

**DRAFT - NOT FOR CITATION**

**LAND REFORM POLICY DEBATES IN THE EARLY TO MID 1990s**

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**Introduction**

In 1988, a few years before South Africa lurched irrevocably into its negotiated transition to democracy, William Beinart began an article assessing 'Agrarian Historiography and Agrarian Reconstruction' with the following pertinent observation:

... agrarian reform is a crucial and still rather neglected issue. Many analyses of power and inequality in South Africa start by mentioning the division of land between whites and blacks: figures of 87 per cent reserved for whites; and 13 per cent for blacks – though not entirely accurate for the century as a whole – are amongst the best-known South African statistics. But, not least because of the overwhelming importance of urban growth and urban political protest in the last decade, discussions of change on the land are seldom given the prominence that this often quoted statistic would seem to demand.<sup>1</sup>

While property rights and land restitution were highly contentious and emotive issues in the constitutional negotiations of the early 1990s, the challenges of agrarian restructuring and the role of land reform within that were relatively low on the agenda of key political players in the transition to democracy – from the side of the apartheid government, because its best endeavours were directed towards preserving as much as possible of the existing agrarian economy, in which (white) private property and largescale commercial agriculture were privileged, and from the side of the ANC, because of its heavily urban bias in terms of its key constituencies and economic priorities.

This paper focuses on the policy debates of the early to mid 1990s. It forms part of a larger and ongoing process of enquiry that has a number of overlapping research objectives. The first is to probe the question 'Why land reform in South Africa?' – a question which is fundamental to the development of policy positions but which often seems to be glossed over since, for many, it seems that land reform is taken as a given, an obvious political and, in some less clearly defined way, economic necessity in the South African context. The second of my research interests is to understand better the shifting dynamics behind the land reform policy debates of both the 1990s and the present period, and the way in which these dynamics

have shaped the changing policy outcomes; this seminar paper relates directly to this project. My third broad concern is to go beyond the account of policy and its development and explore the always messy relationship between policy formulation and policy implementation as well as the ways in which the gap between principle and practice impacts back on the politics of land reform. Finally, my fourth area of interest is to examine the relevance of land reform policy and practice for women – poor, rural women in particular – and to draw out the gender dynamics involved in these processes. Ultimately I would like to weave all these concerns together into a single project.

This paper, then, is work in progress. It draws largely on a report that was commissioned as background material for a quite separate, external project, and in its current form reflects some of the idiosyncracies of those original terms of reference. This is part of the reason why this paper can, emphatically, not be cited as yet – that project has not yet been publicly released.<sup>2</sup> My interest in presenting my own work to the History seminar at this stage is to get critical comment on my account (thus far) of the policy positions of the early 1990s and also to get ideas as to how I might take this work forward. There are a number of issues that this paper raises, which straddle the academic and practice divide and hold a particular interest for me. One is the operation of parallel intellectual streams in the conceptualization of policy problems and solutions, which leads to thinking about ways in which one might create a more creative and politically open inter-disciplinary environment for policy development and debate. Another is the role of networks, both formal and informal, in the way in which ideas about land and land reform get taken up politically and worked upon in the process of being turned into – or rejected as – programmes of government. A further issue concerns the conjunctural nature of both policy formulation and, down the line, policy implementation. How useful is the idea of conjuncture in understanding these processes and what are the specific conjunctural elements one needs to understand?

The paper is divided as follows:

1. The apartheid government's land reform policy, 1990 – 1993
2. The ANC programme for land reform in 1993/94
3. The main policy debates on land reform in the early to mid 1990s
4. The GNU government's first initiatives around land reform.

## 1. The apartheid government's land reform policy, 1990 – 1993

### *Essential features of the land policy*

The essential features of the apartheid government's land proposals of the early 1990s were:

- The formal deracialisation of land ownership and residence;
- Commitment to the principles of private property, individual freehold tenure and the regulatory authority and efficiency of the market;
- Support for the existing system of largescale commercial agriculture, within a deracialised context, alongside limited recognition of the potential contribution of smallscale farming for rural development within the former bantustan areas;
- The protection of existing property rights as well as what were somewhat euphemistically termed 'community' norms and standards;
- Recognition of communal systems of tenure in the former bantustan areas, within a tribal authority framework, with a view to upgrading them to a system of individual property rights over time.

Initially the de Klerk government was strongly opposed to both a land restitution process and any form of state-sponsored land redistribution. Under pressure to commit to a programme of restoring land rights to those who were removed off their land under apartheid legislation, it attempted to defuse the issue by establishing an Advisory Commission on Land Allocation (ACLA) in November 1991. Its brief was to advise the State President on the allocation of undeveloped state land to applicants, including formerly dispossessed individuals or communities. While a large number of claims were lodged with ACLA, it was widely criticised for failing to deliver expeditiously even on its own limited terms of reference.<sup>3</sup>

Then, in the final days of the constitutional negotiations of 1993, the de Klerk government came round to trading off acceptance of the principle of restitution, for land rights lost after 1913 on both state-owned and private land, in return for the protection of property rights in the new Constitution.<sup>4</sup> While expropriation of land 'for public purposes' was not ruled out, it was subject to the payment of 'just and equitable' compensation, in which, if the matter went to court, both the market value and the use and history of acquisition of the land had to be

taken into account.<sup>5</sup> Once accepted by the negotiating parties, this compromise meant that any future land redistribution programme would operate within a normative framework of ‘willing seller/willing buyer’, in which the market value of land identified for redistribution, while not supreme, would be a major cost factor.

*The White Paper on Land Reform, March 1991*

The cautious land reform initiatives of the apartheid government were first broached publicly in early 1990, soon after the unbanning of the ANC and other political organisations. They were presented as formal policy in March 1991, in the government’s *White Paper on Land Reform* (henceforth the 1991 *White Paper*) with its five land-related Bills. This document signaled the de Klerk government’s recognition that the ‘statutory framework for the policy of separate development’ was no longer viable; this recognition heralded the abandonment of the bantustan policy, although decisions on the future government structures for these areas were postponed to subsequent negotiations (with unspecified parties).

Having made this historic commitment, the government then set out a framework for shoring up existing property and social relations within the new, deracialised context. The 1991 *White Paper* rejected calls to nationalise and/or redistribute land:

Private ownership of land, including agricultural land, is a cornerstone of the Government’s land policy. Private ownership gives people a stake in the land, offers social security, promotes the optimal use of land and also stimulates an awareness of the importance of the preservation of this valuable resource. This is in keeping with the Government’s opposition to any form of redistribution of agricultural land, whether by confiscation, nationalisation or expropriation.<sup>6</sup>

The 1991 *White Paper* argued that it was ‘of the utmost importance that the productive use of land in the wealth-creating processes of a market-orientated economy be maintained’ alongside ‘existing security and existing patterns of community order.’<sup>7</sup> On agriculture specifically, it argued that ‘private ownership of agricultural land and its use by private entrepreneurs form the basis of an established and successful agricultural industry.’<sup>8</sup> No reference was made to the issue of land rights and tenure security for farm workers and labour tenants. Nor was there any reference to the 1970 Subdivision of Agricultural Land Act.<sup>9</sup>

Within the bantustan areas, where ‘communal land tenure is culturally ingrained’, the government was prepared to accept the continuation of this tenure system ‘alongside the system of individual land tenure.’ However, ‘it is ... not the ideal form of land tenure and the Government will not promote the extension of the system.’ Rather, provision would be made for ‘tribes’ to upgrade ‘eventually’ to individual tenure ‘in such a way that this will not lead to a breakdown in established social structures.’<sup>10</sup>

While the redistribution of land was rejected in principle, restitution of land rights to individuals and communities who were removed in terms of racially discriminatory policies was ruled out on the grounds that it was impractical - because of the potential for conflict as well as the impossibility of dealing with overlapping and contradictory claims. The government did, however, acknowledge that ‘far more than the mere removal of racially based restrictions is necessary to make land rights accessible to all’ as well as the ‘potential for conflict’ inherent in the existing disparities in land access.<sup>11</sup> Hence it accepted the need for support measures for people previously excluded from ‘land-focused assistance programmes’ in both rural and urban contexts; these should henceforth operate ‘on the basis of merit alone.’<sup>12</sup> Here, because of ‘the economic realities’ in the country and constraints on government spending, it was envisaged that the private sector and ‘foreign organisations’ could make a ‘significant contribution.’<sup>13</sup>

In keeping with the emphasis on maintaining the existing property dispensation, the 1991 *White Paper* also endorsed strong action against squatting and land invasions, as well as steps to ensure the maintenance of norms and standards in existing, well-serviced communities:

Those who already have reached a high standard are entitled to a higher order of services and to the maintenance of values appropriate to their lifestyle.<sup>14</sup>

At the same time, the 1991 *White Paper* recognised the need to address the acute housing shortage and to put in place systems for the rapid release of land for township development. Regarding the rural areas, it called for a national integrated rural development strategy, including the establishment of a National Rural Development Corporation and agricultural settlement schemes ‘by indigenous tribes’ on state or other land (which one estimate at that time put at some 474 000 hectares).<sup>15</sup>

*De Klerk's legislative programme, 1991 – 1993*

In the next couple of years the de Klerk government went some way towards enacting this programme and setting a legislative framework which would continue to shape a number of the choices made by the post-1994 land reform programme. Several of the laws passed at this time were subsequently utilised, in amended form, in both the redistribution and tenure security programmes after 1994.

In 1991 the Abolition of Racially Based Land Measures Act (Act 108 of 1991) finally abolished the 1913 and 1936 Land Acts as well as the Group Areas Act, thereby ushering in a formally non-racial land dispensation. This Act also provided for the establishment of ACLA. In 1993, the de Klerk government passed nine land-related pieces of legislation, including:

- Amendments to the Upgrading of Land Tenure Rights Act (ULTRA) (Act 112 of 1991), providing for the upgrading of 'lower' forms of tenure, including communal, to freehold, as well as the rationalisation of the different land registration systems within the country.
- The Provision of Certain Land for Settlement Act, (Act 126 of 1993), providing for the settlement of people on land designated by the Minister of Regional and Land Affairs. Financing of the land, at market value, was divided on an 80%/20% basis between the government and the purchasing community (80% from a government grant, 5% from the community and 15% in the form of a five-year loan from the government to the community).
- The Distribution and Transfer of Certain State Lands, (Act 119 of 1993), providing for the transfer of state land to private ownership.

In February 1993 the de Klerk government's published its *Proposals on a Charter of Fundamental Rights*, which called for the protection of property rights and the payment of market value, determined by a court of law, in the case of expropriation for public purposes.<sup>16</sup> During this time the government took steps to transfer to the Bantustans much of the 1,25 million hectares of 'released' land still vested in the SADT.<sup>17</sup> It also embarked on a major drought relief project in 1992/93, in which white commercial farmers were the primary beneficiaries. According to the National Consultative Forum on Drought, just over 64% of

the state allocation for drought relief in 1992/93 went directly to this sector.<sup>18</sup> Lipton reports the total cost of the drought relief scheme as R3,4 billion and notes that, by bailing out bankrupt farmers, this package ‘sabotag[ed] an opportunity to acquire land for redistribution at reasonable costs.’<sup>19</sup>

## 2. The ANC programme for land reform in 1994

### *Evolving ANC policy, 1990 – 1994*

In February 1990, at the moment when the ANC and other organisations were being unbanned, a number of ANC activists in Lusaka, Zambia organised a workshop on ‘the Land Question’ in an attempt to initiate a more serious discussion on a future land and agrarian reform policy than then prevailed within the ANC. Heinz Klug, one of the participants and a member of the ANC’s Land Commission that was established as a result of the workshop, recalls the context for the workshop in these terms:

... all the participants ... seemed to assume that nationalization of existing land holdings, given a history of dispossession and the vast inequalities in land holdings between black and white, would be high on the agenda of an ANC government. This shared assumption was based in no small part on our commitment to the 1955 Freedom Charter .... Despite our assumptions and the liberation movement’s general rhetoric on the ‘Land Question’, activists at the workshop had a realistic view of the low priority rural issues had on the mainly urban-based ANC’s political agenda in the late 1980s.<sup>20</sup>

However, despite the radical assumptions of many ANC activists, during the constitutional negotiations the ANC leadership moved steadily towards a more moderate and pragmatic accommodation of the demand that existing (and future) property rights be given constitutional protection. This should be seen in the context of a general shift to the centre as it began to turn its attention from political liberation to fashioning substantive economic policies. In the words of Hein Marais:

The first target for attack was the ANC’s alleged penchant for nationalization, which it soon dropped – to the alarm of many of its supporters. ... The need to build consensus among key stakeholders ... reigned supreme, and the ANC assumed the task of trying to harmonize and distil from antagonistic interests economic policies that could win consensual endorsement.<sup>21</sup>

Klug recalls how, at a conference convened by the ANC’s Constitutional Committee in May 1991, ‘attempts ... to question whether there should be any constitutionally protected property rights at all elicited a highly charged response from one member of the

Constitutional Committee, who warned that the rejection of property rights would directly endanger the democratic transition.’<sup>22</sup>

While the ANC negotiators were ready to compromise on the question of property rights, they remained strongly committed to both land restitution and a programme of land redistribution aimed especially at the poor and landless (among whom women were identified as an important category of beneficiaries). A 1991 Discussion Document from the ANC Land Commission spoke also of the importance of ‘flexible forms of ownership’, including an accommodation of communal tenure, within an assumed ‘mixed economy’ approach, as well as of extending ‘rights and protections’ to rural workers, including those living and working on farms.<sup>23</sup> This document spoke in general terms of the strong economic reasons for land reform. However, although there were policy analysts linked to the ANC within the Macroeconomic Research Group (MERG), who looked at land reform in terms of its potential within a broader strategy for rural economic development<sup>24</sup>, these ideas never gained sustained political attention within the organization; MERG’s contribution to ANC economic policy was sidelined in any case.<sup>25</sup> The ANC’s macro-economic focus was urban-industrial; its commitment to land reform in the early 1990s was driven by essentially socio-political rather than economic concerns – redress, justice, human rights and, linked to these, basic needs.

The key features of its position going into the 1994 election were framed by the ‘growth through redistribution’ strategy of its election manifesto, *The Reconstruction and Development Programme*, in which ‘meeting basic needs ... - jobs, land, housing, water, electricity, telecommunications, transport, a clean and healthy environment, nutrition, health care and social welfare’ was regarded as the first priority.<sup>26</sup> This document committed to a land reform programme that would redistribute 30% of agricultural land within five years;<sup>27</sup> this figure was not quantified or costed in any way. Land reform was to redistribute land ‘to the poorest section of the rural population and aspirant farmers,’ ‘ensure security of tenure for all’ and, ‘through the mechanism of a land claims court, restore land to South Africans dispossessed by discriminatory legislation since 1913.’<sup>28</sup> In the RDP document land reform was linked to the development of a ‘vibrant and expanded agricultural sector’ which was, however, envisaged in very general, all-purpose terms:

The RDP aims to create a restructured agricultural sector that spreads the ownership base,

encourages small-scale agriculture, further develops the commercial sector and increases production and employment.<sup>29</sup>

The ANC was not specific on the future of traditional leaders in land reform, allowing a plurality of views on their legitimacy and representivity to co-exist among its supporters. Its clear rejection of the bantustan system of government, along with its commitment to the extension of democratic forms of government to these areas, were tempered by its acceptance, in the constitutional negotiations, of ‘the institution, status and role of traditional leadership’ and of ‘indigenous law.’ However, as a result of the fierce lobbying of the Women’s National Coalition, customary law was made subordinate to the equality clause which asserted the ‘fundamental right’ to equality for all regardless of, in particular, race and gender.<sup>30</sup> In a context of deadly political conflict between the ANC and the IFP, in which the politics of traditionalism were central, the ANC preferred to defer resolution of these ambiguities to the future.<sup>31</sup>

#### *Key features of ANC land reform policy in 1994*

The key features of the ANC’s official position in 1994 can thus be summarised as follows:

- Abolition of all racial restrictions on ownership and use of land, and the reintegration of the former bantustans into a common political dispensation with the rest of the country;
- Restitution for the victims of forced removals after 1913 (in keeping with the constitutional compromise), through the mechanism of a Land Claims Court;
- A significant redistribution of land to the poor and the landless, including, if necessary, by means of expropriation (with compensation, in terms of the constitutional formula);
- Promoting tenure security for all people, including farm workers and labour tenants;
- Accommodating a range of tenure systems, including communal tenure, but without a full endorsement of the role of tribal authorities and traditional leaders in this;
- An undeveloped commitment to a rural development strategy that envisaged both a strong, deracialised commercial sector and a strong smallscale farming sector;

- A major role for the state in addressing social inequalities through various redistribution programmes, alongside an acceptance of the general principles of a market economy.

### *Similarities and differences between the de Klerk and ANC positions in 1993/4*

Although in 1994 the de Klerk government and the ANC leadership were politically very far apart in terms of their constituencies and, crucially, their understanding of what a deracialised society would look like as well as what the role of the state should be in achieving that, their land reform programmes were not as fundamentally divergent as the political rhetoric might suggest. The differences lay not so much at the level of broad principle as in the assumptions of how – and how far - the principles should be applied. Thus both accepted a role for the market, while disagreeing on the role of the state within market-led land reform. Both parties also accepted restitution, but differed on the primacy of land restoration in settlements and the manner in which settlements should be reached. Both parties recognised a place for largescale commercial agriculture as well as for a ‘small farmer’ policy, but held very different understandings of state priorities in terms of the agricultural sector; neither, however, had well-developed rural development strategies. Both programmes were profoundly political – the ANC programme driven by the assertive politics of redress and transformation, the de Klerk programme by the defensive politics of deflection and pre-emption. The major differences of principle centred on the need for a far-reaching land redistribution policy and, less prominently, the standing of tribal authorities in relation to communal land. While the ANC looked to redistribution to transform social relations in the countryside, including the democratisation of tribal authority systems, the de Klerk government wanted to defend existing social relationships against change, as far as possible.

What is perhaps more interesting to note about the de Klerk programme, however, is not its relationship to the ANC’s land reform programme of 1994 but, rather, its resonances with the ANC’s programme of 2000, where it is possible to see even greater convergence. This, however, is the subject of another paper.

### **3. The main policy debates on land reform in the early to mid 1990s**

Feeding into the debates within political parties and the complex techno-political processes of

the constitutional negotiations was a wide-ranging debate within segments of civil society about land reform and agrarian restructuring. This tended to polarise between a strong social justice, rights-based focus on the one hand, and prescriptions for optimising land and producer productivity on the other. The former, which connected far more readily with the political debates of the constitutional negotiations, predominated politically in the lead up to the 1994 elections, while the latter, which tended to be conducted on a less immediately accessible, more technical terrain, began to assume greater policy significance after 1995/96.

Major participants in these debates, which sprawled across an ungainly agglomeration of workshops, research projects, conferences, informal networking, publications and political protests, included the ANC's Land Commission, organisations within the land-rights NGO sector, the World Bank and associated researchers, the Land and Agricultural Policy Centre (LAPC), and a number of prominent individual academics, lawyers and research institutions (university-based and parastatal), all with differing degrees of connection to the main political groupings and to the various land reform constituencies.<sup>32</sup> The nature of these networks and relationships undoubtedly played an important though largely undocumented role in the way in which policy research got drawn into the negotiations and into the post-1994 government's policy process. The role and influence of the World Bank in setting the terms for many of these debates has itself generated a degree of debate.<sup>33</sup> While it worked with the independent research capacity and political dynamics in the country, its international experience and the comparative perspectives on land reform it brought to bear on local, often very parochial, debates; the research funding and patronage it controlled; and its political prominence and hence capacity to draw on otherwise very separate research networks, gave it considerable power both in generating research and in feeding its views into policy agendas.

In reviewing these debates and their outcome, one needs to keep in mind key features of the broader context in which they were taking place. Firstly, as already noted, although the land reform debate was always intense, at times high-profile, and for many participants one of the central issues in the transition to democracy, it was not a primary focus of attention in the negotiations except in relation to 'property rights'. A further consideration is simply the enormity and complexity of the challenges embedded in the bipolar legacy of state policies of the previous hundred years and more in the rural areas. These challenges straddled - intermeshed - the social, economic, political, cultural, institutional and ecological spheres in ways that demanded multi-dimensional and multi-disciplinary, rather than single, linear and

discipline-bound responses. (This is, of course, always easier to acknowledge than to achieve in practice.) As is so often the case, however, the social scientists, lawyers and economists involved in the crosscutting policy debates tended to talk in parallel streams, if not actually past each other.

What also needs to be remembered is the highly charged political context in which the early policy debates took place. No policy intervention, however ‘technical’ its content, is ever politically neutral. However, particularly during the negotiations phase of the early 1990s, the debates on the merits and implications of the proposals of the various players were immersed in an environment of intense political expectations, fears, suspicions and party-political labelling. This made the dispassionate collection and analysis of (often quite technical) information, as well as the commitment to critical but open debate with those deemed for so long to be ‘the enemy’, or regarded as apologists for the enemy, particularly difficult to achieve. These tensions co-existed uneasily with the politics of compromise that characterised the political transition itself. It is also instructive to bear in mind the highly conjunctural nature of the outcomes of the policy/political intersection.<sup>34</sup> It has been argued, for instance, that the specific wording of the Property Clause adopted as part of the Interim Constitution in 1993 ‘was as much a result of serendipity, legal ignorance and the particular quirks and concerns of the individual negotiators, as the logical product of an informed or even interest-based political debate and compromise.’<sup>35</sup>

It is impossible to do justice to the policy debates of this time in a report of this nature. The various positions, their linkages, the arguments behind them, and the evidence they marshaled, continue to have relevance for policy formulation today and deserve a fuller exposition and critical engagement than is possible here.

For the purposes of this section, the major debates of this period within the land reform lobby can be grouped into six inter-related and over-lapping areas, summarised here as:

1. The broad socio-economic objectives of land reform
2. Whether and how to redress the injustices of the past
3. Market-led or state-led land reform and the question of compensation
4. Large-scale commercial farming versus a ‘small farmer’ policy

5. The merits of different forms of tenure, in particular individual freehold versus communal
6. The deregulation of agriculture.

Threaded through the last four areas of debate, in particular, were a range of views about whether land reform should underwrite a broad process of rural restructuring that went beyond agriculture, or whether land reform was primarily and more narrowly an element of agricultural restructuring and reform. These issues are touched on in the section on the large-scale versus small farmer debates below.

Also present but not, it would seem, fully engaged in the emerging policy debate were differing views on the significance of land reform in the country's overall economic strategy and the relationship of land reform to urban policy in the new South Africa. Was the country's future urban? Was the role of land reform to retard the rate of urbanisation as, it was argued, was the intention behind the de Klerk government's rural development proposals?<sup>36</sup> Should land reform aim to support the phenomenon of oscillating rural-urban migration? Already in 1988 Alan Mabin pointed out that 'two polar categories of need for land, from the point of view of the bulk of the population, are the need for land from which to produce, and the need for land on which to live' and that these two sets of needs could not be neatly allocated to purely 'rural' and purely 'urban' spheres respectively:

The greatest unknown in relation to the land question in South Africa is ... the double question of how constraints on land need and use will change, and how people will react to different changes in those constraints.<sup>37</sup>

The critical linkages between land reform and housing policy, for rural, urban and peri-urban areas, were not, however, fully canvassed in the land debates which unfolded in the heat of the early 1990s.

Other important but less prominent issues debated in the early 1990s concerned the promotion of gender equity in the programme,<sup>38</sup> the land and labour rights of farm workers and labour tenants, and the role of the provincial and local spheres of government in implementing land reform. Environmental concerns were largely absent from the debates except at the level of generality and good intentions – the policy issues they raise tended to arise most pointedly after 1994, in relation to specific land reform projects on high-profile

conservation areas (eg Makuleke (Kruger National Park), the Eastern Shores of Lake St Lucia, and Dwesa-Cebe on the Wild Coast) or to fears of environmental degradation in redistribution projects as they began to get underway. Also worth noting is that in these early debates the threat that HIV/AIDS posed to the country's development prospects and societal well-being had not yet surfaced as an issue for policy work.<sup>39</sup> This only began to move hesitantly on to the land reform agenda in 2000.<sup>40</sup>

What is significant in the light of subsequent concerns with 'capacity' and 'delivery' within the land reform programme, is that the institutional structures and systems required to implement whatever the preferred form of land reform was taken to be, received relatively little attention. The analysis of the cost of land reform and the budgets required to service it also tended to operate at a high level of generality, with little operational content. The notable exception in this regard was the World Bank – its 1993 proposals went into the institutional, staffing, training, support and financial implications of its proposals in considerable - hence additionally influential - detail.<sup>41</sup> Overall cost estimates that were in circulation at this time included:

DBSA, 1990:	R11 – R25 billion to transfer 25% of land at market value. <sup>42</sup>
Claassens 1993:	R18 billion to compensate at market value for black spot, township and Group Areas removals. <sup>43</sup>
World Bank 1993:	R17,5 billion for the state, plus R1,8 billion paid/borrowed by beneficiaries, to transfer 30% of land and meet all proposed programme costs over five years; R3,5 billion p.a. <sup>44</sup>

### *1. The socio-economic purpose of land reform*

Threaded through the various policy positions and proposals was an underlying debate on the primary objectives of land reform. Was it mainly about social justice, which linked to discussions on rights and redress; or about social welfare, which linked to discussions about social and tenure security and poverty alleviation; or about encouraging greater productivity and development, hence part of a broader economic development strategy; or should land reform embrace some combination of these? Where analysts positioned themselves in relation to these issues shaped how they viewed the price tag for land reform, where they believed that responsibility for meeting that cost should be placed (the state, 'white' South

Africa, commercial farmers, the business sector, beneficiaries of land reform, foreign donors, etc) and how they engaged with the economic arguments for land reform and for restructuring South Africa's 'two agricultures'.

While serious analysts were in general agreement that what was required was both justice and development, and that these need not be mutually exclusive, the relationship between the two was often a matter for substantial disagreement – disagreement, it is probably fair to say, that operated most comfortably at the level of broad generalisation. As noted, in the early stages of land reform the emphasis on justice and redress was politically ascendant. This ascendancy probably helps explain the lack of engagement by many land reform activists with the parallel debates on macro-economic policy and a future urban strategy.

## *2. Redress for the injustices of the past, particularly land dispossessions and 'forced removals'*

For black South Africans the history of land dispossession remains a highly emotive political issue. During the 1980s population relocation became emblematic for opponents of apartheid, both locally and internationally, of the racist injustices of the system against which they were fighting. Much of the popular mobilisation that took place around land reform in the early 1990s was driven by NGOs affiliated to the National Land Committee (NLC), whose origins lay in these land struggles of the 1980s (eg AFRA, TRAC, SPP, BRC) - for instance, the land restoration campaign in 1991/92,<sup>45</sup> demonstrations against the property clause by rural communities outside the World Trade Centre in August 1993, and the Community Land Conference and public rally in Bloemfontein in February 1994.<sup>46</sup> The NGOs and a number of academics, lawyers and policy analysts supportive of the political transition drove the debate on redress, which focussed in particular on restitution for the victims of what were commonly described as 'forced removals.'

By the early 1990s the principle of restitution had a political and moral legitimacy that was difficult for any mainstream political party to contest, as the National Party discovered. The key areas of debate centred on the question of compensation for current owners of claimed land (which linked in with the general debate on the affordability, desirability and morality of market-led reform, discussed below); how far-reaching the programme of restitution should be, in particular how far back in history it should go (1652, as favoured by many NGOs and

CBOs, or 1913, as was eventually decided, or 1948); and what the best mechanisms for implementing it would be. In early 1993 the ANC was reported as favouring a Land Claims Court, while the World Bank proposed both a Commission and a Court.<sup>47</sup>

There was also some debate about whether the programme, conceptualized predominantly in relation to rural dispossession, could or should ignore urban claims. As the implications of restitution for the victims of the Group Areas Act became more apparent to urban planners and policy analysts aligned to the ANC, there were moves to prevent the preferential restoration to claimants of metropolitan land earmarked for urban redevelopment, especially for low-cost housing. In 1994, during the drafting of the Restitution of Land Rights Act, lawyers linked to the housing development initiative for Cato Manor in Durban (which had been identified as a Presidential lead project) lobbied, successfully, for inclusion in the Act of a provision allowing a national, provincial or local government body to apply to the Land Claims Court to rule out the restoration of land where it was found not to be in the public interest.<sup>48</sup>

What is significant about the early debates on land reform as redress is the way in which they tended to prioritise restitution over and above redistribution, and to focus attention on the process of transferring land (to claimants or the landless), in effect, though not intentionally, as an end in itself, rather than as one step in a much larger process of development once the beneficiaries were settled, or resettled, on the land. Within the restitution programme the 'master narrative' of redress which prevailed, in which the restoration of formerly dispossessed land assumed primacy over other land and development options for restitution, deflected consideration away from difficult policy and political choices that would confront the new government after 1994. These involved not only how to deal with developments and alternative land uses on dispossessed land in the intervening years since the claimants were removed (particularly, but not only, in the urban areas), but also how to think about the infrastructural development that had taken place in the despised resettlement areas in the years since people were first moved there, which the new government was not planning to replicate on restored land. The potential for divisions among dispossessed communities about the desirability or otherwise of returning to their former land and the impact this would have on the politics and procedures of restitution was also not an element of the master narrative, which tended to work with a singular vision of 'the community' or 'the people'.<sup>49</sup>

Within the master narrative, the 87/13 per cent division of land between white and blacks referred to by Beinart took on the status of an analytical and planning axiom which only a racist would interrogate, rather than an essentially politico-legal description of land and power relations, which had to be further unpacked before it could usefully inform detailed planning and policy decisions. The political authority of this statistic hampered serious policy debate and analysis of the actual spatial dispensation in the country, as well as the concentration and the demographics of ownership, the health of the commercial agricultural sector, urban/rural linkages, and the areas most suitable for different types of land reform projects. With regard to rural redistribution, the actual land in South Africa that is allocated to commercial agriculture is not 87%, as is often popularly assumed, but, rather, a still very large but nonetheless markedly reduced 67% of the total area. This land is divided among some 60 000 farm units, of great variability, most of which are not well suited to intensive cultivation or dense, subsistence-based settlement.<sup>50</sup> In a contribution to a 1990 IDASA workshop on 'The Land Question in South Africa', Richard Cowling pointed out that only 13,5% of the 83 per cent of South Africa used for farming (his figure includes the former homelands) is arable, 'only a very small amount of low potential land is available for future expansion of crop production' and 'as much as 60 per cent of the veld is currently in poor condition.'<sup>51</sup>

### *3. The market, nationalisation, expropriation, and the role of the state*

The key dividing line on the issue of land reform and compensation was between those favouring expropriation at market-prices and those wishing to leave the option open for expropriation at below market prices.<sup>52</sup>

Running alongside the restitution debate was an equally intense debate on the relative efficiency and advantages of the market and the state in structuring land reform, which raised a range of moral, political and economic questions around justice, pragmatic politics, budgets and economic development. As already noted, the 1991 *White Paper* was vehemently opposed to any redistribution programme except through the disposal of state (SADT) land already earmarked for black occupation (and often already settled). Amongst those who accepted that a pure market system would not open up access to land for black people on a large enough scale, fast enough, the debate centred on the most effective mechanisms to achieve the transfer of private land from white to black – nationalisation and reallocation by the state, expropriation with or without compensation, or mechanisms to facilitate a willing

buyer-willing seller programme. (It was generally agreed that land reform could be kick-started through the disposal of state land. The main problem with that then – as now - was that there was so little ‘agricultural’ state land that was not already occupied.)

As noted, the ANC leadership dropped the idea of nationalising land from the policy debate relatively early on. What remained was a major ideological contestation over the issue of compensation for land acquired from current property owners, whether this was for restoration to previously dispossessed rights holders through the restitution process, or, far more controversially, for redistribution to the landless and the land-hungry. From the start the NGO sector was strongly opposed to compensation. They argued that it ‘would entrench the racially discriminatory results of apartheid land laws and policies and colonial conquest’<sup>53</sup> by compensating those who had unjustly benefited from these laws, and would also make land reform too expensive to sustain. This was part of a broader hostility to market-led land reform which, it was feared, would see the release of only marginal and poorly situated land, at insufficient levels to meet people’s needs.<sup>54</sup> The National Party, on the other hand, resisted the very idea of redistribution but, on the issue of compensation for expropriated private land, argued for the payment of full market value.

For its part the World Bank argued for what it termed ‘market-assisted’ land reform, in which land reform beneficiaries would use a system of state grants to buy land on the market on a willing seller–willing buyer basis. At a major conference on ‘Land Redistribution Options’ in October 1993 it presented the following proposals:

- The deregulation of agriculture, which would, *inter alia*, support market access for small farmers;
- A market-assisted programme aimed at redistributing approximately 30% of commercial farm land to some 635 000 small farmer households, for productive use, within five years;
- A basic grant element by the state ‘sufficient to pay for a major share of a rural housing site’ as well as an additional matching grant option ‘to support increased access to land by individuals or groups that will use land in a productive manner’;<sup>55</sup> the matching grant proposal envisaged that beneficiaries would provide half of the purchase price through co-payment and loan provisions;
- A rural ‘safety net’ programme for those households who would be too poor to take

advantage of the small farmer programme, and

- A land claims process involving both a Commission and a Land Claims Court; the role of the Commission was envisaged as making decisions on state-owned land and referring claims against private land, with recommendations, to the Land Claims Court for a final decision.<sup>56</sup>

The idea behind the basic grant was that land reform in South Africa needed to address both welfare and productive concerns:

... one of the central tensions in designing a land redistribution model is that between the desire to address welfare objectives through the redistribution of land and the need to promote the productive use of land. The problem with those individuals who qualify for land or assistance under welfare objectives of a program, is that they often have little experience in agriculture. In contrast, the more experienced and well-qualified farmers typically do not qualify to receive land under welfare objectives. ... The basic grant element would be available to all individuals who meet the requirements for participation in the redistribution program.<sup>57</sup>

The World Bank subsequently extended the research foundations of its land reform proposals by supporting a further body of research on land markets and the state of South African agriculture,<sup>58</sup> that collectively made the case that land reform in South Africa was best served by a combination of market mechanisms and non-market interventions in the form of state grants, and that the land market in South Africa 'is not only active enough but stable enough' to support a substantial transfer of land to black people without distorting it.<sup>59</sup>

The small farmer aspects are dealt with below. With regard to compensation, the World Bank argued in favour of compensation for current property owners, through the mechanism of the grant, on essentially pragmatic considerations. Not to compensate would be politically unacceptable to the de Klerk government and most whites, hence would jeopardise the democratic transition; it would also scare off foreign investors. In addition, it would place the burden of redress unfairly on one sector of the white population and could, in addition, threaten the financial viability of agricultural lending organisations.<sup>60</sup>

As the political difficulties of enforcing a programme of non-payment of compensation became more apparent, a number of proposals were developed on the side of the ANC for alternative methods of payment. The idea of a wealth tax moved into the public arena at an

ANC conference in October 1991, when a subgroup on land concluded that a ‘wealth tax’ would be necessary to fund land redistribution:

Given the demand that any expropriation be compensated, we concluded that the only way to achieve the redistribution of land necessary to overcome the legacy of the 1913 Land Act was to create a specific compensation account. ... this dedicated account would need to be funded by those who benefited from the limited land market created by the Land Acts ....<sup>61</sup>

Klug recalls that this provoked an outcry from the media; less expected perhaps, but indicative of problems to come, the idea of a dedicated fund for land redistribution also came into conflict with ‘alternative demands for resources among the ANC’s own constituencies.’<sup>62</sup>

At a conference organised by the Community Law Centre at the University of the Western Cape in May 1993, when the issue was on the boil, Aninka Claassens (subsequently an advisor to Minister Hanekom) laid out the argument for compensation to be paid on a ‘proportionate’ basis:

... it would be a mistake to establish a system which defines rights to compensation as finite individual claims against state resources. Rather, it is posited that compensation for loss should be proportionate to past and present interests in the land and, in particular, should take into account the historical circumstances of the acquisition of the land and the availability of State resources.<sup>63</sup>

She summarised the arguments against market value as 1) the enormous cost to the state, which would either funnel off money needed for other programmes, such as health and education, or limit the scale of the land reform programme drastically; 2) the fact that many beneficiaries of the land policies of the past had received land at below market value; and 3) the potential for conflict between the contending parties.

The idea of balancing market value against other factors by ‘taking into account all relevant factors, including ... the use to which the property is being put, the history of its acquisition, its market value, the value of the investment in it by those affected and the interests of those affected’<sup>64</sup> was how this highly contentious issue was resolved during the constitutional negotiations of 1993. However, the issue resurfaced during the negotiations to write the Final Constitution in 1995/1996, which provided an opportunity for the debate on the legitimacy and utility of the property rights provision to be re-opened by those who had never fully accepted it.<sup>65</sup> This process culminated in the retention of the compromise of 1993 of property rights with restitution, market value with other relevant factors taken into account, but

extended the constitutional commitment to land reform beyond restitution, by positively endorsing expropriation ‘for a public purpose’, subject to compensation, and defining public purpose to include ‘the nation’s commitment to land reform and to reforms to bring about equitable access to all South Africa’s natural resources.’ Tenure security was identified along with restitution as a constitutional right ‘to the extent provided by an Act of Parliament.’<sup>66</sup>

#### *4. Large-scale or small farmers*

The prevailing orthodoxy among South African agriculturalists and agricultural economists until the 1980s was that large-scale commercial farming was the most efficient form of agriculture, best able to implement economies of scale and deal with the vagaries of an often unfavourable climate and poor soils. However, by the early 1990s this orthodoxy was being challenged from a number of quarters, on the grounds that this apparent efficiency derived from massive subsidization, tax concessions and other forms of protection.<sup>67</sup> Merle Lipton has argued that claims for the superiority of large-scale agriculture overlooked not only all its costs but also ‘the alternatives foregone’ and limited ‘thinking about future possibilities.’<sup>68</sup>

From the late 1980s economists at the DBSA began to put forward proposals for a small farmer support policy;<sup>69</sup> albeit focused on production options within the bantustans. The DBSA proposal was picked up in the 1991 *White Paper on Land Reform* which outlined plans ‘to assist new entrepreneurs to develop into small and medium farmers’<sup>70</sup> and spoke of the ‘prospect of using available SADT land for suitable small-scale agricultural settlement schemes.’<sup>71</sup>

However, the primary intellectual authority in favour of a small farmer policy, within a broader restitution programme, came from the World Bank (which had itself moved away from the presumption of large-scale efficiencies since the 1970s) and a number of international agricultural economists and experts associated with it. A small farmer strategy (to be promoted alongside the existing large-scale commercial sector), sat at the heart of its proposals for sustainable land reform and broader rural development in South Africa:

One of the critical assumptions on which the findings of this land reform program hinge is the viability of part time and small-scale rural enterprises, especially in agriculture. In order to assess the potential for income and employment generation of the land redistribution process, a modeling exercise was undertaken .... The results

clearly indicate a substantial increase in rural employment and income as a result of land redistribution. This is because farming will become more labor intensive and because the increased number of part-time farmers will generate a “ripple” or multiplier effect by adding a large number of non-farm jobs.<sup>72</sup>

It argued for the transfer of land to be seen as only ‘the beginning of the larger process of rural development’ and stressed the critical need for support services for the new farmers and for the training of support service staff to deal with the very new demands that would be placed on them.

The arguments in favour of a land reform programme geared towards small farmers also received support from a large body of research on what came to be described as the ‘multiple livelihoods’ strategies of poor, rural South Africans.<sup>73</sup> In the early 1990s the thrust of much of this work was to show the reliance of rural households in the former bantustan areas on migrant remittances and transfers rather than agriculture; in the second half of the 1990s new research began to emphasise the persistent importance of land for rural livelihoods, both the relative contribution made by subsistence farming activities to overall income and the underestimated significance of ‘natural resources’ and ‘non-marketed goods and services’ for household survival.<sup>74</sup>

Whether access to land is declining or not, and regardless of the percentage of households which have access to land, it is clear that land is nowhere the ‘main source’ of income for the majority of rural households. However, it does provide critical support to poor families – most households in rural areas. Its importance for poverty alleviation and livelihood support should not be underestimated.<sup>75</sup>

The ‘livelihoods’ perspective had the potential to support land reform policy development in two divergent directions – 1) towards stronger support for essentially residential settlement (with the possibility of some gardens and stock-grazing options attached), which was the initial direction taken after 1994, and 2) towards more aggressive small farmer support schemes as the motor behind ‘livelihoods-intensive rural growth,’ which moved back into sharper consideration towards the end of the 1990s.

The World Bank’s arguments for ‘agricultural growth linkages’ were challenged by Gill Hart in the mid 1990s; her analysis, which pointed towards a stronger non-farm rural development strategy that had some affinities with the viewpoints prevalent within MERG, were not widely circulated within land reform circles at the time but are outlined here because of the

alternative perspective they provide. She argued that the World Bank and related arguments ‘derive from an idealized and partial reading of ‘Asian successes’ – most notably Taiwan – and invoke problematic assumptions to produce multiplier estimates that in fact have very little meaning.’<sup>76</sup> She emphasized the dangers of extrapolating from experiences elsewhere to the South African context by pointing out the important part played by ‘particular local histories, class forces, and social dynamics’ (including ‘culturally and historically specific gender and kinship relations’) in shaping ‘superficially similar patterns of industrial dispersal ... or paths of socio-spatial restructuring and agro-industrial linkages.’<sup>77</sup> She argued that the Asian data did not support the World Bank argument that increases in agricultural incomes – deriving from the efficiency of small family producers, itself based on the patriarchal control of family labour - would necessarily translate into rising consumption and hence demands for goods and services within rural regions. Rather, certain Asian studies showed a drainage of agricultural surplus out of the rural areas and indicated that non-farm growth within these areas was more likely to be the result of investment by urban industrialists in search of cheaper wages than of local small-farmer agricultural growth.<sup>78</sup>

What the Asian comparative data actually shows, Hart suggests, is how land reform provided workers with a rural base which subsidized low wages. This, she concludes is an option which a market-led programme of land reform in South Africa would be unable to emulate, because the reach of such a programme would be too limited and not optimally located spatially. Furthermore:

In much of the celebratory literature on Taiwanese production networks, labour quiescence and consent is simply taken for granted, or viewed as a natural concomitant of family-run business. ... the celebrated Taiwanese model of networked production rests on systems of labour coercion that are largely unworkable in South Africa.<sup>79</sup>

Her proposal was for a programme of agrarian reform in support of multiple livelihoods rather than small farmers *per se*, which would target land reform at areas already adjacent to non-agricultural resources, such as the ‘interstitial spaces’ around small towns and industrialization decentralisation nodes.

##### *5. Individual freehold versus communal systems*

The debate on smallscale versus large-scale farming intersected a parallel but less developed

debate on the merits of the system of individual freehold tenure (that was seen to define property rights in the commercial farming areas) vis-à-vis the communal systems of tenure associated with the former bantustans.

Those in favour of a system of individual freehold tenure argued that it was a prerequisite for economic growth and the proper management of land – it ensured enforceable tenure security and provided incentives for serious investment in land unlike communal systems, where a ‘lowest common denominator’ approach applied to land management. Some analysts also argued that withholding freehold tenure options from all black South Africans would simply perpetuate their second-class status and racial discrimination, a view which resonated with some black groupings such as the aspirant commercial farmers within the National African Farmers’ Union (NAFU), which was established in the early 1990s. Leon Louw of the Free Market Foundation expressed the economic importance of freehold in these terms:

Black communities in South Africa have been forced into a state of economic stagnation by paternalistic and hostile land legislation. Land held by blacks under freehold is necessary for rapid economic development to take place.<sup>80</sup>

However, starting in the 1980s and gathering force and greater respectability in the 1990s were a range of views that collectively challenged the assumption of a necessary causal link between freehold tenure and the productive and environmentally sustainable use of agricultural land. The arguments in favour of communal systems also highlighted the social benefits of broad-based access to land and all its resources, in particular for the poorer and weaker members of society, and emphasized the distortions and degradations of traditional tenure systems that had been imposed under apartheid.<sup>81</sup> In a critique of the thesis of ‘the tragedy of the commons’ with regard to communal grazing land, Vink argued for a distinction between ‘common property’, where particular groups had identifiable rights in particular pieces of land (with more or less effective systems for managing those rights) and ‘open access’, where no sets of rights, ‘owners’ or limits controlled access:

... ‘common property’ refers to a system where an identifiable group of people have access to specified rights in land .... The traditional grazing tenure common to Southern Africa can also be defined as common property rather than open access .... It is also provable empirically that common property grazing regimes are not inevitably overgrazed.<sup>82</sup>

Those advocating a more pluralist approach to tenure systems were bolstered by a re-evaluation of tenure and titling reform in Africa among international development agencies in the 1990s. The editors of a set of papers from a 1999 conference on ‘Evolving land rights, policy and tenure in Africa’ summarised this shift thus:

The present wave of land policy reforms [in sub-Saharan Africa] follows a general failure of earlier approaches to land reform, in which free market models, emphasizing the conversion of customary tenure to individualised freehold rights, or alternatively egalitarian socialist models were dominant. Individual land registration and titling, in particular, came to dominate the land policy prescriptions of international finance institutions in the era of structural adjustment. During the 1990s, mounting evidence of the pitfalls of this approach, in particular its high economic and social costs, and negative consequences for the poor, led donors and African governments alike to re-examine accepted approaches.<sup>83</sup>

However, in the early 1990s the tenure debate in South Africa tended to take backstage to redistribution and restitution; in-depth research on how to balance competing interests in land and the relationship between communal tenure systems and traditional authority and customary law were deferred till after 1994. The World Bank spoke very generally about the need to recognize ‘different forms of property and tenure relations’ while also pointing to the need to ensure ‘gender equality within land tenure relations’ especially in relation to customary law.<sup>84</sup> The RDP emphasized ‘tenure security regardless of [the] system of land holding’ and called for ‘the development of new and innovative forms of tenure such as Community Land Trusts and other forms of group land-holding’.<sup>85</sup>

### *6. The deregulation of agriculture*

The debate on agricultural policy was an important debate for land reform policy, which was not, however, fully engaged outside the circles of agriculturalists and economists. The World Bank spelled out its views on the linkages between deregulation and land reform thus:

Agriculture in South Africa has been highly controlled, through massive state intervention .... The policy of distorting – through intervention – the structure of incentives facing farmers has resulted in a serious misallocation of resources, large public sector expenditures, and some environmental degradation. Although steps have been taken in recent years to improve the policy environment in the rural economy, there is still considerable scope for further liberalization. Further liberalization will increase agricultural efficiency and ensure equal market access for the farmers who will participate in the land reform programme. This is essential in order to keep food prices low and to support the employment-intensive economic growth path that is so critical for the future of South Africa. Hence, liberalization of agricultural policy is not just of narrow interest to the rural sector, but can serve as the foundation of growth for the whole economy by supplying employment and secure sources of

inexpensive food.<sup>86</sup>

The World Bank views tended to find favour with analysts on the left who otherwise looked sceptically at its market prescriptions, because of political hostility towards the commercial agricultural sector as prime beneficiaries of the racist land and agricultural policies of the past and because of the perceived link between deregulation and the availability of cheaper land for redistribution through the market. The MERG report did strike a more cautious note – while recognizing that state interventions in the past had led to ‘unacceptable outcomes’, it also warned against ‘rapid, indiscriminate deregulation and the abdication of state responsibility for rural development and food security:’

Although the World Bank critique of current policy is a useful starting point, the policy conclusions rest too heavily on an almost religious faith in the welfare and growth-optimising characteristics of free agricultural markets, upon the assumed inevitability of state failure, and the policy irrelevance of market failures. The World Bank prescriptions also ignore the role played by pervasive state intervention in the agricultural sectors of all the now developed economies, and in the agricultural sectors of the most rapidly industrializing economies in the second half of the twentieth century.<sup>87</sup>

These cautionary words did not, however, find much receptivity in the Department of Agriculture after 1994.

#### **4. The GNU government’s first initiatives around land reform**

The land reform policy of the government in the ‘first phase’ of land reform (1994-99) took some years to acquire formal shape – quite how long took most activists by surprise, not least those who found themselves responsible for managing the process from within government. Quite unanticipated, it would seem, was just how cumbersome the legislative and administrative process was; how stubbornly, bureaucratic attitudes could reproduce themselves; how fragmented the procedures for valuing, buying, surveying, transferring, disposing of and servicing land were across the different tiers of government; how dense and intractable the social and political dynamics in many land reform communities were, how different the skills required for policy formulation and for policy implementation.

The shape and relative autonomy of the restitution process was set by the constitutional negotiations of 1993, which provided for the establishment of both a Commission and a judicial process.<sup>88</sup> In 1995 and 1996 the Ministry and DLA embarked on a lengthy process of

public consultation and drafting which culminated in the adoption of the *White Paper on South African Land Policy* in April 1997 (henceforth the *White Paper*). The policy pieced together a series of interventions that attempted to respect the political compromises of the constitutional negotiations while honouring the commitments of the RDP. The *White Paper* outlined a moderate programme of market-assisted land reform with a strong emphasis on redress, poverty alleviation, the extension of rights and the democratisation of rural institutions. The limited 'safety net' aspect of the World Bank's proposals were reflected in the 'Settlement and Land Acquisition Grant' (SLAG) for households with monthly incomes of R1 500 or less, but the Bank's 'matching grant' proposals for small farmer schemes were not followed through, although a Post-Transfer Production Grant and a Land Reform Credit Facility were subsequently developed to support the more productive use of land.<sup>89</sup>

In the *White Paper* the redistribution programme was envisaged as providing 'the disadvantaged and the poor with access to land for residential and productive purposes'<sup>90</sup>; women were identified as a major category of land reform beneficiaries, reflecting the prominence of high-level commitments to gender equity in the democratic transition (a commitment, I have argued elsewhere, which has remained largely at the level of high principle rather than operational policy.<sup>91</sup>) Land for redistribution was to be obtained through the 'willing buyer-willing seller' approach that was initially understood to preclude the DLA from any supply-led initiatives such as the purchase of land in anticipation of specific projects for targeted categories of beneficiaries.

In practice, especially in the early years, the residential settlement focus predominated, in part because of the very limited reach of the grant, which encouraged beneficiaries to cluster in group projects in order to buy farms, in part because of an implicit assumption that land reform was intended to benefit 'communities' on the part of many officials, and also in part because of the social and political dynamics among many of the groups clamouring for land in the mid 1990s. In the KwaZulu Natal pilot district, for instance, many early redistribution projects were driven by a very strong restitution ethos, where groups of beneficiaries mobilised to purchase farms which they regarded as their collective ancestral lands, from which they or their forebears had been evicted, rather than because of their productive potential.<sup>92</sup> Much of the popular demand for land operated in the context of the 'multiple livelihoods strategies' already referred to; this helped set up the conditions under which the first phase of land reform was deemed to be a failure after 1999 and a new direction - geared

towards promoting a black commercial farming class – initiated under the Mbeki presidency.

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## ENDNOTES

<sup>1</sup> W Beinart, *Agrarian Historiography & Agrarian Reconstruction*, in J Lonsdale (ed), *South Africa in Question*, Cambridge: African Studies Centre (in association with James Currey, London and Heinemann, Portsmouth), 1988, p 134.

<sup>2</sup> Pending the release of the commissioning agent's final report, I would like to acknowledge their role in funding this research.

<sup>3</sup> See, for instance, a report on criticisms by the *Farmer's Weekly* in AFRA, Land Briefs in *AFRA News*, February 1993, p. 20. In 1993 the powers of ACLA were extended, and its name changed by dropping the epithet 'advisory'. However, it was still only empowered to deal with state-owned land.

<sup>4</sup> For a detailed account of the negotiations see D Atkinson, *Insuring the future? The Bill of Rights in S* Friedman and D Atkinson (eds) *South African Review 7. The Small Miracle. South Africa's negotiated settlement*, Johannesburg: Ravan Press, 1994.

<sup>5</sup> The Constitution of the Republic of South Africa, Act 200 of 1993, s28.

<sup>6</sup> *The White Paper on Land Reform*, March 1991, p 13.

<sup>7</sup> 1991 *White Paper on Land Reform*, p 1.

<sup>8</sup> 1991 *White Paper on Land Reform*, p 13.

<sup>9</sup> M de Klerk, Rural Aspects of the White Paper on Land Reform and Four Accompanying Bills, *Transformation* 15, 1991, pp104-108.

<sup>10</sup> 1991 *White Paper on Land Reform*, p 5.

<sup>11</sup> 1991 *White Paper on Land Reform*, p 6.

<sup>12</sup> 1991 *White Paper on Land Reform*, p 6.

<sup>13</sup> 1991 *White Paper on Land Reform*, p 6.

<sup>14</sup> 1991 *White Paper on Land Reform*, p 10.

<sup>15</sup> See M de Klerk, Rural Aspects of the White Paper, pp 104 – 108.

<sup>16</sup> H Klug, *Constituting Democracy. Law, Globalism and South Africa's Political Reconstruction*, Cambridge: Cambridge University Press, 2000, p 132.

<sup>17</sup> It has proved difficult to substantiate how much of this land was effectively transferred, but the indications are that much of it ended up being transferred to the self-governing states. *AFRA News* (October/November 1993), p12 reports that in August 1993 an agreement was reached between the SA government and the KwaZulu government to establish joint administrative control over some 500 000 hectares; substantial protests did, however, lead to an 'unofficial' halting of implementation of parts of the deal. A report by L Steyn on the 1993 land legislation stated that at that time the transfer of an additional 360 000 hectares to Lebowa was 'pending if it has not already gone through.' See L Steyn, 1993 Land Legislation: Its Implications and Implementation in *Review of African Political Economy*, no 61, vol 21, September 1994, p 456. The DLA's 1997 *White Paper on South African Land Policy* stated that at that stage some 500,000 hectares of SADT land lay outside the former bantustans. See DLA, *White paper on South African Land Policy*, Pretoria; Department of Land Affairs, 1998(second printing), p 79.

<sup>18</sup> Figures cited in AFRA, *Drought Relief and Rural Communities*, Special report no 9, Pietermaritzburg: Association for Rural Advancement, 1993, p 35.

<sup>19</sup> M Lipton, The politics of rural reform in South Africa in M Lipton, M de Klerk and M Lipton (eds) *Land, Labour and Livelihoods in Rural South Africa, Volume One; Western Cape*, Durban: Indicator Press, 1996, p 421.

<sup>20</sup> Klug, *Constituting Democracy.*, pp 124-125. For another account of the workshop, which confirms the low priority accorded land and rural issues, see H Dolny, *Banking on Change*, London: Viking (Penguin Group), 2001.

<sup>21</sup> H Marais, *South Africa: Limits to Change. The Political economy of transformation*, London: Zed Books, 1998, pp 146 – 147.

<sup>22</sup> Klug, *Constituting Democracy*, p 126. What needs to be borne in mind is that the ANC, with its UDF allies, was operating more as a popular front against apartheid than a ideologically cohesive political party.

<sup>23</sup> ANC Land Commission, Discussion Document. ANC Position on the Land Question, unpublished internal discussion document, Johannesburg: African National Congress, 1991, pp13, 15.

<sup>24</sup> See the chapter on 'Rural Development and Food Policy' in Macroeconomic Research Group (MERG), *Making Democracy Work. A Framework for Macroeconomic Policy in South Africa*, Bellville: Centre for Development Studies, University of the Western Cape, 1993, pp 171 – 209.

- <sup>25</sup> See Marais, *South Africa: Limits to change*, pp158 – 160.
- <sup>26</sup> ANC, *The Reconstruction and Development Programme*, Johannesburg: African national Congress, 1994, p 7.
- <sup>27</sup> ANC, *Reconstruction and Development Programme*, p 22.
- <sup>28</sup> ANC, *Reconstruction and Development Programme*, pp 20, 22.
- <sup>29</sup> ANC, *Reconstruction and Development Programme*, p 103.
- <sup>30</sup> Constitution of the Republic of South Africa, 1993, Constitutional Principle XIII.
- <sup>31</sup> See C Walker, 1994, Women, Tradition and 'Reconstruction' in *Review of African Political Economy*, no 61, vol 21, September 1994, pp 347 – 358.
- <sup>32</sup> Key publications coming out of this process would include: M de Klerk (ed) *A Harvest of Discontent. The Land Question in South Africa*, Cape Town: IDASA, 1991; J van Zyl, J Kirsten and H Binswanger (eds) *Agricultural Land Reform in South Africa. Policies, markets and mechanisms*, 1996, Cape Town: Oxford University Press; World Bank, Options for Land Reform and Rural Restructuring in South Africa, Report presented to the Land Redistribution Conference, Johannesburg: Land and Agricultural Policy Centre, 12 – 15 October 1993; M Lipton, M de Klerk, and M Lipton (eds) *Land, Labour and Livelihoods in Rural South Africa, Volume One; Western Cape*; M Lipton, F Ellis, M Lipton (eds), *Land, Labour and Livelihoods in Rural South Africa, Volume Two: KwaZulu-Natal and Northern Province*, Durban: Indicator Press, 1996.
- <sup>33</sup> See, for instance, B Fine, Transition and the Political Economy of South Africa, paper presented at a conference in Perth, 2000; Klug, *Constituting Democracy*, p 132; G Williams, Setting the Agenda: A Critique of the World Bank's Rural Restructuring Programme for South Africa in *Journal of Southern African Studies* vol 22, no 1, 1996; G Hart, The Agrarian Question and Industrial Dispersal in South Africa: Agro-industrial linkages through Asian lenses in *Journal of Peasant Studies*, 23 (213), 1996; Marais, *South Africa: Limits to Change*, pp 151 - 152, AFRA News, Walker, South African Case Study: Background Report. Unpublished research report, Geneva: UNRISD, 2000 p 39. What needs to be remembered is that the World Bank was (is) itself not a monolithic structure but embodied within its various departments a number of competing visions and priorities for economic restructuring.
- <sup>34</sup> My thanks to Gill Hart for useful discussion on this point.
- <sup>35</sup> Klug, *Constituting Democracy*, p 132, citing Mathew Chaskalson, Stumbling towards Section 28: Negotiations over Property Rights in the Multiparty Talks in *South African Journal on Human Rights* 222, 1995.
- <sup>36</sup> See A Mabin, Land ownership and the prospects for land reform in the Transvaal: A preliminary view, in C Cross and R Haines (eds) *Towards Freehold? Options for land and development in South Africa's black rural areas*, Cape Town: Juta, 1988.
- <sup>37</sup> Mabin, Land ownership and the prospects for land reform in the Transvaal, p 137.
- <sup>38</sup> For an analysis of this issue see C Walker, Piety in the Sky? Gender Policy and Land Reform in South Africa, Unpublished research report, Geneva: UNRISD, 2001.
- <sup>39</sup> Between 1990 and 1995 HIV prevalence among ante-natal clinic attendees in South Africa rose from 0,76% to 7,57%. (Q Abdool Karrim, Women and AIDS, the imperative for a gendered prognosis and prevention policy in *Agenda*, 39, 1998, p 17.)
- <sup>40</sup> See Walker, South African Case Study: Background Report on DLA's HIV/AIDS policy in 2000. See also D Mullins, Land Reform, Poverty Reduction and HIV/AIDS, Paper presented at the SARPN conference on Land Reform and Poverty Alleviation in Southern Africa, Pretoria, 4 – 5 June 2001.
- <sup>41</sup> World Bank, Options for Land Reform and Rural Restructuring in South Africa.
- <sup>42</sup> A Claassens, Compensation for Expropriation: The political and economic parameters, in M Venter and M Anderson (eds), *Land, Property Rights and the Constitution*, papers presented at a conference held at Sanbonani, Eastern Transvaal, 21 – 23 May 1993, Bellville: Community Law Centre, University of the Western Cape, 1993, p59.
- <sup>43</sup> Claassens, Compensation for Expropriation, p 57.
- <sup>44</sup> World Bank, Options for Land Reform, pp 73 - 74.
- <sup>45</sup> AFRA, Land restoration: first step to heal apartheid's scars, in *AFRA Newsletter*, May 1992, p 1.
- <sup>46</sup> For a detailed discussion on the demands of the August 1993 protests and the proposals for the 1994 conference see Border Rural Committee, *Groundwork*, vol 1 no 5, September 1993. At the World Trade protests the memorandum handed by the protesters to the negotiators stated 'There can be no freedom without land. There can be no peace until the emotional issue of land is settled.'
- <sup>47</sup> *Groundwork*, May 1993, p 2.
- <sup>48</sup> The Restitution of Land Rights Act, Act 22 of 1994, s34.
- <sup>49</sup> See C Walker, Relocating Restitution in *Transformation* 44, 2000.
- <sup>50</sup> See Appendix 1.
- <sup>51</sup> R Cowling, Options for rural land use in Southern Africa: An ecological perspective in M de Klerk (ed) *A Harvest of Discontent*, pp 15, 16.

- <sup>52</sup> H Binswanger, The Political Economy of Alternative Modes of Compensation in M Venter and M Anderson (eds) *Land, Property Rights and the New Constitution*, p52.
- <sup>53</sup> The views of the National Land Committee as reported in *AFRA News*, Property rights debate rages on, October/November 1993, p 13.
- <sup>54</sup> For a recent statement of this position see A Mngxitama and N Peter, Farm Dwellers, Citizens without Rights: The Unfinished National Question, Paper presented at the SARP conference on Land Reform and Poverty Alleviation in Southern Africa, Pretoria, 4 – 5 June 2001.
- <sup>55</sup> World Bank, Options for Land Reform, p 2.
- <sup>56</sup> World Bank, Options for Land Reform, p 32.
- <sup>57</sup> World Bank, Options for land Reform, p 34.
- <sup>58</sup> See J van Zyl, J Kirsten and H Binswanger (eds), *Agricultural Land Reform in South Africa*.
- <sup>59</sup> J van Zyl, J Kirsten and H Binswanger, Introduction in van Zyl *et al* (eds) *Agricultural Land Reform in South Africa*, p 11, referring to work by H van Schalkwyk and J van Zyl on the land market.
- <sup>60</sup> See Binswanger, Political Economy of Alternative Modes of Compensation.
- <sup>61</sup> Klug, *Constituting Democracy*, p 128.
- <sup>62</sup> Klug, *Constituting Democracy*, p 128.
- <sup>63</sup> Claassens, Compensation for Expropriation, p 55.
- <sup>64</sup> Constitution of the Republic of South Africa, 1993, s28(3).
- <sup>65</sup> On this see Klug., *Constituting Democracy*, pp. 134 – 136.
- <sup>66</sup> Constitution of the Republic of South Africa, Act 108 of 1996, s25.
- <sup>67</sup> J van Zyl and J van Rooyen, Agricultural Production in South Africa in M de Klerk (ed) *A Harvest of Discontent*.
- <sup>68</sup> Lipton, The politics of rural reform, p 414.
- <sup>69</sup> National Land Committee (NLC), *Land Update* no 2 June 1990, p 9. See also van Zyl and van Rooyen, Agricultural Production in South Africa and N Vink and E Kassier, Agricultural Policy and the South African State in M de Klerk (ed) *A Harvest of Discontent*. In response to the DBSA, the NLC called for a hold on such initiatives, ‘until the larger questions of land redistribution are resolved through national negotiation and future majority government policy formulation.’
- <sup>70</sup> 1991 *White Paper on Land Reform*, p 13.
- <sup>71</sup> 1991 *White Paper on Land Reform*, p 23.
- <sup>72</sup> World Bank, Options for Land Reform, p 3.
- <sup>73</sup> See Lipton, *et al* (eds), *Land, Labour and Livelihoods in Rural South Africa* and C Cross and R Haines (eds) *Towards freehold*.
- <sup>74</sup> S Shackleton, C Shackleton and B Cousins, The Economic Value of Land and Natural Resources to Rural Livelihoods: Case Studies from South Africa, in B Cousins (ed) *At the Crossroads. Land and Agrarian Reform in South Africa into the 21<sup>st</sup> Century*, Bellville: Programme for Land and Agrarian Studies (PLAAS), School of Government, University of the Western Cape and Johannesburg: National Land Committee, 2000, p 39.
- <sup>75</sup> E Ardington and F Lund, Questioning Rural Livelihoods, in Lipton, Ellis and Lipton (eds) , *Land, Labour and Livelihoods in Rural South Africa*, p 55.
- <sup>76</sup> Hart, Agrarian Question and Industrial Dispersal in South Africa, pp 246-7.
- <sup>77</sup> Hart, Agrarian Question and Industrial Dispersal in South Africa, pp 256, 248.
- <sup>78</sup> Hart, Agrarian Question and Industrial Dispersal in South Africa, p 252, 253.
- <sup>79</sup> Hart, Agrarian Question and Industrial Dispersal in South Africa, pp 266, 267.
- <sup>80</sup> L Louw, Black Tenure vs White Tenure in South Africa: What is the Impact on Development? In Cross and Haines, *Towards Freehold?* p 294.
- <sup>81</sup> See the debate in Cross and Haines, *Towards Freehold?*
- <sup>82</sup> N Vink, The Fallacy of the Commons: Communal Grazing in Southern Africa, in Cross and Haines (eds) *Towards Freehold?* p 257.
- <sup>83</sup> C Toulmin and J Quan (eds) *Evolving land rights, policy and tenure in Africa*, London: DFID, IIED, NRI, 2000.
- <sup>84</sup> World Bank, Options,for Land Reform, p 6.
- <sup>85</sup> ANC, *The Reconstruction and Development Programme*, pp 20, 21.
- <sup>86</sup> World Bank, Options for Land Reform, p 1.
- <sup>87</sup> MERG, *Making Democracy Work*, p 175.
- <sup>88</sup> Constitution of the Republic of South Africa, 1993, s121-123: Restitution of Land Rights.
- <sup>89</sup> DLA, *Annual report 1998*, Pretoria; Department of Land Affairs, 1999, p 109.
- <sup>90</sup> DLA, *White Paper on South African Land Policy*, Pretoria; Department of Land Affairs, 1998 (second printing), p 9.
- <sup>91</sup> Walker, Piety in the Sky?

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<sup>92</sup> Walker, *Piety in the Sky?*