution and tenure reform. The challenge created by the distorted apartheid land dispensation has been considerable. Through the grant systems, policies and legislation introduced since 1994, a great deal has been achieved particularly in respect of restitution and redistribution, although budgetary and capacity constraints remain real issues with regard to meeting stated targets.

The report begins with a profile of current freehold farming communities, focused primarily on farm workers and their families. An overview is then provided of the land base with a view to generating an understanding of natural and physical opportunities and constraints. This section also reflects briefly on land utilization and the determinants and history of farm size. This is followed by a discussion of land issues and perspectives from the points of view of the different categories of people or interest groups within the current freehold and farming areas. The focus then shifts to the institutional framework governing land in South Africa. Policy, legislation and markets are considered for land, labour and agriculture. The land rights issue is discussed and a description of land registration systems is provided. The report then hones in on the organizations that impact on, regulate and influence the institutional framework. The functioning and activities of the Departments of Land Affairs, Agriculture and Labour is described, as is the involvement of local government in land issues. The way in which organized agriculture is structured and its *modus operandi* are outlined. The initiatives of non-governmental and community based organizations are described and the degree to which the banks and development finance institutions have intervened in the land sector is discussed. A brief account of the impact of HIV/AIDS within the current freehold and farming areas is provided. Current and proposed future interventions on the part of the state and donors, from the private sector and from the non-governmental sector, are summarized. The report concludes with an identification of gaps and opportunities that flow from the description and analysis presented.

2 Profile of the current freehold farming areas

This section of the report centres on the people of the freehold farming areas. The primary focus is on farm workers and their families as the most vulnerable group.

2.1 Population profile of the freehold areas

Figures from Census 1996 show that 2.9 million (7.1%) of South Africa's 40.6 million population live on commercial farms. Just over 67% of all commercial farm residents are African, 17.5% Coloured, 13% White and 0.8% Asian. People living in rural areas constitute just over 46% of the population, while people living on farms made up 15% of the rural population.

Table 1. Population resident by area type and population group

Population group	African	Coloured	Asian	White	Unspecified	Total
Urban formal	10 081 367	2 901 917	1 009 341	4 010 776	237 079	18 240 480
Urban informal	3 405 140	100 339	8 359	6 272	21 130	3 541 240
Commercial farms	1 952 085	505 467	21 683	377 342	25 927	2 882 504
Tribal authorities	14 667 883	15 842	3 450	7 066	82 516	14 776 757
Other non-urban	982 862	76 578	2 688	25 493	8 276	1 095 897
Unspecified	38 293	304	74	7 746	275	46 692
Total	31 127 630	3 600 447	1 045 595	4 434 695	375 203	40 583 570

Source: Census 1996

2.2 Farm sector employment

Although agriculture in South Africa contributed only 3.5% to the total value added of the country in 2001, the contribution of the agro-food complex, which includes primary production, input suppliers and the agro processing sector is approximately 14% of the Gross Domestic Product (GDP). It is estimated that approximately 40% of the country's total population are primarily dependent on agriculture and related industries (The Strategic Plan for South African Agriculture, 2001).

Information on employment in the agricultural sector is limited and sometimes contradictory. Reasons for disparities in figures include different sampling methods and varied category groupings.

The September 2002 *Labour Force Survey* reports that for the formal sector of agriculture, hunting, forestry and fishing, total employment was 811 000 persons. Of these, approximately 8% of workers fall under the fisheries and forestry sub sector, leaving an agriculture and hunting labour force of 746 000 as the latest available employment figure. Agricultural employment when viewed in relation to other sectors of the economy is dominated by unskilled labour. Only employment in personal households exceeds agriculture in elementary employment.

Table 2. Agricultural sector by province amongst the employed aged 15-65, Census 2001

	EC	FS	GP	KZ	LP	MP	NC	NW	WC	SA
Agriculture, hunting, forestry and fishing	72 123	102 791	67 648	142 900	118 261	114 532	55 016	81 043	206 176	960 490
% of agriculture	8%	11%	7%	15%	12%	12%	6%	8%	21%	100%
Total employed	754 338	591 002	2 894 777	1 602 270	663 847	630 175	208 745	748 889	1 489 722	9 583 765
% of total	9.6%	17.4%	2.3%	8.9%	17.8%	18.2%	26.4%	10.8%	13.8%	10.0%

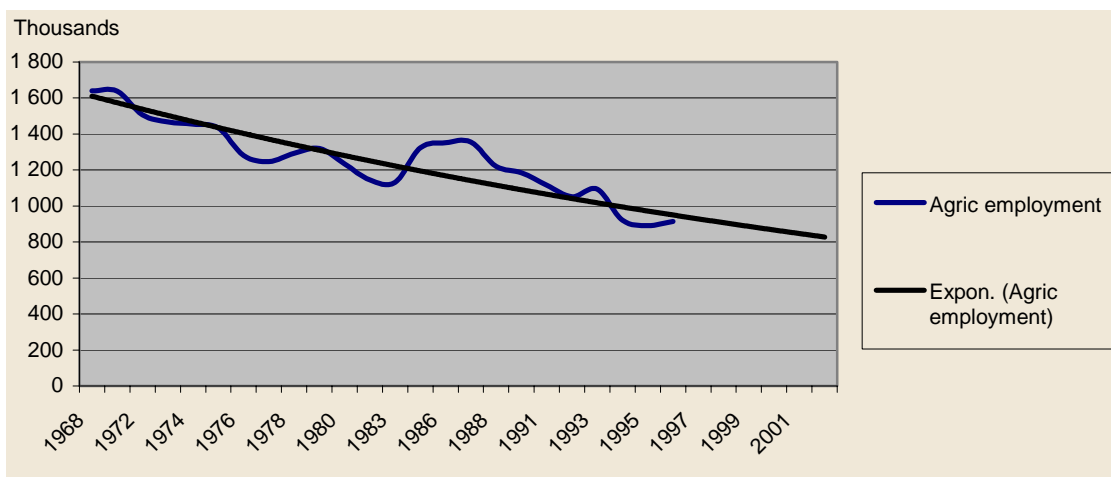
Table 2 derived from the 2001 Census reflects a figure of 960 490 South Africans employed in the sector (a variance from the *September 2002 Labour Force Survey*). The majority were employed in the Western Cape (21%). However, only 13.8% of the workforce of that province is employed in

agriculture. The Northern Cape, on the other hand, shows a relative dependence on agriculture as a major employer, with 26.4% of all jobs being in the agricultural sector.

2.2.1 Long Term Trends In Farm Sector Employment

There is a long-term downward trend in agricultural employment as is evident from Figure 1 below. What is not so obvious, and what has been debated are the underlying causes. It is a normal and expected phenomenon of a developing economy to be shedding agricultural labour due to rising labour costs, which reflects the labour scarcity resulting from increased demand from industry. Mechanisation in South Africa resulted in rapidly increasing the area under cultivation, which initially increased demand for labour. This mechanisation was promoted by low interest loans and favourable capital depreciation regulations by the apartheid government.

Figure 1. Long-term trend in agricultural employment



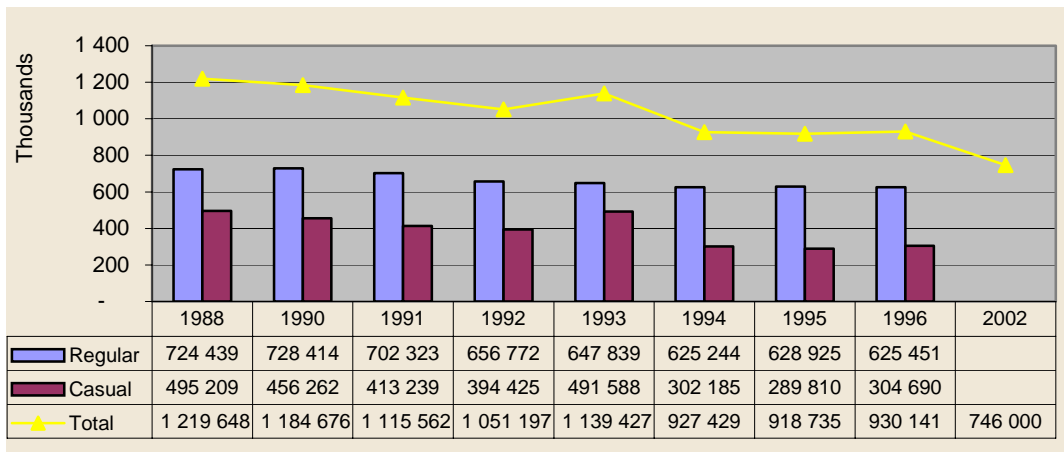
In the more recent period of South Africa's history, seemingly non-economic factors have influenced levels of employment. The dramatic fall in farm sector employment from 1993 to 2001 of almost 32% is certainly cause for concern. Simbi and Aliber (2001), point out that this change is not being driven by an increasing real wage reflecting a labour scarcity, or by falling cost of capital that would result in relatively cheaper mechanisation, substituting for labour. The authors argue that change is due to farmers' fears about future legislation and perceptions around the changes to the balance of power between farmer and worker.

A commentator makes the sobering observation that more livelihoods have been lost in agriculture since 1994 as a result of structural changes in the commercial sector, than have been created through the land reform programme (Hall, 2003).

2.2.2 Casual and regular employment

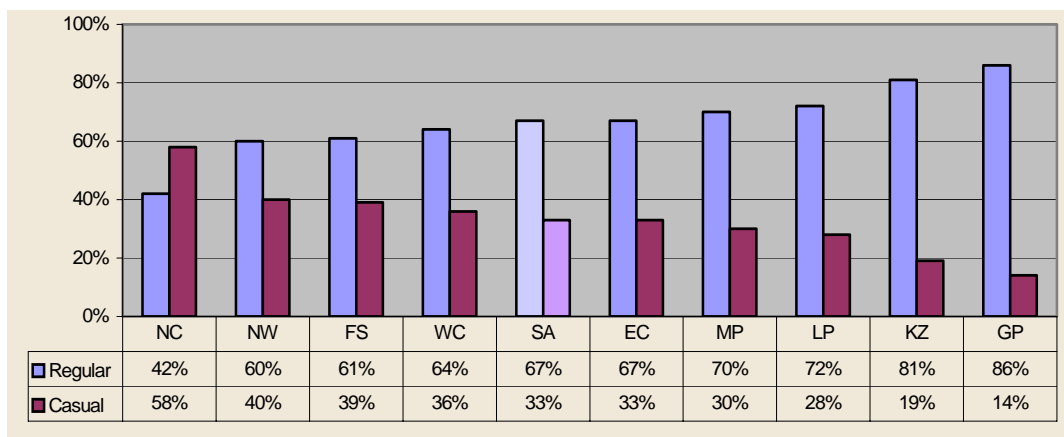
There has been a general concern that not only is rapid job shedding taking place but increasing casualization of labour is occurring. As indicated in Figure 2, casual labour has shown a greater decrease proportional to total employment than has permanent labour. In 1988, casual labour accounted for 40.6% of the agricultural labour force. It decreased continuously until 1993, when it rose by 25%, then declined rapidly again to 32.8% in 1996. The reason for this increase could be attributed, at least in part, to the 205% increase in maize yield in 1993.

Figure 2: Trends in the employment of regular and casual labour. (Agricultural survey 1999)



Provinces vary considerably from one another as shown in Figure 3. The Northern Cape employs a high proportion of casual labour in intensive horticultural production on the Orange and Vaalharts irrigation schemes, while the extensive nature of agriculture in the rest of the province uses relatively little labour.

Figure 3. Provincial differences in employment of regular and casual labour. (Employment Trends in Agriculture in SA, 2000)



2.2.3 Farm worker quality of life

Poverty is measured not only by income generation, but also by quality of life and sense of well-being. While income can enable a person to access the basic necessities required to improve quality of life, in the case of farm workers, there is not necessarily a direct correlation between income and quality of life.

- ✔ Farm workers receive many benefits “in kind”, which are not always readily translated into cash equivalent.
- ✔ Access to schooling, health care and shops is more difficult and costly in the rural areas. Incomes do not translate directly into outputs.

A Department of Labour investigation (2001) into employment conditions in agriculture revealed the following:

- ✔ With regard to nutritional status, children living on commercial farms showed the greatest prevalence of stunting and underweight, while only children in the former homelands rated higher than those on commercial farms in terms of wasting symptoms. In terms of household food security, measured by a series of questions, children on commercial farms fared better than those in informal urban areas and former homeland areas. More than half (52%) of the children in South Africa face hunger, and 48% of those children are living on commercial farms.

With regard to access to housing and services, more than 65% of farm workers live in formal dwellings, and 83% of the respondents in the Department of Labour investigation lived on farms. This access to formal dwellings is higher than that of the unemployed non-urban dwellers and marginally higher than that of other non-urban employed.

Table 3. Summary development index. (Census '96 quoted by Department of Labour 2001).

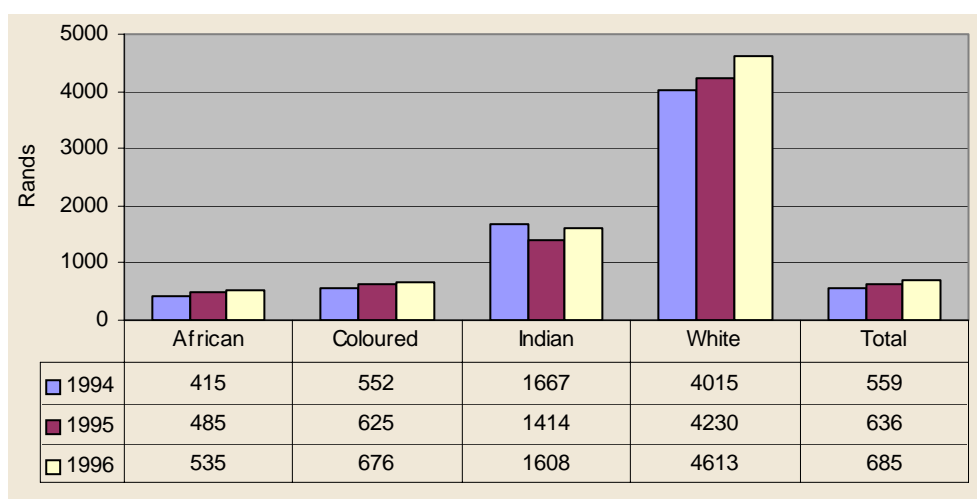
	Farm workers	Other workers (urban)	Other workers (non-urban)	Unemployed (urban)	Unemployed (non-urban)
Formal housing	69.72	79.06	64.08	62.63	44.56
Electricity for lights	44.60	81.76	47.05	66.56	25.18
Tap water inside	27.05	82.41	20.02	67.05	67.06
Flush or chemical toilet	26.73	71.96	23.41	49.58	6.12
Phone or cell phone	9.06	51.06	10.17	23.99	1.63
Average	35.43	73.25	33.09	53.96	28.91

The analysis of Census 96 data shows that while farm workers appeared relatively better off than other non-urban employed and unemployed, they lagged behind the urban unemployed and far behind the urban employed.

2.2.4 Wages and In-Kind Payments

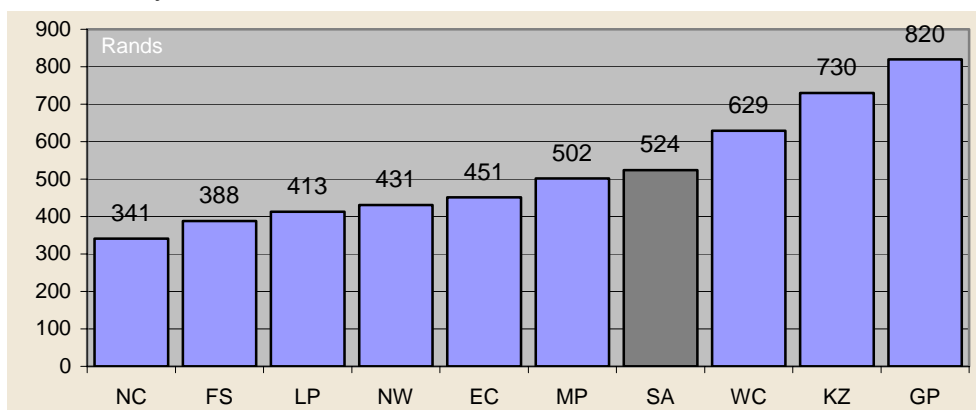
The remuneration shown in Figure 4 as derived from annual agricultural surveys, includes in-kind payments. In-kind payments (such as free housing, rations and clothing) accounted for 25% of remuneration paid to Africans, 21% for Coloured, 17% for Indian and 11% for White workers.

Figure 4. Average monthly remuneration of regular employees in commercial farming sector 1994-1996. *Agricultural Surveys 1999.*



The distribution of average monthly remuneration varied substantially among provinces, being the highest in Gauteng (R820) followed by KwaZulu Natal (R730) and being the lowest in the Northern Cape (R341), followed by Free State (R388).

Figure 5. Average monthly remuneration (including in-kind) to farm workers by province, 1996.
Agricultural surveys.



Much distribution detail is hidden in the use of averages for wage data. October Household Surveys have shown that the agricultural sector has a distinct clustering of employees at the lower level of earnings with a distinct tailing off at the upper end of the distribution group. Data demonstrates that 20% of farm workers earn between R0-R200 per month, 70% earn between R0-R500 per month, while 87% earn less than R1000 per month.

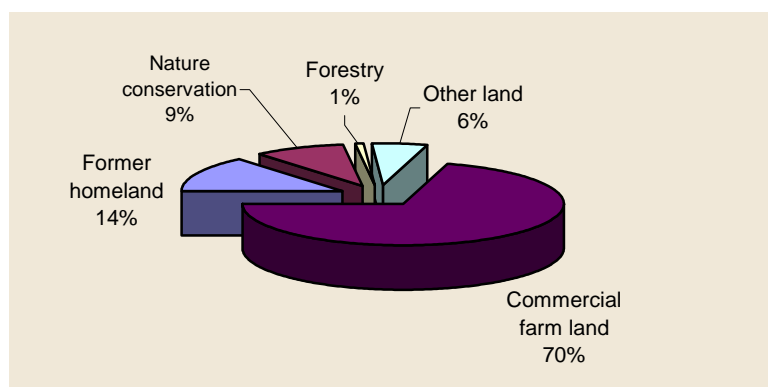
3 The Land Base

The purpose of this section of the report is to provide an overview of the land base of the current freehold farming areas of South Africa.¹

3.1 Land categorisation

South Africa covers a total land area of 121 909 000 ha. The land dispensation in 1991 under the previous government is reflected below in Figure 1. While these figures have changed somewhat since then, they represent a good entry point. State land cuts across the various categories of land utilisation presented, and currently comprises some 9% of total land area excluding the former homelands. Our interest is in the category of commercial farmland, which is that land formerly reserved for white commercial farming. Current estimates put this area at 82 209 571 ha (DLA, 2003), comprising approximately 67,4% of the country's land area.

Figure 6. South African land categorisation, 1991. Source: Abstracts, 2000.

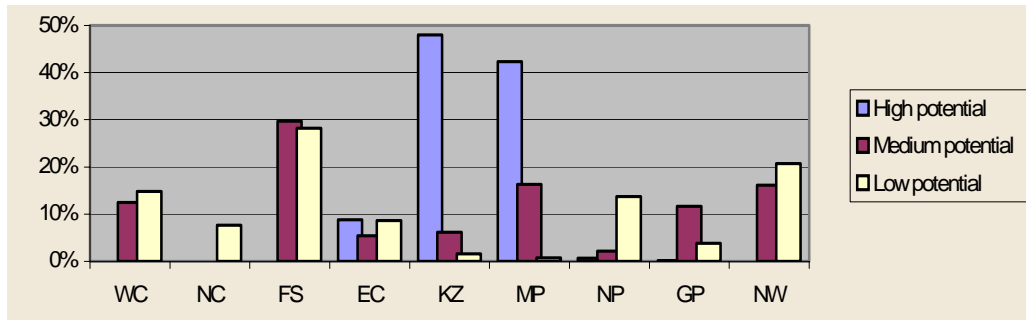


¹ In researching the land composition of South Africa, one thing that becomes evident is the inconsistency of figures between different sources and even within the same source at different periods. These discrepancies may come as a result of different tools of analysis, different parameters, and also changes in land utilisation between samples.

3.2 Agricultural potential

South Africa is relatively poorly endowed as a natural resource base for crop and horticultural production. According to the National Department of Agriculture, only about 13.7% of South Africa is considered potentially arable, and less than 3% is high potential land. Of the commercial farmland, arable land constitutes roughly 17% (14 192 099 ha) of the available land. This land is almost fully utilised at more than 90%, leaving little room for horizontal expansion of production. High potential land is geographically concentrated in Mpumalanga and KwaZulu-Natal provinces, together making up just over 90% of this land, as seen in Figure 7.

Figure 7. Land potential distribution. Source: Soil and Irrigation Institute, 1986



South Africa's water resources are scarce and limited, which severely limits agricultural potential. Rainfall is a low annual average of 497 mm compared to a world average of 860 mm. An average annual precipitation of 600 mm is generally regarded as the minimum for successful crop production. Only about one third of South Africa is equal to and above this level. Frequent droughts and rainfall variability cycles increase farming risk.

The balance of commercial farmland is classified as grazing land, of which the majority is situated in the arid western part of the country, with extremely low carrying capacities. Almost 43 million hectares of land in South Africa are below productivity level due to rainfall limitations. Grazing resources are over utilised and in poor condition. In 1994, it was estimated that only about 0.3% of natural veld was in very good condition, while 13.2% was in good condition and 86.5% in fair to poor condition (Economic Review: Agriculture 1996).

3.3 Land utilisation

Freehold agricultural land can be broadly divided between potentially arable and grazing land. Grazing makes up approximately 71 million hectares (84%), while potentially arable land constitutes 14 million hectares (16%) of total farmland.

In 1993, 32% of all field crops were grown in the Free State. The Western Cape is the primary horticulture area with 46% of land under horticultural crops. Mpumalanga has the greatest area under forestry (40%), while Northern Cape has the most area in the country utilised for animal production (44%) and mixed farming (24%). In terms of contribution to total value added in 2001, KwaZulu-Natal made the largest contribution (28.3%), followed by the Western Cape (22.6%). The Eastern Cape recorded the highest increase in value added compared to 2000.

In 2001, animal products constituted 39.8% to the gross value of agricultural production; field crops were 34.3% and horticultural products 25.9%. The most important animal products in terms of gross value of production were poultry (42.9%) which overtook livestock as the dominant contributor to gross value in 1994, livestock slaughtered (31.1%), fresh milk (11.6%), dairy products (5.2%) and wool (3.0%). The most important field crops in terms of gross value of production were maize (37%), sugar cane (18.5%), wheat (14.7%) and tobacco (3.7%). Horticultural products in ranking are deciduous fruit (28.6%), vegetables (20.1%), citrus (12.7%) and viticulture (11.5%).

3.4 Farm size and farming units

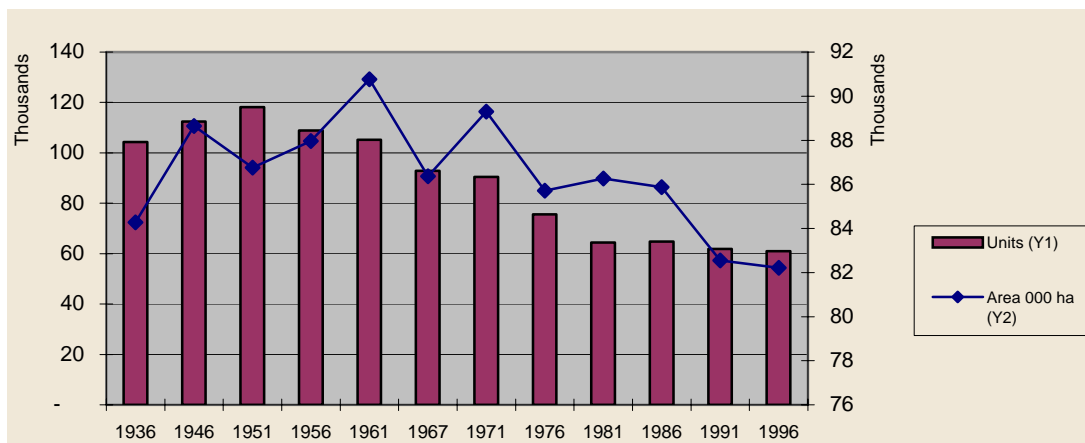
Average farm size is to a large extent determined by the land potential as well as the availability of land in each province. Northern Cape is the extreme example of low potential, the average farm size being 4 418 hectares. Here, livestock carrying capacities of 30-40 ha/LSU are commonplace. Gauteng on the other hand is under pressure from industry and urban expansion, with the result that land is relatively scarce. Only 40% of the total land is available for agriculture. This is reflected in the average unit size of 323 hectares.

A farming unit consists of one or more separate farms, holdings or portions of land, whether adjoining or not, which are operated as a single unit. Farms or portions of land situated in different districts can be regarded as a single farming operation.

According to the long term trend assessment in number of agricultural operations and area farmed over the period 1936-1996, the area farmed peaked in 1959, to a maximum 92 million hectares and has decreased slowly but significantly since then. Many economic and political factors have influenced this process, from mechanisation to urbanisation and past policies of forced removals and separate development.

The number of farming units peaked in 1952 with 119 556 units and decreased to its lowest point in 1993, the year before the first democratic elections.

Figure 8. Changes in farming units and area farmed 1936-1996. Source: Abstracts 2000.

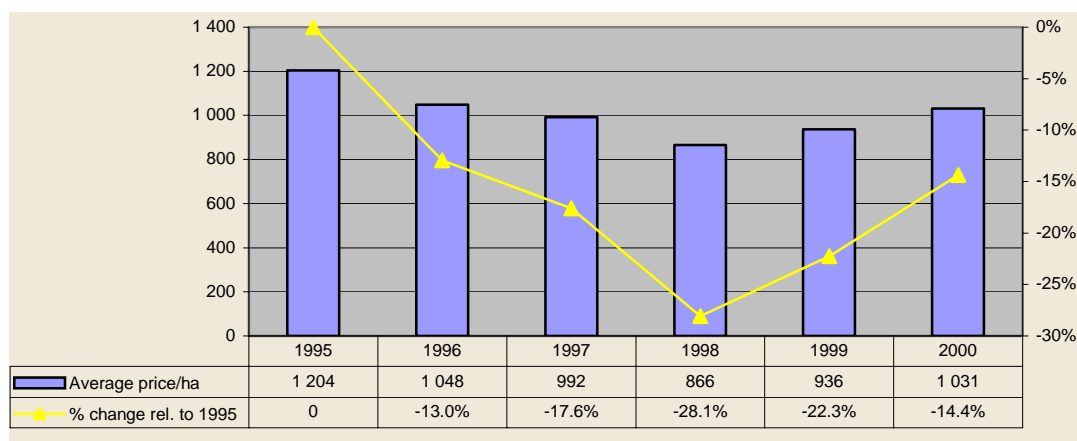


3.5 Land availability and pricing

The South African land market is relatively active. On average, over the five-year period from 1995 to 1999, 6.3% of commercial farmland changed hands per annum. On a provincial basis, Eastern Cape recorded the lowest transactions with 4.9% per annum and Gauteng the highest with 9.8% (Aliber and Mokoena, 2002:7).

While concerns have been raised over the high prices of agricultural land in relation to the acquisition of land for land reform, the general trend in land prices has been downward. Aliber and Mokoena (2002:4) reported a 28% decrease in real land values for the period 1995-1998; and while subsequent years saw partial recovery, the average per hectare prices in 2000 were still 14% lower than in 1995 (see Figure 9).

Figure 9. Average prices for farmland in SA 1995-2000. Source: Aliber & Mokoena, 2002



4 Land issues and Perspectives

The purpose of this section of the report is to provide a sketch of the issues impacting on the various categories of people living in the commercial freehold areas, and to reflect the views and perceptions of these categories of people.

4.1 Established Commercial Farmers and Corporate Interests

4.1.1 Key Issues

In broad terms, levels of investment in agriculture have declined. However, it is not possible to be categorical about investment. Anecdotal evidence suggests that land prices have risen since early 2002, partly as a consequence of investment in game farming and the foreign purchase of land, particularly in the Western Cape.

The Zimbabwe situation has created anxiety in the corporate and commercial sectors. Although government has said that a Zimbabwe situation will not arise in South Africa, there is concern about a build up of frustration around the land question that could lead to political mobilization and land invasions.

Land is being sold because it is close to informal settlements or former homeland areas, and is viewed as unviable. In these contexts, theft and security are serious problems. Land is also being sold because the returns to agriculture are perceived as very low, and because landowners prefer to disinvest rather than run the risk of being embroiled in a Zimbabwe style land crisis.

South African agriculture has been deregulated over recent years and enjoys one of the lowest subsidies in the world. The effective subsidy in South Africa is 4% compared to 45% in Europe. Input costs are high, returns are relatively low and interest rates are high. Given this set of circumstances, it is unsurprising that many farmers have faced a profit squeeze.

The plethora of unresolved land claims on freehold land is having a profound effect. In many instances, unresolved claims are constraining progressive and proactive planning. The effect of land claims on the land market seems to be ambiguous, although in general it would seem that the value of claimed land has dropped dramatically.

The effect of the *Extension of Security of Tenure Act* (ESTA) has been for many farmers to settle matters informally with their workers mainly through off-farm settlement, but also through subdivisions on farms. Due to the fact that ESTA prescribes the provision of alternative accommodation of the same standard if workers are evicted, farmers are reluctant to improve the quality of accommodation.

The rating of agricultural land is viewed with some dismay, especially as municipalities seem to be acting at their own discretion in a totally uncoordinated manner.

Most farms are one or two person operations. These small businesses are overburdened with a host of administrative requirements stipulated in various pieces of labour, tax and tenure legislation

The minimum wage is not an issue for most employers of agricultural labour, although cut backs on labour can be anticipated. However, there are aspects of the legislation that are a cause of concern, for example the limit on in-kind payments.

Despite a sense that agriculture has been subject to unwelcome tenure and labour legislation, and that farmers are impinged upon by bureaucracy, there is a willingness on the part of farmers and corporate actors to contribute to the transformation of the commercial freehold sector.

4.1.2 Perspectives of Commercial Farmers

There is no single view on land issues emanating from commercial farmers. Differences are sectoral and regional and depend partly on scale of operation. However, the thinking of owner/operator commercial farmers can be crystallized into a set of propositions around which there is broad consensus. Commercial farmers operating, as small businesses believe that:

- ✔ Freehold farming is part of the free market system;
- ✔ Land tenure legislation impinges on property rights;
- ✔ Land tenure legislation has disturbed and in some cases destroyed relationships between farmers and workers;
- ✔ Land tenure legislation impinges negatively on conditions of labour;
- ✔ Land tenure legislation builds unrealistic expectations;
- ✔ Government is unable to enforce tenure legislation – evictions continue to occur;
- ✔ Better services can be provided through off farm settlement options;
- ✔ Rating of agricultural land is unfair and will destroy commercial agriculture;
- ✔ The proposed amendments to the restitution legislation are mistaken;
- ✔ Resolution to labour tenant claims should involve all stakeholders including farmers;
- ✔ Agriculture is not the only sector responsible for livelihoods and poverty reduction;
- ✔ The agricultural sector is tough and does not offer an immediate means to alleviate poverty;
- ✔ Most people seek a place to settle not to farm;
- ✔ People need to be capacitated to use land so that it has an economic purpose;
- ✔ Post transfer support is needed for land reform;
- ✔ Joint ventures will assist land reform;
- ✔ Farm workers should be targeted as emergent farmers;
- ✔ Such farm workers need training in planning and economics;
- ✔ Municipal commonage should be used to support income generating projects;
- ✔ The economic role of commercial farmers in agricultural transformation should be recognized;
- ✔ Land held by the state should be redistributed as a first option;
- ✔ There should be a close out on land reform; and
- ✔ A minimum wage provision is not market based.

4.1.3 Perspectives from the Corporate Sector

Sugar millers and timber companies are essentially processing operations. As such, they have one primary interest, and this is to ensure the sustainable supply of raw material. This does not necessarily entail owning land. Indeed, the preferable scenario is to ensure throughput without owning land because cane production and forestry are not the core businesses of sugar millers and pulp and paper producers. The perspective on land of the corporate sector is therefore very different from the perspective of private landowners where the land is a business and a livelihood. There are a number of obvious benefits for corporate actors in disinvesting in land. Disinvestment frees companies from being employers of agricultural labour (although the timber companies have avoided this through sub-contracting forestry activities); frees capital for downstream capital investment; allows for the establishment of black commercial farmers; provides a social responsibility opportunity, and makes economic sense as returns on land have decreased. The sugar industry already has a substantial track record in the redistribution of corporate land. The

timber sector is at the early stages of land redistribution and is in an early phase of deliberation and planning.

4.1.4 A Perspective from Organized Agriculture

Although the perspectives of the corporate sector are different from those of commercial farmers, it would be true to say that corporate actors have many views in common with commercial farmers. Some shared views that could be said to be the views of organized agriculture are:

- The agricultural sector has very limited capacity to address inequity in South Africa;
- People need to be disabused of the false assumption that land is the key to wealth;
- Land reform is a priority because transformation is required for the credibility of the agricultural sector;
- The need to transform the ownership of the commercial sector should not be confused with the need to deal with rural poverty;
- The constraint on rapid land reform is not the availability of land. State land is available for redistribution, as is land through the Land Bank and the market;
- A fundamental contradiction in government policy is that the aim is to bring disadvantaged people into what macro economic policies have transformed into a vulnerable sector;
- Land reform in the agricultural sector must be commercially driven;
- Land reform should meet a range of different needs;
- Government's objective to transfer 30% of the land by 2015 is supported;
- Land policies are not clear and transparent;
- Government lacks the administrative capacity and competence to carry land reform forward quickly and efficiently;
- The pace of land reform is far too slow;
- The Department of Land Affairs has not interacted sufficiently with organized agriculture;
- In the context of implementing land reform, the rule of law and property rights must be enforced;
- Services, capacity building, technical support and infrastructure must be provided as an integral part of land reform, since land by itself is valueless; and
- There is a strong case for the privatization of land reform

4.2 *New entrants to the commercial sector (emerging farmers)*

The term 'new entrants' or 'emerging farmers' often refers to historically disadvantaged individuals who are or were farming on a small scale, but who are aspiring to farm on a larger or commercial scale. Hence they are described as emerging or resource poor farmers. These farmers are predominantly, but not exclusively, confined to the former homeland areas. However, what needs to be recognized is that recent new entrants to the commercial agricultural sector are in many instances people with business interests in urban or rural areas, or retirees from business or the civil service.

A good example of this is provided by the sugar industry's programme to establish new freehold growers through the redistribution of company owned land. The beneficiaries of the sugar miller land reform initiatives have typically been company employees, people from the business sector, or people from the civil service. A common way of raising the deposit to acquire the farms has been through pension and provident fund payouts. It should be noted that beneficiaries have not typically been drawn from the small-scale grower sector of the industry where holdings are generally no more than a few hectares, and that beneficiaries have largely been urbanized middle class people (Vaughan, 2001).

The Land Redistribution for Agricultural Development (LRAD) programme presents good opportunities for such applicants who are able to access loan funding or own contributions and thereby leverage a higher grant. This is reflected in LRAD applications, which through the Land Bank for the period August 2001 to December 2002 had approved loans to the value of R359

million. Preliminary figures from the Department of Land Affairs indicate that approximately 90 of the approved 859 projects were at the maximum grant value of R100 000, although 80% of projects were in the two lowest grant categories (R 20 000 – R 30 000 and R 30 000 – R 40 000).

Technically, commercial farmers are described by the National Department of Agriculture as having a turnover greater than R300 000 per annum. However, the National African Farmers Union (NAFU) considers farmers having an annual turnover above R250 000 as commercial farmers. In 2001, NAFU claimed a membership of approximately 400 000 farmers out of an estimated 2.8 million black farmers in South Africa. Of these, approximately 58 000 were considered to be commercial farmers, and the balance were considered small-scale farmers. Latest indications are that this number has declined substantially and possibly comprises up to half of 2001 estimates.

The *Survey of Large and Small Scale Agriculture (2002)* estimated a total of 1.1 million farming operations in South Africa, of which 943 000 were in the former homeland areas and 150 000 in the former Republic of South Africa (RSA). Of the latter, approximately 82 000 were commercial, predominantly white, farming operations. It should be noted that the number of farming operations is not equivalent to the number of farmers.

4.2.1 Needs and demands of new entrants to the sector

The aspirations of emerging farmers as expressed through NAFU are for urgent access to land, markets, finance and empowerment in primary and secondary farm industries (Rammuthla, 2000; Buthelezi, 2002).

There is a demand among new entrants to the sector for better access to services. In the survey of large and small scale farming in South Africa, the three most essential services required by emerging farming operations were water for irrigation (65.2%), telephone services (46.1%), and electricity for farming purposes (37.9%) (Stats SA, 2002).

There is an expressed need for access to land-based resources. There is also an expressed need for self-improvement, and better access to information. As black farmers enter the commercial farming sector, they are exposed to a range of information sources far in excess of what is available in the former homeland areas. Suppliers of inputs usually have specialist knowledge of their products and can inspect crops and advise farmers accordingly. Co-operatives and pack houses have crop specialists and current market information. Agro-processing companies have expertise and capacity to assist and train emerging farmers.

4.3 Labour Tenants

4.3.1 Profile and Demographics

Labour tenants refer to a specific category of people who acquired rights to use land in exchange for labour. The system of labour tenancy has its history in the 19th Century when the practice was widespread, but decreased during the 1960s and 1970s through state action and changes in agricultural production. The system is largely confined to Mpumalanga and KwaZulu-Natal. Labour tenancy as a “category” of people living on current freehold land came to the fore again with the passing of the *Land Reform (Labour Tenants) Act* of 1996.

Information around the extent and demographics of labour tenancy has always been vague. Prior to the enactment of the legislation, estimates varied between 25 000 and 250 000 households (Hornby, 1998). Approximately 21 000 applications have been received in terms of the Act. This would affect about 200 000 people. The majority of these applications were lodged in KwaZulu-Natal and Mpumalanga, with small numbers of applications across all the other provinces, except for the Western Cape (DLA, 2002).

Labour tenants represent a group of vulnerable people whose objectives are principally to access secure tenure and convert it into sustainable livelihoods. The very existence of labour tenancy

attests to a category of people who spread risk through various arrangements to secure land and other assets to sustain a livelihood. Some commentators argue that labour tenants are possibly the only grouping in the countryside who still retain agrarian skills and capacities, and that they should constitute the basis for a future class of rural producers (Hornby, 1998).

4.3.2 The current status of labour tenant issues

The process of implementing the Act has been slow. There is also a lack of and variance in official information regarding progress on implementation (Hall, forthcoming). The issue of labour tenancy and secure tenure has been overshadowed by broader official considerations regarding tenure security for farm dwellers and tenure reform in the communal areas. For that reason, resolving the labour tenant issue has never been properly resourced, budgeted or capacitated.

Recent initiatives around implementation by the Department of Land Affairs in KwaZulu-Natal have involved a shift from a narrow rights based approach to a more district and development oriented approach involving local and district negotiating structures of labour tenants, land owners, municipalities and officials. This process is still in the early stages. It is doubtful whether the Department of Land Affairs has currently either the capacity or budget to fully support the outcomes of any negotiations.

A key consideration is whether the current institutional context has strengthened or weakened the livelihoods of this category of people. There is common cause that the enactment of the *Land Reform (Labour Tenants) Act* has increased the levels of tension and conflict between landowners and labour tenants. Various National Land Committee (NLC) reports claim increased levels of evictions and pre-emptive measures taken by farmers prior to and shortly after the enactment of the Act. Neither government nor NGOs have developed or maintained credible databases on evictions so analyses remain largely anecdotal and speculative.

Representatives of organised agriculture state that the expectations created by the Act and the lack of programme implementation have increased conflict and damaged relationships between landowners and tenants. They indicate that the effect of the legislation has been a total unwillingness on the part of landowners to consider any arrangements that might involve people living on or using their land out of fear that this might lead to claims being lodged. To this extent it can be assumed that the legislation has had the effect of reducing various tenancy and use arrangements and 'freezing' transactions on land, thereby reducing the flexibility of the informal land market in opening access to land.

Land practitioners argue that although the legislation has increased tensions, it has improved the negotiating position of farm dwellers and enhanced a growing sense of rights and ownership. They claim that the legislation has unlocked solutions, including options for land acquisition and 'off farm' land and housing.

A noticeable trend reported across the country from officials and agricultural representatives is the increase of local informal solutions or deals that are being struck because of the delays in the implementation of the official land reform system. Agreements are being reached involving amounts of R15 000 to R50 000 on high value land for 'off farm solutions'. Landowners are abandoning marginal land settled by labour tenants in expectation of it being purchased at a later date through the land reform programme. Departmental officials view the off-farm local solutions with suspicion, arguing that tenants are compromising their rights and sustainable livelihoods for short-term benefits. Landowners and some land practitioners are critical of the perceived inability of the Department of Land Affairs to support equitable local on and off farm agreements when they are reached.

4.3.3 Post land acquisition sustainability assessment

Where land transfer agreements have been finalised between labour tenants and landowners, there is currently little analysis as to the livelihoods situation of those former labour tenants.

Problems have been experienced in accessing the balance of the land grant (funds remaining after land purchase). There are also problems with respect to internal tenure and land management issues where land is held in common property institutions such as Communal Property Associations and Trusts.

4.4 Land reform beneficiaries

4.4.1 Characteristics of early land reform projects

In the first phase of the land reform programme, provincial offices of the Department of Land Affairs had to respond to strong pressures. The projects that emerged had a number of characteristics in common:

- Projects had an essentially settlement and subsistence orientation, with uptake on projects reflecting an expressed need for land for settlement. Particularly in KwaZulu-Natal, land reform had to deal with the compression of the populations in the former KwaZulu areas that was spilling over onto the bordering farms.
- Projects came together through kinship and tribal affiliations. This, in part, determined the very large size of initial projects.
- Many projects carried the burden of resolving intense and longstanding political and social conflict.
- In many projects in KwaZulu-Natal, tribal authorities played a key role, and there was conflict between these tribal authorities and the democratic institutions that were set up to take ownership of and manage the land.
- In a large number of the early cases, the land that was identified for transfer was land to which communities had an historical affiliation rather than land that had been identified for appropriate location and productive potential.
- Many of the early redistributions cases were attempts to resolve restitutive issues because these cases fell outside the parameters of the restitution legislation.
- Although business plans were a requirement for projects, these were often not implemented, and turned out to be almost irrelevant to actual land use practices.
- In some instances, land reform beneficiaries took over existing enterprises which they did not have the skills or experience to manage, and predictably, many of these enterprises subsequently disintegrated.

4.4.2 Issues of group ownership

Large beneficiary groups typically applied for land because substantial numbers were required to make up the amount needed for the acquisition of a commercial farm. These large groups posed questions of sustainability. Difficulties arose around the cohesion of these large groups and around the micro institutions that were set in place to take ownership of and manage the land. The institutions that were set in place were typically either Community Trusts or Communal Property Associations set up under the *Communal Property Associations Act*. These institutions were criticized because they tended to promote inadequate management practices, played into the hands of elites and because gender equality was not properly addressed. In some cases, new democratic institutions collapsed back into traditional systems of authority and control, and social organization within projects began to mirror social organization within the traditional authority areas. In the case of land that was being redistributed to former 'black spot' communities, the leadership dynamics were somewhat different. The dynamics of leadership were also different in the Eastern Cape where civics tended to play an active role. However, the sustainability of institutions was also questionable in these cases, This was partly because the institutions set in place were often viewed as mechanisms to acquire land, rather than as tools for land management.

4.4.3 Land demand

In 1997, it was estimated that approximately 68% of black rural households desired farmland. The demand varied from province to province, supposedly due to the differences in viability, but on the

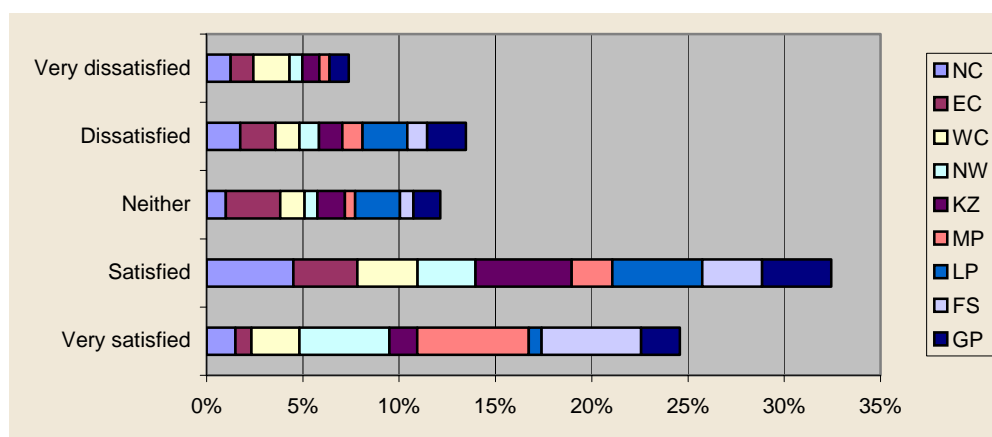
whole, people were looking for small amounts of land. At least 40% of those wanting land desired 1 hectare or less (Rural survey, 1997).

4.4.4 Satisfaction with land reform

The Department of Land Affairs (DLA) commissioned Quality of Life reports are intended to show the impact of land reform projects on the livelihoods of beneficiaries. While the reports have been criticised, despite their limitations, they are perhaps the most substantial investigations available on land reform beneficiaries (Lahiff *et al*, 2003:43). Quality of Life (QOL) survey 2000/2001 constituted of mostly redistribution projects, some tenure and very few restitution projects². The QOL surveys evaluated projects funded through the Settlement and Land Acquisition Grant (SLAG). Land Redistribution and Agricultural Development (LRAD) projects, which started only late in 2001, have not been assessed in such detail.

The 2000/2001 QOL report shows a decline in levels of general satisfaction with land reform since the previous report. Figure 10 below illustrates that the general level of satisfaction of beneficiaries with their projects is quite high. However, of the original sample of households drawn by DLA, none was surveyed because they had either moved off the land or had never moved on after transfer (Ahmed, 2003:243). This could substantially skew the results as those who had moved off the land could well have moved out of dissatisfaction.

Figure 10. General satisfaction of beneficiaries with project



4.4.5 Perception of land in relation to livelihoods

Of the households surveyed in the 2000/2001 QOL, the majority of respondents (28%) indicated that having land of their own was their primary reason for satisfaction with the programme. The subsequent two reasons reveal the perception of land as a source of livelihood improvement: 10% responded that they would now have an opportunity for a better life, and 8% stated that they would benefit from the project.

Despite the most important factor for satisfaction listed as having land of their own, the Quality of Life report found that only 43% of households had access to land for private purposes. This is very low compared to households in the former homelands, of whom 71.3% had access to land for farming purposes (Rural Survey, 1997:38). Most beneficiary households with access to land grew multiple crops with maize being the most commonly cultivated. Although some crops were sold, most of the harvest was kept for home consumption. This finding is in keeping with the previous QOL survey, which reported on the important contribution of subsistence agriculture to households'

² The classification of projects does not appear to be accurate. Cape Olives listed as restitution is in fact redistribution, FWES. Yende Trust listed as redistribution is Labour Tenants.

livelihoods³. The primary land use activity that projects were engaged in was unspecified communal farming (40.7%), livestock grazing (32.5%), followed by private vegetable gardens (22.8%)⁴. Disturbingly, on a significant number of projects (17.1%), there was no activity at all.

The most significant change in the lives of land reform beneficiaries surveyed was found to be the improvement in non-material quality of life. An improvement in self-esteem and pride of achievement were reported for approximately a third of respondents. Agricultural training was identified as a priority in suggestions for improvement from beneficiaries.

Beneficiary households surveyed in the QOL survey had high expectations of service provision as a result of their projects. Service provision was defined as housing, clean water, sanitation, electricity in the house, and roads. Only a small percentage of these expectations were realised.

Most beneficiaries (70.5%) had expectations of a higher and more secure income from their projects. On the whole, these expectations were not realised, as only 8.1% felt that higher incomes had been obtained. These expectations might be caused by people's misconceptions regarding the profitability of agriculture⁵. Also, as pointed out by Aliber (2003:3), business plans were often designed to impress officials and beneficiaries with unrealistically high projections of profit.

4.5 Farm workers

A farm worker is defined as someone who sells his/her labour power to an employer or landowner of a farming operation in return for a wage and who frequently, though not necessarily, obtains accommodation, tied to his or her employment. Farm workers whether they are employed, permanent, seasonal or living on or off-farm are the poorest workers. More than half the numbers of farm workers are women. The number of farm workers declined rapidly over the last two decades with research showing that the position of women has deteriorated most significantly (Du Toit, 2001).

The economic restructuring of the agricultural industry, trade liberalisation, and the implementation of new labour and land legislation has led to major changes in the position of farm workers. Overall there are more retrenchments, greater casualisation and externalisation of employment, increased use of contractors, a decline in the on-farm workforce, withdrawal of the provision of services by farmers, increased eviction of farm dwellers and stagnant wages, with women still receiving lower wages than men. Off-farm housing in formal or informal settlements is often worse than housing on the farms.

These trends are unlikely to be reversible. Since the early 1960s, jobs have been shed in the agricultural sector but this has accelerated since the 1980s. It may be possible to reduce the pace of agricultural job shedding – but where jobs have been lost, they are likely to stay lost and farmers are increasingly keen to reduce the number of farm worker families living on the farms.

Legislative attempts to protect farm workers' tenancy and labour rights have proven difficult to enforce in the absence of an overarching culture of legal compliance on farms. Moreover farm workers have few alternative options and in most cases are entirely dependent on farmers for employment, social security, and housing. The *Extension of Security of Tenure Act* was intended to give rights to farm dwellers and to prevent illegal eviction. Information on the exact number of evictions is impossible to obtain (Hall, 2003; SAHRC, 2003). In fact, the South African Human Rights Commission (SAHRC) has called on the Department of Land Affairs to furnish the Commission with accurate statistics as one of its recommendations.

³ This is not to say that there are not projects run on a purely commercial basis where beneficiaries are essentially shareholders and employees.

⁴ As multiple activities occur, percentages do not add up to 100%.

⁵ Normally every farmer has a bakkie and often a second vehicle. From the perspective of the poor, this would be extravagantly wealthy. Many redistributed farms were marginal for the previous owners.

For workers the implications of current shifts are complex. There is no specific land reform programme catering to the particular needs of farm workers. Joint ventures offer opportunities but have been criticized for giving inadequate consideration to access to land, control over its use, alternative livelihood options, building the skills and abilities of farm workers and independent monitoring. The LRAD and market-based framework offers few opportunities to farm workers because it fails to address practically the multiple social, institutional and economic obstacles that stand in their way. The food safety net and commonage programmes have been eclipsed by the emphasis on commercial farming (Tilley, 2003). Land reform, or redistribution, will only affect a minimal number of farm workers, while the majority still seeks improvement in their life conditions and opportunities (Husy, 2001). While many have lost their incomes and homes, those workers who remain in the sector remain vulnerable, as the application of basic labour laws is tenuous and labour inspection services are not adequate to enforce compliance in agriculture. Farm labour is mostly unskilled and little investment is made in training workers, due to the fact that employment relationships are often brief, or the third party labour broker has little incentive to invest in productivity. The Agricultural Seta has indicated that it is having difficulty in developing appropriate training programmes for farm workers.

Given the critical importance of land access to rural livelihoods, the lack of access to land provides a critical weakness in the efforts of rural families to improve agricultural production and income. Studies of farm worker conditions on white owned farms in KwaZulu-Natal, Free State, Northern Province and Gauteng, showed minimal access to land for farm dwellers (Husy, 2001).

Research on the specific impact on women of these shifts shows that they are often dependent on male household heads for the right on-farm accommodation, that they usually carry the burden of responsibility for child rearing and that there are extremely high incidences of family violence amongst farm labourers.

The perceptions of farm workers themselves on land and labour issues appear to vary from province to province and from sector to sector. Key issues appear to be secure employment, improved living and employment conditions, safety, and home ownership, rather than access to farmland in many cases (Du Toit, 2001; Aliber, 2001; SAHRC, 2003). The South African Human Rights Commission held provincial and national hearings with farming communities during 2002 and has recently published a final report which highlights the inequality in power between farm worker and farm owner, and the lack of effective legal mechanisms to protect farm dwellers (SAHRC, 2003). This impacts negatively on violence, tenure security, evictions and labour conditions. Some farm workers indicated that they were happy to be financially encouraged to move off-farm as there were better prospects for housing and services in towns. Others asserted that they wanted access to productive land and housing on the farm.

The SAHRC report also deals in detail with both land and labour legislation, drawing particular attention to ESTA and to non-compliance with labour legislation, including provisions pertaining to child labour and illegal immigrants in particular. The most significant recommendation from the SAHRC is the formation of a forum between farm dwellers, farm owners and government where parties can confront each other on an equal basis to resolve issues that impede the enjoyment of rights in rural communities. The Office of the State President has already taken steps to initiate this.

4.6 Multiple livelihoods

Multiple livelihoods strategies where households rely on a cluster of income streams and resources to secure a living are typical in many rural contexts. It is likely that historically farm worker households in the freehold areas had access to multiple income sources. Farm worker households might run a few cattle on the farm, and natural resources might provide a source of energy and building materials. Payment in kind would diversify income sources. Family members (women and children) might be deployed as casual or seasonal labour. Social grants might also supplement household incomes. The group for whom multiple livelihoods strategies would have been most

typical are labour tenants who used land allocated in return for labour for a variety of purposes, but most importantly for raising livestock and producing crops.

It is likely that tenure and labour legislation promulgated over recent years has impinged negatively on the opportunity for farm workers and labour tenants to generate livelihoods from a multiplicity of sources. The reason for this is that the legislation represents a strong disincentive for commercial farmers to allow the use of land and resources because of perceptions that property rights may be undermined. Many farm workers have been retrenched or evicted. The trend towards the casualization of labour has already been referred to, as has the fact that the legislation pertaining to labour tenants has shut down possibilities for the shared use of land and resources. However, the legislation has had the positive effects of affirming rights and opening housing opportunities under secure tenure. It is worth noting that the patterns of land use on early land reform projects where commercial land was acquired by beneficiary groups, testifies to a powerful imperative for rural households to generate their livelihoods from a multiplicity of sources.

5 The Institutional framework governing land in South Africa

5.1 Land legislation, policy, and markets

Prior to the elections in 1994, the African National Congress stated in the Reconstruction and Development Programme that land reform was to redress the injustices of forced removals and the historical denial of access to land. It was to ensure security of tenure for rural dwellers, eliminate overcrowding and to supply residential and productive land to the poorest section of the rural population. As set out in the 1997 White Paper on Land Policy, the government's land reform programme has three elements, namely restitution, redistribution and tenure reform. Government has set itself a target of redistributing 30% of agricultural land by 2015 and resolving all restitution claims by 2005.

There is much debate and criticism about the market-based, demand-driven process of land reform. Unlike other African countries which inherited racially based patterns of land distribution, South Africa has an inordinately high proportion of land that was reserved for white occupation and use. This extreme maldistribution of land, in the context of a highly urbanized and industrialized country, has led to much argument about the objectives, process and practice of land reform. Initially land reform attempted to target the poor and landless, but subsequently has shifted its emphasis to include potential small-scale farmers and commercial farmers. Government's current targets for redistribution and restitution could potentially address racial imbalance in ownership without creating significant increases in livelihoods for the poor. This problem is exacerbated by the changing character of agriculture in South Africa and the reduction of subsidies to farmers.

The state's assistance in market-led land reform has created some anomalies in the market-based approach to land reform. In practice, the slow processes required for allocation of funds and acquisition of land does not facilitate easy exploitation of or access to the land market. It is well documented that many transactions fall through because willing sellers are unable to wait for the government to complete its onerous approval processes. In fact, a study in KwaZulu-Natal has shown that more land of a better quality was redistributed on the open market without state aid than in the land reform programme (Lyne and Darroch, 2001).

There is a call for government to exercise its right to expropriate land more frequently, especially with regard to resolving restitution claims. A number of Non Governmental Organisations (NGOs) have argued in favour of a state-led programme in order to allow for the sub-division of land, the provision and control of servicing, and the control of land prices.

The *Restitution of Land Rights Act 22 of 1994* tackles the injustices of apartheid most directly. A person or community dispossessed of property after 19 June 1913 (the date of the *Natives Land Act*), as a result of racially discriminatory laws or practice, is entitled to lodge a claim. Initially

implementation was slow and there is anxiety within the commercial agricultural sector as to the impact of the process.

Land tenure reform aims to provide people with secure tenure where they live, to prevent arbitrary evictions and fulfil the constitutional requirement that all South Africans have access to land rights of legal standing and security. The *Land Reform (Labour Tenants) Act of 1996* (LTA) provides for the protection of the rights of labour tenants and gives them the right to claim land. The Extension of Security of Tenure Act aims to protect people who live on land with the consent of the owner or person in charge against unfair eviction and to create long term tenure security through on or off-site developments assisted by a government grant and the landowner. The *Prevention of Illegal Evictions and Unlawful Occupation Act of 1998* enables owners to evict people who unlawfully occupy their land and makes it a criminal offence to evict people without a court order. There is a lack of hard data on land tenure reform, which has been the slowest and most difficult aspect of the land reform programme to date. This issue is covered in greater detail in section 5.3 below.

During 1994 - 1999 land redistribution aimed to provide the disadvantaged and the poor with land for residential and productive purposes through the Settlement Land Acquisition Grant (SLAG), a flat grant of R16 000 per household that was used to purchase land from willing sellers. Land redistribution took several forms (e.g. group settlement with some production; group production; commonage schemes; on-farm settlement of farm workers and farm worker equity). A range of additional financial resources and services supported the grant. In June 1999, the Minister of Agriculture and Land Affairs called for a review of the redistribution programme and introduced in August 2001 the Land Redistribution for Agricultural Development (LRAD) programme that aims to cater for black South Africans aspiring to become full-time, small and medium-scale commercial farmers. Beneficiaries are able to access grants ranging between R20 000 and R100 000 per individual adult, depending on the amount of their own contribution in kind, labour and/or cash, which must be at least R5 000.

It is difficult and premature to assess fully the impact of the policy shift towards LRAD. Early analysis shows that some of the early SLAG projects contributed significantly to the creation of livelihoods, however many of the earlier large group projects with an agricultural component have failed. Some of the current LRAD projects carry very high debt-equity ratios, which potentially could place the projects at risk. Clearly comprehensive monitoring of the progress of redistribution projects is critical if policy is to be analysed and adjusted where necessary.

A number of criticisms have been levelled at the land reform programme. Most obvious has been the slow pace of delivery. More recently the Department has fully spent – overspent – its budget, yet there has been no increase in budgetary allocations. Less than 0.4% of the national fiscus is spent on Land Reform. A number of organizations have pointed out the huge discrepancy between current targets and budget allocations. This is discussed further in 6.1 below.

A more recent critique of the land redistribution programme raises questions as to the extent and nature of the demand for land and the appropriateness of the policy (Aliber, 2003). The paper argues that LRAD primarily benefits black commercial farmers. This raises the question of whether or not it will be seen to have redressed the collective injustice of dispossession. A forthcoming review from the Department of Land Affairs however indicates that the key beneficiaries of LRAD remain resource-poor beneficiaries and communities. Alternatively the paper also argues that many South Africans do indeed want land, both to support their livelihoods and as a matter of righting historical wrongs, but that next to job creation, more housing and improved security, land is generally not a priority (Aliber, 2003).

5.2 Agricultural policy, legislation and markets

Political involvement in South Africa's agricultural sector was a feature of both the colonial and apartheid periods.

Prior to the 1990s, the National Party's support for white commercial agriculture was extensive and included subsidised access to credit and other factors of production, price support mechanisms, tax incentives, export rebates and statutory single channel marketing.

The benefits were dispensed through a network known as "Organised Agriculture", consisting of the Department of Agriculture, the Land Bank, and agricultural co-operatives. The comprehensive package of government assistance helped to establish some 60 000 commercial farmers by the mid-1980s and inflated land prices (Deininger and Binswanger, 1992), and was in stark contrast to the minimal support given to the 800 000 black, farmers in the homelands.

In the lead up to the 1994 elections, government support for agriculture was reduced and following the findings of the Kasser Commission in 1993, the statutory marketing environment was deregulated.

Much of the ANC-government's rural focus since 1994 has been on land reform and restitution, but ironically the National Department of Agriculture has been slow in providing support to this process, vacillating between its perceived obligation to commercial agriculture and its support for new land owners. During the tenure of the Government of National Unity (GNU), reasonable co-operation between the ruling-ANC and commercial agriculture prevailed, but subsequent to the withdrawal of the National Party from the GNU in 1996, both the discourse and the vision became polarised. During the ensuing period, most of the marketing boards and co-operatives privatised, thereby positioning themselves largely beyond the influence of the new government and removing the potential to harness commercial agriculture and its established market access in the process of agrarian reform and poverty alleviation.

The current level of Government support in commercial agriculture is extremely low. Public funding accounts for a mere 2.5% of South African farmers' production costs, a level similar to that of New Zealand. This is significantly less than the 45% of costs received by European Union farmers and the 21% received by farmers in the United States (Department of Labour, 2001). The exposure of local producers has been amplified by an increasingly unequal bargaining position in international markets. Whilst South Africa's fulfilment of agreements reached at the Marrakech Round of World Trade Organisation negotiations (1994) has increased international competition in the domestic market, developed countries have reneged on their commitments made at Doha in 2001 and retained prohibitively high levels of entry tariffs on their markets as well as substantial support for their producers⁶. Subsidies to farmers in the European Union and the United States amount to \$320 Billion a year; six times more than those countries' investment in foreign aid.

Whilst alliances between disillusioned developing countries (most recently at Cancun) offer some hope for more effective bargaining, the collective impact of pressured international commodity prices, reduced government support, domestic market liberalisation and an increasingly precarious trade position has seen the number of commercial farmers in South Africa decrease by 17% since the mid-1980s.

Subsequent to the collapse of the GNU in 1996, the involvement of commercial white agriculture was always going to be critical to meaningful change in the agrarian economy,. Early in his first term in office, President Mbeki encouraged all stakeholders in the agricultural sector to unite behind a common agricultural strategy. The result was the release of the US-Aid funded 'Strategic Sector Plan for South African Agriculture' in November 2001. This framework was produced by the National Department of Agriculture in collaboration with AgriSA and the National African Farmers Union and enjoys reasonably widespread legitimacy.

Some of the aims of the Sector Plan resonate with concerns of organised agriculture in calling for a "reduction of input costs and greater competitiveness", restored "pride and dignity" in the agriculture sector and better utilisation of the "untapped" human and natural resources.

⁶ One of the most significant proposals to emerge from Doha, was for the EU to reduce its export subsidies on products that are important to developing countries. To date, however, it has not specified which products this involves.

At its core, however, the Plan aims to promote:

1. equitable access and participation within the agricultural sector,
2. global competitiveness and profitability,
3. sustainable resource management.

This is to be achieved through the implementation of an ambitious series of 'supporting strategies' and 'first steps, which are to be monitored by a joint committee. Critically, the Plan acknowledges a central role for the private sector and expressly encourages entrepreneurial collaboration between the private sector and government.

The process has helped to rekindle a degree of trust and co-operation between government and the commercial agricultural sector, which together with the anxiety created by the failed land reform programme in Zimbabwe, has created a fertile environment for renewed collaboration between commercial agriculture and government in addressing rural poverty and unemployment.

5.3 Land Rights – Theory and Practice

The South African land rights framework is set out in the Constitution of the Republic of South Africa (1996) in the property clause (Section 25) of the Bill of Rights. In essence the framework sets out to balance the protection of existing private property on one hand with measures to redress the imbalances of the past with respect to land rights through the enactment of enabling legislation and the implementation of land reform programmes. The key pieces of land rights legislation are the *Restitution of Land Rights Act 22 of 1994*, the *Land Reform (Labour Tenants) Act 3 of 1996* and the *Extension of Security of Tenure Act 62 of 1997*.

In practice, private property rights have dominated the land rights framework given the nature of South Africa's negotiated political dispensation and its macro-economic trajectory. Although measures have been taken to introduce legislation and programmes to deal with land restitution, protection and land acquisition, these have been fairly modest in practice and beset with major implementation challenges.

A shift of restitution from a largely judicial to a more administrative process has seen the restitution process accelerate over the past three years, with more significant levels of budget being allocated to the process and 39 687 of the 72 975 claims being settled (CRLR, August 2003). The claims that have been settled are primarily urban and largely compensation based. Official statistics reveal that rural claims (5607) constitute 14,3% of those claims settled (CRLR, August 2003). Other independent research suggests a much lower number of rural restitution claims where land restoration has been effected (Hall, forthcoming).

Rural land claims on current freehold and farming communities have still to be tackled. The task, the full extent of which remains unknown (Lahiff *et al*, forthcoming), has to be weighed against government's resolve to conclude the process by 2005. Organized agriculture and the banking sector have commented on the uncertainty that the unresolved land claims are having on the agricultural sector and formal land market. This has reduced the collateral value of land and also necessitated detailed title deed assessment to determine whether the land involved is subject to restitution claims, before it can be used as collateral (See Section 6.9).

A recent national review of land occupations in South Africa has identified rural land occupations by restitution applicants on state and private land as becoming increasingly common (Steyn, 2002). The study concludes that there is a high risk of conflict if rural claims are not resolved and has identified KwaZulu-Natal, Mpumalanga, Limpopo and Northern Cape as high-risk areas.

Another factor that will influence the restitution process in the future are the amendments to the *Restitution of Land Rights Act*, which aim to strengthen the expropriation powers of government. Stakeholder opinions on the proposed changes vary from the NGO sector which has been strongly advocating the need for expropriation if the state is to meet its targets and be able to address communities' frustrations at the slow pace of land reform, and the agricultural lobby that argues

that it will not necessarily accelerate more cost effective or efficient delivery of restitution (“Think Tank”, 2003)

The NGO sector is highly critical of the *Extension of Security of Tenure Act* and the *Land Reform (Labour Tenants) Act* arguing that the legislation has neither protected the rights nor secured long-term tenure for rural dwellers (NLC, July 2003). DLA officials however argue that the weakness does not lie with the legislation, but rather with the justice system that needs to enforce the law through proper enforcement, legal representation, and the provision of information.

Rural dwellers in the main have an increased knowledge of their rights, but remain vulnerable to eviction and have not acquired rights to land against which they have lodged claims (AFRA, 2003). Where land has been acquired, the issue of group ownership under the Communal Property Associations has often lead to freeloading, open access and increasing informalization of rights (Lyne and Darroch, 2002).

Both the *Extension of Security of Tenure* and the *Land Reform (Labour Tenants) Acts* are to be amalgamated, although the amendments are still being formulated within the Department of Land Affairs. NGOs and organized agriculture have expressed concern about the lack of transparency and consultation in the process.

5.4 Land Registration and land use management systems

5.4.1 The land administration system

The land administration system is a holistic system which comprises of interlinked sub-systems and technical processes. The system delivers land administration products through various public and private organisations that are technically equipped to administer the various linked sub-systems. Programmes targeting the poor make extensive use of services purchased in the private sector.

Land Registration deals with the survey and registration of immovable property in terms of the *Deeds Registries Act 47 of 1937* and the *Land Survey Act 8 of 1997*. In South Africa, the land registry evidences the existence of rights. The guarantee of land rights is however provided by the private sector (surveyors, conveyancers, etc). These rights arise from private and property law and can be enforced against others through the courts. The registration system has a high degree of accuracy (the object and the holder is clearly identified) and delivers secure title.

The land use management system regulates land use by attaching land use rights to registered parcels and administers these rights, mostly through zoning schemes. Land use rights arise from policies and laws in the spatial planning, environmental, transport, economic and various other spheres.

5.4.2 Access to land in freehold areas

Access to land can be obtained by concluding an agreement with a seller to purchase and to transfer the title deed to the buyer and register it in his/her name. Land held in full ownership can be encumbered or mortgaged to provide security for commercial loans, bonds and land bank loans.

Access to existing land parcels in the current freehold areas is not solely dependant on obtaining full ownership rights, but can be gained in a number of ways, for example:

- The long and short term leasing of freehold land (leases longer than 10 years must be notarially executed).
- Purchase of shares in property owning companies or closed corporations.
- Membership of a rights holding entity such as a Communal Property Association, or by being a beneficiary of a community trust.
- Equity shareholding schemes.

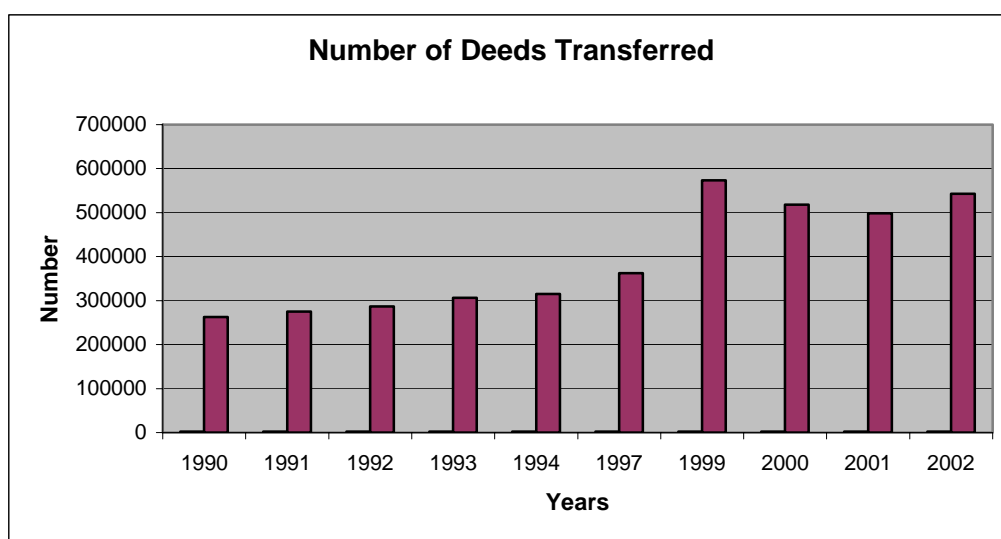
New land parcels in the freehold farming areas can be created by subdividing existing farms in terms of the provisions of the *Subdivision of Agricultural Land Act 70 of 1970*. Land reform laws contain special provisions that allow for the subdivision and parcelling of agricultural land for settlement.

5.4.3 Registration costs

The poor cannot afford the costs associated with the transacting of freehold land without some form of assistance. This assistance could be provided by way of a direct grant to cover associated transfer costs or by exempting the poor from the payment of certain fees.

The cost of a land transaction in the freehold areas varies and depends on land prices, the need to register a bond, the need to subdivide and survey land, and whether a fee is payable to an estate agent. The total transaction cost to register an existing freehold property of less than R 140 000 as purchased on the open market will amount to approximately R 3 000 ($\pm 2.15\%$ of the land value) if no surveying or estate agent fees are involved. Attorney and conveyancer fees have been deregulated and beneficial rates can be obtained for larger projects. Registrations exempted from the payment of registration fees as a percentage of all registrations varied between 14.5% in 1999 and 4.7% in 2001.

The number of freehold land transfers registered has almost doubled in the period since 1994. This data is shown in the figure below. Commentators estimate that 6% of all agricultural land changed hands between 1997 and 1998 (up from 1.5% in the preceding apartheid era), and that 10% of all agricultural land in the commercial farming areas is currently on sale.



Source: DLA annual reports 1994 and 1997 and information sourced from the Office of the Chief Registrar of Deeds

A number of new electronic systems are currently under development that will impact positively on the cost of land transactions. These include an e-Cadastre system, a National Spatial Information framework (NSIF), a network of global positioning systems (Trignet), a virtual historical record in a Central Image Base (CIB) and a new Deeds Web system that was launched on 4 December 2001.

5.5 Labour legislation, policy, and markets

The post-apartheid government has developed a new regulatory framework through the modernisation of labour legislation, the development of new institutions and statutory bodies, and the introduction of new labour statutes. Four key pieces of legislation were introduced after 1994. These are the *Labour Relations Act 65 of 1995* (LRA), the *Basic Conditions of Employment Act 75 of 1997* (BCEA), the *Employment Equity Act 55 of 1998* (EEA), and the *Skills Development Act 97 of 1998* (SDA).

Farm workers were included in the LRA in 1995, and in the BCEA legislation in 1997, although only in 2001 were transitional arrangements limiting their full rights repealed. Today, the full range of laws governing employment, non-discrimination, land and housing tenure, socio-economic welfare, and transparency and administrative justice covers farm workers. In 2003, a sectoral determination was passed for the first time setting minimum standards (including wages) for the agricultural sector.

The LRA formalises and codifies union organisational rights, establishes a basis for worker participation in the workplace, grants workers a meaningful right to strike (without fear of dismissal), introduces a new dispute resolution system, provides strong support for collective bargaining, and extends coverage to most workers. The BCEA establishes a floor of minimum employment conditions. The EEA defines the law on unfair discrimination and transformation in the workplace. The SDA promotes skills development.

The legislative framework for South African labour assumes a “big business, big union” model. This assumes the industrial profile of a worker who is a male, permanent, full-time, long-term employee with employment benefits (medical aid and pension fund) working at one fixed workplace where formal representation by a nationally organised union is available. In contrast, the average farm worker is a female, non-permanent, seasonal, migrant, non-unionised employee enjoying no social benefits and working for various employers and/or clients at various workplaces.

The exclusion of ‘independent contractors’ from labour legislation has led to casualisation. Employers have exploited this loophole by converting ‘workers’ into independent contractors or self-employed workers in order to bypass the legislation.

A number of criticisms have been levelled at the labour legislation as it applies to farm workers:

- Historically a feudal/paternalistic relationship existed between workers and employers. To transform this to an equal partnership defined by rights and obligations is a long-term process.
- Agricultural employers feel beleaguered on all sides. They regard labour as primarily a cost not an asset and as such find it anomalous to invest in and respect workers’ interests as a contribution to productivity.
- There are no visible sanctions for non-compliance or benefits for compliance. Thus voluntary compliance is unlikely in the majority of cases.
- Globally the full time, permanent, life-long worker is a thing of the past, despite South Africa’s labour legislation being geared towards such an employee.
- The laws assume a vibrant, unionised and resourced workforce who have choices about alternative employment and do not live under the threat of overwhelming unemployment.
- Few agricultural workers have access to the judicial or dispute resolution structures.
- In most cases, the assistance of a professional is required to realise one’s rights and comply with one’s obligations.
- Enforcement is limited or non-existent. The South African government shies away from intervening in business concerns and the market (CRLS).

In terms of poverty alleviation and human development, there remains considerable scope for the implementation of “first best practice” (Standing *et al*, 1996), that is improved employment conditions. In 1999 it was estimated that 66% of farmers paid certain of their workers less than R30 a day. In general poor labour practices, combined with declines in agricultural revenue, have contributed to endemic rural poverty. However a study commissioned by the Department of Labour (Department of Labour, 2001), estimated that a minimum wage of R1000/ month would result in a 17% reduction in employment.

6 The organizational framework

6.1 The Department of Land Affairs (including the Commission on the Restitution of Land Rights)

Land Affairs is a national competence with a National Office based in Pretoria. The Department of Land Affairs (DLA) delivers services in the freehold areas through regional Deeds and Surveyor General offices, Provincial Land Reform Offices (PLROs), and Regional Land Claims Commission Offices. Currently the Mutingati project is being rolled out to establish four decentralised shared services centres to support programme delivery in KwaZulu-Natal, the Eastern Cape, Free State and the Western Cape.

The DLA has gone through major organizational restructuring since its inception in 1994. A new mandate and the implementation of an entirely new programme of government have meant that the Department has had to change continually as delivery needs have become clearer. The organisational challenges the DLA is grappling with currently are of National, Provincial and District co-ordination with other government departments, and severe budget constraints.

The DLA Strategic Plan 2003-2006 reflects commitment to integrating the land reform programme with the Integrated Sustainable Rural Development Programme (ISRDP) and the Urban Renewal Programme. The Land Redistribution for Agricultural Development programme is delivered jointly with the Department of Agriculture and a similar Land Redistribution for housing programme is proposed with the Department of Housing.

Each PLRO is required to produce an implementation strategy that reflects national and provincial priorities and includes both land reform and restitution plans. The trickier arena of co-ordination is at provincial and district levels around programme implementation. Provincial and district co-ordinating structures have been put in place. However, in practice there are still significant problems. From all quarters there are complaints of lack of support for agriculturally based land reform and restitution projects. Some argue that this is no longer a problem of co-ordination but one of inadequate capacity in the various Departments of Agriculture. The inadequacy is both in the numbers of extension officers and in the appropriateness of their skills for the new policy direction.

By the end of 2002 a total of 917 redistribution projects in all categories, had been implemented or approved countrywide, involving approximately 130 000 households and 1.48 million hectares of land. From August 2001 to 30 June 2002, 125 000 hectares of land was delivered through LRAD. During the six months from July 2002 to December 2002, an additional 140 000 ha were redistributed, indicating an accelerated delivery of land through the programme (Lahiff, forthcoming). These figures are not confined to implemented projects but include those where there has been approval and, as such, cannot be fully relied on given the budget crisis.

By far the greatest challenge currently facing the DLA in terms of sustainable delivery and credibility is the budget crisis. For the first time the DLA spent its entire budget for 2002/2003. This was largely as a result of increased spending on restitution and through the Land Bank's implementation of LRAD. The Department has employed more staff in order to deal with capacity shortages but the budget allocations have remained the same with the net effect being an overall reduction in the budget for the land reform programme. Once again this has meant a limitation on the acceptance of new projects and the inability to deliver to agreed implementation plans.

Budget problems are not new to the Department. The Department receives less than 0.4% of South Africa's annual budget. Until recently the key criticism of the DLA was its inability to spend its budget. There is debate on the actual budget required to deliver efficiently on the targets of resolving all restitution claims by 2005 and delivering 30% of agricultural land into black ownership by 2015. Ball park figures based on current estimates of costs and demand show that R3.89 billion is needed to settle outstanding land claims to which R2.37 billion has been allocated according to the Medium Term Expenditure Framework. The DLA in its Strategic Plan 2003-2006, has estimated that the average price of land in South Africa to be R1000 per hectare. In terms of this

estimation, an annual amount of R2 billion is necessary purely for the acquisition of land if 30% of the land is to be redistributed by 2015. This is a far cry from the R270 million allocated to land redistribution during this financial year (SPP *et al*, 2003).

The policy development process is ongoing and must still be completed. The key outstanding sections of the policy framework remain issues related to tenure reform, farm workers and labour tenants. These policies must still be institutionalised and could have a considerable organisational impact. In the absence of final policies in these spheres, officials on the ground are under intense pressure from affected communities and NGOs frustrated with the pace of delivery.

Questions of sustainability reach beyond co-ordination of delivery. A critical weakness in the delivery process is that of ongoing and accurate information. Accurate monitoring of delivery against land reform targets and evictions in terms of the *Extension of Security of Tenure Act* is non-existent. A number of NGOs have called on the Department to deal decisively with the problem of monitoring in the interests of tracking project quality and sustainability, and to facilitate learning from experience.

6.2 The Department of Labour

The *Labour Relations Act 65 of 1995* (LRA), introduced the Commission for Conciliation, Mediation and Arbitration (CCMA), a statutory dispute resolution body for sectors not covered by bargaining councils, including farm workers. The LRA thereby abolished the Agricultural Court and directed that all labour disputes had to be referred to the CCMA, bargaining councils or Labour Court for resolution.

The development of a new regulatory framework required the development of new institutions and statutory bodies and an increased role for the Department of Labour. Fewer than 6% of farm workers are unionised. Of those unionised, few belong to the Cosatu or Nactu federations. The agricultural affiliates have minimal resources and influence within the federations. Despite agriculture being the second highest employer in the country, the sector has very little influence on legislation.

Legislation introduced significant changes with regard to enforcement. Government inspectors are now responsible for the enforcement of all labour legislation. Overall, the introduction of new statutes has placed increased pressure on the Department of Labour and its provincial offices. Even before new legislation was implemented, the capacity of the Department to effectively monitor compliance with legislation was often weak. The increased workload within the Department has not been accompanied by adequate increases in staffing levels. As a result of staff shortages and general capacity problems, many offices report that inspections tend to be reactive rather than proactive.

It would be a mistake to say that the fault lies exclusively in the area of ignorance of or disregard for the law (ie a lack of compliance), failure or incapacity (financial or technical) to implement the law or failure or incapacity to enforce the law on the part of government. The transformation of society to enable agricultural workers to enjoy their constitutional rights and progressively improve their working conditions requires legislation and implementation mechanisms that enable voluntary compliance by employers and stipulate implementation strategies that are cost effective and efficient. Unswerving and fair enforcement by government of these requirements is then a possibility and cannot be avoided. Good laws mean nothing without compliance. Transformatory laws require more than mere compliance, they require significant attitudinal and cultural shifts to take place at the workplace. There are currently two systems of authority on farms. Both workers and land owners shift between the previous informal authority of "boss" and the new legal mechanisms depending on what best suits the individual's strategic aim at any given point. Thus legislating for change is insufficient in itself to effect change in South African agriculture.

6.3 Departments of Agriculture

The vision of the Department of Agriculture (DoA) is to “provide a national governance service in support of sustainable agricultural economic growth, equity and social development” (NDA, 2002:9). In support of the common vision as defined in the *Strategic Agricultural Sector Plan* of a “united and prosperous agricultural sector”, the Department has focussed its medium term objectives on participation, conservation and service provision. Key clients of the Department are provincial Departments of Agriculture, other public entities in the agricultural sector, consumers, exporters and producers of agricultural products.

According to the Quality of Life survey conducted for the Department of Land Affairs (2000/2001), only 23% of land reform projects had received support from the Department of Agriculture since transfer. This poor record of collaboration between DLA and provincial agriculture on land reform has been ascribed to the lack of extension capacity as well as the lack of motivation to support projects in which Agriculture had very little role in design and approval.

To a large extent, the Departments of Agriculture were sidelined in the first phase of land reform, which saw the removal of their mandate to manage and dispose of state land (through the power of attorney that they held) by the former Minister of Agriculture and Land Affairs. The formulation of the new LRAD sub-programme under a new minister from 2000 saw a joint collaboration between the Departments of Agriculture and Land Affairs, with the former playing a more senior role in the process of policy formulation and programme design.

The LRAD policy has brought a new emphasis on the need for joint responsibility between DLA and DoA. Post transfer support has officially become part of the responsibility of provincial Departments of Agriculture. However, budget and capacity constraints continue to bedevil the provincial departments in their efforts to support the programme. Budgeted amounts for the national Department of Agriculture plus the agricultural budgets of the nine provinces, amounted to R2.8 billion in 1998. In real terms, this was 46% of the budget of the Department of Agriculture plus that of the budgets of the former homeland departments in 1988 (Vink, 2001). In addition, provincial budgets for agriculture are allocated by the provincial governments, which do not necessarily reflect the same priorities as those of the national department. Decentralisation and co-operative governance aimed at increasing capacity has been largely successful from national to provincial Departments of Agriculture. However, the transfer from provincial to local level has met with mixed success.

While decentralisation and co-operative governance is important in building the long-term capacities of departments to implement their functions, other factors have been eroding the existing ability of departments to deliver services. These include poor fiscal discipline leading to overspending, poor performance management and lack of departmental accountability, pursuit of personal agendas by officials, lack of commitment and unsympathetic attitudes of officials towards the poor (May *et al*, 1998:30). There is a high turnover of management level staff, and a consequent lack of co-ordination and experience.

6.4 Local government

The intersection of local government and land issues in current freehold and farming communities principally takes place around the land use management and land development functions of local government. The integration of land, local government and rural development is the strategic intention of the Integrated Sustainable Rural Development Strategy (ISRDS) and its implementation framework, the Integrated Sustainable Rural Development Programme (ISRDP). Local government involvement in land reform in freehold farming communities has largely been limited to planning and expenditure on development services from the remainder of the land grant on redistribution projects and limited involvement in ESTA and eviction issues.

The policy framework for local government has a strong pro-poor orientation. This is articulated in the *White Paper on Local Government* with its emphasis on “developmental local government”. In

terms of the White Paper and the *Municipal Systems Act of 2000*, each municipality is required to prepare an Integrated Development Plan (IDP) as the principal instrument to co-ordinate and integrate development and service provision and to ensure budgetary alignment. A key component of the Integrated Development Plan is the requirement to prepare a Spatial Development Framework with a Land Use Management System.

The White Paper on Spatial Planning and the new *National Land Use Bill* (March 2001) elaborates on the role of local governments in land use planning. The latter requires all municipalities to prepare Land Use Schemes to regulate the use and development of land (Khan *et al*, 2001). The key effect of all these developments is that local government's land use management and planning functions are now extended over primary agricultural (and communal areas) for the first time. Although the new municipal land use and development framework provides the opportunity for municipalities to pro-actively shape pro-poor land use outcomes, there are major constraints due to the capacity problems of municipalities and the limitations on land use planning and management in areas zoned for agriculture.

An important development in this regard is the recently published *Property Rates Bill* (2003). This will extend property rates to primary agricultural land as well as communal areas for the first time. The impact of this development on current freehold and farming communities is unclear. Organised agriculture is opposed to the Bill and what it calls a "Wealth" or "Land Tax". It argues that property rates will erode the sustainability of agricultural production and threaten food security. Alternatively, the rating system might form a strategic tool for municipalities to increase the supply of under-utilised agricultural land onto the market.

The Integrated Sustainable Rural Development Strategy has set the strategic objective of ensuring that by the year 2010, rural areas would attain the internal capacity for integrated and sustainable development. In reality the programme has focused on achieving greater co-ordination and synergy across government programmes in 13 nodes in the poorest district municipalities across the country. Land issues have largely been limited to communal areas and therefore fall outside this study.

Local government structures were largely excluded from land reform at the inception of the land reform programme, but there has been a gradual recognition of the need for their inclusion over the years. From 1998 a number of regional councils entered into agency agreements with the Department of Land Affairs to spend the balance of the R16 000 SLAG grants on development services. But these projects received little municipal funding or other sectoral funding to supplement the land grants.

The Department of Land Affairs' own decentralisation programme and its adoption of a "district delivery system", as well as the IDP processes of the post 2000 municipalities and the establishment of district level co-ordinating structures has seen greater alignment between land reform and local government. DLA and NGOs have tried to ensure that land reform is included in IDPs. However, the limited capacity of local government and the shift of land reform towards a black farmer settlement programme has seen a limited role performed by municipalities in taking on land reform as a key instrument of local economic development and poverty alleviation within their areas. Local government also intersects with land issues in current freehold and farming communities with respect to the eviction provisions of ESTA. Local governments are required to be informed by the owner with regard to eviction provisions and matters relating to alternative land. This however does not always occur. Local government capacity to provide land access, land management and land use planning support is very constrained and requires additional support.

6.5 The corporate sector

The two largest agri-industries – namely sugar and timber - have reorganized to reflect a voice for their small grower constituencies. In the case of the sugar industry, reorganization began in the very early 1990s, and has been accompanied by considerable institutional capacity building to empower local structures to participate meaningfully in industry affairs. When reorganization was

initiated, the principle that underpinned grower representation was 'one ton, one vote'. Small-scale and large-scale growers are now represented in industry structures on a 50/50 basis. Reorganization in the timber sector has been a very recent phenomenon, occurring over the past two years. Although national level structures are in place, the formation and capacitation of local structures remains incomplete.

6.5.1 The Sugar Industry

The industry is founded on a partnership between growers and millers. The millers are organized through the S A Millers Association Limited. The growers are organized through the South African Cane Growers' Association. The administrative arm of the industry is the South African Sugar Association (SASA), which in compliance with the *Sugar Act* provides services to growers and millers. The key issue in the industry is the division of proceeds between the millers and the growers. The split is currently 37% (millers) to 63% (growers). The industry sets its own price in terms of the powers stipulated in the Sugar Act and the Sugar Industry Agreement. Fifty seven per cent of production is sold into the protected domestic market. The industry falls under the Department of Trade and Industry, which is responsible for mediating irresolvable issues between growers and millers should these arise.

There are currently approximately 50 000 cane growers – 2 000 freehold growers and 48 000 small-scale growers. At a local level, the South African Cane Growers Association has 43 member organizations. There are three organizations at each of most of the 15 mills representing small-scale growers, large-scale growers and Indian growers. The different organizations come together within the Local Grower Council, which has equal representation of small-scale and large-scale growers. Local Grower Councils elect 4 members to the Board of Directors of the South African Cane Growers Association on a fifty/fifty basis (two from the small-scale grower sector and two from the large-scale grower sector). The Board elects an Executive. Eleven councillors are elected to the Council of the South African Sugar Association, which is the highest decision-making body of the industry.

6.5.2 The Forestry Sector

Until very recently, grower representation in the forestry sector was fragmented with separate organizations for the large companies and for individual private growers. Historically, corporate interests were articulated through the Forest Owners' Association (FOA) and individual farmer interests through the South African Timber Growers' Association (SATGA) and the South African Wattle Growers' Union (SAWGU). There was no formal representation for small-scale growers. These organizations have recently merged to form Forestry South Africa. The reasons for the merger are to strengthen the sector in the international arena and to draw small-scale growers into the mainstream of the industry.

The new organization is structured in terms of three constituencies, namely the corporates, individual farmers and small-scale growers. Each constituency has a committee. Members from these committees are represented on the Forestry South Africa main committee. The corporates have five representatives, the individual growers have three, and the small-scale growers have two. Small-scale grower local committees are being put in place.

A large proportion of the energies and time of Forestry SA staff is dedicated to interaction with government on policy issues in an effort to achieve an appropriate environment for forestry. A central concern is the inability of government to issue licences.

6.5.3 Sectoral Similarities

Grower organization in the corporate sector is generally more advanced in terms of effective representation than organization through the provincial agricultural unions.

The major corporate sectors have drawn small-scale producers into the organizational systems on a parallel rather than an integrated basis. However, at the apex of sectoral organizations, producers are integrated within a single structure.

6.6 The cooperatives

Agricultural cooperatives in South Africa emerged during the 1910s and 1920s. The core idea of the cooperatives was to establish a central organization to source inputs and to identify markets and sell products. Profits generated through buying and selling on the farmers' behalf were reimbursed to farmers. All members were equal in terms of voting power, and shares, which did not grow in value, were cheap.

In terms of political decisions, what emerged from the 1930s on was a tightly controlled and regulated system involving the Land Bank, the Marketing Boards and the cooperatives in a set of intricate and tightly knit relationships founded on monopolistic and monopsonistic principles. Prices were politically negotiated and were calculated for periods of time. Farmers could influence systems and processes through their representation on the Marketing Boards.

Since 1994, this system of regulation and control has been dismantled. The Marketing Boards have been phased out. In line with national economic policy, there has been a move to a free market system. Farmers market commodities for themselves or appoint independent agents to do this for them.

In response to the changes in the mid 1990s, many of the agricultural cooperatives transformed into public companies with former members becoming shareholders. The motivation for this by cooperatives was based on their aspirations as follows:

- To be able to participate competitively in deregulated markets, and to create a new image for themselves as business units in a competitive environment.
- To participate more freely in global trade.
- The need for an easier operational system and consultation of members on all decisions.
- To be more open and/or attractive to alliances, buy-outs, takeovers, and strategic partnerships.
- To place and unlock real value in the hands of shareholders with shares having a trading value.
- To adopt a stronger emphasis on the generation of profits and on economic growth.
- To move to a system within which management and staff would be remunerated on the basis of results achieved in terms of profits and growth.
- To free themselves from the perception that they were semi-state institutions.
- To be regulated under the Companies Act and not the Cooperatives Act that had been targeted to change very substantially.
- There were perceptions that assets might be appropriated or attached by government, especially in instances where the financial status of organizations was doubtful. There was an imperative to safeguard assets through placing them with shareholders.

The conversion was largely business-driven and decided by members. Despite a general move towards company status, many cooperatives retained their former organizational form. The agricultural cooperatives (both those that have remained cooperatives, and those that have become companies) are organized under the Agri Business Chamber (ABC) which is functionally autonomous, but which is affiliated to AgriSA. The reason for functional autonomy is that AgriSA is fundamentally a producer organization. ABC also needs to represent the interests of brokers, suppliers, insurers, financiers, and consumers. ABC has an elected executive council on which the cooperatives are represented. The advantage of membership of ABC is that it provides an organizational base for lobbying or negotiating with different role players in government or the private sector.

Individual cooperatives are involved in numerous local initiatives to support emerging farmers and community groups. However, the Cooperative Development Initiative (CDI) is now facilitating some

broader initiatives. The CDI It is a joint venture between ABC and DGRV (the German federation for cooperatives). The principal funder is the DGRV. The mission of the CDI is to deliver agribusiness opportunities by establishing linkages between new farmers and their commercial counterparts to enhance the empowerment of historically disadvantaged groups through providing access and capacity. The CDI has worked with the cooperatives on projects and has assisted them with strategic planning.

An examination of the historical trajectory of the cooperatives highlights the sharp changes that have occurred in the economic environment for agriculture – both nationally and globally. New farmers are entering a sector in which risk is higher than was the case in the past, and in which levels of protection are amongst the lowest in the world. Established farmers and the cooperatives themselves have had to adjust to these changes.

Despite the many changes that have occurred, some elements of monopoly and monopsony remain. An example is the control and ownership of silos and other facilities required for processing and marketing.

Cooperatives have very considerable capacities and resources and are able in many instances to provide a comprehensive range of services to their memberships. The cost of membership remains relatively cheap. However, the membership of cooperatives remains largely white. Benefits to new black farmers have been very modest, and seem largely to have taken the form of development initiatives or projects to assist land reform beneficiaries or farmers in the communal areas. Efforts on the part of cooperatives to provide assistance and support have been ad hoc and un-coordinated, although the advent of the Cooperative Development Initiative holds out some promise of a more focused and strategic approach. However, the CDI is focused on business opportunities and not on community projects. Wider access to the capacity, expertise and resources locked up in the cooperatives remains a significant challenge.

Agribusiness has become progressively more involved with emerging agriculture. However, the perception from government seems to be that the previously advantaged continue simply to articulate their interests.

The view from agribusiness is that successful land reform hinges on establishing partnerships between agribusiness and government. Land reform should be outsourced and privatized. The objective should be to draw new entrants into the mainstream of agriculture rather than to sustain the current trend of developing and commercial sectors. A difficulty in establishing effective partnerships is the lack of trust between government and the agribusiness sector.

6.7 Agricultural unions

Agriculture in South Africa is represented primarily by two agricultural unions at a national level, Agri SA, representing most commercial and many small scale farmers, as well as commodity organisations and agri-business; and NAFU, representing black farmers who are predominantly small scale producers. At a provincial level, KwaZulu Natal has led the process of transformation and integration. The merger between the former Natal Agricultural Union (NAU) and the KwaZulu Farmers Unions has demonstrated what can be achieved by two seemingly unequal and disparate organisations. The mandate from Agri SA is clearly to integrate at a national level, however although the unions appear to have good working relationships such as in developing a common vision for agriculture in the sectoral plan, NAFU does not consider the timing right. The chairperson of NAFU KZN said recently that farmers' needs are different, with black people still struggling for access to land. He is convinced that it is not yet appropriate to merge with other structures (SABC, 2002).

NAFU was established with the primary aim of promoting urgent access to critical resources, such as land, credit, information, extension and other support services for disadvantaged and marginalized black farmers. That has remained its primary goal and NAFU is recognised by government as the key lobby group for Black Economic Empowerment in Agriculture.

The Transvaal Agricultural Union (TAU) is a former affiliate of SAAU (now Agri SA), representing conservative, mainly Afrikaans speaking farmers in the former Transvaal areas of South Africa and now actively seeking national representation. TAU takes a strong stance on the preservation of property rights, non-interference of government in the labour market, and safety and security. Through collaboration with the Agricultural Employers Organisation, TAU has established a property rights fund through which to provide assistance to its membership in dealing with various pieces of legislation ranging from ESTA, the Labour Tenants Act, and restitution, to land taxes, firearm legislation and water rights.

6.8 Civil Society -Non government and community organizations

Although there are a significant number of NGOs, CBOs and Trade Unions working with farm dwellers and land reform beneficiaries within freehold and farming communities on a range of issues including health, labour and social services (HSRC, 2003), those focusing on land issues are essentially limited to two categories.

The first category could be loosely termed the “land sector” comprising the National Land Committee (NLC) and its ten affiliates, as well as the various local committees and “social movements” which they have helped foster, many of which have joined the Landless Peoples Movement (LPM). The second category is a small-scattered number of rural development or “agrarian” NGO/CBOs working at local or district levels with the beneficiaries of land reform projects on land use and agricultural issues relating to post land transfer issues. There has been no discernable growth in the NGO sector working on land issues in freehold areas over the past few years. Although a number of trade unions are active in the agricultural sector, there is no evidence that they are taking on land issues.

The National Land Committee’s core focus is to assist poor black rural people access land rights and development resources across 8 programme areas, of which the land rights and farm dwellers programmes are the most relevant to this study.

The key challenges to the NLC around land issues relate to:

- The relationship between the NLC and Government
- The formation of Social Movements and the role of the NLC in the social movements which it has helped foster
- The relationship between land rights and broader issues of agrarian reform, rural development and sustainable livelihoods.

During the political transition and with the advent of the new government, the NGO land sector played a prominent role in shaping the direction of land reform policy and programmes. However from 1997 a growing tension emerged around the slow speed of government delivery. The tension intensified in 2000 with the shift of government land reform policy from an explicit pro-poor focus towards the establishment of black commercial agriculture. The NLC network was increasingly marginalized in policy and strategy formulation. This tension was further exacerbated through the network’s support of the Landless Peoples Movement and its increasingly vocal criticism of government.

Division and dissent have recently racked the network over the dismissal of the NLC Director, resulting in the disaffiliation of three provincial affiliates from the network following a special general meeting to vote on a dissolution motion in September 2003. Although the problems appear largely to revolve around matters of management and governance, the dismissal has raised underlying tensions within the network. These relate to the NLC’s relationship with government, the ANC, the Landless Peoples Movement and its broader strategy. There are structural weaknesses inherent in donor funded national NGO networks.

A new phenomenon in the past 2 years has been the emergence of land based social movements such as the Landless Peoples Movement. Although the LPM has only recently come to public prominence through public demonstrations and its radical rhetoric, it does represent a number of

local and district farm dweller and land reform communities that have been supported by the NLC and its affiliates over the past few years, largely around the issues of evictions, human rights abuses and the promotion of tenure security on white owned farms. The LPM and its various structures currently confront a number of key challenges. These include its weakness at local level, the coherence of its various demands, its almost total reliance upon the NLC network and its affiliates for financial and organisational resources, internal factionalism and division around power and positions (AFRA, 2002).

With regard to land rights and sustainable development, the NLC network has a farm dwellers programme funded through the Foundation for Human Rights, which focuses on securing tenure rights, human rights and farm worker development. A recent independent review of the programme raised concerns about its limitation in linking land rights to development issues (Wildschut and Andreoli, 2003). The network has played a key role in advocating stronger protection measures to be included in proposed legislation for farm dwellers. Besides advocacy and lobbying, the network's strength lies in organising local farm dweller structures. Its weakness relates to a lack of rigorous monitoring, evaluation and impact assessment.

A number of the NLC affiliates have been grappling with moving beyond land rights and addressing broader issues relating to agrarian reform and sustainable livelihoods. Progress towards adopting sustainable livelihood approaches and methodologies by the National Land Committee and its affiliates has been uneven (Vaughan, 2002).

Outside of the NLC network, there are a number of agencies that relate to land issues in broader agricultural and rural development terms, such as MIDNET (Midlands Rural Development Network) in KwaZulu-Natal.⁷ The main focus of many of these agencies is on organic farming, extension services, farming support systems (particularly marketing), rangeland management and other issues relating to grazing systems. All operate within a sustainable livelihoods approach, and many are being pushed to move beyond specific localities to support learning and knowledge sharing.

6.9 Banks and Development Finance Institutions

Financial markets have the ability to influence the transfer of freehold land through the following:

1. Supply of mortgage finance
2. Supply of production loans that improve the profitability of land based ventures making acquisitions easier to finance.

South African financial markets are deep, liquid and systemically significant to the global economy. The regulatory environment, principally guided by *The Bank Act 94 of 1990* complies with international guidelines laid down by the Basel Committee on Banking. South Africa's financial sector is underwritten by the Reserve Bank and its independent monetary policy. The commercial banking sector is open to foreign institutions but is dominated by the "Big Four" South African banks, namely ABSA, Standard Bank, Nedcor and First Rand Bank, which collectively control over 70% of all deposits. The mortgage market is oligarchic, with ABSA, Standard Bank and Nedcor commanding an 82% share and First Rand accounting for a further 10% (PWC, 2001). Whilst these institutions are mature and act as functional intermediaries between investors and savers, they have not managed to extend services to the poor. In 2000 an estimated 26 million South Africans – and four million of the employed population - had no contact with formal financial institutions (KPMG, 2002). Informal loan markets (classically "stokvels") do exist, but are usually small and prone to extortion. Financial market truncation is most pronounced amongst the rural poor and in the mortgage finance market. The reasons behind the high levels of exclusion include high inflation rates, market prices for land exceeding the productive value of land, principle-agent information asymmetries, conservative banking cultures, uncompetitive banking practices and HIV/AIDS.

⁷ MIDNET does have a specific land tenure project called LEAP. See (8.3).

The land reform programme acknowledges the difficulties confronting aspirant landowners seeking mortgage finance. The design of the Land Redistribution for Agricultural Development programme has the express intention of improving the gearing of mortgage loans and crowding private sector capital into the land redistribution process. In addition, the Department of Land Affairs allocated R50 million to the Land Bank (in an agency agreement) and R120 million (including a donor contribution from the European Union of R32 million and from DANIDA an amount of R1.7 million) to the parastatal development finance institution, Khula, to assist in developing concessionary finance products to augment LRAD allocations.

Evidence to date suggests that the impact of these products has been at the margin and has not brought mortgage or loan finance within the grasp of the poorest of the poor. Neither have the products facilitated large-scale involvement of the commercial banks in the land redistribution programme. By the end of 2002, the Land Bank had implemented 89 redistribution projects involving 59,116 ha – 17.6% of the redistribution projects in this period (DLA, 2003). ABSA, who are recognised as being the most proactive commercial bank in the rural land market and the greatest user of Khula's Land Reform Credit Facility (LRCF), have advanced only R52 million (which is 1.3% of their agricultural loan book) to black farmers in the entire Western Cape.

The paucity of finance reaching the rural poor has been aggravated by the withdrawal of fiscal allocations to the provincial development finance institutions and the consolidation of development finance within national government. Those provincial development finance institutions that have survived the consolidation (Ithala Development Corporation in KwaZulu-Natal, for example) have had to increase the cost of their loans and withdraw their services from the bottom end of the credit market.

To the extent that a more equitable distribution of land in South Africa is a prerequisite to poverty eradication, the inability of the financial markets to work in support of land transfers to the poor represents a market failure. Financial institutions acknowledge this failure and have identified interventions that might remedy the situation. These include allowing the poor to accumulate experience and signal their credit-worthiness without having to purchase land; better use of financial intermediaries and existing knowledge networks; allowing for different forms of collateral; and formalisation of existing commercial farmer-emerging farmer mentoring relationships.

ABSA intend to release a programme targeting the rural poor before the end of 2003, and Standard Bank are believed to be developing a competing programme.

7 The implications of the HIV/AIDS pandemic for freehold farming communities

7.1 Demographics

At the outset it must be stressed that while South Africa knows it has a huge HIV/AIDS problem it does not know the true extent of it. Secrecy and denial are still endemic in the reporting of HIV/AIDS incidence, and HIV/AIDS is readily masked by a host of other opportunistic diseases. Tomlinson (2003:3) best reflects the gravity of the situation when he says, "[T]he key assumption that there are functioning households no longer holds". That a pivotal, traditional 'unit of analysis' for housing is fast becoming anachronistic, has important ramifications for the present study. The US-based Population Reference Bureau (Health Systems Trust, 2003) estimates that South Africa's population will drop from its present 44-million to 35-m in 2025, and 32-m in 2050 – a 26 percent decrease that 'no one would have predicted in the recent past'. Cumulative AIDS deaths for the country as a whole stood at 688 000 as of 2002. This is forecast to rise to 1 800 000 by 2005 (ie. an average of 1 000 people a day), and 5 200 000 by 2010.

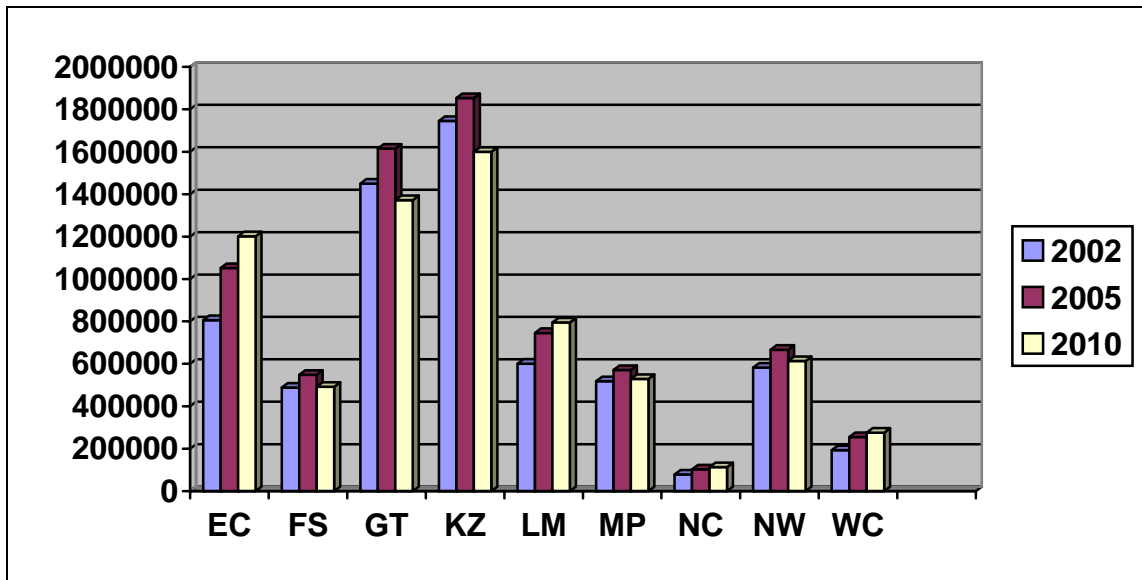


Figure 11: People living with HIV/AIDS by province 2002, 2005, 2010

Table 4: Prevalence Percentages by Province as of July 2002

Prevalence	EC	FS	GT	KZ	LM	MP	NC	NW	WC	SA
Total population	11.3	16.7	16.0	18.4	11.0	16.5	7.9	15.1	4.2	14.2
Adults (18-64)	20.5	26.5	23.8	31.4	20.9	28.1	12.9	24.8	6.7	23.4

Source: Dorrington, Bradshaw & Budlender 2002:5

Although no explicitly urban: rural ratios of infection feature in the mainstream statistical sources, the Human Sciences Research Council (HSRC, 2002:51) reported an 11.3% infection rate on farms as opposed to 28.4% for informal urban areas. The corresponding percentage for 'formal rural areas' (also given however as 'tribal areas') is 12.4%.

7.2 Impacts on the Freehold Farming Community

HIV/AIDS sets in motion an inexorable downward spiral: the infected are less and less able to work > healthy family members devote more and more time and energy to caring for them > progressively less time is given to vital agricultural activities > a squeeze on income > livestock and means of production sold off to stay afloat > reduction in range of options for subsistence > increased vulnerability and poverty > greater likelihood of infection of the remaining healthy > the vicious cycle becomes self-perpetuating.

This is the 'template' which informs the following analysis and in the light of which the impact on farmers and farm workers should be interpreted, noting that those affected are people first, before they are role-players in the commercial farming sector.

The key features of the analysis are:

- Major impact on the inter-generational transfer of agricultural skills and expertise
- Demise of the nuclear household affects farmer/farm worker social fabric
- State agencies have to contend with the loss of skilled personnel within own ranks – impacts on extension services, accessing child grants, health services etc
- Dire lack of counselling services and authoritative advice for the bereaved
- The relatively prosperous become poor, and the poor become indigent
- Tendency by afflicted families to switch to less labour intensive food crops with a resultant loss of diversity – bare subsistence replaces surplus
- Productive farming assets are sold off to meet medical and funeral costs
- Land owners downgrade to progressively poorer seed stock (or eat seed) and quality of livestock and bloodstock is impaired due to degraded levels of animal husbandry

- ┆ Farmers report increased absenteeism through sickness and funeral attendance
- ┆ Labour shortages may occur in areas with high infection rates eg. KwaZulu-Natal
- ┆ Farmers feel State not bringing its side of the bargain especially through lack of orphan safety nets, grants, and `chaotic' state of Primary Health Care services
- ┆ Very real risk of HIV+ farm workers being evicted and farmers switching to less personnel intensive activities such as game farming
- ┆ Farmers report it takes more workers to get the same amount of work done
- ┆ Farmers very nervous about having to cope with medical emergencies on farms
- ┆ Increase in crime and stock theft seen as inevitable.

Existing programmes of amelioration are ad hoc, fragmented and inadequate. The Department of Health's recently announced anti-retroviral rollout is being treated with suspicion as an election ploy. The Department of Land Affairs has budgeted R3.85-million over the next four financial years to mainstream HIV/AIDS. This involves a `revised HIV/AIDS prevention plan'; an `approved HIV/AIDS care and support implementation plan'; and that `land reform systems and procedures [be] aligned'.

8 The implications of Crime and Violence for Freehold and Farming Communities

The issue of crime and violence in the commercial agricultural sector is highly controversial and perspectives are often informed by political considerations. `Farm attacks' have received prominent media attention with a strong focus on analysis of incidents of violent crime against predominantly white landowners or managers.

Organised agriculture has maintained a strong focus on violent crimes and analysis reflects that a total of 6 122 farm attacks took place between 1991 and 2001, with 1 254 associated deaths. In 2001, 147 people died in 1 011 attacks and in 2002, 112 died in 1 000 attacks. There was a sharp increase in attacks from 327 in 1991 to 1011 in 2001. The number of murders during attacks also increased until 1998 and then remained virtually constant until 2001.

Other crimes assessed by organised agriculture include the high incidence of stock and maize theft and the negative economic consequences of such criminal activities. For example, according to the Transvaal Agriculture Union, R280 million in stock was stolen in South Africa in 2002. The high incidence of stock theft has negatively impacted on the farming operations of large-scale commercial stock farmers as well as small emerging and subsistence farmers. The high risks associated with stock theft reduce investment in livestock as a rural livelihood strategy.

There are differing perspectives on the issue of crime and violence in rural areas. Whilst organisations such as the Transvaal Agricultural Union have maintained that the focus of these farm attacks is motivated by racism and political agendas, others suggest that the attention on `farm attacks' as primarily crimes instigated against white land owners and managers has created an unbalanced public perception of criminal activity and violence in rural areas.

Research as to whether farm attacks are politically or criminally motivated and how these crimes should be addressed has been consolidated into a national report by a commission of inquiry which has been submitted to the Ministry of Safety and Security for consideration. Early indications are that the key finding of the report is that the majority of farm attacks (90%) are purely criminally related with the intent of committing robbery. The Commission of Inquiry has also noted with concern, the impact of land invasions on rural security and has recommended that measures be implemented to prevent land invasions and speed up the restitution process.

Reports by organisations and institutions such as Human Rights Watch and the Human Rights Commission have highlighted other acts of criminal violence such as the poor treatment of farm workers and occupiers, and domestic and sexual crimes against women living on farms. There are allegations of complicity by employees of private security companies and members of the South African Police Services in acts of violence.

Although rural safety forums and community policing forums have been established, these have not been uniformly inclusive or successful in ensuring the participation of all rural stakeholders.

These factors have contributed to tensions, uncertainty and alienation, and have perpetuated polarised perceptions of roles and responsibilities in addressing issues of criminal activity which affect rural society.

9 Interventions with regard to land and agriculture

9.1 Initiatives on the part of the state and donors

The Department of Agriculture's Comprehensive Agricultural Support Package (CASP) is a policy proposal with the National Department of Agriculture. The policy aims to support participants in the land reform programme as well as farmers on communal land. The programme consists of the same grant scale as provided by LRAD and can be used to purchase a wide range of goods and services from training to both on-farm and off-farm infrastructure. Budget allocation is very low with only R 6.5 million allocated for this year (2003/04).

The *Restitution of Land Rights Act* is to be amended to make it easier for the Minister to expropriate land where necessary. Organised Agriculture is contesting the amendment. The budget of the Commission for the Restitution of Land Rights has been more than doubled from R392 million for 2002/03 to R 852 million for financial year 2003/04. Belgian government donor funding has contributed R18 million towards the National Validation Campaign. The next phase of claimant verification is to be completed by March 2004. There is a proposal to earmark R50 million from the Belgian government be used in a range of programmes within DLA in a newly designated Land Reform Trust Fund.

The Commission for the Restitution of Land Rights will probably be fully merged into the Department of Land Affairs after 2005. An initiative between the Land Bank, National Department of Agriculture and the Commission for the Restitution of Land Rights to assist claimants in becoming productive users of their restored land has been negotiated.

The Department of Land Affairs is again looking at supply led projects and ways in which to proactively engage with the land market.

Of the approximately US\$400 million official development aid committed to South Africa over the four years 1997-2000, only 13% has been allocated to rural development. However, disbursement rates showed that the sector only managed to spend 9.5 cents of every rand committed (ISRDS, 2000). This poor performance reflects the dire lack of capacity within the sector and affects its ability to attract development assistance (ISRDS, 2000:9). Current ongoing donor funding from European countries to Department of Land Affairs is ZAR 128.53 million.

9.2 Private sector initiatives

Over the last ten years there have been substantial private sector interventions with regard to land and agriculture. Private sector interests have been involved in land redistribution, contractual production arrangements and farmer support and empowerment.

9.2.1 The Sugar Industry

The major land related interventions in the sugar industry have been the redistribution of corporate land, the support of small-scale growers, and more recently the establishment of a Land Company.

The land reform programmes initiated by the milling section of the sugar industry involves the subdivision of company estates into individual farms conceived of as 'economic units', and the allocation of these farms to selected applicants. Twelve thousand hectares have been redistributed to date, with a further three thousand hectares in the planning phase. The aim is to establish 990 new freehold farms by 2015. To ensure a continuation of cane supply to the mills and loan repayment, land purchases have been tied to cane supply agreements. The high number of applications received relative to the available farms indicates a strong demand. Innovative financing mechanisms have been used to overcome cash flow problems. The companies have provided a diminishing interest rate subsidy to new farmers.

Over the past thirty years, the sugar industry has encouraged and facilitated the development of a small-scale grower sector. The millers have extended their production bases by entering into contracts with households that have access to communal land. Value added during the processing phase has made it viable for the sugar millers to provide administrative and production support for small farmers. For the growers, the contract relationship means access to the means of production and a guaranteed market. There are currently some 48 000 small-scale growers farming on 86 000 hectares of land which comprises about 20% of the total area of land under sugar cane. The average size of a small-scale grower holding is 2.5 hectares, although growers in irrigation projects (mainly in Mpumalanga) have holdings of between 5 and 10 hectares. Due to the fact that land holdings are generally sub-economic, the benefits of participating in production have been the capacity to earn a supplementary income, rather than the opportunity to become a full time farmer. Although the incomes derived from cane production are generally too small to support individual households, cane production generates a substantial flow of income within rural communities as a whole, and creates a demand for commodities and services typically provided by a plethora of small businesses.

The purposes of the soon to be established Land Company will be to rationalize and align the land reform efforts of the two major companies (Tongaat-Hulets and Illovo) and to facilitate land reform in the sector as a whole, with a view to escalating the transfer of land in the hands of large-scale commercial growers. The Land Company will have an independent Board and a Chief Executive Officer. The administrative costs will be funded by the industry from the premium on the American quota.

9.2.2 The Timber Sector

An obvious implication of the land reform model applied in the sugar industry is that it might be applied in other contexts. The model has not yet been applied in the timber sector. However, the redistribution of corporate land is now being considered, as are mechanisms for the transfer of land.

The small grower experience in the timber sector is very similar to that in the sugar industry. Households that have access to communal land in former KwaZulu areas have been drawn into contract farming arrangements. Subsidized credit is offered in terms of a legal contract that binds the grower to deliver the product to the mill. Land sizes are too small for production to provide more than a supplementary income for most households. In 2001, there were approximately 10 000 growers in KwaZulu-Natal producing on nearly 18 000 hectares. Small-scale producers account for a very low percentage of mill throughput. There is huge potential for expansion of the small-scale grower sector. Constraints on expansion lie in the arena of government policy with regard to licensing, water charging and determination of the water reserve for the affected catchments.

9.2.3 The Fruit and Wine Sectors

The fruit and wine sectors have been negatively impacted by the fluctuating exchange rate. Margins are under pressure due to the recent strengthening of the Rand. However, these sectors still offer considerable opportunities, and land can be bought at very reasonable prices, especially where debt/equity ratios are high. Individual farmers have driven land reform in the fruit and wine sectors. Within both sectors there is a powerful motive to recapitalize, as this is often the precondition for entering markets on a competitive basis or for exploiting niche markets. This,

coupled with high barriers to entry in these sectors, makes it unsurprising that the vehicle for land reform in the Western Cape has been share equity and resource sharing projects. Many share equity projects have been financed through workers buying into enterprises using government grants. Some projects have used borrowed capital. There have been a limited number of share equity projects, so the impact of these projects on the structure of ownership has not been significant. Were grant funding to flow freely, it might be possible to transform the ownership profile of 30% of these sectors over a period of four to five years.

A recent survey of farm worker share equity projects in the Western Cape (Knight and Lyne, 2001) revealed that concerns raised about such projects in earlier research (Fast, 1999) regarding issues such as beneficiary participation and expectations, power relations between management and worker shareholders, and skills transfer have largely been addressed. However issues of concern that remain are skill and wage differences between men and women, literacy levels among worker shareholders, and exit procedures.

An interesting new development has been the grouping of land reform projects to market produce under a common label. Land reform projects with worker equity of more than 25% have been fair trade accredited and generate a premium equal to farm turnover. Rebates have also been negotiated from suppliers in the cost chain. This example illustrates the potential for negotiating pro-poor input and product markets.

9.2.4 The Cooperatives and Commodity Organizations

There has been a range of initiatives from the cooperatives (many of which have transformed to public companies) and the commodity organizations. Some examples of these initiatives are provided below.

Stock Owners' rural development programme has recently been presented to Parliament and accepted. Stock Owners is to enter into a public/private partnership with the Department of Land Affairs. This partnership will see funds from DLA vested with Stock Owners, which will bring buyers and sellers together to forge land acquisition deals. Stock Owners will formulate the business plans with additional funding being sought directly from the Land Bank. Most potential black farming entrepreneurs are from the business and professional sectors. Stock Owners also wishes to assist people from the communal areas who have substantial stock holdings to enter the commercial freehold sector.

The National Wool Growers Association (NWGA) that operates throughout the country has been involved in small farmer development in the former Transkei, in the former Ciskei and in the Free State. The NWGA has used shearing houses (of which there are 200 across the Eastern Cape) as focal points to provide support in production, shearing and marketing. Although the focus has been on wool production, support has also been provided for other activities such as vegetable and poultry production.

Grain SA runs a substantial farmer development programme. Study groups (300 throughout the country) for black farmers have been established which focus on production, finance and marketing. The organization impacts on 10 00 livelihoods across the country, although the focus of its activities is primarily in the North West in both the communal and the freehold areas.

9.3 *Initiatives from the non governmental sector*

There are no new major initiatives about to take place within the NGO and CBO sectors, but rather the consolidation and deepening of work in progress. A noticeable trend in NGO and CBO initiatives is the absence of any private sector partnerships, with a preference for government-NGO partnerships to achieve their stated objectives

The NLC network still sees itself playing a key role in supporting the 'poor and landless' in current freehold and farming communities through campaigning, advocacy, lobbying and supporting the

establishment of farm dweller organisations. The network is involved in lobbying government for pro-poor legislation to confer meaningful rights to farm occupants, exploring long-term settlement and development options. The network as a whole is not involved in the government's new LRAD programme, although some affiliates such as the Nkuzi Development Forum are engaging with the process.

There is currently no specific livelihoods programme within the NLC. Most affiliates have attempted to incorporate a sustainable livelihoods approach into their work, although only the Border Rural Committee (BRC) has really made significant progress (Vaughan,2002). Other affiliates such as the Association for Rural Advancement (AFRA) are looking to establish monitoring, evaluation and research instruments to assess the impact of secure tenure, municipal Integrated Development Plans, conservation and eco-tourism (AFRA, 2003).

Outside of the NLC, the Midland Rural Development Network project, LEAP (the Legal Entity Assessment Project) plan to focus on tenure security and land administration for both the urban and rural poor. This is to be done in partnership with other agencies including Peoples Dialogue and the Urban Services Network. The initiative will look at a wider sweep of the issues affecting tenure security, development and sustainable livelihoods. With respect to current freehold and farming communities, the key focus will continue to be on the lessons emerging from the various community property institutions (CPIs) that were set up for land reform beneficiaries.

The Farm Dwellers and Workers Coalition, consisting of trade unions, CBOs and NGOs, works with farm workers across the Western Cape as issues arise. The NGOs that are involved are the Centre for Rural Legal Studies, Women on Farms Project (WFP), Lawyers for Human Rights, Surplus Peoples Project, Southern Cape Land Committee, PLAAS, and Trust for Community Outreach. The Coalition has individual programmes focussing on different aspects of rural land and labour. Noteworthy are the projects and research that these NGOs have conducted regarding the position of women. The WFP pays particular attention to the stakeholder deals negotiated off-farm which affect women.

The Legal Resources Centre, a public interest law centre has a Farm Dweller Project, which promotes the rights of farm dwellers through existing legislation. The emphasis is on test cases to establish the parameters of the Acts. The Land Legal Cluster Project is a legal initiative of NGO partner organisations in KwaZulu-Natal. It aims to empower farm occupiers and labour tenants so as to enable them to access the benefits and protections of the government's land reform programme.

An initiative to promote greater dialogue and partnership between government, NGOs, and service providers for the benefit of rural communities has seen the emergence of the KwaZulu-Natal Agricultural Development Forum. The forum promotes policy dialogue and identifies concrete projects and programmes to promote agricultural development. The forum also seeks to promote the development of black agricultural service providers, and to direct the optimal use of government funding for agriculture.

The Programme For Land and Agrarian Studies (PLAAS) is planning a Participatory Monitoring and Evaluation Programme for Land Reform. The intention of this is to empower a wide range of actors to engage in monitoring and evaluation of land reform. The intention is to improve the quality of information emerging from the land reform programmes, to share experiences with other stakeholders, to contribute to policy debates and to promote best practice in land reform.

A noteworthy initiative is the "Think tank " which emerged in March 2003. The group comprises of land reform practitioners and researchers who are concerned about the problems besetting land reform in different countries in the Southern African region. They are looking at ways of building greater consensus around land reform issues.

10 Gaps and opportunities for reorienting institutional and organizational frameworks in the interests of the poor

This scoping exercise has revealed four areas for potential intervention in the land sector centred on four themes.

First, there is wide divergence and in some instances strong contestation around land issues amongst the state, NGOs, organised agriculture and land aspiring, using and occupying communities. The major differences and conflicts centre on land rights and labour legislation, the relative importance of land reform to poverty alleviation, the role of the market (willing seller-willing buyer debate) in land reform, and the role of the state in accessing land (the expropriation debate). With regard to some of these issues, views are deeply polarized. With regard to others, there is broad in-principle agreement, but dissatisfaction and unhappiness around implementation.

A second issue that has been identified by the scoping study is that the private sector has played a relatively isolated and marginal role in land issues. The state has not drawn on the considerable capacities and expertise of private sector actors and interests, but has preferred to 'go it alone' in dealing with racially based land legacies. The private sector on the other hand has acted to protect its interests (through the privatisation of the co-operatives for example) or it has acted independently of state initiatives. NGOs have largely ignored the private sector or have been openly hostile towards it.

A third and unsurprising theme that has emerged is that lack of capacity and inadequate budgets are a very serious constraint to using land as a basis for creating and supporting livelihoods. Stated targets for redistribution and restitution are simply not possible given current capacities and budget allocations. An area of particular and ongoing concern is the absence of post transfer support to land reform beneficiaries. The absence of capacity is not simply a feature of government, but is characteristic amongst individuals and groups who might benefit from land related interventions.

A final issue that can be identified is that there are a number of structural impediments to using the land base in support of the livelihoods of the poor. These relate to both legislation and the operation of markets.

In line with the analysis, we have identified gaps and opportunities focused around four areas of possible intervention. These are building consensus and co-operation, drawing on private sector strengths to facilitate livelihoods in the land sector, building capacity to engage effectively with land issues within a pro-poor paradigm, and dealing with structured impediments to the creation and enhancement of sustainable livelihoods.

10.1 Building Consensus and Co-operation

A review should be conducted of land rights and labour legislation with a view to bringing stakeholders together in a concerted effort to create a foundation for co-operative action. The review should examine the extent to which existing legislation constrains and inhibits labour and land markets and livelihoods.

There is an opportunity for supporting local and district level mechanisms amongst key stakeholders (farm dwellers, landowners, local government, sectoral departments and farmers) to facilitate equitable land rights and settlement issues for labour tenants and farm dwellers. Most stakeholders including some of the NLC affiliates have indicated support for such a multi-stakeholder initiative.

10.2 Drawing on Private Sector Strengths to facilitate livelihoods in the land sector

The Private Sector has immense technical and administrative capacity that could be brought to bear through the agricultural production process and in marketing and land reform. However, private sector involvement in land related initiatives has been uncoordinated and ad hoc. The private sector could contribute more substantially to land related development through entering into partnerships with government. For example on the basis of the experience of establishing new freehold growers, the sugar industry could provide advice and assist government in fine-tuning models for parcelling and selling land, and selecting and settling farmers. Partnerships with government around grant funding could facilitate private sector initiatives in the small-scale grower sector and for new freehold farmers. Grant funding in the small-scale grower sector could make an enormous contribution to the long-term sustainability of production. Grant funding would lower risk for new freehold entrants to agriculture. The co-operatives and commodity organisations could support many more land reform initiatives and land users. The private sector could also work with government to reduce transaction costs that stifle the land market. There are farms waiting to be sold, but transactions do not occur because the costs are prohibitive and the process is complicated.

Private sector land reform initiatives have not been targeted at the poor. Indeed, those that have benefited have had access to substantial capital. Access to land could be broadened by leasing land in the first instance, by government guarantee of a proportion of the deposit, by small group ownership of farms, and through share equity arrangements.

The support services offered by the sugar and timber companies, and the guaranteed market for the product are the primary reasons for the relative success of small-scale production in these sectors. Contract farming arrangements are possible for only a few sectors – typically those that involve guaranteed demand from processors for a specific product. Out grower schemes could be expanded for sectors that lend themselves to these relationships, but this would hinge on a plethora of factors such as small-scale producer access to land, existing patterns of supply and demand, and possibly, international market conditions.

Recent research suggests that farm worker share equity projects have been important in significantly broadening access to land and agriculture. Evidence from both the Western Cape and KwaZulu-Natal suggests that there is a huge demand from commercial farmers for share equity projects that far outstrips budgets and capacity. The availability of budgets and capacity would open access to land and agriculture for farm workers.

Recent experience in the timber sector and in the fruit and wine sectors suggest that an important initiative is to make inputs and product markets work for the poor. Many such arrangements could be forged between poor land users and powerful agribusiness interests.

10.3 Building capacity to engage effectively with land issues within a pro-poor paradigm

A key gap identified in the study relates to the absence of post land transfer support to the past and current beneficiaries of land reform programmes. In the DLA Quality of Life Survey 2000/01, beneficiaries identified a critical need for agricultural training, finance and funding for production, farming equipment and greater access to project related information.

There is also a need for quality and appropriate services. Key opportunities exist for innovative post-transfer support around rangeland management and dry land cropping. Despite the fact that most current land reform beneficiaries - and black rural households in general - are involved in grazing and dry land cropping, the key focus of most rural development NGOs and state agencies is on craft production, organic farming and the marketing of high value crops. A gap therefore exists to re-orient both government and non-government agencies around appropriate support for sustainable livelihoods amongst land reform beneficiaries.

The growing role of local government in land use management and planning, requires interventions to re-orientate municipalities and Departments of Agriculture to establish pro-poor land use management and planning capacity. This should also be extended to include land administration and tenure issues.

Support could be provided for the effective organisation of those wishing to use land commercially. There is an urgent need for greater integration and collaboration between existing farmers' unions at the district, provincial and national levels. There are opportunities for synergies based on specific areas of comparative advantage. NAFU are intending to build capacity to build their organisational structures. Vital experience in organisational development could be transferred through Agri SA, as well as access to information through the various commodity organisations represented. Collaboration on the sector plan may be the first step in successful integration.

It is clear from the experiences with LRAD that the provision of collateral is merely a partial solution in enabling the poor to comply with the credentials that qualify them for loan finance from banks. Improving the poor's credit-record and management expertise are equally important in assisting them to access the volumes of finance required for land acquisition. Basic economic literacy campaigns could achieve this objective.

10.4 Dealing with structural impediments to the creation and enhancement of sustainable livelihoods

Efforts that allow financial institutions to draw on existing knowledge networks and develop graduated repayment loans will allow the financial markets to make a greater contribution to the nature and pace of land redistribution.

The obstacles to land sub-division and the high costs of transfer are also an impediment to a pro-poor land market. Focused support is required to phase out the sub-division legislation and to review registration and land administration systems that can facilitate affordable and secure tenure.

One of the most pressing issues raised by the DLA Quality of Life reports is the need for support of household food security. While LRAD does cater for this category of project in terms of the lower end of the sliding scale, these projects are not popular with private sector LRAD service providers as the planning grant is usually far lower than that available for larger commercial projects. These projects are probably better formulated and managed by land based NGOs with experience and understanding of rural livelihoods, rather than technical, commercially oriented consultants. There is an opportunity to provide support for organisations that prioritise the support of livelihoods in land reform initiatives.

11 Priorities for future work identified in the freehold and farming discussion group: DFID Multi-stakeholder workshop on Land Issues: 3rd September 2003.

Participating stakeholders in the discussion group on Freehold and Farming communities at the DFID Multi-stakeholders workshop on land issues on the 3rd September were requested to identify priorities for future work and support. The list below represents the contributions from individual participants. It is important to note that the issues raised were not subject to any process of group consensus or prioritisation.

11.1 Institutional Development

There is a need to support community-based organisations dealing with land issues as distinct from the support provided to community-based land holding institutions. The community structures organising landless people and land occupiers are not being provided with financial and capacity

building support. Attention needs to be given as to how support is provided to 'organisations of the people'. The land issue in South Africa would not be well served by the presence of frustrated landless people and land occupiers whose concerns and issues are not being properly articulated and whose organisations are not being supported.

11.2 Alternative Dispute Resolution

There is a recognition that land reform is a very contested and conflictual issue. The approach to dealing with disputes around tenure reform on farms is based on legal processes and the courts. There are however, major problems with access to legal support and the courts for vulnerable groups. There is a need to develop new ways and models of resolving disputes other than through the formal court process. For this reason it would be important to develop a system of Alternative Dispute Resolution (ADR), which can be supported by landowners, land occupiers, government and NGOs to provide a sustainable mechanism for resolving disputes between parties.

11.3 Information Management and Monitoring and Evaluation

There are challenges and problems relating to land information. These include:

- The delay in the production of an audit on state land, particularly land available for redistribution, which information had been promised to Agri SA some years ago
- The lack of detailed information on the nature of land demand and land supply
- The lack of accurate information on the progress of the land reform programme
- The lack of accurate information on evictions
- The need to undertake a cost-benefit analysis on creating rural livelihoods through land reform
- The need for a land reform and agricultural audit.

11.4 Land Reform Delivery and Agricultural support Systems

There is a need for a performance audit on land reform and agricultural services to establish where the inefficiencies in the system are, and to provide support for a process of reform and development.

11.5 Areas for Future Research

The following areas for future research were identified:

- Land utilisation and underutilisation in South Africa and its relationship to declining trends of agricultural employment
- The nature of support required for smallholder agriculture, particularly new entrants to agriculture
- Different approaches and models of land reform that can deliver land at scale
- How land reform can reduce poverty and a detailed cost-benefit analysis thereof
- How common law can be reformed to support land reform and land rights and how formal rights of ownership can be integrated with the common law
- Land demand and supply; and perspectives of the poor and landless on land demand and utilisation
- The need to integrate the three scoping reports commissioned by DFIDSA to look at land reform in an integrated way, and to look at the bigger issues of the founding assumptions of land reform and how land reform is reflected in government's conceptualisation of economic development.

11.6 Rural Economic and Black Economic Development

There needs to be a focus on looking at rural economic development beyond land reform. This should include:

- Looking at sectors beyond agriculture, including mining, conservation and tourism to identify opportunities for promoting rural livelihoods
- The need to look at the broader issue of Black Economic Empowerment (BEE) in the land and agricultural sectors.

11.7 Establishment of a Private Sector Land Reform Agency

There needs to be a feasibility and facilitation process for creating a private sector land reform agency. The private sector needs to look at how it can become involved more systematically in land reform.

12 Annexures

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12.2 List of Interviews and Consultations

Name	Position	Organisation	Telephone/cell	Fax	E - Mail
Tony Ardington	Ex Chair	South African Sugar Association South African Cane Growers' Association	(031) 366 1160 083460 5766	(031) 366 1304	ardingtont@marriott.co.za
Helena Dolny	Director: Agricultural Banking	Standard Bank	(011) 636 9112 (011) 636 1002 082 372 6006	(011) 636 8218	HMDolny@sbic.co.za
Mike Edwards	Chief Executive Officer	Forestry SA	(011) 803 3403 082 600 7627	(011) 803 6708	trees@global.co.za
Johan Hamman	Consultant	Hamman and Schumann Consulting	(021) 887 1520 0825528747	(021) 887 1520	schumann@icon.co.za
Piet Luttig	Manager	Cooperative Development Initiative	(058) 303 3606 (012) 322 7181 083 629 8326	(012) 346 5891	dgrvsa@worldonline.co.za
Stephen Marais	Financial Manager	Vrystaat Kooperasie Beperk (VKB)	(058) 863 8111 082 576 5168	(058) 863 8527	steve@vkb.co.za
George Oricho	General Manager for Corporate and Project Finance	Agricultural and Land Bank	(012) 312 3999 082 895 4121	(012) 312 3706	gooricho@landbank.co.za
Nic Opperman	Director: Natural Resources	Agri SA	(012) 322 6980	(012) 320 0557	nic@agriinfo.co.za
Alistair Patterson	Manager: Advisory Services	Stockowners	(033) 330 7470 082 880 9002	(033) 330 8830	ingridm@stockowners.co.za
Mike Phillips	Chair Board Member	KwaZulu-Natal Red Meat Producers' Organization KwaNalu	(034) 351 1875 082 255 2285	(034) 351 1875	sunstate@mweb.co.za
Duncan Pringle	Divisional Manager: Agribusiness Division	Ithala Development Corporation	(031) 907 8911 (031) 907 8842 082 807 5587	(031) 907 8636	dpringle@ithala.co.za
Mdu Shabane	Director	KwaZulu-Natal Department of Land Affairs	(033) 355 4300		mshabane@sghq.pwv.gov.za
Steve Shone	Chief Executive Officer	Grain SA	(056) 515 2145 082 550 4555	(056) 515 3613	steve@grainsa.co.za

Name	Position	Organisation	Telephone/cell	Fax	E - Mail
Danie Stander	Agricultural Specialist dealing with black empowerment	ABSA Bank	082 854 1733 (022) 921 2245	(022) 921 2244	daniesta@absa.co.za
Roger Stewart	Chair	South African Sugar Association	(031) 508 7000	(031) 508 7199	ngse@iafrica.com
Brian Sugden	Director Grower Services	South African Cane Growers' Association	(031) 508 7200	(031) 508 7201	BSugden@canegrowers.co.za
Jeff Wright	Group Managing Director	Afgri	(011) 706 7897	(011) 463 4139	jwright@afgri.co.za
Nathi Zondi	Development Manager	KwaNalu	(033) 342 9393 082 930 4811	(033) 3457141	mailto:nathi@kwanalu.co.za
Mr Mathlala	Vice President	NAFU - National African Farmers' Union	(013) 656 0325	(013) 656 1033	c-plan@mweb.co.za
Figness Mashele	Chairperson	MAFU – Mpumalanga African Farmers' Union	082 253 4727	(013) 790 7742	
Rick Dillon	Agricultural Development	Agri SA	082 564 9404 (012) 322 6980	(012) 320 0557	rick@agriinfo.co.za
Jan Rautenbach	Chairperson	Agri-SA Mpumalanga	082 492 4049	(017) 847 0103	jjr@skyafrica.co.za
Jan Volskenk	Chief Director	Provincial Department of Agriculture	(013) 766 6000	(013)	
Leona Archary	Provincial Director	Provincial Department of Land Affairs	(013) 755 3499	(013) 755 3529	larchary@sghq.pwv.gov.za
Sam Malatshi	Director Farmer Settlement	National Department of Agriculture	(012) 319 6000 082 805 8049	(012) 319 6869	smfs@nda.agric.za
Carmen van der Merwe	Director Policy	Department of Land Affairs	(012) 312 8911	(012) 312 8066	cvdmerwe@sghq.pwv.gov.za
Chris Williams	Director	The Rural Action Committee (TRAC)	082 829 3443 (013) 755 4324	(013) 755 4359	cjwilliams@trac.org.za
Theresa Yates	Farmdweller Policy	Dept of Land Affairs	082 770 7105 (012) 312 8911	(012) 312 8066	tyates@dla.gov.za
Donna Hornby	Researcher	Midnet	(033) 343 3052	(033) 394 3584	donnah@icon.co.za

Name	Position	Organisation	Telephone/cell	Fax	E - Mail
Rauri Alcock	Chairperson	Midnet	082 856 9861 (033) 394 3584	(033) 394 3584	khonya@yebo.co.za
Sihle Mkhize	Director	AFRA	(033) 345 7606	(033) 345 5106	afra@wn.apc.org
Lisa Del Grande	Deputy Director	AFRA	(033) 345 7606	(033) 345 5106	afra@wn.apc.org
Frikkie Brooks	Chief Director: Development Planning	Dept of Provincial and Local Government	(033) 395 2172 082 868 8020	(033) 342 1623	brooks@tlga.kzntl.gov.za
Anwhar Madhanpall	Deputy Director	Dept of Land Affairs	082 494 7770 (033) 355 4320	(033) 394 3753	amadhanpall@sghq.pwv.gov.za
Cathy Green	Chairperson	Sisonke District Farmers Agricultural Council	(039) 757 5403	(039) 757 5249	fallod@worldonline.co.za
David Green	Chairperson	Uthukela District Agricultural Council	(036) 352 4724	(036) 352 6632 Att: Dave Green	
Deena Bosch	Programme Manager	Women on Farms Project	(021) 887 2960	(021) 887 2963	deena@wfp.org.za
Terence Fife	Provincial Director	DLA	(021) 426 2947	(021) 426 2702	tufife@dla.gov.za
Andries du Toit		Plaas	(021) 959 3959	(021) 959 3732	presence@iafrica.com
Ruth Hall		Plaas	(021) 959 3959	(021) 959 3732	rhall@uwc.ac.za
David Mayson		Surplus People's Project	(021) 448 5605	(021) 448 0105	
Karin Kleinbooi	Researcher	Centre for Rural Legal Studies	(021) 883 8032	(021) 886 5076	karin@crls.org.za
Bronwyn Page-Shipp	Legal Unit Co- ordinator	Centre for Rural legal Studies	(021) 883 8032	(021) 886 5076	bronwyn@crls.org.za
Marc Wegerif	Executive Director	Nkuzi Development Association	(015) 297 6972 082 452 3861	(015) 297 6975	marc@nkuzi.org.za
Chris Schalkwyk	Director: Public Land Support Services	Department of Development Aid	(021) 312 9397	(012) 312 8135	cjschalkwyk@dla.gov.za
Anton v Staden	Director: Human Resources management,	Department of Land Affairs	(021) 312 8424	(012) 312 8072	afvanstaden@dla.gov.za
Gert Hatting	Director: Deeds Registration Support Services and Financial Management	Office of the Chief Registrar of Deeds: Department of Land Affairs	(021) 338 7203	(021) 328 3347	gaahattingh@dla.gov.za
Apie vd Berg	Registrar of Deeds	Department of Land Affairs	(021) 322 5419	(021) 322 5418	avdberg@csg.pwv.gov.za

Name	Position	Organisation	Telephone/cell	Fax	E - Mail
Derick Clarke	Chief Director: Cadastral surveys	Department of Land Affairs	(021) 658 4301	(021) 689 1351	dclarcke@slu.wcape.gov.za
Steve Worth		KZN Agric Development Forum	(033) 2606140		worths@nu.ac.za
Tessa Cousins		LEAP	(033) 3421387		tessa@sn.apc.org
Kobus Visser	Security Desk	Agri SA	(012) 3226980	(012) 3200557	kobus@agriinfo.co.za
Japie Kruger	Agricultural statistics	Dept. of Agric.	(012) 3196535	(012) 3196267	dasi@nda.agric.za
Michael Aliber	Chief research specialist	HSRC	(083) 4390426		maliber@hsrc.ac.za
Alan Theron	Farmer	Theron & Sons	(083) 2659646	(039) 791801	
DB Cathcart	Farmer	Belmont Farm	(039) 7477682	(039) 747 7682	
Adam Schwartzmann	Public Finance Director	Department of Finance	(082) 3206405		
Khula Enterprise Finance Ltd	Land reform Empowerment Fund	Khula Enterprise Finance Ltd	(011) 8078464		