



Searching for the Elusive Success: The Politics and Hurdles of Post 1999 Land Reform Policy in South Africa

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Abstract

The central aim of the paper is to understand the dynamics of land reform policy process in post-apartheid South Africa (1994) and the challenges facing the policy process in South Africa between 1999- present. This analysis is done against the back-drop of two key policy innovations initiated in post-1999 namely the land reform for agricultural development (LRAD) and the communal land rights bill (CLR). Land reform for agricultural development aims to build a class of black commercial farmers in an attempt to de-racialise the agricultural sector and also achieve a more comprehensive agrarian reform in rural South Africa. The second policy innovation namely the communal land rights bill aims to establish a system of freehold tenure system in the former homeland in an attempt to trigger rural development which is currently impeded by the insecurity of tenure systems, ineffective administrative systems, boundary disputes and the breakdown of permit systems in rural South Africa.

The first part of the paper will discuss the normative and broader limits that define the current parameters of land reform policy in post-apartheid South Africa. Its leverage to engender a revolutionary change in the patterns of land ownership and agrarian transformation is circumscribed by the limits of South Africa's political economy of transition on the one hand and the incapacity of state institutions to effectively implement the vision of the land reform policy. The second part of the paper will discuss the radical change in policy orientation that was initiated in 1999 which was partly informed by the structural, ideological, resource based and institutional impediments that generated the slow pace of progress land reform had under gone through between the year 1994- 1999. Incidentally, the new policy innovations echo similar innovations albeit with little success other African countries had adopted. A comparative analysis with Kenya's 1954 Swynnerton plan will be discussed against the back-drop of the current policy changes in South Africa.

Introduction

Land reform is essentially a state initiative to modify, redirect or even change rights, usage and relations on the land especially in the rural areas. It has been a persistent feature of change in the 19th and 20th centuries. Since World War II, land reforms have been undertaken as governments have come into office under the impetus of revolution, military defeat, the ending of colonial rule or a broadening of internal democracy. South Africa is not an exception to this trend. Hence, the land reform programme needs to be understood against the backdrop of broader state and societal processes of democratisation processes in post-apartheid South Africa.

The end of the Cold War both coincided with, and was a significant contributing factor to the decision of the apartheid regime to begin the long process of ceding power to the



ANC. This profoundly transformed international order had crucial determinate effects on the place and role of the South African state in global strategic relations. The end of the Cold War also forced the two sets of institutional actors in South African politics; the apartheid state and the ANC, to reinvent their worldviews. With both sets of actors long frozen in the most rigid of Cold War postures, neither was well equipped to confront the new challenges of the evolving post-Cold War global order (O'Meara 2000). In late 1992, as it became clear that the ANC and the Democratic Movement on the one hand, and the forces of the apartheid state and capital on the other, could not budge one another, a compromise was required. After much blood was shed, the deal arrived at contained two essential elements. First, at the political level, "sunset clauses" (September 1992) and a highly constrained Interim Constitution (November 1993) paved the way for a Government of National Unity and an excessive degree of federalism (devolution of responsibilities) to a largely new provincial tier of government. Second, the transitional compromise included the implementation of free-market or neo-liberal economic policies at the national and local government levels (Bond and Ruiters 2000:1).

These global changes have had a decisive influence on the options open for the new post-apartheid state in transforming the legacy bequeathed by apartheid. Notions of state led and demand driven developmentalism have gradually been marginalised. The redress of deep class, racial, gender and spatial inequalities has come increasingly to depend on a notion of economic growth premised on fiscal discipline, containment of public spending and strengthening business confidence. This shift was expressed in the GEAR strategy in 1996. The strategy subordinated, in particular, the expansion of public spending and state intervention within the development sphere (Barchiesi 2001; Levin 1997b). The genesis of this shift articulates South Africa's gradual move away from a desire to pursue a state led developmental model to that of a market led developmental model. Within the framework of the new democratic government, the resolution of the land and agrarian question has become part of a broader project of forging a national consensus through national reconciliation. However, as aptly put by Levin (1997b: 6-7), such a broader project is being constructed through a conception of reconciliation, which constitutionally entrenches private property rights established during the colonial and apartheid eras. The adoption of a market led land reform signified a triumph of neo-liberalism in the land debate in South Africa (Levin and Weiner 1997: 6-7) but equally set into motion the inherent limits of the policy in dealing with the skewed ownership patterns of land in post-apartheid South Africa.

One of the key macro-limits facing the land reform process in South Africa is based on the limited political will of the current government to stretch its resources to implement the policy. The budget allocated to the land reform programme equally articulates the kind of limited political attention accorded to this process. The current budget for land reform is well below R 1 billion a year. With this kind of allocation, only insignificant inroads can be made into a demographically proportionate transfer of land to African commercially oriented farmers or the landless and unemployed. This budget cannot in any meaningful ways effect a comprehensive re-configuration of the balance of forces within the rural areas of South Africa. As noted by Lafiff (2001: 1), even where the



monies are available for the programme, the Department of Land Affairs (DLA) has routinely failed to spend its budget (less than one-quarter of one per cent of the national total), resulting in reduced funding being made available by the treasury for 2001/02. This has generally been attributed to severe lack of capacity particularly in terms of quality and quantity of staffing, in national and provincial offices of DLA and the Commission on the Restitution of Land Rights (CRLR).

Worse still, the adoption of a market led land reform signified a triumph of neo-liberalism in the land debate in South Africa (Levin and Weiner 1997: 6-7) but equally set into motion the inherent limits of the policy in dealing with the skewed ownership patterns of land in post-apartheid South Africa. Hence, the potential for far reaching land reform is restricted by current initiatives stressing market forces as chief mechanism for land redistribution. Many rural people are unable to purchase land at market value, even with the assistance of the settlement/land acquisition grant. In order to address the land and agrarian questions, land reform policy and implementation processes need to move beyond neo-liberal market-based approaches to address the fundamental questions related to power relations in rural South Africa (Mohamed 2000:165).

Hendricks (2001: 298-299) points to a much more pessimistic future when he notes that Clause 25 of the Bill of Rights establishes property rights under which nobody may be deprived of their property. Hence while blacks are now allowed to own and dispose of property freely in the country as a whole, that right is significantly circumscribed by the truncated possibilities for its realization, as whites still own the bulk of fixed property in the country. The redistribution of land to the rural poor under these conditions is therefore a fraught process.

Within this context, one needs to realise that the resolution of South Africa's land question is ultimately a political question. It is concerned with who has control over the land in the country. Based on this context, one would query whether a programme of land reform premised on negotiation can succeed. Deininger (cited in Hendricks 2001:300) suggests that negotiated land reform must be made to work because the alternatives have not proven successful at all. His argument is premised on the understanding that such negotiation can only succeed through an open market, and involving the private sector in implementation. Market-driven approaches in macroeconomic strategy, corporatist solutions, and redistributive aims are some of the competing imperatives that shape the overall thrust of the land policy in South Africa (Hendricks 2001: 300).

There is an increasing consensus around the limits of South Africa's land reform programme. Land reform has remained a marginal issue during the transition and consolidation of the democratic process. One of the implicit aims of the land reform programme has been to maintain stability in rural areas, contain any political destabilisation and consolidate the land market. For instance according to the Strategic Plan for South African Agriculture, the key aim of dealing efficiently with land reform is to ensure rural stability and market certainty (Greenberg 2002:16).



The institutional mechanisms established to implement the land reform programme are also highly underdeveloped. This has stifled the rapid pace of land reform implementation. This is evident in the first years (1994-1999) where the Department of Land Affairs (DLA) fell far short of the objectives it set itself, let alone the ambitious targets implied in the World Bank's models of distributing 30% of agricultural land within the first five years. An official review of the Department's work described it as a "highly centralized and fragmented bureaucracy", characterised by "poor race relations" and a high black staff turnover (Hall and Williams 2000: 1).

For instance by the year 2000, 340 redistribution projects had been carried through to land transfer. These involved the transfer of a total 663 373 hectares of land to 37 091 households, of which 14% were female headed (Ibsen and Turner 2000). Within the restitution pillar, a total of 63 455 claims were lodged with the commission on Restitution of Land Rights. By 31 March 2000, the commission had settled a total of 12 094 claims. The total number of households that had benefited from the process was 27 385 with a total of 164 661 beneficiaries in total (South Africa, Commission on Restitution of Land Rights 2001: 9). Tenure reform is the third leg of the government's land reform programme. Tenure policy remains undeveloped and contested in relation to developing a tenure bill. Some laws affecting tenure have been passed, the most significant of which are the Land Reform (Labour Tenants) Act, the Extension of Security of Tenure Act and the Communal Property Association Act. None of these laws, however, deals with the complex system of administering tenure in the former homelands and state-owned land that is the result of a myriad of inconsistent laws, proclamations, regulations and procedures. This is compounded by the gradual erosion of the administrative systems over many years as a result of the contestation of traditional authorities and their lack of budgetary resources to carry out these functions (Hornby 2000:312).

These sets of problems led to a fundamental rethinking on the part of the Department of Land Affairs on the need to initiate new radical reforms that would address the current policy inertia. By mid-1999, the tension between the limitations, on the one hand, and the ambitious goals of these programmes on the other, had become so severe that a fundamental re-thinking of many aspects of policy was clearly necessary. This was widely recognised in the rural sector despite the significant increases in delivery of land under both redistribution and restitution, which were beginning to be evident in the annual reports of the Department of Land Affairs (Cousins 2000: 2-3). A ministerial review on land restitution was completed, and far-reaching changes in the administration of the programme were initiated in 1999. A systematic attempt to adjust redistribution policies and procedures to achieve a better fit between complex rural realities and the "products" of the department were under way, and the issue of integration and improved co-ordination within government at large was acknowledged as crucial if more equitable access to land was to serve the goals of agrarian reform and meaningful rural development (*ibid.*). Despite all these challenges, new policy initiatives aimed at creating a commercial stratum of black farmers were proposed by the Department of Land Affairs in February 2000.



The change in policy was also a reflection of the change in leadership structure that had taken place in the Department of Land Affairs. With Thabo Mbeki taking over the presidency in 1999 from Mandela, there was a renewed focus on the need to consolidate a conservative macro-economic policy framework, with its driving force, market liberalisation as the driving force in the development process. The key focus of Land Affairs Minister Derek Hanekom during the period 1994-1999, had been to direct state resources towards the rural poor and the landless, and to focus on reform at the grassroots level. Hanekom's attempts to make poor black people the beneficiaries of land reform did not correspond with Mbeki's vision of making South Africa the engine of the African Renaissance and of building of South Africa as an economic centre of the African continent. He also faced opposition from the predominantly white South African Agricultural Union and the predominantly black National African Farmers' Union. Both of these farmers' unions wanted to foster a black commercial farming class, a priority that they shared with Didiza but not with Hanekom (Greenberg 2002).

Hence the Minister of Land Affairs and Agriculture, Thoko Didiza, in February 2000 initiated a policy document entitled *Strategic Directions on Land Issues*. The cardinal focus of the policy is to gradually change the structure of the South African agriculture by opening up opportunities for a significant number of black commercial farmers to operate on medium and large-scale farms.

Minister Thoko Didiza, in her policy statement (2000), argued that land reform could not succeed unless it was approached in an integrated fashion. This required coordination and joint planning by relevant departments, and in particular joint planning and policy development in the Departments of Agriculture and Housing. The new policy initiatives were set against the backdrop of the limitations that existed within the three pillars of the current land reform briefly dealt with successively below.

Previous recipients of the settlement/Land Acquisition Grant can apply for a new grant under the new programme, although preference will be given to those who have not received any previous support. As an integrated facility, the new programme is intended to assist low income, small-scale household producers as well as emergent black commercial farmers. This is envisaged to be a joint programme of DLA and the Department of Agriculture with a heavy emphasis on the role of the latter (South Africa, Department of Land Affairs 2000; Cousins 2000).

For restitution, the government notes, there is a need to assess the current policy on the award of financial compensation in cases where restoration of land is not feasible, as well as current methods for determining compensation due. The current approach, if left unchecked, has financial implications that would make restitution unsustainable in the medium and long term, as well as restitution taking longer than is politically acceptable (South Africa, Department of Land Affairs 2000).

Given this context, it was argued that the priority for the years 2000-2001 would be to speed up the settlement of restitution claims and review the current method of calculating



monetary payments. It was also noted that there was need to reduce administrative cost through closer collaboration with other relevant departments and restructuring of the restitution process to enable speeding of claims. There was a need to come up with an integrated approach to restitution policy that would encapsulate development concerns as integral issues to achieve in the process.

As far as tenure reform is concerned, there was need to achieve uniformity in the system of land administration and land holding. Therefore an initiative of rationalising and consolidating legislation dealing with tenure reform was commissioned, including a controversial Communal Land Rights Bill. Within the redistribution programme, it emerged that the structure and the implementation of the settlement land acquisition grant (SLAG) and other redistribution projects had several limitations that impeded the attainment of objectives as set out in the White Paper on South African Land Reform Policy (South Africa, Department of Land Affairs 1997). One of the limitations noted was that the current approach had not permitted a full realisation of land reform policy objectives as envisaged in the RDP document. The programme as a whole was not embedded within the broader strategy of achieving an integrated rural development in the rural areas. Delivery of land was prioritised over agrarian transformation under the old programme.

The placing of responsibility on market forces as a core redistributive factor had not produced the desired effect and impact. This had limited the level of choice, suitability and quality of land parcels acquired for the beneficiaries of land reform programme. The manner in which the process had been structured had impacted on land prices, and the department of land affairs had had to pay inflated prices for marginal land. This had brought about unintended consequences, which had impacted on the land reform programme. The grant programme in its current form had not made any significant contribution to the development of semi-commercial and commercial black farmers. This created very little new rural employment. Nor did it transform the racial character of agricultural land holdings (South Africa, Department of Land Affairs 2000). Hence the new policy had to take into account the different needs of beneficiaries.

New Policy Changes: 2000 and Beyond

The Land Redistribution for Agricultural Development sub-programme (LRAD)

The land redistribution for agricultural development (LRAD) sub-programme aims to transfer 30% of the nation's medium and high quality agricultural land to blacks over the next 15 years. The total cost of the programme is estimated at R 16-22 billion. The programme aims to be a single, integrated facility for redistribution (South Africa, Ministry of Land and Agriculture, 2000).

LRAD is designed to provide grants to black South African citizens to access land specifically for agricultural purposes. The strategic objectives of the sub-programme include: contributing to the redistribution of 30% of the country's agricultural land over 15 years; improving nutrition and incomes of the rural poor who want to farm on any



scale; de-congesting over-crowded former homeland areas; and expanding opportunities for women and young people who stay in rural areas (South Africa, Ministry of Land and Agriculture, 2000: 5).

The LRAD is demand driven-driven in the sense that beneficiaries define the project type and size they want to pursue and the implementation of the projects will be de-centralised at the district level. LRAD encourages participants to design what works best for them and the target beneficiaries are supposed to make a contribution (in kind or cash) based on their abilities (South Africa, Ministry of Land and Agriculture, 2000:5).

Beneficiaries can access grants under LRAD on a sliding scale, depending on the amount of their own contribution in kind, labour, and/or cash. Every beneficiary individual makes at least the minimum contribution in cash, labour, and/or kind. Those who make the minimum contribution of R5 000 receive the minimum grant of R20 000. Those who make a higher contribution of own assets, cash, and/or labour receive a higher grant, determined as a basic proportion of their own contribution. The grant and own contribution are calculated on an individual adult basis (18 years and older). If people choose to apply as a group, the required own contribution and the total grant are both scaled up by the number of individuals represented in the group. The approval of the grants is based on the viability of the proposed project, which takes into account total project costs and projected profitability (South Africa, Ministry of Land and Agriculture, 2000:7).

Own contribution by beneficiaries in labour can be for up to R5 000 per applicant (individual). In order for the applicant to claim the full R5 000 in own labour towards the own contribution requirement, the business plan must show evidence that the applicant intends to devote a significant amount of own labour towards the establishment and operation of the project. The contribution in kind could be calculated by costing assets such as machinery, equipment, livestock, and other assets that a beneficiary may possess. The cash contribution can be in the form of one's own cash contribution to the project, or borrowed capital, or some combination of the two. These three forms of own contribution can be added in any combination to make up the required own contribution from the beneficiary (*ibid.*). The grant given to the participants is meant to cover expenses such as acquisition of land, land improvements, infrastructure investments, capital assets and short-term agricultural inputs.

For the experienced and well endowed farmers, the total project costs can range up to R500 000 or higher, of which the grant can cover up to R100 000. The remainder (about R400 000) would be financed through a combination of normal bank loans approved under standard banking procedures, and own assets and cash. Farmers choosing this option would have to possess managerial skills adequate to handle the debt, as well as prior experience in agriculture. Land would be either owned or leased on an individual or household basis (*ibid.*).

Under the LRAD, four broad sub-programmes have been initiated. The first programme



is the Food safety-net projects. These programmes will give the participants, the opportunity to access land for food crop and/or livestock production to improve household food security. This can be done on an individual or group basis. These will be small-scale projects since poor people will only be able to mobilise the minimum own contribution in cash, labour and materials (South Africa, Ministry of Land and Agriculture, 2000: 5).

The second programme, equity schemes are aimed at aiding the participants to receive equity in an agricultural enterprise tantamount to the value of the grant plus the own contribution. These schemes are targeted for people actively and directly engaged in agriculture, the grant recipient in the case of the equity scheme will be both a co-owner and employee of the farm.

Production for markets is the third sub-programme of LRAD. This is aimed at commercial agricultural markets. Participants in these programmes will access the grant and combine it with normal bank loans, approved under standard banking procedures, and their own assets and cash to purchase a farm. These farmers will typically have more farming experience and expertise than those accessing land for subsistence or food-safety-net-type activities (South Africa, Ministry of Land and Agriculture, 2000:5).

Agricultural initiatives in the communal areas are the fourth sub-programme of the LRAD. These programmes are meant for people living in the communal areas. People in the communal areas have access to agricultural land, but may not have the means to make productive use of that land. Such people would be eligible to apply for assistance so as to make productive investments in their land such as infrastructure or land improvements (South Africa, Ministry of Land and Agriculture, 2000:5).

As far as gender concerns are concerned, the LRAD notes that the new initiatives provide an excellent vehicle for redressing gender imbalances in land access and land ownership, and thus in improving the lot of rural women and the households they may support. Under the Agricultural Development sub-programme, adult individuals can apply for grants in their own right, rather than as members of households. This means that women can apply for grants to acquire land individually, or can pool their grants with which they choose, thus augmenting their control of the manner in which they benefit from the sub-programme.

However, in order for the sub-programme to accomplish its overall goals in respect of women, it must ensure that women are able to participate on an equal footing with men in the course of all aspects of implementation. For instance women only projects are to be encouraged and in terms of targets, not less than one third of the transferred land resources must accrue to women (South Africa, Ministry of Land and Agriculture, 2000:6-7).

Successful applicants in these projects will be expected to participate in training courses and activities designed to assist them in successful operation of their farms and gardens.



Beneficiaries will be allowed to graduate from smaller to larger farms, and will be able to access LRAD to facilitate investment to increase scale. Those who have previously accessed the Settlement/Land Acquisition Grant (SLAG) are eligible to apply, though priority will be given to first-time applicants (South Africa, Ministry of Land and Agriculture, 2000: 11).

A Critique of the Land Reform for Agricultural Development (LRAD)

The new policy initiative aims to deracialise the agricultural sector, which in the past the land reform policy was unable to do so. Given the fact that approximately 55 000 white farmers currently own 102 million hectares of land, side by side with 1.2 million small scale farmers who share about 17 million hectares in the former homelands, one would accord credence to the underlying objectives of the new policy. However this exercise has the potential of accentuating and re-configuring new and complex forms of “gender and class based rural inequalities”, which run against the RDP objectives, and most importantly, against the intended integrated rural development framework.

These justifiable objectives are set within the current maze of institutional, resource and ideological challenges, which have subsequently locked the policy in a state of inertia, when measured against its anticipated outcome. Most of these challenges were identified during the pilot phase of the programme in 1996, and similar criticisms were leveled at the government Green Paper (1996) and White Paper on South African Land Reform Policy (South Africa, Department of Land Affairs 1997). After five years of experience with the present land reform policy, a consensus has emerged that the current policy in practice is unable to reflect the objectives of the RDP in achieving rural development and stimulating agrarian transformation. In essence, the programme has failed to generate “an engine of growth” for rural economies, which remain in sheer stagnation. The complex procedural nature of the policy itself has tended to disenfranchise rural communities, who are unable to appropriate the policy tenets to their own gain.

The new policy directive clearly points out the need to create a class of black emerging farmers. This is informed by the need to go beyond the notion of land transfer and delivery as the final product of a land reform process. The notion of a land transfer and delivery has had the effect of disengaging the programme from a broader framework of agrarian transformation. The subsequent effect has been that community beneficiaries are unable to engage in viable agricultural ventures, which to date have remained a key domain of white farmers. The observation made in the new policy document is worth noting. However, the extent to which these new initiatives would close the inequality gap in the rural areas remains a salient and controversial issue.

The LRAD envisages a hierarchy of black farmers who are characterised as ‘subsistence’, ‘semi-commercial’, ‘pre-commercial’ and ‘commercial’. It is hoped that state interventions will assist large numbers of people at the subsistence level (Hall and Williams 2000). The policy makes a false dichotomy between commercial, “market based” agriculture, on the one hand, and farming as a “food safety net” on the other. With a lineage as old as colonialism, this stereotype of African agriculture is an attempt to



separate the mass of “backward peasants”, farming on household plots in the reserves, from “progressive”, market-oriented farmers who deserve to own land under individual title and to receive support from the state (Cousins 2000: 2).

The new policies have an inherent class bias, in the sense that they target a calibre of well-resourced and skilled farmers. For instance the target beneficiaries are expected to choose the grant they want, engage a design agent, enter into a contract, apply for a bank loan, come up with a proposal report among other lengthy bureaucratic imperatives etc. These assumptions are invalid since they operate on the basis that local communities have the capacity and sophistication to effectively appropriate the processes set forth in the new programme.

Limited provisions and strategies on how the current programme orientation in responding to the needs of small-scale farmers can be done are inadequately discussed. State and private sector extension services, are presumably expected to provide for black commercial farmers as they have always provided for whites (Hall and Williams 2000). The new programme assumes that commercial banks will provide the bulk of the finance for the emergent black commercial agriculture that the programme will support. However, since the inception of the land reform programme, commercial banks have shown little inclination to offer credit facilities. Unless there are radical changes in the economic outlook of the sector, their attitude is unlikely to change (Ibsen and Turner 2000: 41).

The new strategy aims to provide for large, medium and small commercial farmers and for subsistence producers. Land for settlement, commonage and non-agricultural production activities will be dealt with under different policies though, without more specific provision, they may find the necessary finance wanting. Budgets are unlikely to be committed to their implementation (Hall and Williams 2000). Moreso, invited participants from black and white commercial agriculture, financial institutions, agribusiness, NGOs and trade unions, and uninvited rural communities, were divided about the policy and its priorities. National African Farmers Union (NAFU) looked to the state to make state and private land available to African farmers, and called for expropriation of private land, to the alarm of Agriculture SA. The National Land Committee wanted government to acquire and allocate land in a supply-led approach, but did not regard expropriation as its first option. They all complained about the Department’s lack of genuine consultation on the new policies they were being asked to implement (Hall and Williams 2000, Lahiff 2001: 5). Greenberg (2002: 16) for instance notes that commercial agriculture, organisationally restructured into AgriSA, has continued to exert significant influence over the policies of the post-apartheid government. Land transfer and support to black farmers is thus occurring on the terms of the white commercial farming sector. That is, black farmers are to become commercial farmers and integrated into existing networks of agricultural production and distribution. As such the process of land reform is being designed to ensure that no real threat is posed to the core interests of export-oriented agri-business. This is in line with the neo-liberal approach adopted by the government.



The new policies reflect government's unwillingness to acquire land for the majority of rural South Africans (Hall and Williams 2000) but rather to a few rural elites. For instance, Cousins (2000:2) aptly notes that what is worrying in the new programme is the balance of resource allocation between the relatively well-off, but currently small interest group, and the millions of poor households living either in the former Bantustans or on commercial farms. Current estimates of commercial farmers stands at 20 000 to 30 000. This is a paltry number compared to the bulk of the rural poor who seem invisible in the new policy initiatives. In addition, as argued by Ibsen and Turner (2000:41), the new programme is not attuned to the realities of rural livelihoods, which incorporate farming as just one strand in a bundle of household livelihood strategies. In fact fewer and fewer existing commercial farmers depend on agriculture alone. Rural livelihoods tend to be multiple and complex in nature. Demand for land as a source of security, resident site are as important as other less sources of livelihoods such as wage labour from the formal and informal labour market. Hence, targeting agriculture as a key economic strategy underestimates the plural nature of livelihoods strategies in rural South Africa.

Despite the barrage of criticism levelled at policy, the Department of Land Affairs seem steadfast in retaining intact the priority to commit resources to altering the racial profile of the commercial agricultural sector, which is itself in crisis. As in 1994, the new policy combines a change in discourse with institutional continuities, and a return to strategies that have been tried, tested, and often failed elsewhere or in the past (Hall and Williams 2000). Key institutional questions of procedures and capacity remain to be streamlined in this programme. There is little proof that the national or provincial Departments of Agriculture have the staff or the experience to take on the roles that the LRAD is creating for them. Past institutional experience with the DLA shows that it takes a long period of time to develop the procedures for a new programme and make them work smoothly. There is also a significant risk of abuse in the new programme's heavy dependence on the private sector (Ibsen and Turner 2000: 41, Lahiff 2001:5).

The new policy initiatives equally presume that interested community members would have the capacity to appropriate the policy to their own gain. However, this assumption is misleading in the sense that most community members, in particular those who are not accessible to the NGOs, often end up been unable to partake in such policy initiatives. Rural communities need to be capacitated in order to make sure that the support services opened to them are utilised effectively and in a sustainable way. It is the well-informed community members who benefit from these initiatives and not the poorest members of the community. The need to capacitate not only communities but also civil society organisations so that they can widen the "geographical spread" of their operations is an essential prerequisite, should communities be expected to partake in at least the first window of the redistribution grant. The implication therefore is that class polarity would increase in the event of this process. As aptly noted by Lahiff (2001:5), a key disadvantage of demand-led targeting is that the participation requirements will tend to favour those who already have a reasonably strong asset base, and will tend to exclude



those who have none. If the poor prove to be systematically unable to meet the requirements set by DLA, they will be left out of the land redistribution process process.

It is envisaged that developing a class of black farmers would generate a positive linkage effect in rural economies. It is stated that, “increased agricultural production and employment will strengthen linkages between farm and off-farm income generating activities” (South Africa, Department of Land Affairs 2000: 6). However under the current agricultural support infrastructures one finds in South Africa, this increase is bound to be very incremental.

This is because of the historical spill-over effect of some of the skewed agro-policies that were in operation within the agribusiness during apartheid, which enabled white commercial agriculture to thrive though not with optimum production, despite the support it was accorded. Complementary agri-support infrastructures such as credit, cooperatives, extension services and infrastructural developments are bound to be some of the overriding handicaps with which a “black emerging farmer” will have to grapple.

To achieve an agrarian transformation in rural South Africa, there is an urgent need to address and restructure the broader agri-based support services in order to respond effectively to the challenges faced in nurturing a class of black emerging farmers in South Africa. In other words the balance of power within the agri-business needs to be appraised in favour of all stakeholders within the agri-industry. Under the current neo-liberal economic framework, smallholder agriculture is only likely to be a success story among the well-resourced farmers. If the poor communities are to succeed in this venture, one needs to go beyond the financial inducements the three windows of redistribution are set to offer and look at how functional the current neo-liberal economic climate is in supporting such a venture in the long-term period.

The current policy inertia finds itself locked in within an institutional quagmire in its implementation stage. The attainment of an integrated land reform strategy under the present institutional arrangements is a distant chimera. The new policy guidelines acknowledge these institutional anomalies. The need to decentralise land reform process and implementation should be prioritised simultaneously with the other policy changes. The need to develop vertical and horizontal institutional linkages and decentralise implementation to the district level may offer a worthwhile starting point for communities to effectively engage with the government at its lowest tier.

For instance, the programme assumes that inter-departmental collaboration will take place at all spheres of government assuming a key role. Projects are supposed to take place in consonance with district and provincial spatial development plans. But in the end, LRAD appears to represent a retreat from the district level planning of land reform towards which DLA had been moving, and the potential for integrating this process with broader district level development planning. It is not clear how provincial level decision making about redistribution will be articulated with district level processes. The latter remain set to become the principal vehicle for development planning and management



(Ibsen and Turner 2000: 41).

In South Africa, the current policy shift geared to create a class of black commercial farmers is a credible initiative given the demographic imbalances that exist within the agri-sector. However, this new initiative is bound to throw the initial objectives of the programme into further disarray. Creating a class of black commercial farmers will in essence “dovetail” into already existing patterns of social inequality as exemplified in the dichotomised agricultural sector (small and large scale farmers divide) evident in the rural areas. Most importantly, creating a stratum of black commercial farmers without unlocking the imbalances of power in favor of all within the agri-economy will only perpetuate the existing biased agrarian structures in favour of white commercial farmers.

Given the current country’s macro-economic strategy (GEAR) as evident in its “liberalised agricultural sector”, the success of the black commercial farmer is bound to be a daunting challenge for South Africa. The logic of Apartheid system within the agri-sector was to destroy the black commercial farmer. This was evident in the skewed agro-support services that were established by the system. The double challenge for the current government therefore is not only to unlock this historical “structural constraints” within the agrarian economy but to also “re-orient” the current macro-economic climate to be more sensitive and responsive to the needs of small-scale black farmers in rural South Africa.

The new policy is not informed by lessons learnt from other countries that have attempted to build a stratum of black progressive commercial farmers such as Kenya. The conceptions underlying the new strategies recall the Kenyan land reform, on which the World Bank modeled its proposals for South Africa. This distinguished between ‘commercial’, ‘yeomen’ and ‘peasant’ farmers, all above ‘subsistence’ level. The proposal is unrealistic in assuming that there is a definite relation between scale, commercialization and full-time farming. For example, producers with access to small areas of irrigated land and markets for their produce may well grow vegetables intensively and buy their staple food. The most successful commercial farmers often drew on past or present earnings from salaries of business activities. One reason for the failure of policies to promote ‘yeomen’ farmers in Kenya was that they operated on a scale too large to manage family labour based smallholdings and too small to enjoy the economies of scale of large owner-managed capitalist farms (Williams and Hall 2000:14).

In Kenya a class based land reform model that centred on the progressive farmer has been a critical political consideration that has driven the process through since the early 1950s. For example, the implementation of the Swynnerton plan in the 1950s, the low-density scheme and the high-density scheme (or the Million acre scheme) in the 1960s was a political ploy to pacify rural unrest by creating a landed gentry. This was a political strategy to reconcile competing and conflicting needs of the constituents involved during Kenya’s transition to independence.



The Swynnerton plan contained a strategy for the development of a class of progressive farmers. The plan also provided for the development of crop and livestock production for the market through the provision of agro-support services to a class of progressive farmers. This plan gave African farmers land titles for the first time and created an African elite with a vested interest in the economic status quo. It was argued that giving the African farmer security of tenure, would enable the landowner to pledge his land as collateral for development of capital. The programme for the small farms in the highlands areas on which the Swynnerton plan concentrated was based consciously on the controlled development of an elite of progressive farmers who would form a solid conservative bulwark against Mau Mau and other political opposition. The plan was for “energetic or rich” farmers to provide employment and increased incomes for the poor who could not generate adequate incomes farming on their land. The logic behind these schemes exemplifies a long held tradition in studies of rural development where it is viewed as a safe and sound investment to concentrate in building a class of progressive farmers to the exclusion of the poor and less able farmers. What lessons does the Kenyan model have for South Africa?

Comparative lessons from Africa (Kenya in particular) on the dangers of focusing on the myth of the progressive farmer seem not to have influenced the current orientation towards emergent progressive farmers in South Africa. The failures of land reform thus far in South Africa give reason for adopting a different approach to those tried by the old regime or put forward by colonial planners in Kenya. These examples suggest that it may prove difficult and expensive to foster and sustain a successful class of ‘semi-commercial’ and commercial black farmers, let alone enable the former to turn themselves into the latter. As aptly noted by Hall *et al.* (2000), the new policy blueprints may fail to realise their goals, as previous plans did in colonial and post-colonial Kenya and in the old and the new South Africa. Even if they were to succeed, in their own terms, the policies may not quell the demand for land and the social conflict associated with it.

The commercialisation drive which has come to characterise the post-2000 land reform policy shift is also evident in the current controversial Communal Land Rights Bill, 2002, which will attempt to fragment communal land ownership in favour of individual freehold.

Communal Land Rights Bill, 2002

The current impasse with regard to the role of traditional authorities in land management systems is symptomatic of the contradictions that have come to bedevil South Africa’s democratic process. On the one hand, South Africa’s liberal democracy boosts an impeccable attempt to uphold civic and political liberties while on the other, a wide range of political and social imperatives have compelled the government to accord constitutional credence to tribal authorities. The latter is often viewed as anti-modernist and unable to uphold the virtues of a modern liberal democratic model.

One of the major challenges facing the South Africa land tenure reform question is rooted



in this dialectic. At the centre of such a contestation is the on-going controversy that has come to face the draft communal land rights bill. The key aims of the draft communal land rights bill is to, give effect to section 25 (5), (6) and (9) of the constitution which requires the State to take reasonable legislative and other measures to enable citizens to gain access to land on an equitable basis, give legal recognition to land tenure rights held by communities and their members on communal land in terms of this Bill (Communal Land Rights Bill, 2002).

Administratively, the bill aims to regulate decision-making processes in the management of land tenure regimes and provide for the registration of land tenure rights. These legislative and administrative processes aim to provide in the context of the bill, the overall protection of fundamental human rights contained in the Bill of Rights in the Constitution. These include the right to equality, especially gender equality in respect of the allocation, use of, or access to land, the democratic right of the members of a community to choose the appropriate land tenure system, community rules and administrative structures governing their communal land; and the right to democratic participation by the members of a community in decision-making processes affecting their tenure rights (Communal Land Rights Bill, 2002).

The bill envisions that conflict is inevitable in management of land rights regimes and resource utilisation. To minimise this, the bill aims to provide a framework for land-related conflict resolution processes, and to also provide tenure redress to persons whose tenure of land is insecure due to past discriminatory laws or practices and which cannot be made legally secure. The parties to a dispute regarding a land tenure right can endeavour to settle the dispute in accordance with the relevant customary law or the common law or the community rules, if such law or rule has adequate and fair provision for settlement of the dispute. A dispute, which could not be settled, as stated above be referred to a magistrate's court or the Land Claims Court for appropriate relief (Communal Land Rural Bills 2002).

For communities to be able to manage the land, juristic personality on communities with full legal capacity will be conferred. This will be effected once the adoption of community rules is done and a certificate of registration is issued by the Director-General. The community will be able to acquire rights, have obligations subject to its own rules, acquire, dispose, or lease immovable property. Communities and their members who hold land tenure rights in relation to communal land are entitled to secure tenure of land, as contemplated in this Bill (*ibid.*).

The bill also aims to accord tenure redress, to a community or the individual members of the community whose land tenure rights are legally insecure due to the existence of conflicting land tenure rights. Tenure redress may be in the form of transfer of ownership of additional land, transfer of ownership of alternative land, and any other appropriate assistance for development and the provision of services.

The bill will also confer legal status on land tenure systems and community rules that will



be based on local custom. The overall thrust of these changes, is to enable government to provide institutional, material and technical support by the State to communities in the ownership and management of their land tenure rights, subject to the provisions of the Constitution and this Bill (Communal Land Rights Bill, 2002).

Given the aforesaid, the bill aims to consolidate and provide legal status to the various irreconcilable and competing tenure regimes that exist in South Africa's countryside. Tenure reform has the potential to contribute to a successful land reform but unfortunately it has been one of the least success land reform stories South Africa can anchor on. Creating a unitary system of secure tenure rights has been one of the most daunting exercises DLA has had to grapple with. The proposed draft on communal land rights bill is an attempt to respond to this lacuna. One of the assumptions of the new bill is that there is a need to formalise rights with traditional communities whose land falls under the jurisdiction of state land.

The majority of the rural population in South Africa are still concentrated in the former African reserves, where about 2.4 million rural households (about 12.7 million people and 32 per cent of the total population) occupy about 13 per cent of the country. This is because people were forcibly moved out of 'white' South Africa to the 'Bantustans' without reference to the wishes of the established inhabitants, there is a legacy of severe land pressure and land-related conflict, which has grown in severity since the disbanding of the apartheid system of land administration (Adams 2002).

The context through which the bill flows from is a justifiable one given the level of underdevelopment in South Africa's homeland areas and the organic link between underdevelopment and insecure tenure rights. Officially, land in the homelands belongs to the state. Historically, land in the homelands was administered through a tangle of apartheid legislation, some of which had been enacted from Pretoria and some of which derived from the assortment of "independent" or "self-governing" regimes that held sway in the various bantustans. Some of this legislation has since been repealed. However, to date, its often difficult to determine what laws or regulations pertain to land tenure in a particular part of the country. Worse still, conflicting and overlapping rights in these areas are a thorny issue that remains unresolved. This is due to forced removals of the apartheid era and the consequent overcrowding of many black rural areas (Ibsen and Turner 2000). These confusions link into a wider turmoil over the governance of these areas. The apartheid regime co-opted and perverted indigenous systems of chiefly governance for its own ends, ruling the bantustans through chiefs who were prepared to collaborate. It conflated the ownership and governance of land by using these administrative tools to govern the land that it formally owned. In turn, many chiefs perverted indigenous concepts of their role in land management with their own conflation of ownership and governance. They claimed that the land they administered was their personal property to be allocated to their subjects at their personal discretion (*ibid.*). In the 1990s these systems have become anarchic and dysfunctional, aggravating tenure insecurities in these areas. Certain interim measures were developed to improve the tenure securities of the homeland people in the post-1994 period. In 1996, the Interim



Protection of Informal Land Rights Act (IPILRA) was passed. This aimed to provide protection for the land rights of people living in the former “homelands” against abuses such as the sale of their land by corrupt chiefs (Ibsen and Turner 2000). This bill was intended to be in force for two years but was subsequently renewed in 1998 and 1999 as the legal drafting process continued (*ibid.*).

In the period of the first democratic government, 1994-99, an effort was made to develop the necessary legal and administrative reforms, which would dismantle the apartheid map and secure the land rights of those living in the former homelands. During that period, the debate moved from the transfer of land in ownership to tribes to the granting of statutory rights to people using and occupying the land. The tenure reforms envisaged in the White Paper on South African Land Policy (DLA 1997) were to have been provided for in the land rights bill. The proposed reforms, aimed to upgrade customary rights by giving them statutory recognition without changing their essential customary character (Adams 2001).

Immediately following the general elections in June 1999, the draft Land Rights Bill was shelved. The ostensible reasons for this change in direction were to place greater reliance for land administration on the traditional authorities and thus reduce the burden on the state. Legislation was to have been prepared to transfer state land in the former homelands to tribes. However, this was not forthcoming and in April 2001 the Department of Land Affairs once again took up work on the draft Land Rights Bill (Adams 2001). The defunct land rights bill had proposed that people in the homelands would be given “protected land rights”. The Minister of Land Affairs would remain the owner of the land, but this would effectively be just a legal shell. The protected rights would be under the management control of their holders. The rights holders may form duly constituted groups. Groups would have to satisfy certain criteria with regard to their conformity to constitutional principles, and majority decision making processes would govern their land management. Protected rights could be registered if their holders so desired, although they would exist even if they were not registered. If this bill came into force, it would have conferred protected rights on all those currently holding land rights in the former “homelands” (Ibsen and Turner 2000). The determination of these rights was to be done through a process of consultation, mediation and negotiation that would be facilitated by the new Land Rights Officers and legitimated by new Land Rights Boards. This process would have enabled individuals and groups to determine and register exactly what the content of their land rights was. Complete transfer of land from the Minister to groups of people was also possible under this bill. This would have applied to groups who wanted to register their land in the old regime but could not due to apartheid laws. Hence with the new bill, groups would have been allowed to own the land through a legal entity such as the Communal Property Association (CPA) (*ibid.*).

The other key aspect of the defunct land rights bill was that it had a redistributive aspect. In cases where it was impossible to confer rights in areas where such rights are competing with others, “tenure awards” were to be conferred in the form of additional land. The land rights bill was therefore hailed as innovative in that it avoided the more impossible variants of awarding freehold ownership to everyone in the “homelands”.



(Ibsen and Turner 2000) However, this bill was deemed too controversial to be passed at a time when South Africa was gearing up for the second democratic elections in May 1999. Part of the envisioned controversy centred on the bill's silence on the role traditional authorities had in the envisioned changes in land management systems in the former homelands.

However, the proposed bill, notwithstanding its justifiable aims, fails to take into cognisance the complex nature of democratic based politics that have come to pervade the processes of formalising security of tenure rights within the midst of other informal rights not only in South Africa but the rest of Africa. The debate on the effectiveness and appropriateness of communal rights vis-à-vis freehold tenure has confronted many social scientists in Africa during the colonial and post-colonial epoch. At the centre of the debate is an old ideological inclination that freehold tenure whose origin lies in Western jurisprudence is seen to be more conducive to agricultural development than communal tenure systems, which are seen as anti-modernist to economic development. This kind of dualistic analysis where one form of tenure regime was juxtaposed against the other failed to recognise that communal tenure arrangements could be as effective as freehold tenure arrangements which could actually co-exist with one another within a formalised legal arrangement even though intra and inter community disputes are some of the normative output of such an arrangement. However for Adams *et al.* (2000:112), this narrow view of tenure reform obscures opportunities for reforms which strengthen the land rights of local people and ensure that their land cannot be alienated or otherwise used without their consent, neither by government, nor by “developers” or other third parties.

The proposed Communal Land Rights Bill is highly complex, and un-implementable. Similar to the new policy on land redistribution for agricultural development, the Communal Land Rights Bill fails to learn from countries such as Kenya where attempts to replace communal tenure with freehold tenure have proven extremely costly, complex and contested since their inception in the 1950s.

A Critique of the Communal Land Rights Bill

One of the contentious issues is that the basis for land rights is based on the bill's understanding of the concept of “community.” The draft bill defines rights holders in terms of their membership of “a community”. The community is defined in draft bill in terms of “shared rules”. Unfortunately rural communities in South Africa are a product of the apartheid forced removals where people were dumped in areas under the jurisdiction of chiefs recognised by government. The de facto rights of these people do not derive from “shared rules”, but from the fact of their established occupation and land use, and from acceptance of these by their neighbours (AFRA 2002: 5). The nested character of most systems of communal land rights, within a hierarchy of neighbourhoods, sub-villages, villages, wards, chieftainships makes definition of “community” intrinsically difficult. For instance the bill is unclear as to what the limits of community boundaries should be. The danger in assuming that there exist easily identifiable “communities” with “shared rules” is that this works to shore up the traditional leaders, whom may or may not



enjoy the support of people under their jurisdiction (AFRA 2002: 6).

The draft CLRB makes provisions for the registration of land rights, but does so in a highly confusing manner. This means that registration could undermine the security of tenure of many people, such as those with established occupation who do not apply for registration, or who are refused permission to do so by other community members (AFRA 2002: 7). In relation to the definition of land rights in terms of community rules, these provisions may well allow groups such as tribal elites who wield power in rural communities to manipulate the registration process to their own advantage. The outcome may be that land rights of many people will be undermined rather than strengthened (*ibid.*).

The institutions required for the bill to function effectively are beyond the current capacity government, civil society and communities are able to marshal for its effective implementation. For tenure reform to become a reality on the ground, rights holders need information on their rights and access to a wide range of support systems at local, district, provincial and national level. They will require ready access to government officials or non-governmental agencies to assist them to choose a structure to administer their rights, to resolve disputes, and to assist in setting up systems of record keeping. Monitoring of decision making by dedicated officials is vital, to ensure that rights are respected and community administrative structures do enjoy the support of a majority of rights holders. The experience of tenure security legislation for farm dwellers and labour tenants has proven that rights on paper are often meaningless without dedicated capacity for monitoring and support. The current draft CLRB makes completely inadequate provision for this (AFRA 2002: 8).

One of the key issues like previous legislation is whether the government has the capacity to enforce this bill. Lack of capacity within government and target communities is bound to halt the implementation of this bill. One of the key lessons learnt from the restitution process, is that judicious processes tend to disenfranchise local communities. Communities which are well organised or whose leadership is capable of appropriating the tenets of the bill are bound to benefit at the expense of unorganised communities.

Securing tenure rights to a third of South Africa's population is a credible achievement. However comparative analysis warns us that formalising tenure regime is not a guarantee to improved productivity. The debate on tenure seems to be couched in a technicist mould in the sense that productivity and efficiency within the black agri-sector is taken to be a normative output of freehold tenure arrangements. Without restructuring the agro-support services such as rural agricultural market, access to credit, extension services etc, the envisioned productivity and efficiency hypothesis is bound to be a distant chimera.

Cousins (2002), argues that the draft Bill adopts a wholly inappropriate approach to communal land tenure reform, based on the issuing of land titles, to either groups or individuals, after transfer of ownership from the state. The most extensive land-titling programme has been attempted in Kenya. Beginning in the 1950s and continuing after



independence, communal land was registered in the names of individuals, and title deeds were issued. In addition, group titles to extensive ranches were issued to pastoralists. However, the anticipated consequences of titling have not been achieved.

The complexity of Kenya's land tenure problems was engendered through the 1954 Swynnerton Plan aimed at transforming customary land rights to individual freehold. The twin pillars of the Swynnerton Plan were the institution of freehold land tenure and the selective loosening of restrictions on African cultivation of high-value crops such as coffee and tea. For instance, Adams *et al.* (1999:5 cited in Lahiff 2000: 15) noted that the titling process in Kenya, introduced through the Swynnerton plan did not give rise to distinctive classes of yeoman farmers and did not have the positive impact on production anticipated. High value crops were adopted by a wide range of farmers, not only on the farms of title holders. The statutory registration of title weakened the rights of access to land for women and tenants. Registration did not resolve disputes over land rights. It merely changed the rules by which they were prosecuted among men and between men and women. This is because English tenure downplayed the status and role of women as the actual users of land. Particularly vulnerable were unmarried women, divorcees and widows, who were ensured at least some user rights under traditional tenure systems. Further, the land registration process, which was designed for a sedentary mode of agriculture, marginalised pastoralists which lost access to key land resources during droughts.

Where titles to ranches were issued to groups of pastoralists, the result has been boundary disputes over seasonal grazing, fragmentation of communities, and growing inequality following elite manipulation of titling processes. The costs of both individual and group titling programmes have been enormous, and the net benefits minimal. Amidst growing agitation in Kenya over inequality and corruption, a commission has now been appointed to review land policy (Cousins 2002).

The Kenyan tenure individualization reform has been the subject of radically different evaluations. Early on, development agencies such as the World Bank touted it as a model, and indeed in the years after the reform began, the smallholder sector in Kenya showed exceptional vitality. On the other hand, the exact role of tenure reform in commercialization of smallholder agriculture is difficult to establish because several other important changes took place at the same time, such as the removal of colonial restrictions on the growing of coffee and other perennials by African farmers. The side effects of the Kenyan reform have been widely criticized. Individualization not only extinguished community rights in land but the rights of individuals (wives and family members) other than those of the household head, who generally became the registered owner. Nothing in the Kenya law required this result, but the values of those implementing the program left wives and children profoundly disadvantaged, stripped of modest but real protections provided by customary law. The operation of a land market has also been questioned; while there is little evidence of the market concentrating ownership of land, but it has played a role in growing landlessness (Leo 1984).</small>



Under the replacement reform models, most countries have only been able to convert the tenure of limited areas. Even where a broad replacement of indigenous systems is attempted legally, implementation of a new system has often been confined to project areas and resettlement schemes. Where conversion has been attempted on a national scale, it has remained incomplete and superficial. Different social values incorporated in the old and new tenure systems continue to compete in determining how individuals behave with regard to the land, and the authorities responsible for the two systems also compete. The result is often normative confusion, and ineffective conversion of tenure can create greater insecurity of tenure than ever existed under the indigenous system (Juma and Ojwang 1996).

Tenure reform is not just a matter of changing rules, but of implementing those rules, and this requires reorganization and reorientation of existing land administration institutions. In Kenya, some of the earlier tenure reform legislation remained on the books for years, having virtually no impact on actual access to land or security of tenure. Tenure reform is not a costless exercise in law reform, but requires substantial commitments to public education, creating new systems of records of rights in land, hiring staff, running offices and vehicles, and training for those participating in the system. Seeing tenure reform as an exercise in law reform invites overreaching, and governments have frequently fallen prey to this temptation. It is difficult to create new institutions, as compared to building on existing institutional arrangements (Juma and Ojwang 1996). The CLRB is bound to fall prey to institutional inertia. The bill is premised on a flawed assumption that South Africa has an advanced land administration system capable of implementing these complex reforms envisaged in the communal areas.

In South Africa, group titles have been issued to over 500 communal property associations and community trusts since 1996, but many of these have become dysfunctional. Constitutions were poorly drafted and misunderstood by members, rights for individual members were poorly defined, and infighting has resulted. Members have often retained strong ties to their original communities, rather than seeing themselves as a new social entity. In some cases traditional leaders have contested the authority of elected trustees, and in others elites have captured the benefits of ownership. There are notable exceptions of course, but overall the experience has been disillusioning for many in the land reform sector (Cousins 2002).

The titling approach adopted in the bill is based on Western notions of ownership, which assume that property rights are absolute and exclusive. Surveyed boundaries show where land rights begin and end. Title deeds are held in a central registry, are updated when ownership changes hands, and provide certainty in case of disputes, which are resolved through the courts. Such systems have proved effective vehicles of economic development in societies organized around market principles, in which private individuals or entities such as companies hold most property. In contrast, African systems of land tenure are based on the principle that everyone within the community of origin has rights to land, but that individual rights are balanced against their obligations to the social group. Rights are thus shared and relative. Systems tend to be inclusive, not



exclusive, and rights and obligations are held at a number of levels of social organization, from the neighborhood to the village to the larger community (Cousins 2002).

Private ownership of land, whether for the individual or the group, contradicts the principles underlying African tenure. In particular, it assumes that clear and exclusive boundaries can be defined, both socially and physically. The nesting of rights at different levels of social organization is denied. This means that the inevitable result of titling is to create massive boundary disputes, between adjacent communities and within levels of social and political organization (Cousins 2002).

Capacity constraints will greatly hamper the rapid implementation of the CLR. It is unlikely that the Department of Land Affairs will be able to process more than one hundred transfers per year. At this rate it will take 200 years to transfer land to the estimated 20 000 rural communities in the ex-homeland areas. In the meantime, land rights for the majority will continue to enjoy only the minimum of recognition and protection afforded by interim legislation passed in 1996, which the draft Bill seeks to make permanent (Cousins 2002). The lessons learnt from Kenya's flawed land registration programme seem to have had a minimal effect in informing the current orientation adopted in the Communal Land Rights Bill. Writing way back in 1976, Okoth Ogendo, one of Kenya's renowned land law experts, noted that Kenya's registration process will only near completion by the year 2050 (1976: 1). The implied assumption is that it will have taken 100 years (1950 -2050) for Kenya to complete its registration process. However, this will not have decimated the resilient nature of communal tenure and the problems associated in attempting to replace communal tenure with freehold tenure as discussed earlier in the study.

Other analyses show that, at the current funding in South Africa, it will take 150 years to deal with land restitution (Lahiff 2001: 4), and 125 years to transfer 30% of agricultural land to the black communities (Molefe 2002). These statistical estimates reflect the bitter gap that exists between the rhetoric of land reform policies in Kenya and South Africa, and the structured land inequality patterns these policies aim to restructure.

In conclusion, one could safely note that the South African land reform, with its three prongs of restitution, redistribution and tenure reform, is extraordinarily ambitious. It is ambitious because of the range of injustices it proposes to right within a relatively short time, and because it proposes to do so while respecting the property and process rights guaranteed by the constitution. The implementation process is set within weak institutional structures that lack the capacity to rapidly implement the policy. As estimated by Hulbert and Wildschut (1998: 88), the land reform programme will continue at more or less the same level of policy and resource commitment, with some slight modifications in terms of implementation. However, this will take extremely long to implement, with very little prospect of its contributing meaningfully to rural development.

The comparative analysis undertaken in the second part of this paper indicates that South



Africa's land reform policy trajectory resembles Kenya's flawed experience with her land reform programme. The political and economic imperatives that informed the overall framework of Kenya's land reform programme is similar to the one that came to inform South Africa's land reform policy process. Worse still, Kenya's flawed attempt to introduce land titling programmes, emergent black commercial farmers schemes seem to have had a limited cautionary impact with the current policy shift South Africa's land question is under going through. Comparative lessons from Kenya thus reflect that South Africa's new land reform policy developments are bound to fail. As argued by Lahiff (2001:6), "Existing land reform policies have failed to bring about the expected transformation of landholding in South Africa to date and are most unlikely to do so in the future".

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