



CENTRE FOR DEVELOPMENT AND ENTERPRISE  
Informing South African Policy

# LAND REFORM IN SOUTH AFRICA



## Getting back on track

CDE Research No 16

Cover: Brian Phokane, general manager of Coromandel, a 5 800 hectare worker-owned estate in Mpumalanga, surveys land under tillage. Photograph: Stephan Hofstätter



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May 2008

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CDE Research provides South African decision-makers with detailed analyses, based on original research, of key national policy issues.

Series editor: Ann Bernstein

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## Acronyms and abbreviations

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AgriSA	Agriculture South Africa
BEE	Black economic empowerment
CLARA	Communal Land Right Act
CPI	Consumer price index
DLA	Department of Land Affairs
DoA	Department of Agriculture
ESTA	Extension of Security of Tenure Act
GDP	Gross domestic product
LCC	Land Claims Commission
LPC	Lereko Property Consortium
LRAD	Land Reform for Agricultural Development
LTA	Labour Tenants Act
NGO	Non-government organisation
PLAS	Proactive Land Acquisition Strategy
PSC	Public Service Commission
RLCC	Regional Land Claims Commission
SASA	South African Sugar Association

# Introduction

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## ‘South Africa belongs to all who live in it’

Nearly 50 years ago, officials from the then Bantu Affairs Department (BAD) came to the farm Boomplaats, near Lydenburg, to tell the people living there that they had to move. The Dinkwanyane community had bought Boomplaats on the open market in 1906. They were a disciplined and highly religious group who ran their farm through a democratically elected committee of seven. But their presence in a white farming area offended the apartheid government. In the late 1950s, BAD began to put pressure on them to leave. Some people agreed to move. Others tried to resist. They hired the Johannesburg law firm of Mandela and Tambo to plead their case. The government turned down their petition. When officials arrived to value the farm without their permission, some community members chased them off the property. The officials returned. The community gathered and sang this hymn:

*Jehovah, arise and protect us  
From all those who hate us!  
Fight for Jerusalem.  
When they say, ‘Come, let us destroy’  
Have mercy upon them.  
Saviour, forgive them!  
Let their children come,  
Let us embrace the children of those who taunt us,  
Embrace them, kiss them!  
Blessed is He who will soften their hearts.*

For most South Africans, the history of the land in the 20th century is one of pain and injustice

The officials, visibly moved, left the farm. But they soon returned, this time with police and bulldozers. On 26 January 1961 the Dinkwanyane were forcibly removed and dumped in a ‘native reserve.’ They were not permitted to take their livestock or any building materials with them. The BAD loaned them tents for three months. A community that had lived in peace, independence, and some prosperity for 55 years had been destroyed.<sup>1</sup>

In 2001 – 40 years later – Boomplaats was restored to its rightful owners under the post-apartheid government’s land restitution policy. However, many thousands of people in other communities around the country are still waiting for their restitution claims to be concluded.

Stories like this could be multiplied many times. For most South Africans, the history of the land in the 20th century is one of pain and injustice. Any meaningful discussion of land reform has to start by acknowledging this and by recognising that the Dinkwanyane, their descendants, and everyone who had similar experiences have a right to justice. The constitution has rightly established a process whereby people must be compensated for land and assets they lost under apartheid. Opportunities to make a decent and dignified living must be created. All South Africans need to feel that rapid progress is being made toward creating a country that ‘belongs to all who live in it,’ as the Freedom Charter puts it.

Equally important, any serious discussion of these issues has to begin by acknowledging that – as in the Boomplaats case – the democratic government has already done a great

deal through its land reform programme to rectify the injustices of the past, and to create new opportunities for the dispossessed.

CDE has researched and written this report as a contribution towards achieving these goals, and we have kept them in mind throughout our research and analysis. But as public policy analysts we cannot be satisfied with just stating our goals. In order to move from goals to realistic policy proposals, we have to look carefully and dispassionately at the evidence about what is really happening in the countryside, and at what is likely to happen if current trends continue.

As a result, some of this report makes uncomfortable reading. City people who believe that the land reform problem has been adequately addressed, or that South Africa's overall prospects are unaffected by how land reform is progressing, will be alarmed by what they read. Those who believe that the government alone can be relied on to correct injustices and create opportunity will not enjoy what follows. People who think that farming is usually easy and profitable are in for a shock. And politicians and officials who argue that land reform is being held up by greedy white farmers and the heartless workings of markets will find much evidence here that they are mistaken.

CDE believes the current generation of South Africans has a responsibility to the Dinkwanyane – and others like them – to analyse our land reform challenges as clearly and accurately as possible, no matter how uncomfortable this may be. The Dinkwanyane had the strength to forgive their tormentors and to endure 50 years of dispossession. We must have the strength to abandon our various illusions about land reform, to look closely at the evidence, to talk frankly about what we see, and to find ways out of our present difficulties.

We need to do this because – as we will show later in this report – there is a real risk that more tragedies will occur soon in the South African countryside. If they do, these fresh disasters would cause at least as much pain as that endured by the Dinkwanyane of Boomplaats.

There is a real risk that more tragedies will occur soon in the South African countryside

## CDE and land reform

CDE is a market-oriented public policy research organisation. We are non-partisan and independent. Our pro-market orientation emerges from our understanding of the lessons of South African and international experience, and does not arise from or imply links with any political party or particular business interest. We seek to produce policy advice that is based on the best available evidence and analysis, and that will help to improve the lives of all South Africans.

In our first report on land reform, published in 2005, we examined this vital issue in the broadest and most strategic sense.<sup>2</sup> We argued that it was necessary to see land reform as part of a coherent set of strategies required to help South Africa become a more prosperous society. Besides recommendations about the land reform process itself, these strategies included:

- successful urban land release, and rapid housing development in and around the cities and towns;
- a coherent suite of programmes to improve the rural economy; and
- a direct assault on poverty and unemployment, both in the countryside and in the urban areas. This would include labour market reforms, better and more rapid skills



development, and a dramatic expansion of the government's labour-intensive public works programme.

There is a great deal of evidence to show that the private sector and markets already contribute greatly to South Africa's development in general and to land reform in particular. In addition, it is a historical fact that, across the globe, almost all state-dominated land reforms have had a very poor outcome for almost everyone concerned.<sup>3</sup> We therefore believe that the positive role of the private sector in land reform can and should be expanded, and that it is vital to understand private sector perspectives on the issue.

Since the publication of our previous report, a number of influential people in politics and the civil service have begun to doubt the value of a market-oriented approach to land reform. As we will show later, some senior officials and politicians now want to control the land market much more directly. There are plans to take steps that are likely to reduce the scale and viability of the commercial farming and agro-processing sectors. Given South Africa's high rate of unemployment, and persistent deep poverty in the countryside, these are steps we can ill afford. In this report, therefore, we focus specifically on the future of South African agriculture. We show that the market and the private sector are in fact making significant and positive contributions to agricultural land reform, and that, given a more enabling environment, this contribution could be greatly increased.

## Areas of agreement between the government and the private sector

It is important not to exaggerate the extent to which the government and the private sector disagree about land reform. Although the distance between them has grown since 2005, government and organised business agree on a broad range of issues. The most important are that:

- Land reform is a central part of the constitutional settlement, and sacrifices and compromises are necessary to accomplish what the constitution requires.
- Land reform should be high political priority. The costs of failure are very high. In a worst-case scenario, failed land reform would have catastrophic knock-on effects on the entire national economy.
- There is a clear and pressing need to accelerate the transfer of land to black farmers. The present slow pace of redistribution is worsening relations between organised agriculture and government, and among farmers, officials and farm workers in many districts. There is an urgent need to identify and remove blockages to redistribution.
- A combination of state and market forces is necessary to achieve effective and sustainable land reform.
- Land is required both for settlement and for farming by the historically dispossessed.
- Many land claims are justified, and these must be settled quickly and fairly.

The private sector and government also agree about the broader economic importance of agriculture. The government's Accelerated and Shared Growth Initiative for South Africa (AsgiSA) emphasises the importance of 'sectors with potential for high growth, employment creation and enterprise development [such as agriculture, and therefore recognises the need for] a focus on agriculture/agro-processing ... biofuels, timber, food production and processing' to improve South Africa's export competitiveness and create jobs.<sup>4</sup> The private sector would add that although agriculture, forestry, and other land-based enter-

The private sector and markets already contribute greatly to South Africa's development in general and to land reform in particular

prise are often more challenging sectors than some suggest, agri-business can undoubtedly provide important opportunities for a new generation of skilled entrepreneurs.

## Areas of disagreement between government and the private sector

Our research shows that, in 2007, there were five main areas of disagreement between the government and the private sector. These were:

- **The operation of land markets:** some government officials have come to believe that ordinary market processes are an obstacle to land reform, while the private sector continues to argue that the market is an efficient mechanism for land redistribution.
- **The practice and process of restitution:** the government is still officially satisfied with progress, while the private sector is concerned that restitution is now progressing slowly, unpredictably, and in ways that make farming more difficult for restitution beneficiaries and black emerging farmers as well as for established commercial farmers.
- **Government's 2007 proposed land acquisition measures, including increased use of expropriation and a right of first refusal on all land transactions:** the private sector regards these as likely to be counterproductive.
- **Government's capacity to implement its land reform programmes:** the private sector believes the government frequently lacks the capacity needed to implement land reform quickly, fairly, consistently, and in ways that leave land reform beneficiaries better off in the long run.
- **Potential of state land:** the private sector believes the government is paying too little attention to the land reform potential of the land it already owns.

A combination of state and market forces is necessary to achieve effective and sustainable land reform

In the rest of this report, we examine the reasons for these areas of disagreement in greater detail. Our aim is to show how to narrow the gap between the government and the private sector in order to get to land reform outcomes that will permanently improve the lives of land reform beneficiaries as well as all other South Africans.

## Research process<sup>5</sup>

This report is based on extensive empirical research. CDE commissioned leading South Africa experts on land issues to write 15 background research reports (see appendix A). These reports focused on a wide sample of regions and agricultural subsectors, and looked in each case at the contribution made by the private sector to land reform, both through organised land reform initiatives and in the ordinary course of their business.

To achieve geographical spread, the regions chosen for analysis were the Stellenbosch area of the Western Cape, the Elliot and Ugie areas of the Eastern Cape, the KwaDukuza area of KwaZulu Natal, the Badplaas area of Mpumalanga, and the southern Free State. In each case, detailed assessments were made of market and state-driven land transactions, trends in farming, and related considerations. Three papers examined economically important subsectors of agriculture. These provided detailed analyses of trends in land reform in the sugar, timber, and fruit sectors. Each of these three industries has a highly organised private sector that is actively involved in land reform as well as in commercially viable agricultural production. Drawing on the regional and sector studies, one of South

Africa's leading agricultural economists provided an assessment of the prospects for further contributions of the private sector to land reform. In order to grasp how land reform is progressing from the point of view of the private sector itself, CDE commissioned a general review of what the private sector has already contributed to land reform.

Another paper provided an overall review of the nature of the contemporary rural land market and of the relationship of that market to land reform. This study drew on secondary sources to assess trends for the country as a whole, and confirmed these results with primary research on land transaction trends in Limpopo and Mpumalanga using evidence from recent land transfer deeds.

In order to understand the progress of land reform from the government's perspective, CDE conducted interviews, in 2006–7, with scores of relevant government officials and non-government organisations (NGOs). These were complemented by ongoing monitoring of government's official research publications, policy statements, and land-related political interventions up to December 2007.

It emerged from the research that many people in the private sector perceive the slow pace of rural land restitution, and the uncertainty it has generated, as one of the most serious impediments to successful land reform. In response to this finding, CDE commissioned a review of land restitution from a legal perspective, and derived recommendations about how to speed up the legal and administrative processing of land claims. Then, because it had also emerged as an issue for some private sector actors, CDE commissioned an analysis of state-owned land and its potential role in land reform. This work also looked at communal tenure and its relationship to land reform.

Most of the commissioned research for this report was done in 2006. In 2007 the results of this research were analysed, evaluated, and tested in numerous workshops and discussions with academic specialists and key stakeholders in the private and public sectors.

Land reform and agriculture are large, complex, and quickly evolving areas. Wherever possible, we have updated our facts and figures to December 2007.

Land reform and agriculture are large, complex, and quickly evolving areas

## Structure of the report

In the next section, we outline the results of CDE's studies of the interactions between land market dynamics and land reform in our sample of South African farming subregions. The situation is shown to be quite complex, but overall the market is performing fairly normally in tandem with land redistribution in most of these places. However, the market is somewhat disturbed in at least two regions by stalled restitution.

Following this assessment, we move on to examine trends in government policy and practice. Although achievements have been notched up, the complexity, failures, challenges and areas of difficulty are starting to mount up, resulting in a shift in policy thinking at the highest levels in the Department of Land Affairs (DLA). Some senior officials and politicians see the market as an obstacle to land reform, and mixed messages are emanating from senior government leaders about the intended scale and methods of land reform, and weak or possibly declining state capacity to implement policy.

We then look in detail at whether or not there has been 'unreasonable inflation' in farm prices and 'profiteering' by commercial farmers whose land is being bought for land reform. This is important because allegations that incumbent farmers are profiting unrea-

sonably from land reform have been central to the arguments of those arguing for stricter regulation of the land market, or for non-market – or anti-market – approaches to land reform. The facts indicate that these allegations are groundless. They are probably based on a narrow sample of unusually problematic cases; on experiences resulting from weak state capacity in relation to land valuation and the management of land transactions; and on ideological preconceptions.

Next, we examine what markets and organised business have done to facilitate land reform. A considerable amount has been achieved, and the outcomes of private sector-led land reform compare very favourably with the results of state programmes. This is probably because of the private sector's tighter focus on productivity, and its greater ability to provide technical support to new farmers. We look in detail at three subsectors with quite highly organised private sectors: fruit, timber, and sugar. In all three cases initiatives towards redistribution started at least a decade ago. By late 2007, however, the slow pace and unpredictability of the restitution process was severely disrupting both redistribution and productivity in the timber and sugar sectors, and disinvestment was starting to occur.

Drawing on these research results, we identify the key challenges facing the land reform process now. To clarify what is at stake, we then construct two likely futures for land and agriculture *if current trends continue or intensify*. Both of these trajectories are unattractive. We call the likely future based on the continuation of current trends 'Nobody Wins.' The trajectory based on the intensification of current trends is called 'Everybody Loses.' People like the Dinkwanyane – and every South African – deserve better outcomes than these. We therefore conclude our report by calling for a public private task team that will implement five practical policy recommendations about how to get from these likely futures to one in which we can genuinely say that everybody wins from land reform.

Our research shows that land reform takes very different forms in different parts of the country

## Case studies of local land market dynamics and land reform

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Some analysts and commentators discuss land reform trends and issues as if they were the same everywhere. Our research shows, however, that land reform takes very different forms in different parts of the country. This is clearly illustrated by our four detailed area case studies and other less detailed local assessments. They give an insight into the interactions between land use, land values, and land reform in different parts of the country.

### Stellenbosch, Western Cape

Most farming in Stellenbosch is of fruit and wine, and features a strong national and international marketing infrastructure. Many farms also have important non-farming components (such as bed and breakfast facilities, restaurants, dwelling units, and so on). There are about 32 000 hectares of farmland in the Stellenbosch municipal area. Of these, 5 500 hectares on 199 farms changed ownership in the period January 2003 to April 2006, at an average price of just more than R1 million per hectare (a much higher price than in the rest of South Africa).<sup>6</sup> Farm prices in this subregion escalated strongly over the three years

studied (which corresponded to the peak national property boom years), but this price escalation had little or nothing to do with farming and/or land reform. Instead, it was related mostly to bank interest rates, the non-farm component of farm values (houses on the farms and so on), the attractions of this area as a retirement and tourism centre, and the anticipation during the period under study of being able to borrow money at a lower interest rate than the projected appreciation of (mainly non-farm) land values.

Many of the sales were of smaller so-called 'boutique' farms, often with significant non-farm functions, such as tourism facilities or retirement homes. The majority of land reform initiatives in the Stellenbosch area have not involved the transfer of land as such. Rather, land reform has been achieved through equity schemes for farm workers on larger farms where per-hectare prices are lower than elsewhere in the district. Under these schemes, government funds allocated to land reform are used to buy shares (equity) for workers in new private companies which, in turn, own the farm and the operations that take place on it. In these cases, the former sole owner often retains a majority share in the company.

What this means is that, in the Stellenbosch area, land reform often amounts to upgrading the conditions of farm workers. As part-owners of the farms on which they work, they receive additional income from farm profits, and their housing is often improved. These programmes have largely been successful, and the land reform process in Stellenbosch is positively perceived both by local people and more widely.

There are very few land restitution claims in this area. Nevertheless, in July 2007 Carl Opperman, chief executive of Agri Wes-Cape, said that some pending claims would have 'enormous impacts' on the economy of the affected areas. He added that Agri Wes-Cape believed the slow pace of land reform was largely due to clumsy bureaucratic processes, an insufficient budget, and a lack of capacity in the Department of Land Affairs (DLA).<sup>7</sup>

## Elliot and Ugie, Eastern Cape

The second CDE case study focused on the Elliot and Ugie districts in the Eastern Cape.<sup>8</sup> This area contains land of fairly high agricultural potential for grazing and some field crops, but with virtually no fruit-growing potential. Former whites-only farmland here is close to the densely populated and land-hungry rural areas of the former 'homelands' of the Ciskei and Transkei, where there is a great deal of poverty and unemployment.

In the course of CDE's research, crime and stock theft were often cited as problems by white farmers, most of whom were planning to retire without family members replacing them on their farms. Volumes of sales and land prices here had fluctuated over time; before 2000 they were depressed by land claims and high rates of intentions to sell; but by 2006 prices had recovered as a result of lowered interest rates, less uncertainty over land reform, and greater levels of confidence and collaboration – at least in certain areas – between black and white farmers. Land reform had taken different directions in different parts of the district, often depending upon the nature of relationships between black and white leaders.

In this area, land ownership by black South Africans has radically improved, and the district's commercial agricultural land is almost 30 per cent black-owned. Land prices in the Elliot and Maclear districts rose in line with inflation (about 7,5 per cent a year on average) over the period 1999 to 2006. Many white farmers sold willingly, often with sales assisted through government Land Reform for Agricultural Development (LRAD) grants. Most farmers received market value for their properties (in 2006, varying between R1 000

The slow pace of land reform was largely due to clumsy bureaucratic processes, an insufficient budget, and a lack of capacity in the DLA

to R2 000 per hectare). The average age of sellers was about 59, although the range in age was from 24 to 92, and very few existing white owners said that family members wanted to continue farming in the future. Many white farmers were mentoring new black farmers.

In certain respects, the situation of new black farmers was less positive than that of white 'willing sellers'. After 1994 some black farmers acquired leasehold over state land, and have since tried unsuccessfully to convert these leases into ownership. Because they cannot convert their leasehold to freehold, they have been unable to use their land as security for loans needed for further agricultural development. Many of those who had gained ownership of 'white' land felt the government had lost interest in them once the transfer had been completed. It appears that no LRAD beneficiaries in the Eastern Cape are recorded as having received post-settlement farming training from government.<sup>9</sup> Black farmers also reported substantial 'squatting' on their land (see box: **Challenges in the Eastern Cape**, facing page).

## KwaDukuza, KwaZulu-Natal

The third area researched in depth is KwaDukuza in KwaZulu-Natal. This region extends northwards from Ballito to the Tugela River.<sup>12</sup> Land reform in this district differs in significant ways from the other areas studied. First, the land is historically closely associated with the sugar industry, and sugar is probably the best organised and researched agricultural subsector in the country, so CDE was able to develop a particularly good understanding of what was happening here. Second, KwaDukuza enjoys high levels of rainfall and is very productive, with relatively stable markets for farm products compared with the Eastern Cape. Land here is therefore more expensive than in the Eastern Cape, but less expensive than in the Stellenbosch area, where values have been enhanced by non-farming factors. In 2006 dry farming land cost between R 12 000 and R 25 000 per hectare, and irrigated cane fields between R 20 000 and R 30 000 per hectare.<sup>13</sup>

The sugar industry has a considerable history of empowerment of small (African and Indian) cane growers, beginning decades before the government's (post-1994) land reform programmes. It has also successfully pioneered the government's LRAD programme in this and other cane growing areas, and established innovative organisations offering new black farmers technical support as well as secure markets for their products (see the box on the Inkezo Land Company later in this report).

Of 93 019 hectares under sugar cultivation in 2005, 68 per cent was white-owned, and 32 per cent black-owned. Of the latter amount, about one third was already established before 1994. This land is highly fertile, and benefits from significant rainfall (around 1 000 millimetres a year). The largest transactions occurred when sugar milling companies sold large blocks of land under cane as part of their black economic empowerment (BEE) undertakings. Some 19 000 hectares had been redistributed in this way by mid-2006, and further transfers were in progress.

The local municipality has been contemplating using its taxation powers to hasten redistribution. In terms of initial 2007 drafts, municipal rates were to be introduced on agricultural land, at a level 50 per cent higher than the rates levied on residential land. This could drive many incumbent commercial farmers out of business. The municipality envisages not applying rates (in other words, providing tax exemptions) to land reform beneficiaries for an initial 10 years.<sup>14</sup>

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## CHALLENGES IN THE EASTERN CAPE

While much of the focus of land reform in the Eastern Cape has been on the transfer of farms owned by whites to black owners, there are also some important challenges of dealing with state-owned land in the area. The following extract from an article in the *Financial Mail* in 2006 illustrates these particular challenges:

Anger is mounting among black farmers in the Eastern Cape at the provincial government's failure to release hundreds of state-owned farms for redistribution or protect them from land invasions.

After South Africa's first democratic elections, small-scale farmers in the province expected to buy land they had leased from former homeland governments and graduate to full commercial status.

Today most are still waiting for transfer, leaving them unable to use their farms as security for production and farm infrastructure loans.

Aggrey Mahanjana, CEO of the stock farmers' union that convened a meeting in Bisho last week to highlight the issue, says more than 200 black farmers are leasing about 100 000 hectares of state land they want to buy. 'Without secure tenure you can't improve your land because it's a wasted investment,' he says.

Mahanjana says most have between 3 and 15 families squatting on their land. All complain that this results in theft, veld degradation, and the spread of disease from unvaccinated animals belonging to squatters.

'We are not asking government to evict these people,' Mahanjana stresses. 'They must be offered alternative land or they must be given title to the portion of the farm they live on after it is excised. Instead, officials do nothing - they are scared to resolve this conflict.'<sup>10</sup>

If successful emerging farmers seek to expand out of this badly managed communal arena, they still face major challenges. The following summary of an article in a *Farmer's Weekly* of June 2007 illustrates both the frustration of farmers on state-owned communal land and the poor performance of the DLA in the region:

A promising emerging farmer started farming in the communal areas with money he made as a miner, and later an airport official, and gradually expanded his herd, while trading in sheep with regional farmers. Upon reaching his productive ceiling in the communal area he tried unsuccessfully to obtain new land, visiting Land Affairs numerous times, with willing sellers in mind.

The first attempt to buy a repossessed farm from the Land Bank faltered for unknown reasons at the Queenstown land reform office in 1999. In 2003 two willing sellers in the Ugie district were identified and again the partners were frustrated at the same government agency. Even if willing sellers accompany the would-be buyer to the DLA they are frustrated, and the situation affects 'many emerging farmers who have identified willing sellers', according to Sipiwo Makanini, one-time deputy chairperson of the Eastern Cape National Wool Growers Association.

In the meantime, this promising farmer's operations are declining as the township surrounding his farming operations expands, especially after the building of a large cluster of RDP houses there in 2003.<sup>11</sup>

'Anger is mounting among black farmers in the Eastern Cape at the provincial government's failure to release hundreds of state-owned farms for redistribution or protect them from land invasions.'

While land redistribution has been relatively successful in this region, only two land restitution processes, involving a total of some 1 000 hectares, had been completed by mid-2006. By end 2007 many new claims had been gazetted, with 'informed opinion' being that there were many more to come.

Officials responsible for administering the restitution process had recently resigned, citing work pressures as the cause. Rumours were circulating among farmers in the area that the negative experiences of conflict in the Mangete area north of KwaDukuza (see box: **Some challenges on the KwaZulu-Natal North Coast**, facing page) could move southwards unless there was timely intervention. The SA Cane Growers' Association, an organisation representing most commercial growers, warned in late 2007 that stalled restitution was affecting about half of all growers, and that the associated disinvestment from farming was threatening the viability of several mill areas.<sup>15</sup>

It is unclear how much land will ultimately be successfully claimed, but in some KwaDukuza mill supply areas, actual (gazetted) and pending claims total some three quarters of all farmland. This creates uncertainty because planned transactions between willing buyers and willing sellers are increasingly subject to land claims. A total of 75 land claims have been lodged in the KwaDukuza area, of which 34 had been accepted for the process of validation. However, the situation is changing all the time, many claims are in the process of being gazetted, and it is probable that two thirds of the total KwaDukuza commercial farming area will come under claim.

In some KwaDukuza mill supply areas actual (gazetted) and pending claims total some three quarters of all farmland

Some claims include land with significant urban development potential on the coast, often valued at about a million rands a hectare. Thus just two or three potentially pending claims on high-value farms in this area could require – at market values – more than R1 billion to settle. This amount is equivalent to half of South Africa's entire national restitution expenditure in the year 2006/7. Concerns about the scale of these claims are beginning to paralyze the land market in the district. This outcome is particularly unfortunate because the provincial government has identified the district as its 'number one development corridor'.<sup>17</sup>

Once a restitution claim has been lodged or gazetted, the land cannot be sold or transferred in any way – including redistribution to emerging black farmers assisted by LRAD grants. Several of the farms under claim are already black-owned, with the owners often having been beneficiaries of voluntary redistribution by sugar companies and/or government LRAD grants. CDE's researchers have therefore reached the painfully ironic conclusion that 'unresolved land claims are the single major impediment to "normal" land reform in the area'.<sup>18</sup>

## Badplaas, Mpumalanga

The fourth area researched by CDE is the Badplaas area in Mpumalanga,<sup>19</sup> comprising some 20 kilometres around the village of Badplaas. The land here is fairly fertile and highly productive, and has a history of being successfully farmed by white commercial farmers since 1870. In more recent times (since 1980) values of commercial farms first declined as tobacco farming became unprofitable, then increased as farmers turned to game farming and ecotourism. By 2006 market values for land were in the vicinity of R8 000 to R10 000 per hectare.<sup>20</sup> This is higher than in the Eastern Cape but somewhat lower than in KwaDukuza, largely because of the intermediate fertility and climatic conditions, and the relative absence of non-farm development options.



## SOME CHALLENGES ON THE KWAZULU-NATAL NORTH COAST

The KwaZulu-Natal North Coast has seen important voluntary land reform initiatives by the sugar industry over several decades. It is also the focus of the province's drive towards high income and international tourism and resort development. But confidence in the ability of the state to wrap up the restitution process in this economically vital area is not high. The following extract from a background research report commissioned by CDE on the area illustrates two of the problems:<sup>16</sup>

- **Uncertainty about the scale and status of claims:**

On the basis of reports by a number of persons interviewed, most of the land south of the Tugela River to the Nonoti River; from the Umhlala River south to Tongaat River; inland of Darnall and KwaDukuza (Stanger) towns are subject to claims. Within this there are small pockets of land on which the DLA have issued letters indicating that there are no claims. While the Development Facilitation Act Tribunal regards such letters as being sufficient to grant development rights, local farmers and developers remain concerned that further claims may emerge.

- **Concerns about capacity in the Regional Land Claims Commission:**

Many of those interviewed reported that the Regional Land Claims Commission (RLCC) had experienced capacity problems for some time. In 2002 the SA Sugar Association (SASA) seconded a staff member to the RLCC to assist in processing claims, in an attempt to sift through the accumulated claims to get all those claims affecting sugar cane farms dealt with earlier. This seems to have been partially successful for SASA (although claims are still emerging unexpectedly) and for the RLCC, which subsequently employed the person. There are recent reports that the RLCC's capacity has been increased over the past 18 months, but others report that the capability of RLCC staff remains weak. The RLCC has also experienced leadership problems. The Commissioner from 1999 to 2005 was regarded as 'controversial' and she resigned in October 2005. Since then the RLCC has operated under an acting Commissioner.

Confidence in the ability of the state to wrap up the restitution process in this economically vital area is not high

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The land restitution process in Badplaas started in 2002 and almost immediately experienced multiple problems, with the result that market transactions are now effectively frozen. By April 2008 more than 80 per cent of the farms transferred as part of the restitution process had not been allocated to beneficiaries and lay unused, with their infrastructure running down (for an illustration of the complexity of the restitution process in this district, see box: **The long and winding road to restitution**, page 18).

CDE's research reveals at least ten reasons for this stalemate, including inexperienced management of the restitution process, responses from farmers, and problems within the DLA.<sup>21</sup> Unfortunately, short- and long-term damage is being done to the land reform process. By mid-2006 only a few farmers had been paid for their farms; and where farms had been transferred the beneficiaries had not received adequate training or any tangible benefit from the transaction.

Regrettably, the Badplaas situation is not unique. There is declining confidence and confusion over land reform in many other areas of Mpumalanga and Limpopo.

CDE's research in drier farmland areas, including the southern Free State, shows that there is no shortage of willing sellers, in some cases at prices of less than R1 000 per hectare. But the government has been slow to act in these places too. It is reported that municipal and DLA officials have unrealistic expectations and negligible budgets, and that relationships are deteriorating.

In summary, the case studies illustrate the great diversity of relationships between localised land markets and land reform. Highly diverse patterns of problems and opportunities are found in different parts of the country, meaning that there are no simple 'silver bullet' solutions that could be successfully applied to the entire country.

Calls for one unified national programme or policy to solve the land problem are very likely to be counterproductive. Demands for a quick and simple solution create inaccurate expectations, and distract attention from the real job at hand: to resolve complex and highly specific local issues in ways that leave land reform beneficiaries better off in the long term.

## Current government programmes and policies

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The remaining few thousand claims are the most difficult to settle, and progress on these has been extremely slow

The state has pursued land reform through four processes. These are: restitution (returning land or providing a cash equivalent) to people dispossessed under apartheid; redistribution (transferring more land to black owners); tenure reform (modernising land tenure rules and access to land ownership); and providing funding and other resources to support the emergence of black farmers. However, despite the fact that the government is devoting considerable energy and expenditure to each process, a broad spectrum of politicians, business people, farmers and communities agree that land reform is progressing too slowly. CDE's empirical research strongly supports this opinion.

### Restitution

The government has done well in terms of the total numbers of restitution claims processed and settled. Crucially, though, the most complex and expensive claims remain to be settled. By 2006, validated land claims numbered about 80 000, of which 81 per cent were for urban land and 19 per cent for rural land.<sup>24</sup> Exact numbers are misleading because the process is a continuing one, and because by the end of 2007 it was still unclear how many claims actually existed. It is likely that at least 90 per cent of validated claims had been settled by the end of 2007, mainly because most of the urban claims could be settled with cash payments that did not entail complex negotiations or very large price tags. Many rural claims have also been settled with cash, although by 2007 there were increasing signals that the DLA would prefer to effect land transfers.

Thus the remaining few thousand claims (around 5000) are the most difficult to settle, and progress on these has been extremely slow. The government itself has acknowledged that its self-imposed 2008 deadline for settling all land restitution claims will not be met. In August 2007 a senior DLA official told the parliamentary portfolio committee on land affairs that 5 128 land restitution claims remained to be validated, gazetted, verified, and finally settled. He said the DLA was aiming to settle 3 590 (70 per cent) of these by December 2008. However, only 132 claims had been settled in the six months under

review before the committee – January to June 2007 – and these had cost R1 billion to settle.<sup>25</sup> Sometimes, a single farm under claim is valued at several hundred million rands.<sup>26</sup> In November 2007 the acting director-general of the DLA, Thozzi Gwanya, said at a government media briefing that ‘many of these [claims] are in the Land Claims Court. We cannot tell a judge when he has to determine the case before him.’ Gwanya also emphasised that many of these claims were delayed by conflicts among traditional leaders.<sup>27</sup>

Land claimants are frustrated by these delays, and sometimes resort to land invasions. Politicians hear from their constituents that land reform is ‘not working’, while existing farm owners are unable to sell land once it has been gazetted as under claim. Banks do not accept gazetted land as collateral for loans. Incumbent farmers therefore lack the incentives and/or the money to continue working with the land, and it is sometimes taken out of production or allowed to deteriorate. This lack of confidence and motivation among farmers is now being exacerbated in many areas by the introduction of municipal rates in respect on farmland, sometimes at levels exceeding those applicable to residential properties, and potentially costing individual farmers hundreds of thousands of rands a year.

During 2006 the national government circulated draft policy papers stating that it believed the application of rates to farms should be used to reduce farm prices, and it has also questioned the whole principle of market values for farmland.<sup>28</sup> In certain restitution cases, there are ongoing claims and counterclaims regarding the financial value of land. The government departments involved are also slowed down in processing claims by high staff turnovers, and poor administrative capacity among those who remain. Finally, inadequate attention is being given to training new farm owners, resulting in financial failure and a return to subsistence farming in many cases.

Redistribution is being slowed down by inexperienced officials, poor relationships, and stalled restitution

## Redistribution

The process of redistribution has also been slow. Because of budget constraints, and because the government lacks the skills required to buy land efficiently, only around 4,7 per cent of commercial agricultural land by area has been redistributed through all government programmes to date.<sup>29</sup> The government’s target is 30 per cent by 2014. According to the DLA, white-owned commercial farmland in South Africa comprises 82 million hectares, meaning that the transfer target is 24,6 million hectares. By November 2007, some 4,2 million hectares had been redistributed.<sup>30</sup>

New farmers established through redistribution programmes are unequally distributed by province, with more than 65 per cent being located in Mpumalanga and the Western Cape.<sup>31</sup> The government has acknowledged that redistribution is proceeding too slowly. Officials often attribute slow progress to high land prices and a lack of willing sellers. CDE’s research and a recent workshop with a cross-section of farmers suggest that this is not the case. Instead, redistribution is more often than not being slowed down by inexperienced officials, poor relationships, and – ironically – by stalled restitution, which prevents market transactions (including those supported by government redistribution grants) from being concluded.<sup>32</sup>

## Tenure reform in commercial farming areas

Neither farmers nor the government are satisfied with progress made in this area. Tenure reform is a constitutional obligation; the constitution states that ‘a person or community

## THE LONG AND WINDING ROAD TO RESTITUTION<sup>22</sup>

1998	Claims lodged
August 2002	Claims gazetted
December 2002	End of last year of full agricultural production for many farms in Badplaas
January 2003	Meeting of farmers, claimants, and RLCC
March 2003	Most farmers agree to co-operate with the process, and to work together
June 2003	Original firm of valuers (Makhaya & Associates) prove unable to do valuations
5 July 2003	Valuations subcontracted to another firm
July 2003	Farmers appoint own valuer
August 2003	Meetings to discuss differences in valuations
September 2003	Agreement to 'average' the differences; farmers sign agreements
Late 2003	LCC head office asks farmers to assist with training and management.
Late 2003	Simunya Badplaas Dlomo Development Forum established, with wide participation
Late 2003	AgriBadplaas establishes an 'after-care' programme
October–November 2003	Agreements processed and confirmed at all levels within Mpumalanga RLCC and national LCC
December 2003	Documents submitted to Minister of Agriculture and Land Affairs
January 2004	Minister visits Badplaas area as part of pre-election tour
March 2004	Department endorses agreements, except for loose assets
	Correction of mistakes in calculations
	Amendment to agreements and application for grants to buy equipment and other loose assets
	Further negotiations regarding greenhouses, pine trees and other loose assets
	Farmers not affected by loose assets issue receive letters of intent, registration proceeds, and seven farmers are paid
4 September 2004	Article in <i>City Press</i> alleging price fixing <sup>23</sup>
6 September 2004	Mpumalanga LCC responds internally to article with detailed explanations which are accepted by chief LCC and Minister of Agriculture and Land Affairs
7 September 2004	Change of direction by chief LCC: Mpumalanga LCC and project manager suspended; legal adviser threatened with suspension; all negotiations stopped
September 2004	Chief LCC takes over management of Mpumalanga office
	Department appoints Ernst & Young to conduct a forensic investigation, and appoints another valuer to review existing valuations
January 2005	Farmers compile chronological report about the land restitution process
	Ernst & Young report finds no evidence of collusion or price fixing
	New valuations all significantly lower than previous valuations
	Disciplinary hearing finds Mpumalanga LCC not guilty on all but three minor counts among 47 charges

26 July 2005	Land Claims Court rules that allegations of fraud and inflated prices were totally unwarranted and based on unsubstantiated allegations
31 July 2005	Minister of Agriculture and Land Affairs criticizes Badplaas farmers in television appearance
15 August 2005	Farmers' proposal of an agreed panel of valuers rejected
26 August 2005	Land Claims Court refuses leave to appeal and orders government to take transfer of farms for which sale agreements have been signed
22 November 2005	Department appoints fourth set of valuers New valuation figures accepted by a group of farmers
30 November 2005	A local lawyer and one affected farmer urges other Badplaas farmers to reject claims and resist the restitution process
30 January 2006	Offers signed by chief LCC and forwarded to Minister for approval
12 May 2006	Chief LCC lodges papers applying for a review of the Land Claims Court judgment
March 2007	Payments begin for remaining Phase 1 farms (apart from the two involved in the Supreme court case) and Phase 2 farms
Mid 2007	Farmers in Phase 3 continue to resist claims and restitution process; supported by TAU SA
November 2007	Land Claims Court judgement upheld in Supreme Court; Department appeals
18 February 2008	Land Claims Court judgement upheld in Constitutional Court; Department ordered to take transfer and pay capital and interest charges
April 2008	Department refuses to pay; new application being made to Land Claims Court
April 2008	Most farms involved in Phases 1 and 2 have not been allocated to beneficiaries and lie unused; very little agricultural activity on these farms, and infrastructure run down; a few white farmers are working as managers with new owners
April 2008	Local community groups remain demoralised due to lack of progress and lack of planning for hand-over by the Department; tensions remain between local community groups, farmers and the Department
April 2008	Some Phase 1 and 2 farmers considering a claim against Department for loss of interest due to delays in payment

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whose tenure is legally insecure as a result of past racially discriminatory laws or practices is entitled ... either to tenure which is legally secure or to comparable redress.<sup>33</sup> The government has passed two laws aimed at implementing tenure reform in commercial farming areas: the Extension of Security of Tenure Act (Act 62 of 1997) (ESTA), and the Land Reform (Labour Tenants) Act (Act 3 of 1996) (LTA). ESTA seeks to protect dwellers on privately owned land against arbitrary eviction, and allows farm workers to 'upgrade the rights in land' from tenancy to freehold. The LTA grants secure tenure to labour tenants on privately owned farms, and creates a claims process that labour tenants can use to gain full ownership of the land they occupy.

According to private sector sources, these acts have tended to make farmers reluctant to hire more workers. Farmers fear that they will no longer be able to dismiss workers or even require them to leave the farmer's property if they are no longer employed on the farm. Organised agriculture has called for ESTA to be repealed.<sup>34</sup> Meanwhile, the government, NGOs, and human rights lawyers have all expressed concern that this legislation is not adequately protecting farm workers against evictions and abuse.

In August 2007 the deputy director-general of the DLA, told parliament that the government's goal of improving farm workers' security of tenure faced various problems, including a lack of ability to monitor evictions, a shortage of funding for NGOs seeking to prevent illegal evictions, the limited organisational capacity of evictees, and too few attorneys willing to represent the evicted. He also said he was aware of collusion between magistrates, lawyers, and farmers against farm dwellers, but added he had no concrete evidence of this. He went on to say that the DLA wanted to buy 5 million hectares of land to provide long-term tenure security for farm workers.<sup>35</sup>

Two weeks later the Deputy Minister of Agriculture and Land Affairs reportedly stated that the government was prepared to expropriate land from farmers who evicted farm workers illegally: 'Those people who don't want to hear, we are not only going to take them to court, we are going to also take their land away from them,' he declared.<sup>36</sup>

In November 2007 the Minister of Agriculture and Land Affairs provided more detail about the new land acquisition plan. She said the government would use the newly acquired land to create 'agricultural villages' in order to 'cater for farm dwellers who want to farm on a commercial scale and those who want tenure security, with access to land for household food security. I'm delighted that this project is targeting farm dwellers and farm workers who are the most vulnerable members of our society.'<sup>37</sup>

In summary, this is another area in which relationships between the government and the private sector are fraying, state capacity is in short supply, and expectations of a single large-scale solution are being raised.

These acts have tended to make farmers reluctant to hire more workers

## Tenure reform in the communal areas

The government aims to modernise communal tenure and promote secure individual ownership in the former homelands. The legislation intended to give effect to this goal is the Communal Land Rights Act of 2004 (CLARA). Unfortunately, this process is effectively stalled.

Draft regulations in terms of the act were only published in February 2008, after a prolonged period of opposition to the implementation of the legislation from a variety of stakeholders, including those who fear that CLARA is an attempt to erode the power of traditional leaders and those who consider it does not go far enough in that direction.<sup>38</sup> The constitutionality of CLARA is currently being challenged in the High Court.<sup>39</sup>

Even if the legal and political obstacles facing CLARA are eventually overcome, it is doubtful that the DLA has the information or capacity to implement it.<sup>40</sup> At an agricultural and land affairs portfolio committee session devoted to discussing the DLA's progress on CLARA in August 2006, ANC MP David Dlali expressed concern about whether the DLA would be able to handle the added burden of CLARA, given its existing delivery problems.

<sup>41</sup>

It is also worth remembering that only a small proportion of households in the former homelands rely on farming as their main source of income.<sup>42</sup> Plot sizes are generally small, markets are often distant, and the quality of labour and capital inputs is often low. This means that upgraded tenure in former homeland areas would not be sufficient in itself to ensure proper livelihoods.

## Land ownership by foreigners

Since 2005 some political interests have been growing increasingly concerned about whether foreigners should be entitled to own land in South Africa. After the 2005 Land Summit the government set up a panel of experts to consider the widespread perception that 'ownership of land by foreigners is denying access to South Africans to land in their motherland' – a view reiterated in parliament in late 2007 by Dr Siphso Sibanda, chief director of policy development in the DLA.<sup>43</sup>

In September 2007 the panel reported that 'foreign natural persons own around 3 per cent (and a significantly higher percentage in coastal and game farming areas) of land in the categories of erven, farmland, agricultural holdings, and sectional titles. The size and value of foreign ownership will certainly be higher once the process of analysing information regarding corporations, trusts and section 21 companies is completed.'<sup>44</sup>

The report concluded that it was 'justified to regulate land for the purposes of land reform and housing purposes,' and recommended that race, gender and nationality be recorded in all future land transactions.<sup>45</sup> Many observers and commentators perceived this as part of a trend towards the re-racialisation of land in South Africa. For example, during the parliamentary hearing on the report, an ANC MP argued that 'the department must not support any legislation to bring a return to racial classification in any form; that would be a return to the dark ages.'<sup>46</sup> At its national conference in Polokwane in December 2007, the ANC resolved that the government should 'regulate but not prohibit' land ownership by foreigners.

Only a small proportion of households in the former homelands rely on farming as their main source of income

## State land

About 25 per cent of all land in South Africa – more than 25 million hectares – is state-owned. This is a great deal of land, roughly twice all arable land in the country,<sup>47</sup> 24 times the area owned by forestry companies and established wood farmers,<sup>48</sup> and 58 times the area owned by big sugar companies.<sup>49</sup> Given the scale of its own holdings, it is sometimes argued that the government is focusing too much effort and spending too much money on redistributing privately owned land. However, the situation is more complicated than that, and varies by region and by type of land.

The government is right to argue that the sale of state land will not be a sufficient response to the challenges of land reform. There are three reasons for this. First, a lot of state-owned land, such as national and provincial nature reserves, cannot be sold. Second, a large proportion of state land is arid or otherwise of low agricultural quality, meaning that it presents relatively few opportunities for the creation of viable new private farms.<sup>50</sup> Third, about half of the land owned by the state is in fact communal land in the former homelands, and transferring some of this land to individual freeholders with modern property rights will almost certainly be a slow and complicated process. This is because it will have

to involve extensive negotiations within communities, and between communities and the authorities.

Table 1: State ownership of land

A provincial breakdown follows of all state land (quoted to the nearest 1 000 hectares): <sup>51</sup>	
KwaZulu-Natal (including Ingonyama land)	4 533 000 ha
Mpumalanga	2 270 000 ha
Limpopo	5 353 000 ha
North West	4 050 000 ha
Gauteng	225 000 ha
Free State	562 000 ha
Northern Cape	1 844 000 ha
Western Cape	1 344 000 ha
Eastern Cape	6,105,000 ha
TOTAL	26 286 000 ha
<i>Source: DLA, August 2006, quoted in Phatisa Equity, the Status of State Land, 2006, p 3.</i>	
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It is clear that the government could use its land holdings more effectively for land reform

However, it is also clear that the government could use its land holdings more effectively for land reform. By August 2007 only a third of state land had been audited.<sup>52</sup> In the same month a member of the Land Claims Commission told a parliamentary committee that the State Land Assets Register was still a ‘work in progress.’<sup>53</sup> Because so little is known about state-owned land and its current use, it remains highly likely that there are significant opportunities for land reform using state land which are being ignored.

This is particularly likely to be true of land held by provincial and municipal governments, the Department of Defence, and land in road and rail reserves. For instance, research for CDE indicates that a lot of land managed by the DLA, provinces, and municipalities is currently being leased out at well below market value – a fact which suggests that valuable land is not being used efficiently, either for land reform or for agricultural production.<sup>54</sup> Anecdotal evidence suggests that a lot of well-located land controlled by municipalities is not being efficiently used either for agricultural land reform or for settlement.

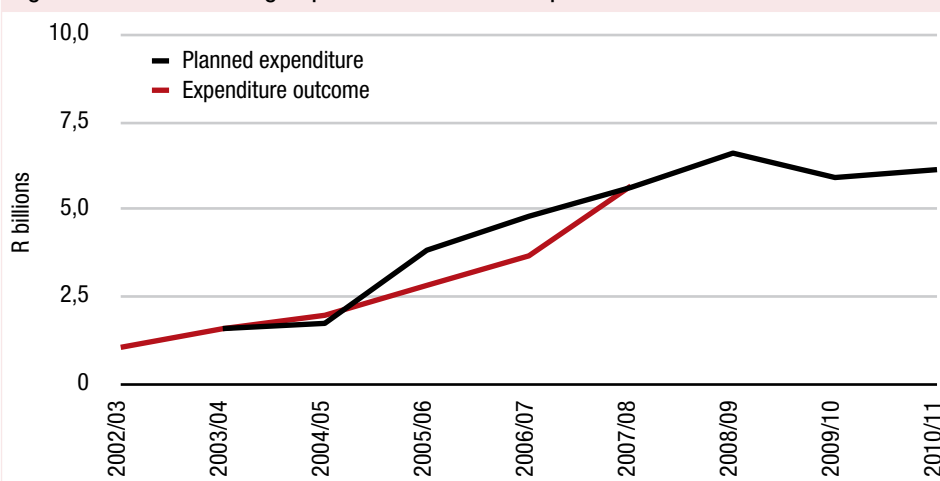
## Funding

State funding of land reform is another problematic area, for two main reasons. First, as figure 1 shows, the DLA has recently struggled to spend its budget allocation. In 2006/7, for instance, R3,7 billion was eventually spent, adjusted down from a planned R4,8 billion.<sup>55</sup> Of this reduced amount a total of R2,27 billion was allocated to restitution, and R907 million to redistribution. Surveys, mapping and planning received R194 million, and the remainder was allocated to administration and services.<sup>56</sup>

Second, even when the DLA is able to spend its whole allocation, there is a mismatch between the size of its budget and the likely cost of meeting its land reform goals. As figure 1 shows, the department’s total budget for 2008/9 is R6,66 billion, and for 2009/10 it is projected to be R5,96 billion. In 2008/9 restitution will receive just more than R3 billion, and redistribution R2,89 billion.<sup>57</sup> To put these numbers in context: a handful of very large restitution claims over valuable coastal land could cost as much as R1 billion to settle.



Figure 1: The DLA's budget: planned and actual expenditure



Source: National Treasury, *Estimates of National Expenditure, 2003 to 2008*.

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The DLA seems to be responding to the mismatch between its goals and its financial resources in three ways. First, it is seeking additional funding, while simultaneously trying to depress land prices by threatening expropriation, advocating new taxes on land, and promoting the idea of levying municipal property rates on agricultural land.<sup>58</sup> Second, some DLA officials are promoting more radical solutions, with a move away from applicant-driven reform to direct state action. There has even been discussion of 'Zimbabwe options' to speed up the process. A draft document circulated in the DLA in early 2007 stated that 'the design and implementation of a policy and/or legislative measure empowering the Government to have the first option to purchase the land that comes into the open market and to issuance of a certificate of no present interest on such land as a basis for accessing high quality land and peri-urban land should be actively prioritised in the same manner that the Zimbabwean and Namibian Governments have approached the question of land.'<sup>59</sup>

And in March 2007 the then director-general of the DLA, Glen Thomas (since dismissed by the Minister, apparently for his general lack of urgency<sup>60</sup>), announced his intention to table legislation giving the state the right of first refusal over all non-urban land transactions.

The Land Bank was previously active in providing finance for land reform, but has apparently retreated significantly from this role after some negative experiences of debt default (see table 2, page 31). A forensic audit of the bank's financial management, submitted to the cabinet in November 2007, revealed that some of its senior managers had ventured into R900 million-worth of transactions without the knowledge or consent of its board or the Minister of Agriculture and Land Affairs. The cabinet expressed indignation at this state of affairs, and several senior bank managers were fired or resigned. Late in 2007, the Minister was reported to be considering handing over a forensic audit report on the Land Bank to the police.<sup>61</sup>

## Capacity in the DLA

Over the past two years the government has begun to admit what informed outsiders have been saying for a decade or more: that the greatest impediment to successful implemen-

The Land Bank was previously active in providing finance for land reform, but has retreated from this role

tation of land reform is the lack of capacity in the DLA. In November 2006 the Minister of Agriculture and Land Affairs said there were 1 000 vacancies in the department. Capacity constraints were limiting delivery, and there was a lack of personnel to manage leases at the provincial level. She said she had asked the Public Service Commission (PSC) to 'investigate and assess areas that required intervention to speed up delivery, and report back on what can be done to correct these challenges.'<sup>62</sup> She added: 'We will then ensure that the department fulfils its mandate.'<sup>63</sup>

In an academic paper written in 2007, Cheryl Walker, former land claims commissioner in KwaZulu Natal, came to much the same conclusions about a wider range of issues in land reform – including stalled restitution. She pointed out that the government could not meet its own deadlines without compromising significantly on the quality of outcomes, and suggested that 'limited "state capacity"... is not a temporary aberration, but an institutional reality knitted into the fabric of state operations, which will persist into the foreseeable future.'<sup>64</sup>

In November 2007 the acting director-general of the DLA, Thozì Gwanya, told parliament's agriculture and land affairs portfolio committee that the vacancy ratios within the department, as well as the inability to recruit and retain staff, were 'a great challenge against capacity-building.'<sup>65</sup> A day earlier, he told parliament's land and environmental affairs select committee that the department's 'recruitment drive was "interesting" in that most of the senior posts were being filled by upward promotions within the department's own staff, thus creating vacant posts lower down; there was also attrition due to other departments poaching employees.' More than 27 per cent of posts were vacant, since the DLA 'had filled 3 228 vacancies out of the 4 447.'<sup>66</sup>

It seems clear, therefore, that the DLA is finding it difficult to recruit and retain qualified and experienced staff. This impression was reinforced by farmers who participated in a CDE workshop on land reform in late 2007, many of whom argued that the DLA and LCC were seriously short-staffed, and that many of the staff they did have knew far too little about land and agricultural issues to be effective.'<sup>67</sup>

The present policy trend is towards a more state-driven land reform strategy. If the DLA cannot find enough people to implement its current programmes, it is surely unlikely that it will find the staff it needs to implement new state-driven policies that demand even more capacity.

To summarise, the findings of this section on current government land reform programmes and policies are:

- The government is experiencing serious implementation difficulties in all its land reform programmes.
- Restitution has stalled in many rural areas now that the government has to deal with the most complex and expensive rural claims. Stalled restitution has a freezing effect on land transactions and on further investment in areas under claim. This has created serious difficulties for several productive regions and economically important sectors of agriculture.
- Redistribution remains slow. One reason for this is that it is held back by unresolved restitution claims.
- Tenure reform also appears to be stalled, and is raising political temperatures in some regions.

It seems clear that the DLA is finding it difficult to recruit and retain qualified and experienced staff

- There are no convincing plans to reduce capacity constraints in the DLA and the Land Claims Commission.
- Too little attention is being paid to state owned land and the potential that exists for redistribution and black ownership of this resource.
- There are no convincing plans to reach the 2014 redistribution target (30 per cent of white owned commercial agricultural land) in ways that will ensure that new owners will be able to use their land productively.

The parliamentary hearings on land reform in November 2007, the ANC's national conference in December 2007, and the parliamentary media briefings in February 2008 show clearly that many people – both inside and outside the ruling party – are increasingly unhappy about the progress of land reform, and about the capacity of the DLA to implement it effectively.

In this sort of context, there is a strong temptation to conduct a search for external obstacles that are perceived to be preventing the civil service from executing the will of the government. Looking for these kinds of obstacles is politically and administratively easier than thinking hard about how to improve the capacity of the DLA or about whether current policies and programmes are appropriate.

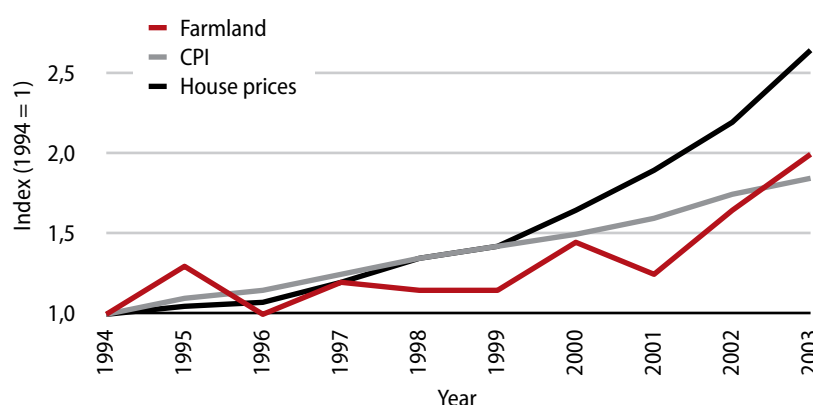
CDE is concerned to note that some people within the DLA, the ANC, and other institutions or organisations close to the ruling party appear to be succumbing to this temptation. Unidentified 'foreigners' are accused of illegitimately buying up the 'motherland'; 'the market' and 'speculators' are accused of artificially driving up the price of land; and established commercial farmers and agri-businesses are accused of deliberately obstructing land reform (see box, **ANC resolutions on land reform**, next page).

In CDE's view, the first of these accusations is made by people who have an ideological objection to non-South Africans buying property here. This is because, whatever one thinks about foreigners being allowed to own land in South Africa, the scale of foreign land ownership is simply not large enough to make a difference to land reform.

The second accusation (market manipulation) and the third accusation (deliberate obstruction) are more serious and more open to non-political policy debate. In the next

Too little attention is being paid to state-owned land and the potential that exists for redistribution and black ownership of this resource

Figure 2: HSRC analysis of national trends in property prices in relation to the CPI



Source: M Aliber and S Mokoena, *Farmland price trends in South Africa, 1994–2003*, Report commissioned by the Department of Land Affairs, Pretoria: HSRC, 2005, figure 2, p 3.

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## ANC RESOLUTIONS ON LAND REFORM

Most of the resolutions on land issues adopted at the ANC's national conference in Polokwane in December 2007 were moderate, technically oriented recommendations for improvements to current government policy.<sup>68</sup> However, several other policy resolutions and recommendations displayed a trend towards a more radical approach. In the words of these resolutions:

'We should discard market-driven land reform and immediately review the principle of willing seller, willing buyer so as to accelerate equitable distribution of land.'

'Ensure that the state regulates the land market effectively with a view to promoting the goals of rural development and agrarian change, limiting the unsustainable use of land for elite purposes (such as the conversion of prime agricultural land to golf estates) and ensuring that land remains predominantly in the hands of South African residents. To this end the management and control of state land must be consolidated under one roof.'

'Introduce a special land tax and other progressive tax measures with the aim of creating incentives for the disposal of under-utilised land and the deconcentration of land ownership, and act urgently to remove biases that currently exist in the tax system that provide incentives for the ownership of large tracts of land, capital intensity and the underutilisation of agricultural land.'

'The state must, with immediate effect, regulate but not prohibit ownership of land by non-South Africans. This regulation should take into account the country's commitment to land reform, restitution, redistribution and access to land.'

'The state and mandated entities must exercise their legal right to expropriate property in the public interest for public purpose. Compensation shall be awarded in accordance with the constitution with special emphasis on equity, redress and social justice. All legislation pertaining to expropriation must be aligned with the constitution.'

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Several policy resolutions and recommendations displayed a trend towards a more radical approach

section we look in detail at what the evidence says about the relationships between the land market and land reform. In the section after that, we look at what established commercial farmers and agri-businesses are actually doing to assist land reform.

## South Africa's land market and land reform

The 'willing seller, willing buyer' principle and the role of markets in land reform have both been under attack in recent years. It now appears likely that the government will soon be required to do something concrete to address these concerns. This is because, at its national conference in December 2007, the ANC recommended that 'we should discard market-driven land reform and immediately review the principle of willing seller, willing buyer so as to accelerate [the] equitable distribution of land.'<sup>69</sup> Behind these kinds of statement lies the beliefs that the market in land is not operating efficiently or equitably, and that a significant number of white farmers are demanding unreasonably high prices for their farms in order to delay or subvert restitution or redistribution. For instance, as the ANC's national general council argued in 2005, farmers have used the willing seller,

willing buyer principle as ‘an opportunity to enrich themselves by insisting on being paid market price.’<sup>70</sup>

How well-founded are these positions? CDE has conducted an extensive overview of research on the operation of the land market throughout the country, and looked in detail at property transactions in areas where land reform has been particularly prevalent. This research has revealed that these anti-market perspectives are not supported by the evidence of what is actually happening in the land market.

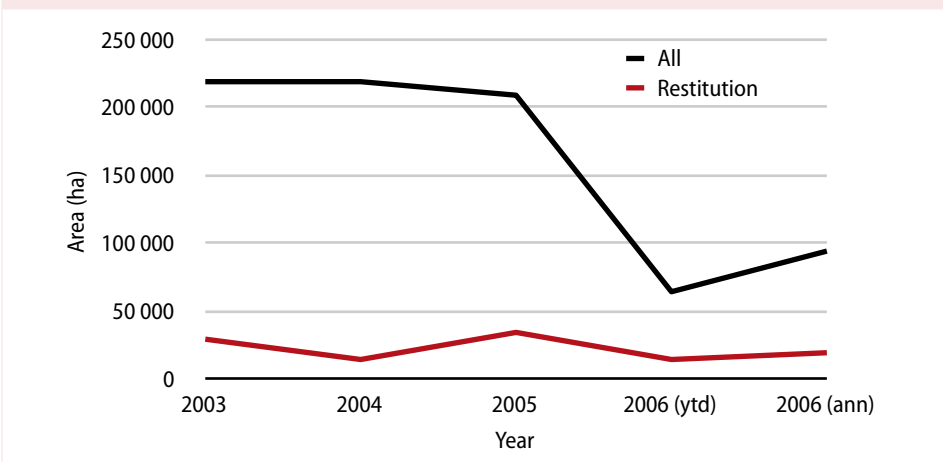
First, it is not the case that the price of farmland in general has risen unusually rapidly. According to the Human Sciences Research Council, the average price of average-quality South African farmland increased at much the same rate as the consumer price index (CPI) in the period 1994 to 2003. In other words, farmland was no more expensive in real terms in 2003 than it had been before land reform started in 1994 (see figure 2). Second, the fastest increases in farmland prices have occurred in the cases of boutique farms and specialised niche farms in areas such as Stellenbosch, and in the case of very large farms in areas where the biggest farms are the most efficient. These types of farms are not, on the whole, involved in land reform processes.<sup>71</sup> Third, there is no evidence that prices are generally rising faster than average in areas where a great deal of land reform is taking place. CDE analysed Deeds Office records for two areas in Mpumalanga and two in Limpopo where a lot of land is under claim. It emerged that land prices were not in fact rising faster in these four places than in the country as a whole.<sup>72</sup> Looking specifically at the prices paid by government for land under restitution claim shows that these prices have fluctuated, and there is no consistent upward trend.

These results raise the question of why some officials believe that the price of farmland is too high, or has been rising too fast. Our research suggests that one reason for this is that officials often use the ‘productive value’ of farmland (in other words, the net present value of future farm income) to set a price. This price is usually lower than the actual market value of a farm because the latter takes into account not only the net present value of farm income, but also capital growth and alternative potential uses. As a result, the official valuation of a farm is almost always lower than the market value, leading to claims that farmers are overvaluing their land in negotiations with the DLA.<sup>73</sup>

It is worth taking a more detailed look at what our researchers found in the four districts of Limpopo and Mpumalanga selected for detailed study. From a high of more than 217 000 hectares transacted in these four areas in 2003, it appears that only about 100 000 hectares were transacted in 2006. Restitution transactions accounted for about 13 per cent of the total area transacted. It is difficult to say exactly what impact restitution is having. It does appear, however, that the ‘acquisition brakes’ have been applied to the farms larger than 100 hectares, and especially those larger than 1 000 hectares.<sup>74</sup>

The ‘willing seller, willing buyer’ principle and the role of markets in land reform have both been under attack in recent years

Figure 3: Total land area (ha) transacted in selected Deeds Office registration districts in Limpopo and Mpumalanga, 2003–2006



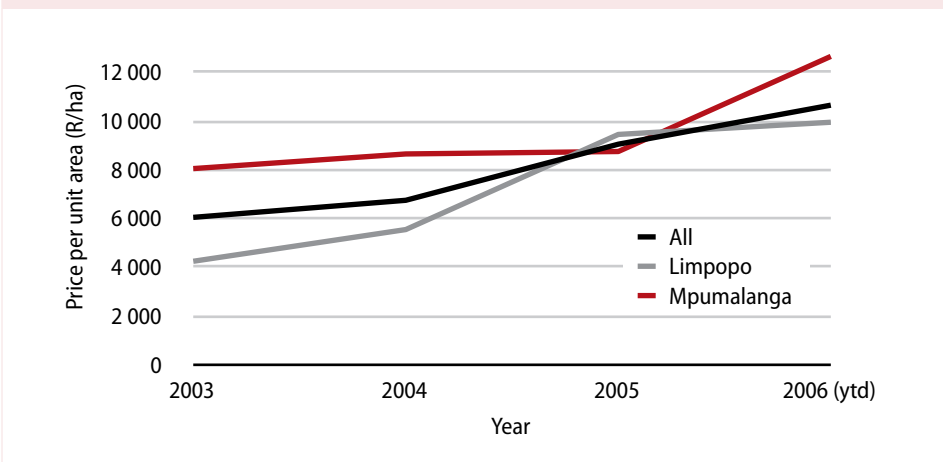
Source: Phatisa Equity, *Land prices and restitution, Mpumalanga and Limpopo case, 2006*, p 23.

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Overall land prices in the study areas increased by 20,6 per cent a year in the period 2003 to 2006. As figure 4 shows, prices in Mpumalanga did not grow dramatically faster than in the country as a whole, and prices in Limpopo grew more slowly than the national average. As was the case throughout the country, the prices of smaller farms grew most rapidly. Prices of farms in the 0-1 hectare category grew strongly by 29 per cent, those in the middle categories grew less strongly, and those of units larger than 5 000 hectares actually appeared to drop.

The evidence does not support the notion that restitution prices – even recent ones – have been unreasonable

Figure 4: Land price movements in selected Deeds Office registration districts in Limpopo and Mpumalanga, 2003–2006



Source: Phatisa Equity, *Land prices and restitution, Mpumalanga and Limpopo case, 2006*, p 24.

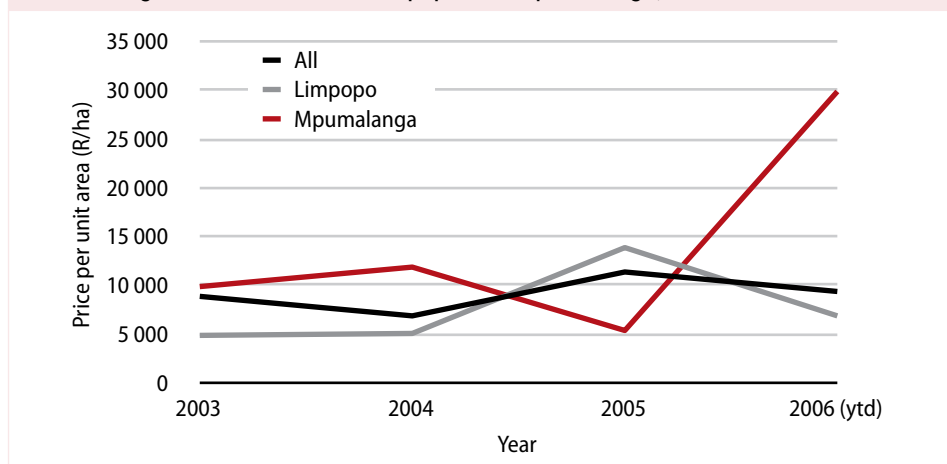
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Prices paid in restitution transactions specifically moved erratically (figure 5). Prices did not consistently move upwards, but rather fluctuated in line with the type of property involved. Overall, restitution transaction prices only increased by 1,1 per cent a year.

There are, however, some unusual cases that could have shaped some opinions. For example, the biggest movements in restitution prices in areas studied by CDE occurred

in Mpumalanga in the period 2005 to late 2006, when prices increased by 46,3 per cent.<sup>75</sup> But this appears to be the result of settling claims on particularly valuable sugar and fruit farms rather than a sign of unreasonable price increases in general. Overall, therefore, the evidence does not support the notion that restitution prices – even recent ones – have been unreasonable.

Figure 5: Movements in land prices in restitution transactions in selected Deeds Office registration districts in Limpopo and Mpumalanga, 2003–2006



Source: Phatisa Equity, *Land prices and restitution, Mpumalanga and Limpopo case, 2006*, p 25.

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This general picture needs to be qualified in an interesting way. In some places, large-scale restitution may indeed have had the effect of driving up farm prices. But this was because of forces of supply and demand (an increase in buyers – including government) and not because of unreasonable demands by farmers on government. The property economist Erwin Rode argued in 2005 that this was likely to be the case in Limpopo:

‘[There is] extra demand for farmland that occurs in regions where large-scale restitution is taking place. Many of the farmers that are bought out want to reinvest and they have the money in hand to pay, and so their demand is an added pressure driving up farm prices in the face of shrinking commercial farmland inventory. This in turn makes expropriation at market values more expensive, thereby putting pressure on the government’s restitution-and-redistribution budget, which will prolong the process even further.’<sup>76</sup>

Rode draws attention to an important consideration: there are two-way effects between land markets and land reform. In other words, what some observers regard as the result of deliberately obstructive behaviour by white farmers could in fact be the unintended result of government actions.

To summarise this section:

- CDE could find no evidence that land reform in general or restitution in particular have caused South African farm prices to rise faster than inflation.
- It is therefore highly unlikely that white farmers with land under claim are systematically taking unfair advantage of the land reform process to get unreasonably high prices.

CDE could find no evidence that land reform in general or restitution in particular have caused South African farm prices to rise faster than inflation

- CDE's area studies provide additional evidence that the restitution process has frozen the land market in some areas.
- Land markets differ by area. The balance between supply and demand, the sequencing of government and private land acquisition, and the unintended consequences of state acquisition in particular areas all have highly specific local effects. There may be some situations in which prices have risen rapidly as a result of restitution; there may be others in which farmers have themselves pushed up prices with the proceeds from farms they been obliged to sell to government. There are clearly also cases in which restitution prices have fallen.
- Therefore, to claim that 'the market' or 'white farmers' have been manipulating prices upwards across the country is inaccurate, and could well lead to poor policy choices with serious negative consequences.

## Private sector contributions to land reform

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Politicians and officials who suspect that the operations of the market are an obstacle to land reform are often also suspicious of the private sector generally. However, like the belief that markets are holding up land reform, this suspicion of the private sector is not supported by the evidence.

The land market continues to transfer millions of hectares between buyers and sellers every year

Some leading companies pioneered voluntary land reform long before it became official government policy, and today the private sector's role in land issues is bigger than ever. Despite this, there seems to be relatively little government and public awareness of the considerable corporate and private sector contribution to land reform.

The main contributions of the private sector fall into five categories – finance, transfers through the land market, BEE and equity deals, post settlement support, corporate social investment.

### Finance

The entire pattern of financing of land transactions has gradually shifted from the state and parastatals to the private sector. For example, in 1990 state and parastatal funding of land transfers totalled R4,45 billion and private funding totalled R10,084 billion. By 2004 state funding had risen to R7,313 billion but the private sector total had risen far more to R24 417 billion, mostly from the commercial banks (see table 2, facing page).

Commercial banks are now central to the financing of the land and agricultural sectors, and are a leading source of information and knowledge about farming and agri-processing.

### Transfers through the land market

The land market continues to transfer millions of hectares between buyers and sellers every year. This happens when an existing or aspirant farmer finds a seller by word of mouth, by seeing a newspaper advertisement, or through an estate agent, and then makes an offer on a farm. These offers are often made with financial and technical assistance from commercial banks. If the buyer and seller agreed on price and other details, a transfer process is set in motion that is very similar to the familiar process of buying a suburban



Table 2: Total farming debt in South Africa (Rm), 1990–2004

As at 31 December	Land Bank	Commercial banks	Agricultural co-operatives	Department of Agriculture	Private persons	Other financial institutions	Other debt	Total
1990	3 441.1	4 948.6	3 780.3	1 013.1	1 209.4	905.0	675.6	15 973.1
1995	4 679.6	6 385.6	3 950.2	1 414.6	1 641.8	432.1	895.1	19 396.1
2000	9 606.0	11 172.3	4 500.0	860.4	1 986.7	602.4	1 098.0	29 825.9
2004	6 915.5	16 636.6	4 121.2	398.2	2 809.8	851.9	1 553.0	33 286.2

*Source: Department of Agriculture, Abstract of Agricultural Statistics, 2005, table 85.*

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house through private conveyancers. Apart from the Deeds Registry, the government does not need to get involved. Indeed, the government is simply the beneficiary of stamp duties and transfer taxes: a considerable gain for state resources in return for almost no effort, and very little political or other controversy.

Importantly, an increasing proportion of buyers are black. CDE's research indicates that this quiet but powerful process has been more efficient as a means of racial redistribution of land than is commonly perceived. Additionally, once account is taken of de facto redistribution through farm worker equity schemes and BEE deals, it is clear that major interracial land transfers have taken place on the open market. For instance, it appears from media reports that between 12 and 20 per cent of commercial agricultural land in certain districts in the Free State is now owned by black people.<sup>77</sup> According to research conducted for CDE, once account is taken of private transactions, land redistribution to June 2006 was closer to 6,8 per cent than the 4,7 per cent claimed by the government.<sup>78</sup> And if reports such as those from the Free State are correct, this is more than likely to be an underestimate of the scale of land transfers from whites to blacks, through the land market.

Research also shows that the agricultural potential of land transferred through private sector processes is higher than the average for all land transferred.<sup>79</sup> Given the attention to quality and the expertise of those involved in open market transactions, this type of interracial land transfer is highly likely to result in sustainable land use. In CDE's view, harnessing the power of the private land market to transfer farmland from whites to blacks has great potential to achieve and accelerate successful land reform (see box, **Lessons from the Inkezo Land Company**, page 40).

## BEE and equity deals

Land-based companies are entering into a growing number of BEE deals. These have the effect of extending black ownership not only of land, but also of more profitable parts of the agri-processing value chain. One illustration here is Sappi's recent BEE deal. In terms of the transaction, Sappi sold 25 per cent of its plantation land holdings to an empowerment consortium called the Lereko Property Consortium (LPC). The consortium is led by Lereko Investments, and includes meaningful participation by Sappi employees, through a workers' trust, and by Malibongwe Women's Development, a non-profit organisation

The agricultural potential of land transferred through private sector processes is higher than the average for all land transferred

focusing on the upliftment of women. Sappi's land holdings, excluding the value of standing timber, have a market value of just under R900 million, and the 25 per cent share will therefore be sold to LPC for an amount of R224 million.<sup>80</sup> There are increasing numbers of transactions like these.

Banks are important role players in these sorts of deals. Financing structures have to overcome the problems of BEE participants' lack of own finance, and the low profitability and uneven cash flow of agricultural enterprises. They also have to bridge the gap between the level of debt the business can sustain and the level of investment capital required if it is to succeed. The private sector has developed a number of financing models that can overcome these problems.<sup>81</sup> Two noteworthy recent examples are innovative commodity financing schemes, and the use of co-funding by international donors.<sup>82</sup>

## Post-settlement support

CDE researchers have discovered about 50 projects in which established farmers are supporting new farmers who have benefited from land restitution or redistribution.<sup>83</sup> These initiatives are launched and sustained by farmers' associations, co-operatives, sector organisations, and agri-businesses. However, reports have grown of difficulties in bringing such efforts to fruition. This is partly a result of interracial suspicions that escalate in contexts of extended and opaque 'us-versus-them' negotiation processes; partly because of practical impediments sometimes placed in the way of farmers deemed to be engaging in 'paternalistic' joint venturing and mentoring by some regional land claims commissioners; and partly because effort is less likely to be expended on post-settlement support when both established and new farmers fear that their land will be subject to a restitution claim.<sup>84</sup>

## Corporate social investment

CDE has identified no fewer than 15 major corporate social investment initiatives in the fields of land reform and BEE in land and agriculture. These include the New Farmers Initiative; the Co-Operative Development Initiative; Bokosini Farms; the Mdluli Trust; small agribusinesses established through Absa's Black Business Incubator Fund; training grants; subsidies given to educational publications; and sponsorship of annual 'Farmer of the Year' awards.<sup>85</sup> Small groups and individual farmers are undertaking hundreds more smaller initiatives throughout the country.

In summary, it is clear that large companies are already contributing very significantly to land reform in South Africa, both in the ordinary course of their business and through targeted programmes. The large commercial banks and the larger agri-processing firms have made particularly important contributions. Some of these, such as the SA Sugar Association's Inkezo Land Company, have become widely acknowledged models for successful land reform. Smaller private sector companies and individual farmers have also been playing highly constructive supporting roles.

In the next section we look in detail at the contributions of three agri-business sectors to land reform and the economy in general. We show that the significant contributions they are making are now, regrettably, often under threat.

CDE has identified no fewer than 15 major corporate social investment initiatives in the fields of land reform and BEE in land and agriculture

## Three agri-business sectors and land reform

Just as each geographic region has unique characteristics, so does each agri-business sector. CDE's in-depth research in three sectors – fruit, timber, and sugar – illustrates the importance of accurate information about each sector. Successful land reform in areas dominated by particular agri-business sectors has to be based on a detailed knowledge of what that sector does. As we emphasised when discussing our area based case studies, there is no single 'one-size-fits-all' solution that applies to all sectors.

CDE chose to look at the fruit, timber, and sugar sectors because together these represent a broad range of crop types, a wide spread of geographic locations, and different levels of international competitiveness. The fruit and sugar sectors are more competitive globally than the forestry sector. Conversely, forestry is more widely distributed throughout the country, a longer-term crop by nature, and more corporatised than either the fruit or sugar sectors. These three sectors therefore create a reasonably accurate picture of the overall state of South African agri-business.

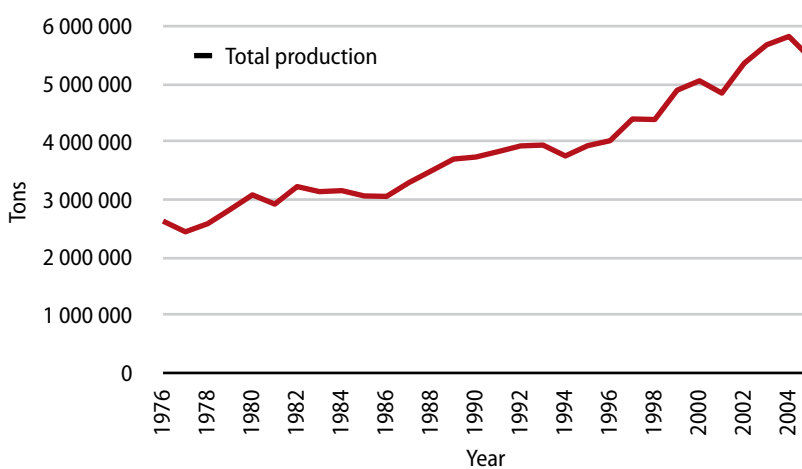
Another important reason for the choice of these sectors was that all have well-organised private sectors. As a result, a good deal of data is available about the performance of each sector, and each sector has developed a clear industry position about land reform.

Successful land reform in areas dominated by particular agri-business sectors has to be based on a detailed knowledge of what that sector does

### Fruit

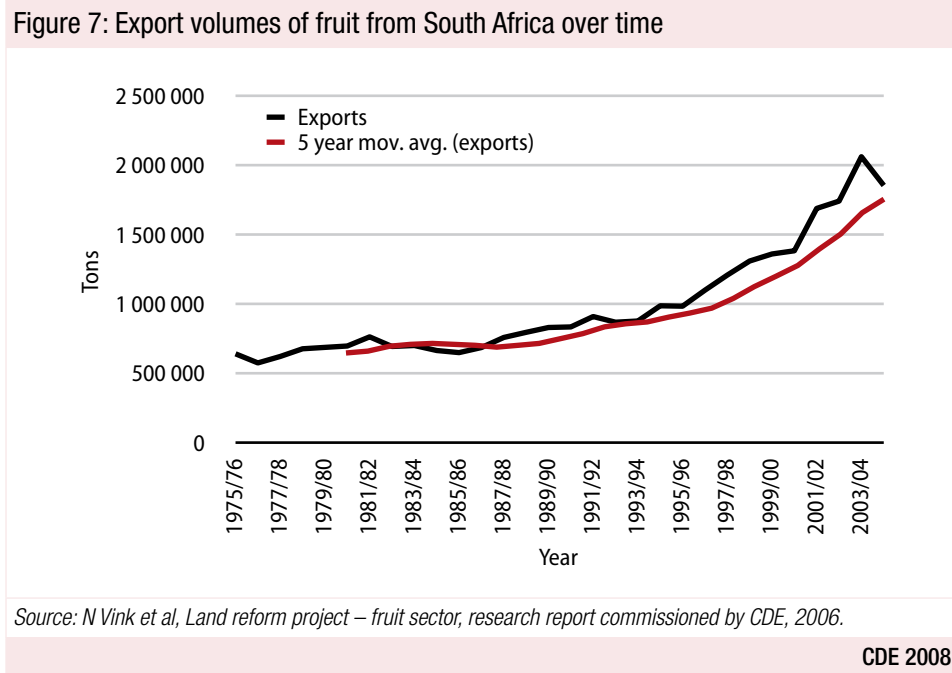
In the season ending in 2005, South Africa produced 5,5 million tonnes of fruit, valued at R12,2 billion (about twice the value of maize production).<sup>86</sup> This was up from 3,9 million tonnes in 1994, amounting to a 40 per cent increase over 11 years (see figure 6). Fruit is an increasingly important export product (see figure 7). Of the total 2005 production, 1,8 million tonnes was exported, up from less than 1 million tonnes in 1994 – an increase of more than 80 per cent over 11 years.

Figure 6: Fruit production in South Africa, 1976-2005



Source: N Vink et al, *Land reform project – fruit sector, research report commissioned by CDE, 2006, p 8.*

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Industry participants argue that equity schemes are a much better form of land reform than simple land transfers

The most important facts about the fruit sector are that:

- It is still characterised by large, white-owned operations and small black-owned operations, but BEE deals are beginning to modify this pattern.
- It often adds little value to the farm product, with the emphasis being on fruit farming rather than processing.
- The efficiency of the production chain could be significantly improved, possibly creating BEE opportunities outside farming itself.
- The simple transfer of small portions of land to black farmers will be ineffective, as economies of scale are vital to profitability.
- The industry is increasingly globalised. The proportion of South African fruit production that is exported has been rising even more rapidly than total fruit production.

Given these realities, industry participants argue that equity schemes are a much better form of land reform than simple land transfers. Under equity schemes, new entrants gain access to the entire value chain. Equity deals recognise that land ownership *per se* is often the least attractive aspect of the value chain from the point of view of returns on investment. Being higher up that chain, for example in processing or in distribution (especially for export), is usually much more financially rewarding (see figure 8).

Maintaining the competitiveness of the South African fruit industry will require careful attention to price, quality, and consistency of output. Where insufficient post-settlement support is provided to land restitution beneficiaries (as is now happening in several cases in Mpumalanga and Limpopo), all three are at risk. Indeed, many industry participants are now arguing that the very existence of the fruit industry is now threatened in Limpopo and Mpumalanga (see box: **Disaster in Limpopo**, facing page).

## DISASTER IN LIMPOPO

In January 2008, *Business Day* published a report about events on a number of fruit farms in the Trichardtstal district of Limpopo after they had been transferred to restitution beneficiaries without appropriate post-settlement support.<sup>87</sup> The report makes devastating reading. Here are a few extracts:

These were not farms where production had simply been halted as a consequence of land claims and neglect had taken its toll; these farms had been destroyed beyond redemption.

They are now perhaps fit only to be returned to the era before the eradication of malaria and the tsetse opened up the lowveld to agriculture on a scale and productivity unmatched anywhere in the country.

The last time that I saw such wrecked buildings and the wanton destruction of showcase farms was more than 30 years ago in the aftermath of the South African Defence Force's invasion of Angola. Here, as in the war zone, the degree of vandalism had gone far beyond the force needed to rip out usable items. It is hard to imagine the level of rage that would motivate someone to break every window pane in a building and knock others down until no two bricks remained on top of each other. What mischief motivates humans to defecate in every room in every building on every farm? Why would anyone open irrigation furrows, to permit scarce, precious water to drain uselessly into the veld?

Mango farmers in the district say these orchards have become infested with pests and will never again produce anything for the market. Whoever hopes to farm fruit here again will have to start from scratch.

A mango processing plant (upgraded by the government) on one of the claimed farms is virtually standing still, because production on all the claimed farms in the area has stopped.

The [Regional Land Claims] Commission would not take responsibility for the destruction of the Trichardtstal farms under its care, saying that it had 'inherited run-down farms'.

Land owners and black community leaders say the biggest single problem with restitution in Limpopo is the conduct of provincial land claims commissioner Mashile Mokono. Mokono was arrested last year and appeared in court earlier this month on multiple charges of fraud and perjury.

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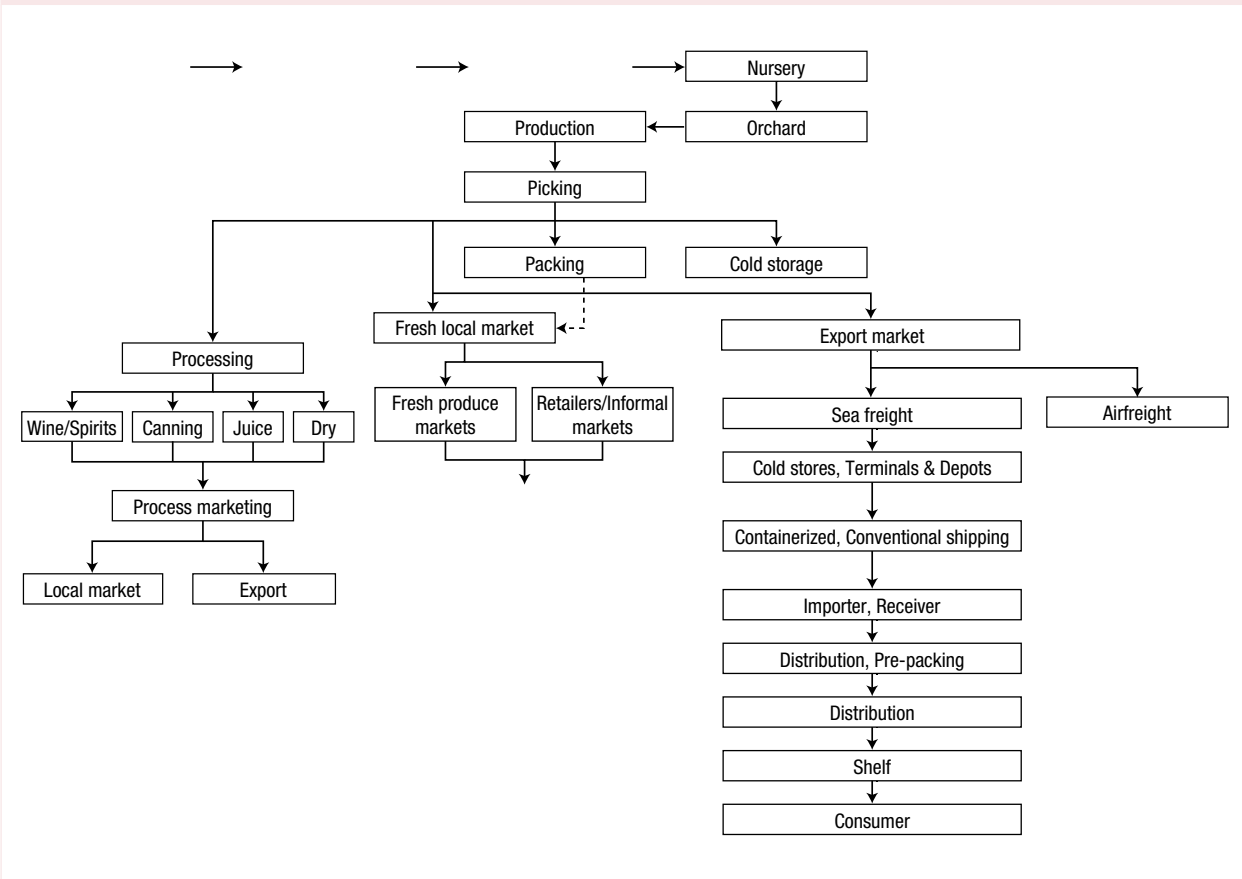
'Mango farmers in the district say these orchards have become infested with pests and will never again produce anything for the market'

## Timber

This sector produces about 17 million cubic metres of forest wood annually; 10,8 million cubic metres of this goes into pulp manufacture, 3,3 million into sawmilling, 1,6 million into wooden panels for furniture and house construction, and 1,3 million into other primary uses. This timber is grown on 1,37 million hectares of commercial forest plantations. The contribution to GDP of the timber sector is R12,3 billion. Ownership of the land is divided among four separate groupings: corporate growers (59 per cent); private individual farmers (22 per cent); state land (16 per cent); and emerging growers (2 per cent).<sup>88</sup>

Major companies dominate the value chain (see figure 9). In the production of pulp and paper, four companies are dominant; in wood chip production, three companies; in

Figure 8: The value chain in fruit production and processing



Source: N Vink, et al, Land reform project – fruit sector, report commissioned by CDE, 2006, p. 21.

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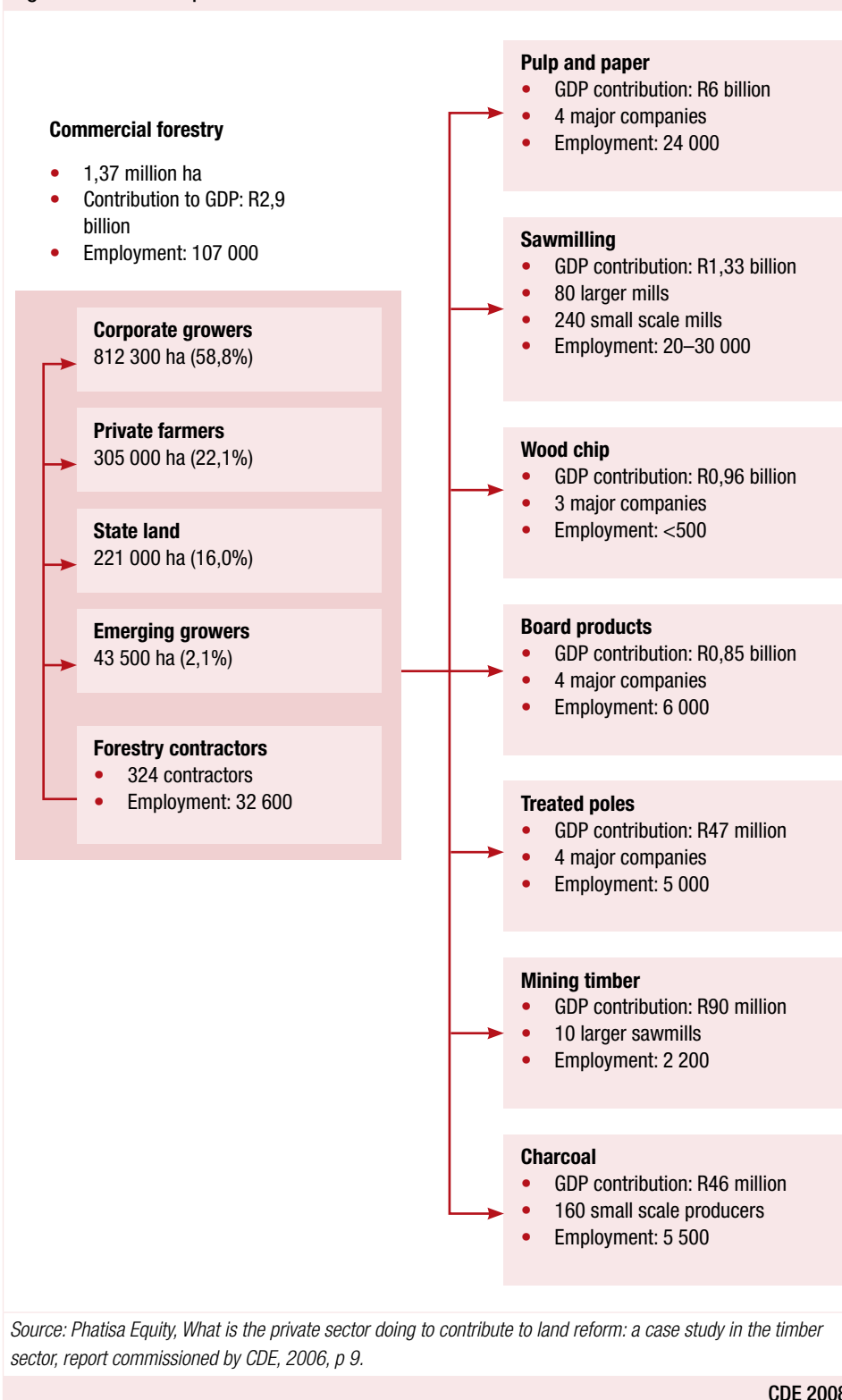
treated poles, four companies; and in mining timber, ten companies. Small producers are significant only in saw milling (240 smaller mills) and charcoal production (160 small-scale producers).

The largest firms are found in the capital-intensive pulp and paper and timber board industries. These firms also own plantations and augment their wood supply by engaging in contract supply arrangements with independent private growers. Through these mechanisms they aim to ensure continuity of supply and reduce the risk of rapid increases in wood prices.

The mills owned by the larger companies can be worth billions of rands. A mill will often be more valuable than the all the land and trees that serve it. Yet mills become financially non-viable below a certain minimum threshold of timber supply, and unlike sugar mills it is almost impossible to reconstruct an existing timber mill in a new location. Thus ensuring the continuity of wood supply is often vital to the financial viability of the whole timber company.

Therefore, in timber as in fruit, BEE should be applied at various points in the supply chain, and should not be confined to the ownership of land or the production of trees. The industry is already doing this. The two largest forestry and pulp companies completed major BEE equity deals in 2005/6. The industry has also created an Emerging Farmers Programme under which black farmers have been allocated small allotments of land

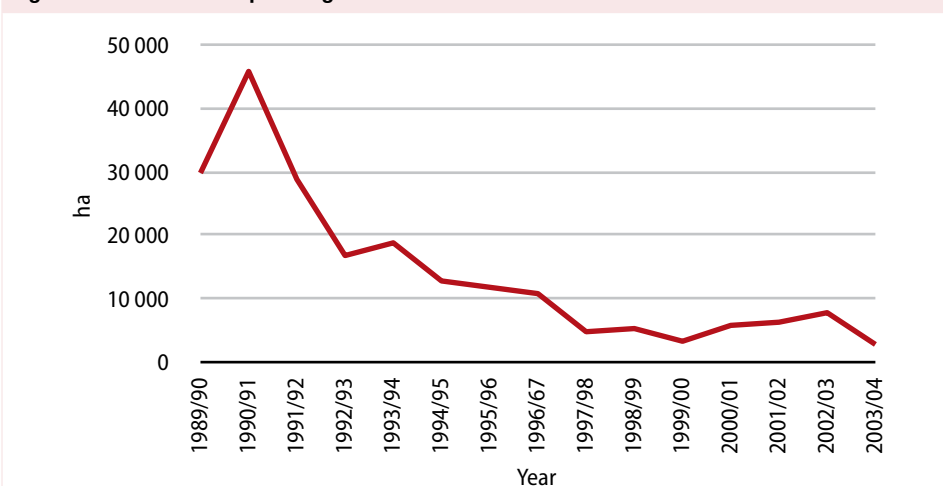
Figure 9: Ownership structure of the timber sector



BEE should be applied at various points in the supply chain, and should not be confined to the ownership of land or the production of trees

previously owned by companies or white farmers.<sup>89</sup> The new owners then supply wood (often via contractor tree feller/hauler intermediaries) from their allotments to company-owned timber mills.

**Figure 10: New timber plantings in South Africa**

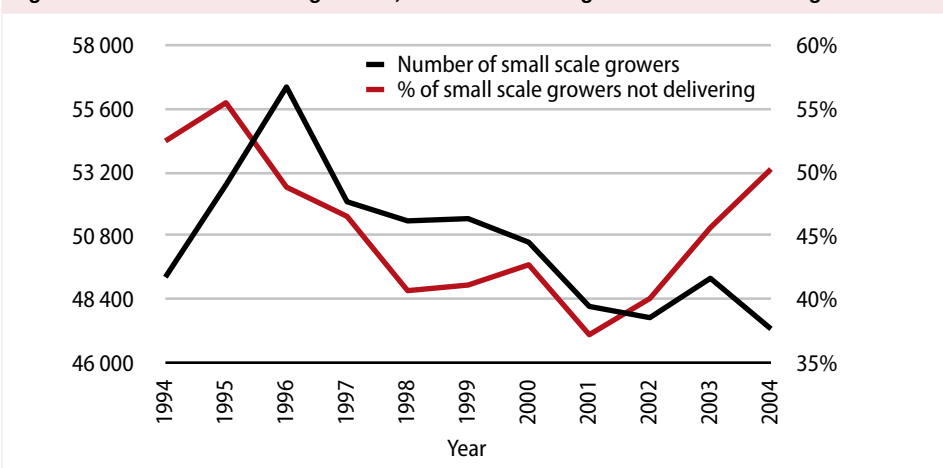


Source: Phatisa Equity, *What is the private sector doing to contribute to land reform: a case study in the timber sector, 2006*, p 27.

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The most serious challenge is the 'uncertainty created by the land restitution process and other political developments'

**Figure 11: Small-scale cane growers, and small-scale growers 'not delivering'**



Source: Phatisa Equity, *What is the private sector doing to contribute to land reform: a case study in the timber sector, 2006*, p 23.

CDE 2008

The timber sector currently faces three major challenges. These are:

- stiff international competition from countries where growing timber is cheaper than in South Africa;
- limitations on permits to plant timber because of government concern about the amount of water used in timber production;
- restitution claims on a scale that is beginning to threaten confidence in the long-term viability of timber production. Some 48 per cent of Mondi's land and 17,5 per cent of Sappi's land are under claim.<sup>90</sup>

In July 2007 an industry leader stated that the most serious of these challenges was the 'uncertainty created by the land restitution process and other political developments.'<sup>91</sup>



New timber plantings have been declining steadily since the early 1990s (see figure 10, page 38).

## Sugar

The sugar sector employs more than 100 000 people.<sup>92</sup> Some 47 000 are small-scale sugar cane growers, mainly small farmers based on communally owned land. (The number of small growers peaked in 1996 at more than 56 000.) The remaining tens of thousands of people working in the sector are mainly employees of large sugar corporations and medium-scale growers. The industry supports about a million people, when the families of those who work in the industry are taken into account.

The sugar industry also has significant multipliers through inputs such as fuel, machinery, chemicals and fertilisers, and transport needs; and outputs such as the provision of product to the food and canning industries. Cane growing is also a potential source of bio-fuel and electricity co-generation, but this potential remains largely untapped in South Africa.

Compared with other South African field crops, sugar cane is highly productive. It generates more than twice the average level of economic output for arable land in South Africa, and nearly 20 times the economic output of land (per unit area) in general.

South Africa's cane growing areas are the most distant from the equator of any in the world. South Africa's relatively low temperatures and rainfall have negative impacts on production levels compared to tropical areas, but these are offset by superior research, innovation, and sophisticated management, as well as by South African companies diversifying into growing and milling in the more suitable climates in countries such as Malawi and Mozambique.

The area under cane and the tonnage of sugar output have both remained fairly static over the past 20 years, following rapid growth during the 1960s and 1970s when South Africa was widely regarded as a world leader in sugar production. The sector earned about R6 billion in 2005, of which R2 billion was earned from exports.

In the period 1994–2004 the number of large-scale growers declined from 1 750 to 1 375, and the number of medium-scale growers from 4 950 to 4 800. As might be expected, this trend is associated with an increase in the average size of farms, in a search for economies of scale. The average size of large-scale growers' farms increased from 220 hectares in 1997/8 to 233 hectares in 2004/5, and that of medium-scale growers' farms from 212 hectares to 224 hectares. These increases are the result of the need to reduce the per unit cost of cultivation and transport, but have the effect of exposing farmers – and especially new farmers – to greater debt. Some larger-scale black farmers spend up to 66 per cent of their operating profits on servicing debt.

The sugar industry voluntarily launched BEE-type programmes as early as the 1970s. More recently, the SA Sugar Association initiated the Inkezo Land Company, aimed at promoting sustainable land reform in the sugar industry. The government has held up Inkezo as an example to other agricultural sectors (see box: **Lessons from the Inkezo Land Company**, next page).

As we have seen, the sugar sector has considerable economic importance and potential. It also has a track record of successful land reform. This positive momentum is now being slowed by two forces. First, the government is pressing for more black growers to

Compared with other South African field crops, sugar cane is highly productive

## LESSONS FROM THE INKEZO LAND COMPANY

Inkezo is a land reform initiative of the SA Sugar Association. It is an independent company whose purpose is to help the government reach its target of redistributing 30 per cent of white-owned agricultural land to black farmers by 2014. Inkezo also helps to ensure that land redistribution is successful by giving new farmers post-transfer assistance.

Inkezo aims to meet its goals by:

- developing a database of willing buyers and sellers;
- formulating innovative financial and settlement models;
- providing transfer support;
- lobbying government for funds to finance such support;
- seeking other donor support; and
- establishing partnerships between interested and concerned parties.

Inkezo itself is neither a land owner nor a financier, but rather a facilitator of land redistribution transactions. Its board of directors includes millers, growers, and other independent parties who can assist Inkezo to reach its objectives. Its CEO is Dr Tshitshi Mbatha.

Inkezo began operating in 2005. By mid-2006 it had already transferred 3 128 hectares under cane. From 2006 until 2014 it aims to facilitate the transfer of 7 000 hectares a year so as to achieve a final total of 61 400 hectares (30 per cent of all land under sugar cane) by 2014. Inkezo plans to transfer farms with an average area of 110 hectares under cane. This means establishing about 500 new farmers, at a rate of about 60 a year, or about five a month.

To ensure that five new farmers stand a good chance of making a sustainable living from sugar cane every month requires a great deal of time and effort. To get a sense of what is involved, we list the 16 steps that Inkezo goes through in each case:

1. Prospective beneficiaries are vetted by Inkezo, and their details are recorded on its database.
2. Details of prospective sellers are recorded.
3. Either the beneficiary finds a farm or Inkezo uses its database to match approved beneficiaries with an apparently suitable farm.
4. The beneficiary inspects the farm.
5. In both cases, Inkezo assesses the farm so as to advise the beneficiary about all the issues that are likely to arise from its purchase.
6. If both seller and buyer are satisfied, they enter a formal agreement of sale.
7. Inkezo compiles a business plan on behalf the buyer.
8. Inkezo submits the business plan and an application for an LRAD grant to the District Grant Approval Committee (DGAC).
9. Inkezo assists applicants to apply to the bank of the applicants' choice. Inkezo submits a business plan and other relevant documents on their behalf.
10. If satisfied, the financier informs Inkezo that it is willing in principle to advance the required loan.
11. This letter is copied to the DGAC to initiate that body's investigation of the application. Later on, it is also copied to the conveyancer.
12. The DGAC sends its recommendation to the PGAC (Provincial Grant Approval Committee).

Inkezo helps to ensure that land redistribution is successful by giving new farmers post-transfer assistance

13. When the PGAC's approval of the grant is received, Inkezo instructs the conveyancer to proceed, and sends him or her proof of the grant and loan approvals.
14. The conveyancer calls on the DLA and the financier to pay the required funds into his/her trust account.
15. After receiving these funds the conveyancer effects the cancellation of bonds that might be registered against the property to be transferred.
16. The transfer is registered at the Deeds Office.

Inkezo reported in 2006 that, if asked in 2005, it would have predicted that it would have no difficulty in finding sufficient land to redistribute to meet its targets.<sup>96</sup> But during 2006 the DLA gazetted a large number of restitution claims on land under cane. It is unclear why or how so many have suddenly come to light, especially since the cut-off date for making claims was 31 December 1998. The exact extent of these claims is also unclear. What is clear, however, is that the process of redistribution is now effectively frozen. Banks will not grant loans on land under claim, nor can LRAD grants be made.

As the SA Sugar Association states:

Land reform through the willing buyer, willing seller process has been progressing at a steady pace until 2006/7 when the gazetting of land claims began impeding this process. To date, 50 per cent of the sugar industry is under claim, with only 4 per cent settled.<sup>97</sup>

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be established, although national and international economic trends point to the need for economies of scale that can only be achieved on larger farms. As a result of global market forces, the total numbers of small (invariably black) growers is declining while the percentage of non-performing small growers (with very low output per hectare) is rising (see figure 11, page 38). For instance, the SA Cane Growers' Association reported in its October 2007 newsletter that small-scale grower tonnage delivered in 2006/7 was half of that in 1997/8.<sup>93</sup>

Second, as with fruit and timber, confidence and investment in the sector are being damaged by the slow pace at which restitution claims are being resolved. As the SA Cane Growers' Association pointed out in October 2007, '50% of the [cane land] is under claim, with only 4% settled.'<sup>94</sup> The very slow pace of claim settlement, with claims often taking several years, has stalled market-based redistribution initiatives. The commercial banks, for instance, are unable to grant loans to farmers (whether black or white) if there is a restitution claim on that land.

There is an additional challenge in managing restitution that is specific to the sugar industry. If too many restitution beneficiaries are unable or unwilling to continue growing sugar cane on their land, the entire industry could collapse. As the SA Cane Growers' Association explained in October 2007:

The process of restitution seems to have been divorced from post-settlement [support], which could have dire economic consequences. Critical to the survival of the sugar industry is the fact that each sugar mill has a breakeven point with respect to cane throughput. ... Every grower ... is dependent on each other to maintain throughput.

Confidence and investment in the sector are being damaged by the slow pace at which restitution claims are being resolved

Any decline in sugar cane production would threaten the viability of all growers in that area and the future of the milling company.<sup>95</sup>

These difficulties could accelerate the movement of ever more of the operations of the larger sugar companies out of South Africa to countries to the north – such as Malawi and Zambia – where growing conditions are better, where there is less uncertainty about land ownership, and where labour and other costs are lower.

In summary, CDE's three case studies of agri-business sectors point to the following conclusions:

- There is a clash between the dynamics of globally competitive agriculture and South Africa's land reform policies. Government land reform tends to result in a lot of people living or working on small pieces of land. To be competitive, agri-businesses usually need to operate on a much larger scale.
- Whether it be in timber, sugar or fruit, it is clear that being too small a farmer means that one will be at the most unprofitable end of an otherwise potentially viable value chain, whereas being in the more profitable middle section requires agricultural and business skill, training, and ongoing institutional support. As the government itself acknowledges, post-settlement training and support need a great deal of improvement.
- More attention needs to be given to BEE initiatives across the entire value chain if the most valuable impacts of white to black asset transfer are to be achieved. Just transferring land is not enough.
- Debate on land reform in South Africa needs to become a lot more specific to certain agri-business sectors, and how best to open up opportunities for black South Africans in those particular sectors. Some sectors have some common features, but successful land reform will require familiarity with quite different details in each case. For example, marketing fruit is very different from selling timber.
- Outside the Western Cape, there has been a rapid and significant decline in confidence in land-based investments. This is largely a result of the serious problems now being encountered in the restitution process: restitution is going far more slowly than hoped; many large new claims have unexpectedly emerged long after the statutory cut-off date; and post-settlement outcomes have often been very poor. Other sources of uncertainty include anti-private sector views being expressed by DLA politicians, senior officials, and some regional land claims commissioners, and both the content and tone of documents such as the report of the Panel of Experts on Ownership of Land by Foreigners in South Africa.<sup>96</sup>
- Finally, in some subsectors where South Africa might once have considered itself a world leader (all three reviewed above would have qualified at some time over the past 50 years), it is becoming less globally competitive. International interest in many of our agri-business products is already not as strong as it was. Additional pressure on these sectors as a result of poorly implemented land reform could result in a dramatic decline in exports, and a total withdrawal of international investment in these sectors. This would have knock-on effects across the South African economy. The increased growing of both sugar and timber elsewhere in southern Africa are symptoms of these kinds of trends.

Debate on land reform in South Africa needs to become a lot more specific to certain agri-business sectors

## Research conclusions

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### Key challenges to land reform now

CDE has distilled its research findings into ten key conclusions. These conclusions identify the key challenges now facing South Africa's land reform process.

1. South Africa, like all developing countries, is urbanising.<sup>99</sup> As CDE's 2005 report showed, most people are concerned about land, homes and jobs in or near urban settlements. Only a small minority want to farm, and an even smaller number will be able to. It is very important that this small group be identified and assisted to be successful.<sup>100</sup> But there is no place for nostalgic 'back-to-the-land' agricultural programmes in a realistic and cost-effective national development scenario. All of the empirical evidence suggests that this would be condemning 'beneficiaries' to failure and continued poverty. Using farmland as a 'place to stay' is also sub-optimal, both in the light of where jobs are being created (in the cities, some large towns, and metros) and in terms of the opportunity costs involved in the misuse of the country's limited supply of arable commercial land
2. Accordingly, any successful land reform programme must include the identification and release of urban and peri-urban land for settlement, housing and job creation, as well as reform of ownership and use of land suitable for farming. In terms of numbers of likely beneficiaries, this will be more important than providing rural plots for small farmers; and in qualitative terms it will offer better access to the fruits of economic growth, and to mixed sources of incomes for poorer households.
3. There is no place in a land reform strategy for a 'one size fits all' approach. There are large regional and sectoral differences among appropriate land uses. A high degree of decentralisation of both policy development and implementation is required for successful land reform. Markets and the private sector have more capacity to implement decentralised programmes than the public sector.
4. There is also no place for 'one size fits all' financial formulas for land reform. Appropriate financing models will differ significantly by sector and by region. Effective land reform thus requires a high degree of professionalism, specialisation, experience, and local knowledge. Many more of these strengths can be found in the private sector than in the public sector.
5. Just providing land will not allow a new beneficiary to succeed. Much more attention should be paid to equity-based BEE programmes and to ensuring the participation of black farmers in the production cycle at more profitable points than farming itself.
6. New black farmers must be seen to succeed, and should see themselves as better off as a result of land reform. Ownership structures need to facilitate economic activity and much greater post-settlement support is needed, as is much more complete integration of black farmers into the established farming community. Both these areas will require greater involvement of private sector players in effective partnerships with state institutions.
7. Land reform policy must be compatible with the economic dynamics of the land and agricultural sectors. In most cases, larger farms are more competitive. Special atten-

Any successful land reform programme must include the identification and release of urban and peri-urban land

tion should therefore be given to preserving the scale economies of the few hundred large-scale high-quality farms in the country. Attempts to settle many new small-scale farmers on little parts of these farms will inhibit productivity, and would set up the new farmers to fail.

8. The slow pace of processing and settling the remaining land restitution claims is creating uncertainty, delaying investment, and generally having negative impacts on agricultural production. These delays appear to be largely attributable to inexperienced staff and/or understaffing at the DLA and the Land Claims Commission. Unless these claims are resolved much more quickly, major sectors of agri-business and tens of thousands of jobs could be under threat.
9. Government has had only mixed success in acquiring land at reasonable prices, and, sometimes, purchase of land by the state has driven up prices as those farmers who sell their farms re-enter the land market. Increased funds must be made available by government and they must be spent – but, crucially, in a more market-sensitive way than in the past. This will require a lot of input from skilled private sector professionals. Allowing inexperienced officials to venture into the complexity of the land market with billions of rands, or relying on the cheapest and most compliant private sector advice, will result in continued poor value for money and other complications.
10. Commercial banks are playing an increasingly prominent role in financing land purchase. Accordingly, their need for adequate security must be built into any agriculturally sensitive land reform programme, as should their very wide range of experience and expertise about what makes for successful commercial farming.

Land reform policy must be compatible with the economic dynamics of the land and agricultural sectors

Overall, the land reform programme must generate more momentum. At the moment, most South Africans regard land reform as an area of failure and threat. We need to replace this perception with a confident and realistic optimism that land reform is on track towards delivering better lives to its beneficiaries and to all South Africans.

## Where are we now, and where are we heading?

As we said in the introduction, parts of this report make uncomfortable reading – and this section is probably the most uncomfortable of all. To clarify what is at stake in the land reform process, we develop two likely futures based on current trends. Neither is an attractive prospect.

Before we begin, we must repeat that we do not aim to shock or dismay our readers just for the sake of it. CDE is firmly committed to ensuring that land reform is successfully completed. We want to see justice done for all those forced off the land by apartheid. We want to see a much better balance between black and white farmers – in other words, a successfully integrated commercial agricultural sector – and we want to help ensure that all land reform beneficiaries are better off after land reform than before it. We want South African agriculture to grow, and to bring jobs and prosperity to many more South Africans. But we are just as firmly convinced by the research we have done that South Africans now need to look hard at the facts about land reform. If we do not face some difficult truths now, we will not reach any of our land reform goals.

In 2005 CDE published a comprehensive overview of the state of land reform. In that report we supported the government's generally sensible and realistic approach to land reform. We pointed out that since 1994 the government has pursued land reform in a reasonable, largely market-oriented manner, firmly rooted in the constitution. The government has not received enough credit for this approach or for its achievements; for instance, about 90 per cent of validated land claims have been settled, a significant accomplishment in a difficult area.

Nevertheless, we said, measured against the political importance of land and the government's ambitious targets, progress had not been adequate. We argued that the land reform process was characterised by very large ambitions, a limited ability to deliver, rising public and political expectations, and a growing sense of inadequacy and failure. Three years ago, we were already beginning to see a search for 'scapegoats' in some quarters both within and outside the ANC, and we detected declining confidence among commentators, investors, and citizens generally in South Africa's ability to manage land issues.

Writing in early 2008, we stand by our 2005 analysis. Little has improved over the past three years, and several aspects of the situation appear to have deteriorated. Specifically:

- Agriculture has become even more challenging. In 2005 agriculture contributed more than 3 per cent of GDP, and international competition was making farming in South Africa ever more difficult. Today, agriculture's share of the economy is less than 3 per cent, and farming competitively is even more difficult.
- In 2005 we reported, on the basis of national survey evidence and urbanisation data, that land reform was primarily an urban challenge – that South Africa needed to find people viable places to stay and work rather than to farm. Today this is even more the case, not least in relation to displaced farm workers, most of whom will be unable to farm commercially themselves, and many of whose families will want other opportunities.
- Three years ago, we pointed out that urban land and housing for poor people required more effort and attention. This is even more true today.
- In 2005 we argued that reference to gross hectares or simple numbers of transactions was misleading, and that quality mattered. This is even more true today. New black farmers are not helped by just handing over big quantities of raw land. They will succeed when equipped with the right amounts of land, in the right places, and when they are able to access appropriate finance, training and support.
- We argued that it was vital for land reform beneficiaries to be better off after the process. Although there is no definitive research, it is reported that the Director-General of Land Affairs now acknowledges that at least 50 per cent of their land reform projects have failed to make their beneficiaries permanently better off.
- CDE pointed out that the DLA was struggling; that capacity within this department was a serious problem; and that it was beginning to generate radical rhetoric about how to reach arbitrary targets. All of these trends have unfortunately intensified.
- CDE reported in 2005 that although markets and the private sector were essential both for successful agriculture and land reform, these forces were increasingly under challenge from some people within government and the ruling alliance. The situation has since worsened, with 'state-led' development and intervention rhetoric now being accompanied by land market uncertainty and disinvestment in some land-based economic activity.
- The popular politics of land have clearly become more worrying since 2005. CDE argued then that the government on its own would not be able to 'hold the line of

If we do not face some difficult truths now, we will not reach any of our land reform goals

reason' in the face of land invasions, setting of farm fires, nakedly racial antagonism, loose and dangerous rhetoric, cycles of violence, and populist pressures for 'quick fixes'. Today, the government's grip on these problems seems increasingly weak.

- CDE argued in 2005 that strong national leadership was vital to successful outcomes in land and agriculture. This need is even more urgent now – but unfortunately also an increasingly uncertain prospect.

We are also seeing two new negative trends that had not emerged by 2005. The first of these is the shrinking of competitive agri-business in at least three sectors, and in several regions. The most important reason for this is stalled restitution, coupled with uncertainty about the future of the sector as a whole. Second, we are also starting to see emerging black farmers being negatively affected by the land restitution process, where sometimes questionable claims are being elevated well above the importance of nurturing successful black farmers.<sup>101</sup>

In summary, in 2005 CDE reported that a ten-year review of trends in land and agriculture was worrying; by early 2008 we must regretfully report it is more worrying still.

To illustrate the importance of moving away from these worrying trends, CDE has constructed two likely futures. The first is based on the simple continuation of present trends. In this future, the public and private sectors have good intentions towards each other, but limited capacity and a misreading of the situation leads to serious difficulties. We call this trajectory 'Nobody Wins'. The second trajectory assumes worsening relationships and increasing demands on the state to act by undercutting land markets, by setting much higher targets, and by adopting a much more unilateral state-led approach in general. We call this trajectory 'Everybody Loses'.

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### 'Nobody wins'

Present trends reveal a land reform process that is stalling, with almost all stakeholders believing that they are losing. This undermines confidence, as is already seen for example in declining forestry plantings, and the outputs, quantity and quality of sugar cane produced compared with operations elsewhere in southern Africa. Many new black dwellers on rural land are not interested in farming; and many new black farmers are worse off than before they gained access to land.

Civil servants are unable to process restitution claims at a satisfactory pace, or within budget, and morale becomes lower still. Former (black) beneficiaries of land redistribution, some of them reasonably well off and some very successful, lose their land in restitution claims. Post-settlement support from government is weak to non-existent, and this causes growing disillusionment among a substantial percentage of emerging black farmers.

Land redistribution limps along in areas where land is relatively cheap, making large numbers of low-quality small farms available to inexperienced farmers. This leads to frustration among new farmers, officials and politicians; scapegoating of white farmers and 'the market-based approach to land reform'; unwise land purchases; distortion of the land market; beneficiary dissatisfaction; and rising racial tensions (on the subject of official rhetoric, see box, **DLA on the willing buyer, willing seller principle**, facing page) in areas where black farmers acquire land. As the process continues to fail to deliver the desired outcomes, pressure increases on government and public opinion grows more and



## THE DLA ON THE WILLING BUYER, WILLING SELLER PRINCIPLE

CDE has interviewed dozens of DLA officials for this report, and it clear that there is a growing leftward shift towards a more state-driven approach to land reform within the department.

As part of this trend, the DLA has been commissioning papers from academics and international aid agencies, and producing internal discussion documents based on the results. Its 2006 document entitled 'Review of the Willing-Buyer-Willing-Seller Principle' gives a good sense of the ideological flavour of much of this work:

[Government should empower] land and agrarian reform beneficiaries through social and political mobilization in order to enable them to walk away in the negotiations with the landed gentry for the purchase of land ...[and it should]...have the first option to purchase the land that comes into the open market and to issuance of a certificate of no present interest on such land as a basis for accessing high quality land....and peri-urban land should be actively prioritised in the same manner that the Zimbabwean and Namibian Governments have approached the question of land; ...sellers of land have been able to inflate the land values. The solution to this problem lies in the implementation of the expropriation measures urgently to contain the escalating costs.<sup>103</sup>

Glen Thomas, director-general of the DLA in the period in which these developments emerged, was dismissed in October 2007, and the department's 2006/7 annual report has a much more conciliatory tone. However, DLA language continues to drift in this more radical direction, as was evident for example from the statements of senior DLA officials at the November 2007 parliamentary briefings.

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Land reform becomes steadily more politicised, rhetoric becomes more radical, and targets keep rising

more negative. Land reform becomes steadily more politicised, rhetoric becomes more radical, and targets keep rising.

Signs of unrealistic ambitions are unfortunately already emerging from statements made by the Minister of Agriculture and Land Affairs. In July 2007, responding to a question in parliament, she said: 'Once all the restitution claims have been settled and the redistribution target has been met, there will still be a need to improve on the ratio of 70 per cent of agricultural land owned by whites and 30 per cent by blacks, until land ownership in the country reflects its demographics in terms of race and gender.'<sup>102</sup>

In the DLA's 2006/7 annual report – its most recent official publication – the Minister argues in her preface that the Proactive Land Acquisition Strategy (PLAS), government's new strategy for 'proactive land redistribution,' should be credited with accelerating the pace of redistribution in 2007. However, this acceleration comes off a low base, and the claim that the whole capital budget was spent should be read against a background of a previously lowered budget because of the department's previous inability to spend its allocation (See figure 1). Indeed, PLAS would need to move into turbo drive to achieve the 30 per cent target, let alone 'land ownership in the country reflect[ing] its demographics in terms of race and gender.' To achieve this goal would mean literally tens of millions of hectares of land being transferred, often to people with little or no capital, or the skills to run farming businesses. Many issues arise here, but the most fundamental one is this: How will the tens of millions of hectares – valued (by educated guess) at about R100 *billion* – be

transferred, allocated and then effectively utilised, given that the National Treasury has taken money back from the DLA in past years because it failed to spend it?

The likely results of this trajectory are:

- continuing perceptions of too little progress among intended land reform beneficiaries, the agricultural private sector, and the public in general;
- an inability to meet targets, especially the target of nurturing sustainable, high-quality farming by black South Africans;
- more attacks by officials and politicians on the land market and the private sector;
- growing allegations of nepotism and/or corruption; which are difficult to prove in research, but widely assumed in everyday discussions;
- negative general economic impacts on the land and agricultural sectors, with declining investment and output in many agricultural sectors;
- growing racial tension arising from the land issue, but starting to spread more widely into the political debate and policy-making.

### ‘Everybody loses’

In this second trajectory, the government responds enthusiastically to left-wing and populist pressure. It gives more bite to its rhetoric, and shifts its land reform policies to a statist, anti-market mode.

A lot of other potentially productive land would become densely settled by poor communities

At first, there is widespread recourse to expropriation and quick and expensive ‘deal-making’, with compliant commercial farmers anxious to get out of a farming environment that they perceive as declining fast. In a manner reminiscent of the fate of the Dinkwanyane, large numbers of ‘beneficiaries’ are rapidly placed on the acquired land, with little or no post-settlement support. As in the ‘homelands consolidation’ era, there will be harsh criticism of, and threats made against, those who dare to question the state’s approach.

As the expense of this approach mounts, measures to depress land values, such as land taxes and property rates on rural land, are introduced. Government formally dispenses with the ‘willing seller, willing buyer’ model. A Right of First Refusal is created for the DLA on all land transactions outside urban improved land. Also, sellers of land have first to offer it to the state. Often, if negotiations are unsuccessful (if negotiations take place), the state declines to issue a permit of ‘no present interest’ and the seller cannot place the land on the open market. The effect of this is to freeze the land market and halt most future investment in land and land maintenance.

This model has been used to expropriate land in Zimbabwe, as the DLA’s document on the willing seller, willing buyer principle approvingly points out. Land is acquired before new farmers are identified, and if the newly acquired state land is vacant for any period, land invasions occur. Since the state will be expending greater sums through officials, the scope for corruption will increase, as will the scope for patronage. Politically well-connected people will soon find themselves owning a lot of farms. A lot of other potentially productive land would become densely settled by poor communities. These communities would lack the support and capital needed to make their land productive. They would therefore continue to live in poverty and dependency on state grants. Influential voices in the political elite would soon be heard to argue that the new rules should be extended to urban property. These processes will have strongly negative impacts on the morale of almost all South Africans outside the political and civil service elites. Local and international confidence in the South African economy will spiral rapidly downwards.

We expect our critics to say that the 'Everybody Loses' trajectory is alarmist, and could never happen here. We hope they are right about this, but popular pressure that could lead to the government adopting a more radical stance is growing. Unsettled land claims were already leading to murders and other violence in 2007.<sup>104</sup> Organised invasions of farmland are spreading, as was the case recently in Pietermaritzburg/Msundusi (July 2007), and Pongola in September 2007.<sup>105</sup> Many reports have reached CDE in recent months that some government officials and even some business interests (who stand to gain in the short term) are seriously contemplating the path of forced state acquisitions.

The likelihood of this trajectory playing itself out was enhanced by the March 2007 announcement by the then director-general of Land Affairs that he intended proposing legislation giving the government the right of first refusal over all rural and unimproved urban land transactions.<sup>106</sup> The constant allegations by government officials that land on the market is overpriced, and that white farmers are obstructing land reform, further reinforce our view that we are not being unnecessarily alarmist.

And there are other symptoms of the growing likelihood of this scenario. For example, in July 2007 the SACP's deputy secretary general, Jeremy Cronin, said the debate on foreign land ownership 'should be widened to include how to restrict land-grabbing wealthy South Africans,' that people should be restricted to owning one farm each, and that wealthy South Africans were distorting house prices, pushing urban property out of reach of ordinary South Africans.<sup>107</sup>

In summary, the 'Everybody Loses' trajectory suggests that South Africa will embark on a version of the Zimbabwean 'fast-track' land reform policy. If left unchecked, this future is one in which land reform develops such powerful negative momentum that it spins out of everybody's control.

Neither of the two likely futures is desirable for the majority of South Africans. Yet, without a decisive shift in direction, one or the other seems inevitable.

There is a clear need for urgent action to get land reform back on track

## Getting back on track: CDE's recommendations

There is a clear need for urgent action to get land reform back on track. We need to find our way to a more optimistic future for land and agriculture than those that seem likely at present. It is clear that this better future will need to be based on a bold plan: leadership, courage, and vision are required to turn around the current situation, and convince the sceptics that land reform is achievable, is being well managed, and will lead to a better life for all.

The details of such a future will need to be negotiated at the highest levels. CDE suggests that there will be a small number of indispensable starting points for a new and more positive path. These are:

- recognise the need for an honest assessment of past mistakes;
- be open to redefinitions of the roles of the state and the private sector;
- treat metropolitan, peri-urban, or rural land for settlement and housing differently from land on which aspirant black commercial farmers can be settled. These needs are very different, and require equally different policy responses;

- recognise that land in itself cannot relieve mass rural poverty, and launch other programmes to address this; and
- set realistic objectives that can be achieved, and regularly report progress towards these.

## CDE has one core recommendation

The country should immediately establish a talented, action-oriented partnership that will report to the nation every six months on progress with respect to land issues. This partnership should consist of senior leaders in government, the ruling party, and the private sector, and its work would focus on five tasks.

### TASK ONE: Completing restitution speedily - 'ending well'

South Africa needs a task team and organisation that will resolve the restitution impasse urgently. The chief land claims commissioner (now director-general of the DLA) conceded in the parliamentary hearings in November 2007 that the department would be unable to timeously resolve the remaining, often complex restitution claims.<sup>108</sup> We have to accept that the 2008 deadline for completing the restitution process will not be met – and that the impasse over restitution issues is set to continue for a number of years yet.

South Africa needs  
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In the meantime there is great uncertainty and accompanying disinvestment in areas with unresolved claims, and attitudes are hardening on all sides in these areas. This is having a negative effect on South African agriculture, the prospects for successful land redistribution, race relations in the countryside, confidence in the government and the state, and the likelihood of a beneficial resolution of restitution to the advantage of all South Africans.

In order to avoid a litigious and adversarial outcome, resources should be devoted to outsourcing some of the Land Claims Commission's functions; consequently, a public-private task team should be immediately established to resolve remaining cases of gazetted restitution. This should include buying land efficiently and quickly, and also providing a range of other options including cash settlements, bursaries to agricultural colleges, or other opportunities.

The resolution of the restitution impasse is a first-order priority for successful land reform, because it lies at the root of so many other problems in virtually all regions of the country.

Large agri-companies are offering their assistance. They have creative plans for how to make speedy progress in generous settlements. These plans would bring together restitution claimants with farm workers and others who would be interested in farming as a means of livelihood, to pool skills and ensure that no one loses out unfairly when claims are settled. This capacity and willingness to get involved must be harnessed by an effective process that requires a positive vision and strong leadership by the government and ruling party.

## TASK TWO: Getting redistribution on the right track, and then going to the significant scale the country needs

There is significant land asset hunger in South Africa. Land will be needed for black settlement and ownership in rural and urban areas. Redistribution must meet these needs, in ways that leave beneficiaries and the country permanently better off.

Two preconditions must be met to get redistribution on the right track before the programme aims to transfer the necessary quantity of land.

First, we need an accurate understanding of patterns of land demand and land supply. This will require, among other steps, an immediate and accurate audit of existing state land. As our research found, the state has only been able to audit some 33 per cent of state land (and it is not clear if this includes municipal land). In parallel with a better understanding of the potential of state-owned land – some of which may be of good quality – we urgently need to develop a much clearer understanding of regional patterns of land demand in both rural and urban areas.

Second, we need to ensure that redistributed land does not fall into communal tenure, but remains in private ownership. Communal land is effectively taken out of the land market – it is frozen – and cannot be used as collateral for investment, preventing people on communal land from accessing many of the benefits of ownership and the resources and skills offered by the financial sector. People living on communal land are far less likely to prosper and build a better future than redistribution beneficiaries who own and control their land themselves.

Once these preconditions are met, a partnership approach is needed to acquire land in a market-supporting way that:

- meets the real and diverse needs of land-hungry, poorly housed, and unemployed people cost-effectively;
- spreads and reinforces private ownership of land with all the benefits that this bestows on owners and the positive spinoffs it creates for economic growth and security;
- reinforces market processes which are self-sustaining and in themselves redistributive;
- helps rural and urban South Africans establish sound foundations for future development; and
- does not establish a precedent of much larger subsidies for some land owners than for others.

Using a combination of enhanced LRAD grants and (in certain instances) loan finance, a public-private partnership involving senior government and business capacity, should acquire – through competitive purchase on the open market – the requisite significant tracts of urban, peri-urban and rural land for black settlement and ownership over the next ten years. In addition, once the audit of state land has been completed, creative ways of using whatever land is available for sustainable and productive purposes should be a part of this process.

This public-private partnership should be staffed with people with real expertise in the cost-effective acquisition and disposition of urban and rural land.

We need to ensure that redistributed land does not fall into communal tenure, but remains in private ownership

## TASK THREE: Deracialise commercial agriculture and South Africa's countryside

Urgent steps need to be taken to further deracialise commercial agriculture. CDE developed a detailed strategy for normalising the South African countryside in our 2005 report on land reform. At the core of this strategy were effective local public-private partnerships (see box: **Normalising the 'platteland'**, facing page). Here, we re-emphasise the three most important steps that need to be taken.

First, we need many more 'Inkezo-style', demand-driven initiatives in diverse farming sectors across different agricultural regions of the country. This strategy will accelerate deracialisation by building around existing best practice in farming, and prudent commercial banking practice. This approach will leverage the power of normally functioning land markets, and match expertise in farming with the right land and technical resources.

Second, we need to make maximum use of farm worker equity schemes and BEE deals, such as those that are already occurring in the forestry sector. The strength of these schemes is that they enable black South Africans to tap into the land and agricultural value chain at the stages where profits are maximised and not simply at the hard (and often unprofitable) end of land ownership. This strategy would focus on accelerating BEE in the best sense of the term, because it would involve buying into globally competitive firms. Several large companies are ready and willing to play an active part in making this happen.

Third, we need to create independent housing in villages for farm workers so that we can start a voluntary process to end 'feudalism' in South Africa's countryside. The custom of farm workers living in accommodation provided by their employers can be a relic of apartheid, discrimination, and deprivation. It sometimes perpetuates social patterns that denies farm workers their dignity. Affordable housing opportunities with secure tenure need to be created in towns and villages where, if they wish, farm workers and their families could choose to relocate. In these villages, workers would be able to lead independent lives and access education, health care and job opportunities cost-effectively. It is essential to emphasise that the move from on-farm accommodation to independent housing will always need to be genuinely voluntary, and will need to ensure that people who do make the move are better off afterwards. There are important roles for both public and private sector actors in this area.

The process of establishing these independent housing villages would also provide an excellent opportunity to renegotiate and amend the Labour Tenants Act and the Extension of Security of Tenure Act so that, for example, a house in a suitably located new village becomes a way of settling a claim for secure tenure. Both the LTA and ESTA have proved very difficult to enforce in their present forms, have raised expectations that have not been met, and have had the perverse unintended consequence of causing farmers to dismiss farm workers.

## TASK FOUR: Tackle rural poverty directly

There are some well-watered places around the former homelands where settling people on small farms could have a useful impact on poverty. But to believe that this approach could make a large-scale or cost-effective contribution to reducing poverty in most of rural South Africa is to succumb to unrealistic and backward-looking 'rural romanticism.'

CDE recommends building on this social reality to create a network of local public-private partnerships throughout the countryside

## NORMALISING THE 'PLATTELAND'<sup>109</sup>

Long-lasting progress in the countryside will depend on recognising that black and white people living in the rural areas are deeply interdependent, and that they often have a great deal more in common with each other than they have with city-based South Africans. CDE recommends building on this social reality to create a network of local public-private partnerships throughout the countryside. These partnerships would include established farmers, emerging farmers, farm workers, municipal officials, local DLA and Department of Agriculture (DoA) representatives, and regional representatives of the commercial banks. These partnerships would:

- help co-ordinate the local activities of government departments;
- provide expertise about land acquisition in their area;
- offer affordable and locally relevant training and extension services for new farmers;
- ensure that conservation and land usage rules are publicised and enforced;
- develop strategies for land close to former homelands in order to deal with local pockets of intense demand for more land;
- prevent new acquisitions from developing negatively into, for example, 'shack farms';
- ensure that movement of farm workers out of farm accommodation into independent housing happens voluntarily and in a way that ensures that workers are more secure, more independent, and better off after the move; and
- develop strategies to deal with crime more effectively.

CDE 2008

Urbanisation is a key component of an effective rural development strategy

Instead of using land as the sole – and often expensive – means of addressing rural poverty, we need to look at rural development more comprehensively. A key part of that is to acknowledge that urbanisation is a key component of an effective rural development strategy, and that, for many poor people in the rural areas, development therefore needs to be focused on portable assets that can be used in a variety of modern urban contexts.

We have two practical and immediate suggestions:

**The first is to call on the private sector** and in particular, agribusiness, and the international development community to put resources into the development of ideas for rural development and 'roads out of poverty'. We need an investigation resulting in a report to the country about the role of rural areas in 21st century South Africa and about how to expand opportunity for people who live in the countryside. This investigation needs to take into account the realities of agriculture in a globalising economy, and the challenges of climate change. Very few government policies and interventions in rural South Africa have resulted in sustainable development processes. A private sector, market-based approach to rural poverty and wealth creation could be a significant contribution from business leaders and international organisations to revised government strategies.

**The second** – which can be implemented immediately without prejudging the outcomes of the above investigation – **is that the government should allocate R1 billion a year for five to 10 years to a Rural Education Fund.** The fund should be managed as a partnership between the public and private sectors, and should be leveraged to have the maximum impact on providing quality education opportunities for young rural people. The fund could:

- provide bursaries to agricultural colleges where there is demand for this;
- provide bursaries to talented rural learners to study maths, science and language at good schools, thus helping the country meet its goal of at least doubling the number of matriculants with marks good enough to enable them to become engineers, doctors, and other technical professionals;
- channel seed capital to good rural or urban schools, for building hostels to accommodate more rural learners or improving teaching capacity and providing bridging courses to help more rural learners;
- provide seed capital for excellent urban institutions (such as CIDA City Campus) to expand their operations into rural or peri-urban areas.

## TASK FIVE: Spend more on land reform, and spend it better

Doing all of this properly will not be cheap. The land reform budget will need to be increased significantly. This is a precondition for CDE's suggestions to work. But an increase in the budget should only occur if new public-private partnerships are established to provide the capacity and leverage to ensure the money is well spent.

The land reform budget will need to be increased significantly

An increased budget must be used to leverage market forces and to fund professional outsourcing of land valuation, transfer, and post-settlement support. It is clear that better quantities and qualities of both land and human capital need to be devoted to land reform and rural development. However, the valid concerns of the National Treasury concerning a greatly increased allocation of national resources to land issues need to be allayed. As the Treasury points out, the DLA has sometimes not been able to spend the money it has been allocated.<sup>110</sup> We therefore recommend that the overarching public-private partnership overseeing each of these Task Teams receive its own budget – with specified allocations to each task – and that it report to parliament, and through it to the country, every six months on its progress and expenditure.

In all of these efforts, the public-private partnership driving the initiative will need to change the increasingly problematic language in which land reform is discussed. We need to move away from misleading Zimbabwe-style terminology and away from unhelpful and ill-informed debates about the role of the market or the concept of 'willing seller, willing buyer' (which has never applied to restitution in any case). We need to move towards concepts such as co-operative relationships between state and market, sustainable development, escaping rural poverty, and expanding educational and economic opportunity. The public-private partnership needs to provide the leadership the country needs to show that South Africans can resolve a difficult issue arising from our history, and do it in such a way that everyone benefits from the process.

## Concluding remarks

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There are two aspects of land reform that we have not discussed in any detail in this report. The first is the issue of how to handle communal tenure in a modernising society. In our view, this is not primarily a land reform issue, but rather a question of the political and social roles of traditional leaders. This is a complex and important topic, and one that was not covered by our research for this report.



The second omission is more important. This is the complex of issues about the relationships between urban and rural development, and between demand for housing and employment opportunities on the one hand and land on the other. We analysed these issues in detail in our first report on land reform, in which we argued that it was essential to situate land reform in the wider context of a rapidly urbanising South Africa. Rural land reform is not the answer to large-scale poverty or unemployment in the countryside. The solutions to those problems are ultimately to be found in the rapid and sustained growth of our urban and industrial economies, better management of growth and settlement issues in urban South Africa, and ensuring that all South Africans have the opportunity to share in and benefit from enhanced economic activity and urban development.

Rural land reform is vital because justice must be done, and the constitutional commitments fulfilled; and because, if land reform goes wrong, it has the capacity to derail South Africa's progress (urban and rural) towards prosperity for all.

The analysis presented in this document is based on a more focused approach to land issues. South Africa must reject the unattractive and extremely worrying trajectories we are on, and get back on track towards a land reform process that improves the lives of its beneficiaries in the long term while also ensuring that our agricultural economy will grow and continue to provide good jobs, compete on world markets, and provide the country with export earnings.

At the beginning of 2008 the ANC was offering mixed messages about where land reform was headed (see box: **ANC resolutions on land reform**, page 26). These mixed messages unfortunately include negative signals – notably the attack on markets and planned 'regulation' of foreign ownership – that reinforce the impression that land reform is likely to remain on a worrying path. One or two seemingly small policy steps, such as the introduction of the state's Right of First Refusal, or increasing use of expropriation at below market prices with a diminution of access to fair legal process, and we will be close to the 'Everybody Loses' trajectory.

It is in this context that we must work toward a more positive future along the lines we have suggested. CDE is confident that South Africa has the resources to negotiate and sustain a successful programme of land reform. There is no doubt that a country which negotiated its entire political structure only 14 years ago can negotiate a new deal on land reform. Success will boost domestic and international confidence, and increase domestic and foreign direct investment. Conversely, the price of failure will be very high. The country should act now in an effective and systematic way.

A national consensus on land reform is still there for the taking.

Great achievements are still possible. The only question is whether public and private sector leaders have the will to make this happen, and to get land reform back on track. The future of South African commercial agriculture is now on the table; this in turn means that the economic viability of many rural regions of the country is under threat.

Bold leadership is required now.

CDE is confident that South Africa has the resources to negotiate and sustain a successful programme of land reform

## Appendix A

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Great achievements are still possible. The only question is whether public and private sector leaders have the will to make this happen, and to get land reform back on track

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