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Overview of Land Reform and Rural Development in post-apartheid South Africa: Policy trajectories and implementation

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Land reform and rural development in post-apartheid South Africa: Policy trajectories and implementation

1. Introduction

This brief seeks to provide, in broad sense, an overview of key policies driving land reform and rural development in South Africa; and to a certain extent analysis on how South Africa fared in delivery of land. Land reform and rural development forms part of strategic priorities of government and the portfolio is central to the raising rural of incomes and job creation as envisaged in the National Development Plan (NDP) and the New Growth Path (NGP). As South Africa marks 20 years of democracy, critical and pertinent questions relating to the extent to which the State has addressed the land question are being asked, both in and outside government. The broad processes of policy review the Department of Rural Development and Land Reform (DRDLR) attest to the urgency of the matter and serious reflection on how land reform and rural development has been implemented. In 2011, the DRDLR published the Green Paper on Land Reform for public comments, a mid-term review of rural development and land reform; and further developed a series of policies to ensure effective and efficient delivery of land to the millions of victims of apartheid land dispossessions.

During the fourth Parliament, the Portfolio Committee on Rural Development (the 4th Parliament Committee), attempted to cover a wide array of issues related to this sector by robustly engaging with the DRDLR and Entities; as well as engaging in public participation processes around its key activities. The legacy report of that Committee provides useful insights into the work the 4th Parliament Committee as well as those pending key areas of work. This brief, therefore, draws on various reports of the 4th Parliament Committee, as well as evidence/testimonies or policy concerns drawn on engagements with stakeholders and members of the public who appeared before the 4th Parliament Committee. In addition, it draws on some empirical material collected during oversight visits by the 4th Parliament Committee, presentations and reports from the DRDLR; and rapid review of some literature on South African land reform.

Following this concise introduction, this brief proceeds as follows: it locates land reform and rural development within the broad constitutional imperatives to redress the wrongs of apartheid, but sets the context by placing the discussion within a socio-political and economic history of South Africa in which land dispossession was central to the freeing of labour for mines as well as establishment of large-scale agricultural sector. It further reviews the land and rural development policy trajectories since 1994, illustrating how the state has had to navigate within a range of policy constraints to attain the outcomes of the programme which are concisely discussed in this brief. Key policy/programmatic areas discussed are restitution, redistribution, tenure reform and farmer support programmes. In addition, National Geomatics Profession and Deeds registries are also introduced. Whilst this paper asks pertinent questions in relation to progress made in both land reform and rural development, it also argues for a an improved coordinated oversight in order to ensure improvement on delivery of policy provisions in relation to land and agrarian transformation as well as rural development. It therefore concludes with a highlight of oversight implications arising from this broad policy discussion for the 5th Parliament Portfolio Committee on Rural Development and Land Reform (the Committee).

2. The historical context

In 2013, the National Assembly[1] facilitaed activities that initiated a dialogue between legislators and the members of the public as a way to marka 100 years since the enactment of the Natives Land Act (1913). To note the Natives Land Act (1913) does not suggest that the histroy of land dispossession started in 1913. The indeginous black people were dispossessed of their land and ultimately displaced from their homes through many other practices and legislations prior to 1913[2]. Through the years, indegnous people suffered subordination, separation and exclusion. The 1913 Land Act laid a legislative basis in which the successive aparthied regimes dispossessed and forcefully removed majority indegenous people from their land. It was the basis for the division and allocation of land , i.e 87 per cent of the entire land to whites and 13 per cent to blacks, hence a legacy of land inequity in South Africa and various other forms of deprivations resulting in poverty and inequalities.

The democratic government inherited a country with unequal distribution of land, in which approximately 82 million hectares of commercial farm land (86% of total agricultural land, or 68% of the total surface area) was in the hand of white minority[3] who comprised 10.9% of the total population of South Africa. The 82 million ha were concentrated in the hands of about 60,000 owners[4].Within the privately owned farms, there was a large population of marginalised group of people (ussually reffered to as farm dwellers) whose tenure rights is insecure. The majority of South Africans lived in the 'reserves', these are present-day communal areas (or former Bantustans) on which some 13 million people live, about 70% of the poor in South Africa as May (1998) would estimate[5].

The above description quite evidently illustrates the post-apartheid South Africa's dual agrarian structure in which the well developed large-scale commercial agriculture (dominated by whites) coexisted with the less developed, mainly small-scale subsistence and to a certain extent medium-scale and semi-subsistence to commercial farming (majoirty are blacks) do exist[6]. This structure, the racial polarisation and unequal society emanate from the history of of white settler's dispossessions of land occupied by indegenous plack people highlighted above. Whilst displacements occured since the arrival of white settlers, the Natives Land Act (1913) and further aparthied policies (between 1948 -1990) saw forced removals of black people, in both urban and rural areas. The crux of the matter is that that blacks were prohibited to access to land, and when they do access to land, the policy context has not been constructed in their favour. They lost productive land, small-scale farming or peasantry was undermined[7]. In contrast, white commercial sector was provided with massive financial support and subsidies. As a result, this industry became highly capitalised and productive due to state intervention.

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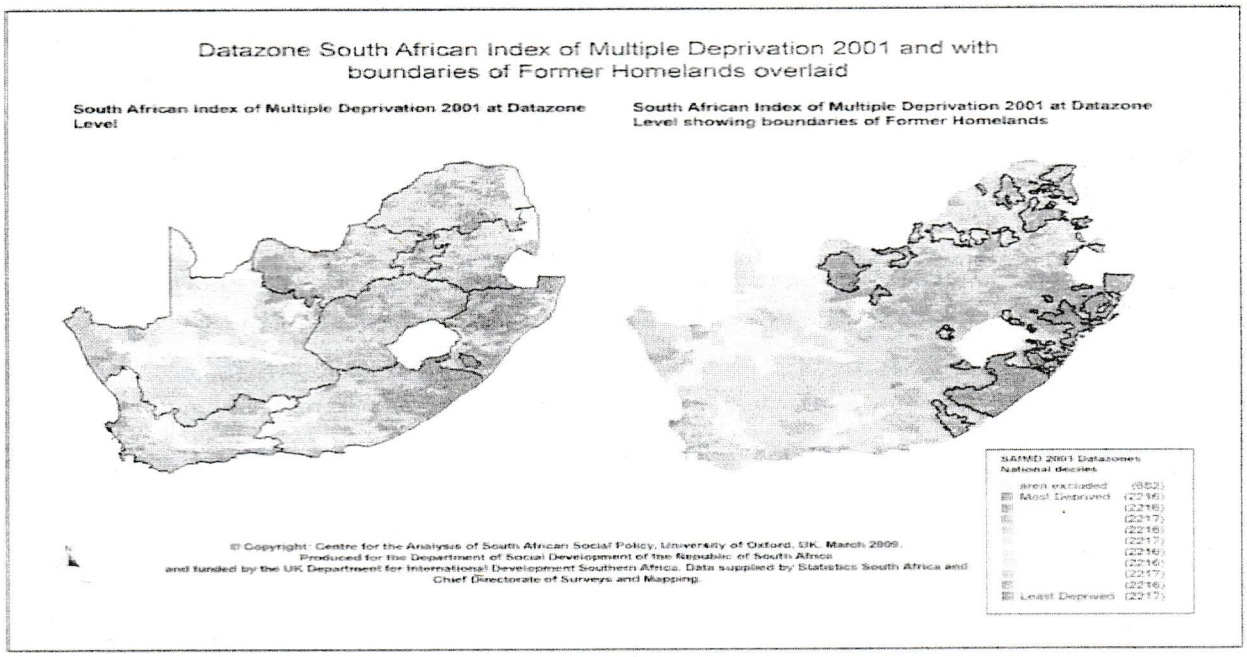
[1] The National Assembly established the *ad hoc* Committee established to exercersize coordinated oversight on the reversal of the legacy of the Natives Land Act (1913).
[2] Around the 17th Century, the Khoisan people were among the first to suffer colonialisation and dispossession.
[3] Lahiff (2007)
[4] Levin & Weiner (1991:92)
[5] Hendricks (1990), Lahiff (2000)
[6] Hall (2010)
[7] Bundy (1979)

The legacy of the colonial and aparthied dispossessions remains, hence a need for land and agrarian reform as a critical programme to resolve and the land and agrarian questions in South Africa. Apart from a need to redress of the racial injustices, land redistribution accompanied with farmer/development support is neccesary and can make a significant contribution to poverty reduction, especially the rural areas including the former Bantustans where majoirty of the poorest live. However the migratory trends to the urban areas by rural people in search of employment also poses a real challenge of urban poverty, but poverty has, largely, a rural face.

Figure 1 demonstrates the findings of a survey by Noble&Write (2001) which shows that the people who are mostly deprived live within the boandries of the former Homelands. Various studies would confirm that most parts of the former Homelands are rural in nature, hence this brief argues that poverty in South Africa, and accross the globe, has a rural face; but urban migratory patterns raises another challenge of urban poverty. The state of neglect of development in rural areas, emanating from apartheid spatial and racial divisions, provide in part one of the reasons why government hasincluded rural development and land reform as one of the top five priorities of government.

Figure 1: South African index of multiple deprivation 2001



Source: Noble & Wright (2013)

One could also argue that the triple challenges of unemployment, poverty and inequalities as identified in the diagnostic study of the National Planning Commission (NPC) are a common characteristic of rural areas in South Africa. The National Development Plan is the country's framework for economic and social transformantion and it aims to accelerate growth to eliminate poverty and reduce inequality by 2030. The National Development Plan, together with New Growth Path and the Industrial Policy Action Plan, as a framework lays a basis for economic transformation to address South Africa's development challenges and to improve the lives of South Africans. In terms of the New Growth Path, agriculture has been identified as a key sector for employment creation. It targets to create 300000 smallholder opportunities by 2020. In addition, it aims to

increase their incomes by securing their participation in higher value commodity chains; and address weaknesses in land reform programme. The National Development Plan on the other hand aims to create 1 million new jobs in agriculture, especially from smallholders, expanded irrigation, new labour intensive crops. It also proposes to fix land reform through decentralised, district based negotiation and support.

According to the National Treasury's budget review, the Medium Term initiatives situates the National Development Plan's critical actions relevant to rural develoment and land reform within a category or theme of "poverty and social wage". Its its objetcive is to -

> "address poverty and its impacts by broadening access to employment, strengthening the social wage, improving public transport and raising rural incomes"[8]

The related medium-term initiatives include the provision that -

> "There will be extensive support to smallholder farmers, rural employment programmes and restitution"[9]

Both the National Development Plan and the New Growth Path have placed agriculture at the centre of jobb creation and raising rural incomes. A pertinent question to these policy pronouncements is to what extent has, and can, land reform and rural development contributes to these policy intents?

2.1 Constitutional and legislative framework for South African land reform

The Constitution of the Republic of South Africa, with its emphasis on socio-economic rights/the Bill of Rights, created an obligation on the state to redress the inequalities of the past. The most quoted clause is Section 25. Whilst it guarantees rights of existing property owners, it also provides for rights of redress to victims of racially-based land dispossessions. The Constitution, therefore, sets the legal basis for the South African land reform programme, mainly the three components of the programme (redistribution, restitution and tenure reform) which derive from Sections 25(5), (6) and (7) which state that:

> "(5) The state must take reasonable legislative, and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.
>
> (6) A person or community whose tenure of land is legally insecure as a result of part racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.
>
> (7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress".

Until 2009, land reform has been understood mainly in terms of the three programmes highlighted

[8] National Treasury (2014); National Planning Commission (2013)
[9] National Treasury (2014)

above. However, the Green Paper on Land Reform articulates 'development support' as a fourth component of the South African land reform. This institutionalisation of the development suppoort (post settlement support) is understood to attempt to address the failure of land reform projects which the Minister of Rural Development and Land Reform reported that 90% were non-productive[10].

Table 2: Key policy programmes

Programme	Key policies/Legislation
Restitution	Restitution of Land Rights Act (1994) as amended and Amendment Bill (2013)
Land redistribution	Proactive Land Acquisition Strategy (PLAS), Land Redistribution for Agricultural Development (LRAD), Land and Agrarain Reform Program (LARP), Settlement Land Acquisition Grant (SLAG),
Tenure Reform	Extension of Secuirty of Tenure Act (1997), Land Reform (Labour Tenant) Act and Interim Protection of Informal Land Rights Act (1996)
Development Support	Settlement Implementation Strategy (SIS); Recapitalisation and Development Programme
CRDP (RID) and (REID)	Rural Development Framework
Other	Spatial Planning and Land Use Management Act (SPLUMA),

NB: These are some of the polices in place. The 2011 Green Paper processes have led to a number of policies which , some of them, are discussed in this brief.

2.1.1 Restitution

In line with Section 25(7) of the Constitution, cited above, the Restitution of Land Rights Act 22 of 1994 provides for legislative mechanisms to redress the injustices of racially-based land dispossession and forced removals in South Africa. In line with the provisions of the Act, the Commission on Restitution of Land Rights (the Commission) was established in 1995[11]. The Commission was originally an independent body, but now it forms part of the Department of Rural Development and Land Reform and its functions are detailed in the Act. The act provides options of settlement of land claims, i.e. land restoration, provision of alternative land, or payment of compensation. In 1999, the Act was amended to provide for settlement of claims through an 'administrative route' rather than the land claims court processes as originally legislated. Introduction of the administrative route was a significant step in acceleration of the settlement of land claims. Although in 20003 the Act was amended to enable the Minister of Land Affairs to expropriate property without a court order for restitution or other land reform purposes, this remained less used.

Table 3: Cumulative statistics for restitution (1995 – August 2013)

Province	Claims	Dismissed	HHs	FHHs	Ha

[10] In 2009/10, government has reported that approximately 90% of all land reform projects had collapsed, near collapse or were unproductive. These statistics, however, have been challenged from certain quarters on the basis that there had not been any reliable and adequate national survey to conclusively suggest such a high rate of failure of land reform projects.

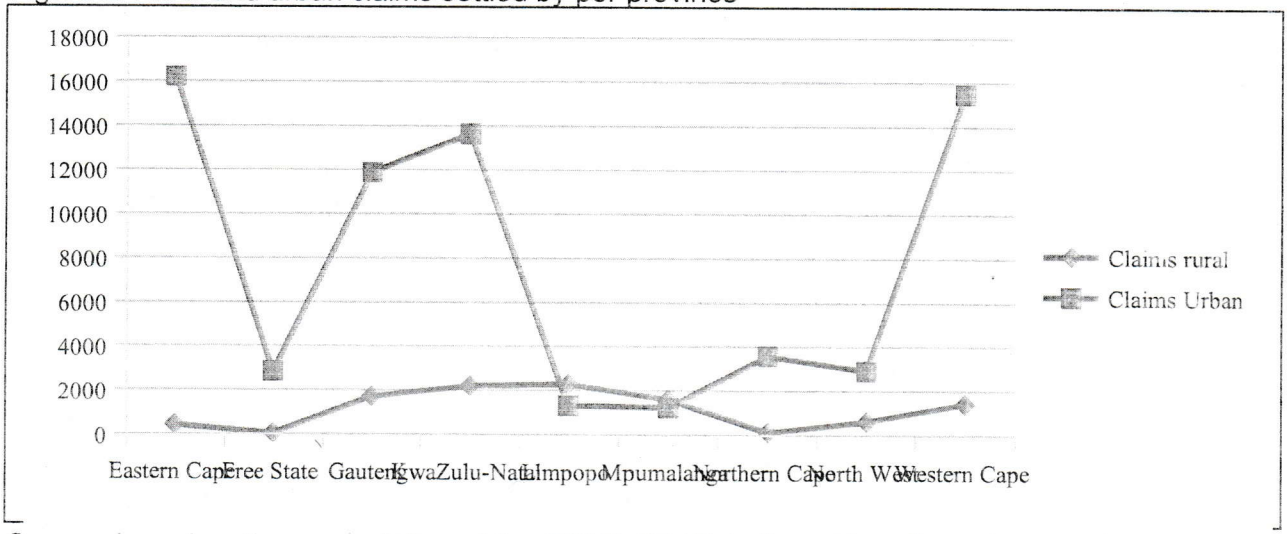
[11] Until 2010, the Commission had a national office under the Chief Land Claims Commissioner and regional offices in provinces (NW and GP combined) under Regional Land Claims Commissioners. The new structure of the DRDLR incorporated the Commission within the DRDLR, and replaced regional land claims commissioners with a deputy chief land claims commissioner and 1 regional land claims commissioner.

	rural	Urban				
Eastern Cape	419	16207	291	65139	25295	136753
Free State	41	2858	209	7614	2716	55747
Gauteng	1717	11866	702	14320	5448	16964
KwaZulu-Natal	2196	13641	141	85421	26503	764358
Limpopo	2294	1326	438	48492	18206	603641
Mpumalanga	1611	1235	202	53525	17362	460964
Northern Cape	133	3593	255	21900	9097	569341
North West	626	2924	319	44268	18408	399407
Western Cape	1426	15469	633	27411	11838	4140
TOTAL	**10483**	**69119**	**3190**	**368090**	**134873**	**3011315**

Source: CRLR (2013) Presentation to the *ad hoc* Committee on 19 August 2013

Figure 2 below illustrates that urban claims constitutes the majority of the settled claims. But the provinces of Limpopo and Mpumalanga, two of the most rural provinces in South Africa, have recorded that rural claim constituted the majority of the settled land claims by August 2013. According to the Commission, restitution has benefitted approximately 368090 households, including a total of 134873 female headed households. A total of 3011315 ha have been acquired for restitution purposes at the cost of R15 billion; whereas about 69119 land claims were settled in cash compensation at the cost of R7, 5 billion.

Figure 2: Rural and urban claims settled by per province



Source: based on the presentation of the CRLR (2013) to the ad hoc Committee

Table 4 below shows that by August 2013, the Commission has settled about 97 per cent of the 79696 land claims lodged by 1998. Of the total 79582 settled claim (a combination of claim forms and rights), about 58990 or 74% have been finalised; and approximately 20592 or 26% claims had not yet been finalised or the implementation of the settlement agreement had not taken place. About 8733 land claims were not yet settled (not gazetted and gazetted but not yet settled). As at December 2013, 7226 (or 9% of all the claims lodged) remained not gazetted.

Table 4: Status of various land claims

Status of claims	No of claims	Percent

Total lodged	79696	100%
Not gazetted	7226	9%
Gazetted but not yet settled	1507	2%
Settled (claims as lodged), i.e. claim forms	59415	75%
Settled (claims as settled), i.e. claim forms + rights	79582	99%
In process of being implemented	20592	26%
Implementation finalised	58990	74%

Source: adapted from the CRLR (2013) and Parliament (2013) Ad hoc Committee Report

In view of the fact that about 74 per cent of the land claims were settled and finalised, whereas 26 per cent of settled were not finalised but in the process of implementation of settlement, it therefore suggests that the Commission still had enormous amount of work to finalise all the claims already settled (20592). The work included the transfer of farms in full title to Communal Property Associations (CPAs) and Trusts. The most challenging aspect of the post transfer period is facilitating land use and development of the farms transferred to claimants. Central to this settlement support stage is the institutional dynamics within claimant groups.

In 2013, the *ad hoc* Committee established to exercise oversight on reversing the legacy of the Natives Land Act of 1913 made the following observations with regard to the programme of restitution of land rights: lack of adequate capacity within the Commission to negotiate settlement of land claims within reasonable time frame, this then has implications to the extent of the cost of land acquisition for restitution. However, the *ad hoc* Committee further noted the effect of the policy choices in relation to the market-based land reform, in which the cost price of land acquisition had been escalating to the extent that it was unsustainable to continue with land reform under the same approach. An introduction of the Property Valuation Bill (2013) to regulate valuation of properties in land reform (also in other instances where government in involved in purchase or sale of land) could potentially assist in enhancing the pace of land reform with reasonable costs of land acquisition.

2.1.2 Tenure Reform

Section 25(6) of the Constitution, as cited above, provides entitlement to tenure security to all people whose tenure insecurity emanates from past racially discriminatory laws or practices. The Constitution, in terms of Section 26(3), provides that:

> "no one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions".

Based on the inherited agrarian structure of South Africa, communal tenure can be best understood in terms of considering the conditions for the majority of the South Africans living in the former Bantustan areas, and those people living on privately owned commercial farm land. To give effect to the imperative outlined in the Constitution, Parliament passed legislation, namely the Interim Protection of Informal Land Rights Act, 1996 (Act No 31 of 1996) and the Communal Land Rights Act (2004) – later nullified by the Constitutional Court - as an attempt to address the

Communal tenure issues. With regard to the tenure security for thise on privately owned farms, Parliament passed the Extension of Security of Tenure Act, (1997)

(a) Communal land tenure security

This policy area mainly affect people living in the area previously designed for occupation by black people, i.e the 13 per cent emanating from the 1913 and 1936 land acts. No less than a third of the Country's population live in these areas. The areas are characterised by over-population, non-existent or frequently dilapidated infrastructure, scarcity of quality agricultural land, environmental degradation, landlessness, land shortage and land related conflicts. In addition, there was lack of equitable public investment in infrastructure, industrial and agricultural development. They are also beset with challenges of land administration inherited from the colonial and apartheid regimes, and insecure land tenure.

Most debates on land tenure security in the former homelands are polarised, between communal tenure (traditional/customary) and private tenure systems. Individual private ownership is premised on the right to exclude others, and has mostly been associated with the Western market economies. It provides rights to possess, use and alienate. Communal tenure is a complex arrangement which does not necessarily mean free for all; it may be 'open-access', usage of land collectively; common property situation where land is used by a collectively by a group/'community'; a situation in which land is allocated by social institutions

The Interim Protection of Informal Land Rights Act (1996), commonly referred to as IPILRA, was passed as a temporary measure for protection of certain right to and interests in land which not otherwise adequately protected by law, until a comprehensive new legislation was in place. IPILRA was never meant to be a permanent piece of legislation and it remained weak in terms of protection of the rights of individuals in the communal areas. Having regard to the challenges in communal tenure, in 2004 Parliament passed the Communal Land Rights Act (ActNo.11 of 2004). This act was declared unconstitutional in its entirety after a court challenge by a group of communities. The bases of the court challenge related to the status of tenure security when traditional councils are given control over the land occupied by people living in the former 'Homelands'. The decision of the Court was based on flawed parliamentary procedural processes[12] rather than the substantive issues which the court did not interrogate. Therefore, the substantive issues or arguments remain as critical points of consideration for any future communal tenure policies. For example, tribal authorities created by the Bantu Authorities Act being transformed into "traditional councils" by the Traditional Leadership and Governance Framework Act of 2003 and policy giving these traditional councils wide-ranging powers, including control over the occupation, use and administration of communal land[13].

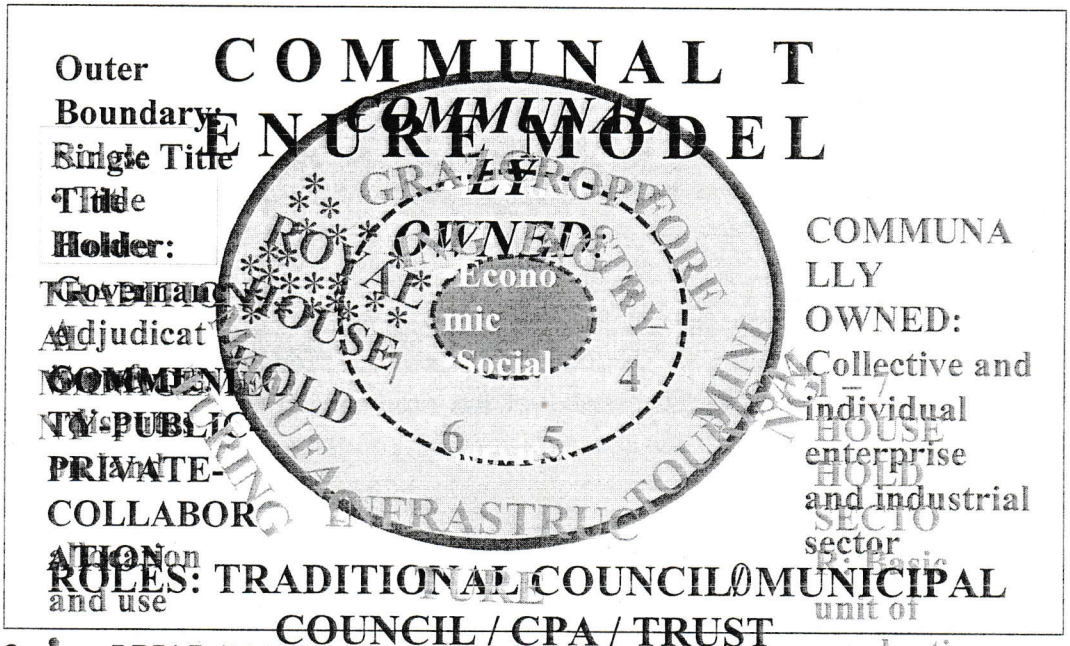
[12] "CLARA was enacted in accordance with section 75 of the Constitution; the procedure for "[B]ills not affecting the provinces". The applicants argued that the enactment in accordance with this procedure was incorrect and invalid. They argued that CLARA was incorrectly classified or "tagged" as a section 75 Bill, rather than a section 76 Bill, as a result of Parliament adopting the incorrect "tagging" test. Judge "Ngcobo CJ held that the conclusion that CLARA was invalid in its entirety rendered it unnecessary to consider whether its provisions were consistent with the Constitution" (from summary judgement).

[13] Tongoane and Others v National Minister for Agriculture and Land Affairs and Others (CCT100/09) [2010] ZACC 10; 2010 (6) SA 214 (CC) ; 2010 (8) BCLR 741 (CC) (11 May 2010

In the absence of any comprehensive communal land tenure legislation, the 1996 IPILRA remains the only piece of legislation that protects the land rights of people with legally insecure tenure in the former 'Homelands'. The interim measures in IPILRA are inadequate to address conflicts over land rights, administration and transaction – especially in the face of rising investor interests, damaging conflicts among landholders and between landholders and local and traditional authorities. In the absence of a stronger legislation, there is a policy and legal vacuum to protect tenure security for people living in the communal areas[14].

A strategic question for policy makers and legislators is: which appropriate paradigm should be adopted for communal tenure in South Africa? Over the years, the land rights bills opted for a paradigm to provide for statutory recognition of informal land rights, provisions to register and formalise rights at individual household and community levels over time, Land Boards and tribunals to adjudicate conflicting claims, then under the he Communal Land Rights Act, the act provided for transfer land title to traditional communities, administration of land rights by traditional councils, with traditional and elected membership, ministerial discretion, for example on transfer and definition boundaries. Recently, with the policy review processes under the Green Paper on Land Reform published in 2011, a Communal Land Tenure Policy was approved by the Minister of Rural Development and Land Reform in June 2013. Figure 3 below illustrates the model as proposed in policy.

Figure 3: Proposed Communal Tenure Model



Source: DRDLR (2013)

The policy proposes communal land ownership under communal tenure system with institutionalised use rights. Its objectives are:

- to promote rural economy transformation; to strengthen security of tenure of people living in these areas to secure the rights and interests of the vulnerable, and enable household members to bequeath the land to their children;

[14] Claasens (2013) Presentation at the Land Policy Workshop (*ad hoc* Committee)

- to clearly define authority and responsibility (among all players across the board from traditional councils to community members and government) within the context of transforming the rural economy;
- to promote special reconfiguration of communal areas through special planning land use management and special development frameworks; and
- to place the household as a human agency to drive change; and to ensure deliberate community investment interventions through the agrarian transformation strategy to enable communities to fully participate in the rural economy.

The policy proposes that the outer boundaries of a particular communal area should be owned by a governance structure, this could be a traditional council or a CPA. This transforms the status quo in which the state owns communal land areas. This proposal seek to ensure that the households are the owners of the land and that their rights should be secured and protected across the residential, economic, social and other service areas. It further promotes that the communal areas be shared by a community and its iNkosi, with the royal household as part of traditional management system. With regard to the powers of allocation of land, the proposed communal land tenure policy suggests that such powers to exercise this authority would be vested within governance structure as a title holder.

The crux of the 'wagon wheel' model is about institutionalisation of use rights to ensure that the rights of every household within a particular communal land are clearly identifiable, and that households can pass them on from one generation to another. This approach seeks to redefine and reconstitute communal areas through spatial planning and land use, spatial development frameworks, improved land use regulations and economic policies to sustain growth. The policy further provides for land adjudication, strengthens the security of tenure through institutionalised use rights at a household level, and provides protective mechanisms to ensure that communal residents do not lose land through foreclosure by making provisions for 'rights of first refusal' to community in the first instance[15].

As has been the case with the Communal Land Rights Act, critical questions are being asked about transfer of land to Traditional Councils. The basis of the argument is legal statuses of majority of the traditional councils as provided for in the Traditional Leadership and Governance Frameworks Act, 2003 (Act 41 of 2003) and the provincial traditional leadership laws enacted in 2005. Section 28(4) of the Traditional Leadership and Governance Frameworks Act provides that

> "Any tribal authority that, immediately before the commencement of this Act, had been established and was still recognised as such, is deemed to be a traditional council contemplated in Section 3 and must perform the functions referred to in Section 4; provided that such a tribal authority must comply with Section 3(2) within one year of the commencement of this Act".

Section 3(2) of the TLGFA provides that 40 per cent of the members of a Traditional Council must be elected, 60 per cent are to be appointed by the senior traditional leaders, and 30 per cent of the members of Traditional Counicls must be women. According to Community Law and Society institute at the University of Cape Town, based on their research on elections of the traditional

[15] DRDLR (2013) Presentation at a policy workshop Stellenbosch

councils accross South Africa , most of the Traditional Councils in South Africa were not constituted in terms of the TLGFA. In addition, the CPAs annual report of the DRDLR (2012) shows enormous challenges confronting CPAs[16]. Therefore any policy to transfer governance powers to the CPAs should consider the existing cchallenges and the capacity of government to provide support to the CPAs.

(b) Land tenure security in commercial farming area

Two main policy instruments to address the question of tenure security for people living on privately owned farms exist; namely, the Land Reform (Labour Tenants) Act, 1996 (Act No 3 of 1996), and the Extension of Security of Tenure Act (ESTA), 1997 (Act No 62 of 1997). Labour Tenants Act provides for security of tenure for labour tenants and those occupying or using the land as a result of their association with labour tenants. ESTA provides for mechanisms to facilitate long-term security of land tenure and to regulate the conditions on and circumstances under which the right of persons to reside on land may be terminated. Post 1994, both illegal and legal evictions continued to be the order of the day on some commercial farms in South Africa. A survey conducted by Nkuzi Development Association (a land rights NGO based in Limpopo) and Social Surveys (in Johannesburg) found that approximately a million people were evicted from farms between 1994 and 2005[17]. During that period, more black people were evicted from farms than provided with access to land through all land reform programmes combined. In recent years, the DRDLR, through the Land Rights Management Facility managed by a consultant legal firm, Cheadle Thompson & Haysom Inc Attorneys, was able to keep data about eviction cases referred to it. The 2011/12 Report on the performance of the Land Rights Management Facility shows that 433 mediation eviction cases were dealt with whereas a total of 907 legal cases of evictions were referred to it[18]. The project however can only keep stats of cases referred to it. There is a need for an extensive survey of the extent of evictions since 2005 to date.

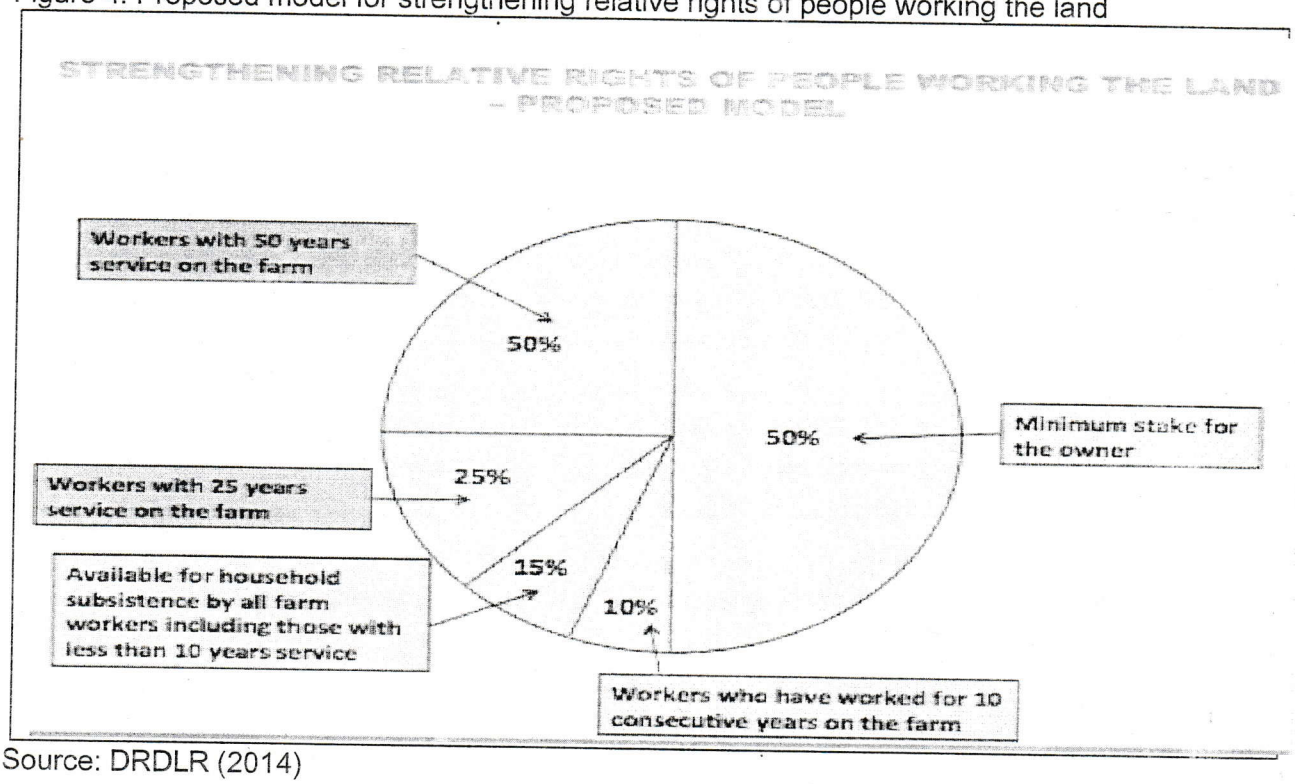
The programme has been weakened by lack of dedicated budget for the programme, disestablishment of ESTA officers' positions; and lack of provision of long-term independent tenure as envisaged in Section 17 of the LTA and Section 4 of ESTA. Despite the challenges, access to land by farm dwellers/workers is facilitated through other programmes of land reform. The programme and legislative mechanisms have been widely criticised for failure to create a class of farm dwellers that cannot be evicted. In 2001, government acknowledged that both LTA and ESTA were failing to protect the rights of farm dwellers. A review of these laws was then launched but was never concluded until the 2011 Green Paper on Land Reform processes which resulted in a new proposal for land tenure security for commercial farming areas. In the absence of amendment of LTA and ESTA, realisation of tenure security and human rights for people living on commercial farming areas is a continuous struggle.

The outcome of the Green Paper of Land Reform consultation process has been a policy known as the "Strengthening the relative rights of people working the land", initial draft published on 30 July 2013. The following discussion is based on a draft of February 2014. The policy can be seen as "a

[16] DRDLR (2012) CPAs Annual Report
[17] Wegerif et al (2005)
[18] DRDLR (2011) Land Rights Management Facility Report

system of collective ownership, based on relative equity holdings", targeting those living and working on farms. Figure 4. summarises the model for the proposed policy. The overall policy proposal is that farm owners should share 50% of their farms with farm workers/dwellers. When government purchases the 50 per cent of the land from the historical owner, it then transfers he fund to the Investment and Development Fund (IDF) which would be representative of all the equity holders. The gist of the policy is that a system of equity sharing based on each individual worker's period of 'disciplined service' on the farm. The notion of 'discipline service', which defined in terms of a "regime of duties and responsibilities historically obtaining on the farm"[19], could be problematic especially in the South African context in which the marginalised continue to struggle for enforcement of their rights.

Figure 4: Proposed model for strengthening relative rights of people working the land



Source: DRDLR (2014)

The proposed mode model states that 50% of the land should be retained by the 'historical' owner. The labourers would obtain 50% share-equity of the land in proportion to their contribution to the development of the land. The share of the workers is distributed as follows:

- Workers with 10 or more but less than 25 consecutive years of service are entitled to 10 per cent of the workers' share.
- Workers with 25 or more years of service are entitled to 25 per cent of the workers' share
- Workers with 50 or more years of service are entitled to 50 per cent of the workers' share
- All households on the farm will have access to 15 per cent of the entire workers' share for subsistence

It should be understood that the policy is a final draft for public comment. It therefore rightfully

[19] DRDLR (2014) Policy Proposals on Strengthening Relative Rights of people working the land.