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LAND TENURE SECURITY POLICY FOR COMMERCIAL FARMING AREAS¹

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¹ Commercial Farming Areas denotes a piece of land used primarily for agricultural purposes, either currently or in recent years. Farms are generally within an area not demarcated as urban, but do not necessarily include all land outside urban areas (*This definition is adopted from: Wegerif, M., Russel, B., and Grundling, I (2005). Still searching for security: The reality of farm dweller eviction in South Africa, Nkuzi Development Association, South Africa*).

An expanded definition of commercial farming areas would include farms producing agricultural products intended for the market, usually registered for value-added tax (VAT) and income tax. For the purpose of this policy, these farms are mostly located within the freehold tenure areas.

We acknowledge that increasing problems of insecure tenure are equally manifesting in non-commercial and other farming areas (with varying tenure regimes) such as communal areas, state land and peri-urban areas. These are addressed through separate policy developments.

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ACRONYMS

B-BBEE	Broad-Based Black Economic Empowerment
CASP	Comprehensive Agricultural Support Programme
CPA	Communal Property Associations created in terms of the Communal Property Associations Act 28 of 1996
ESTA	Extension of Security of Tenure Act No 62 of 1997
DAFF	Department of Agriculture, Forestry and Fisheries
DRDLR	Department of Rural Development Land Reform
DTI	Department of Trade and Industry
LTA	Land Reform (Labour Tenants) Act 3 of 1996
LRMB	Land Rights Management Board
LRMCs	Land Rights Management Committees
LMC	Land Management Commission
LISA	Land Information South Africa
MAFISA	Micro Agricultural Financial Institutional Scheme of South Africa
OVG	Office of the Valuer General
PIE	Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998
RLT	Rural Legal Trust
RADP	Recapitalisation and Development Programme
SALGA	South Africa Local Government Association
STRIF	Social Technical Rural Livelihood and Institutional Facilitation

1 INTRODUCTION

1.1 Context to Proposed Policy

1.1.1 Reversing the Legacy of the 1913 Natives Land Act

The root of the land question today arises out of the pervasive process of land alienation that dispossessed the majority of South Africans of their land over the past few centuries. 2013 is the centenary of the 1913 Natives Land Act, which was the first of a number of discriminatory laws that reinforced the massive dispossession of land from black South Africans. The proposed land tenure security policy for commercial farming areas seeks to reverse the wide range of tenure insecurities that were engendered throughout the 19th century² through a process of land dispossession, human degradation and exploitation. This led to a variety of conflicts over access to, control of and, ultimately, ownership of land. The 1913 Natives Land Act, consolidated by the 1936 Native Trust and Land Act, left only 13 percent of the land for black occupation through culminating violent forced removals of whole communities for most of the second half of the twentieth century.³ This legislation destroyed independent African existence in the interest of White settlers by creating reserves for the settlement of black people, and to serve as pools of migrant labour⁴.

The Native Land Act (No 27 of 1913) forced black women to work as labourers on white farms under labour tenancies that were easily subject to terminations. This made them more vulnerable to evictions than their male colleagues.⁵ In South Africa's rural areas, women's access to land was limited by their gender and social position in the community.⁶ The effects of apartheid have been structured by skewed gender relations, which have led to higher levels of impoverishment

² For historical details, see Bernstein H, "Social change in the South African countryside? Land and production, poverty and power", PLAAS, UWC, 2000

³ Wegerif, M., Russel, B., and Grundling, I (2005). Still searching for security: The reality of farm dweller eviction in South Africa, Chapter 3, Nkuzi Development Association, South Africa.

⁴ De Klerk, M. 1991. *A Harvest of Discontent: The Land Question in South Africa*. Cape Town: Institute for Democratic Alternative for South Africa. Letsoalo, E. 1991. "Land Reforms: State Initiatives." in *A Harvest of Discontent: The Land Question in South Africa*, edited by M. de Klerk. Cape Town: Institute for Democratic Alternative for South Africa.

⁵ Yanon, M. 2006. Access to Land in Post-apartheid South Africa: Implications for the South African Black Woman. *Codesria Bulletin*, Nos. 1 & 2.

⁶ Small, J. 1997. "Women's land rights: a case study from the Northern Transvaal" in Meer, S. 1997. *Women, Land and Authority. Perspectives from South Africa*. David Philip Publishers.

amongst black women in South Africa⁷. This denial of land rights for black women was only a part of a broad legacy of centuries of land dispossession through racially discriminatory laws.

The formulation of the proposed land tenure security policy for Commercial Farming Areas forms part of Government's undertaking to review all land reform policies as enunciated in the 2011 Green Paper on Land Reform, with a view to address issues relating to historical exclusion, equitable access to land, and participation in the optimal utilisation of land; as well as to address challenges relating to access to food at both household and national level to bring about household food security, food sovereignty and national food self-sufficiency. Furthermore, these broad policy initiatives and principles are embedded within South Africa's Constitution.

1.1.2 The Constitution

The context of all rural development and land reform policies is the 1996 Constitution of post-apartheid South Africa. In this instance, the most pertinent sections of the Constitution are 25, 26, 27 and 36. The 1996 Constitution sets out the following framework for land reform:

The state must take reasonable legislative and other measures, within its available resources, to foster conditions, which enable citizens to gain access to land on equitable basis (Section 25(5)).

A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress (Section 25 (6)).

A person or community dispossessed of property after June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress (Section 25 (7)).

There are three key pillars in South Africa's post-1994 Land Reform Policy that reflect the constitutional pronouncement around land matters: land redistribution, land tenure reform and land restitution. As noted hereto, Section 25 (5) enjoins, "The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis". In a context wherein the majority of

⁷Hargreaves, S and Shamim, M. 2000. "Out of the Margins and into the Centre: gendered and institutional Change" in Cousins B. 2000. *At the Crossroads. Land and Agrarian Reform in South Africa into the 21st Century*. Cape Town: Programme for Land and Agrarian Studies (PLAAS), University of the Western Cape.

citizens still do not have equitable access to land, this constitutional promise still remains an imperative for the state to ensure its progressive realization. Furthermore, Section 25 (5) is the only clause that recognizes this exclusive right for “citizens” and it’s accordingly weighted higher than that of non-citizens or foreign controlled juristic persons; hence, although South Africa belongs to all who live in it and afforded Basic Rights, when it comes to land it is citizens that are prioritized.

Section 25 (4) affirms the imperative of land reform in advancing the national interest and states that “For purposes of this (a) the public interest includes the nations commitment to land reform and to reforms to bring about equitable access to all South Africa’s natural resources, and (b) property is not limited to land. Implied here is that national interests take precedence and that limitations and exemptions to such limitations of access, will be in furtherance of national interests.

Section 25(8) of the constitution states that ‘No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36 (1). Consequently, this compels the state to spare no effort in addressing land reforms and racial disparity and inequity in land ownership by South Africans.

Furthermore, Section 36(1) limits the rights in the Bill of Rights and states the following, “the right in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom taking into account (a) the nature of the right; (b) the importance of purposes of the limitation; (c) the nature and extent of the limitation; (d) the relation between the limitation and its purpose; and (e) less restrictive means to achieve the purpose. Hence Sections 25 (4), (5) and (8) on the imperative of land reform, its national interest status and its override of rights, based on “general application” significantly underscores the importance of land reform and accelerating equitable access to land.

The envisaged policies towards limiting access to land by South Africans with excessive land holdings and foreign nationals and Juristic persons ought to be weighed against the stated importance and compulsion upon the state in Sections 25 (4), (5) and (8) addressed above. These

define the nature and significance of land in engendering inclusive rural economic transformation.

Furthermore, Section 26 of the Constitution is on rights to housing which in essence affirms a guarantee of rights to a specific type of property. Section 26 (1) stipulates, "Everyone has the right to have access to adequate housing".

Section 27 of the Constitution guarantees food security and poverty reduction by stating that every citizen has the right to have access to sufficient food and water, social security and health care and that the state must by legislation and other measures, within its available resources, ensure the progressive realization of the right. The Constitutional pronouncements made hereto are further given effect in the proposed legislative, institutional and policy regimes that have emerged from the 2011 Green Paper on Land Reform.

1.1.3 The Principles and Strategic Thrust of the Green Paper on Land Reform

In 2011, the Green Paper on Land Reform provided for a single land tenure framework, integrating the current multiple forms of land ownership - communal, state, public and private - into "a single 4-tier tenure system" namely:

- (a) State and public land: Leasehold;
- (b) Privately owned land: Freehold, with limited extent;
- (c) Land owned by Foreigners: combination of Freehold with limited extent and leasehold, and;
- (d) Communally owned land: Communal Tenure, with institutionalised use rights".

The principles and strategic thrust underlying land reform, as set out in the Green Paper on Land Reform are aimed to: deracialise the rural economy; to promote democratic and equitable land allocation; and enhance production discipline in order to promote social cohesion, food security (food sovereignty) and sustainable and shared economic growth and development in rural South Africa. The strategic thrust, also set out in the Green Paper, is that land reform should be pursued with minimal disruption to food production and based in the agrarian transformation strategy. Agrarian transformation refers to the 'rapid and fundamental change in the relations (systems and patterns of ownership and control) of land, livestock, cropping and community.'

The first element of agrarian transformation deals with building the person, the household and the community. This focuses primarily on dealing with basic human needs and providing the required social infrastructure for improved access to services. This part of the strategy also includes community building, organisational and skills development initiatives. In this context, land reform forms the basis of development in many rural areas and commercial farming areas in South Africa. Hence an essential part of the strategy includes the implementation of an improved land tenure system. The other two components of the strategy dealing with livestock and cropping are directly linked to the growth of the rural economy and focuses on the provision of the required economic infrastructure as well as development of entrepreneurs and improved market access and credit facilities. In addition, these two components deal with the recapitalization and development of all farms acquired through land reform so as to ensure improved food security for South Africa. The Recapitalisation and Development Programme (RADP) aims to give effect to the constitutional imperatives to foster conditions to achieve the productive use of land accessed by those who are the victims of past racial discrimination. This broad context has underpinned the development of the inclusive, developmental and multi-pronged tenure reform policy for commercial farming, which is in addition, aligned to the National Development Plan (NDP) and the Medium Term Strategic Framework (MTSF).

1.1.4 Alignment with the National Development Plan (NDP) and the Medium Term Strategic Framework (MTSF)

The policies on Rural Development and Land Reform are indeed aligned to National Development Plan (NDP). The alignment of the policy to the National Development Plan (NDP) is best understood in terms of the strategic goal of land and tenure reform, which is to promote social cohesion and development, underpinned by rural economy transformation, shared growth and prosperity, relative income equality, full employment and cultural progress. The land tenure security policy for commercial farming areas is guided by the wider vision of enhancing relative rights for the broader development of South Africa, as stated in the National Development Plan:

“The relationship between farmers and farm workers is difficult. Far better relations are needed to achieve the benefits of agricultural expansion, higher employment and better living conditions”⁸

⁸ South Africa, National Planning Commission (NPC). 2011. National Development Plan. Vision for 2030, pp. 212

Chapter 6 of NDP, proposes a revised model for land reform based on a number of principles which are pertinent to the land tenure security policy for commercial farming areas:

- i. Rapid transfer of agricultural land to blacks without distorting the land market or business confidence;
- ii. Sustainable production based on capacity building prior to transfer through incubators, mentorships and other accelerated forms of training;
- iii. Development of sound institutional arrangements to monitor markets against corruption and speculation;
- iv. Alignment of transfer targets with fiscal realities; and
- v. Enhanced opportunities for commercial farmers and organised industry to contribute through mentorship, training, commodity chain integration and preferential procurement.

Furthermore, the land tenure security policy for commercial farming areas will provide an enabling mechanism to achieve the above principles and the imperatives outlined in the Medium Term Strategic Framework (MTSF). The first cycle (2014 - 2019 MTSF) of the implementation of the NDP for the rural sector will focus primarily on 7 imperatives that are a core foundation for an inclusive and integrated rural economy. These are as follows:

- i. Improved land administration and spatial planning for integrated development with a bias towards rural areas;
- ii. Up-scaled rural development as a result of coordinated and integrated planning, resource allocation and implementation by all stakeholders;
- iii. Sustainable land reform (agrarian transformation);
- iv. Improved food security;
- v. Smallholder farmer development and support (technical, financial, infrastructure) for agrarian transformation;
- vi. Increased access to quality basic infrastructure and services, particularly in education, healthcare and public transport in rural areas;
- vii. Growth of sustainable rural enterprises and industries characterised by strong rural-urban linkages, increased investment in agro-processing, trade development and access to markets and financial services resulting in rural job creation.

1.2 Background to tenure insecurities in Commercial Farming Areas

The proposed land tenure security policy for commercial farming areas seeks to strengthen the security of tenure of those people with vested interests in land within the commercial freehold areas. The proposed policy seeks to resolve the diverse and complex range of land rights and tenure insecurities that have emerged in the course of historical change in a manner that seeks to accommodate the various categories of persons with vested interests in the land. Accommodation of these interests may involve strengthening of their existing rights, curbing unlawful evictions, according redress options (e.g. alternative land acquisition), development of sustainable rural settlements or any other suitable alternatives considered through agreed mechanisms. The principle rationale is to establish sustainable institutional arrangements to identify, monitor and resolve the land tenure insecurities of the range of actors using various interventions (e.g. the proposed Land Rights Management Board and the Land Rights Management Committees).

In general, commercial farming among blacks was essentially ruled out as a livelihood option during the late 19th and early 20th centuries, due to a deliberate policy framework which designated the homelands as sources of labour and destinations for displaced male workers in the South African foreign and white-owned mines, farms and industries. Many blacks became "squatters" on their own, but dispossessed of their lands⁹. As most of this land was surveyed and given by deed of grant to white owners, most black South Africans were either removed completely from the land or forced into labour tenancy and sharecropping arrangements. The Apartheid agricultural economy was premised on the forcible alienation of the African population from the means of production, principally land, and based on an increasingly monolithic pattern of rural farm production relations, reliant on migrant labourers and insecure labour tenants and farm dwellers¹⁰. A number of direct "political" interventions by the increasingly powerful state undermined the independence of the peasantry.¹¹

The labour tenancy system forced people to work for a certain amount of time per year or month for no pay except the right to stay on and limited use of portions of the land. Sharecropping involved the sharecropper living on and working parts of the land, the land owner usually providing the seed, and the parties sharing the crop on an agreed to basis. Under both systems –

⁹ Sol, Plaatje, 1995. *Native Life in South Africa, 1876-1932*. Randburg: Ravan.

¹⁰ Ross, R. 1986. "The Origins of Capitalist Agriculture in the Cape Colony: A Survey." in *Putting a Plough to the Ground: Accumulation and Dispossession in Rural South Africa, 1850-1930*, edited by W. Beinart, P. Delius, and S. Trapido. Johannesburg: Ravan Press.

¹¹ Bundy, C. 1972. "The Emergence and Decline of a South African Peasantry." *African Affairs* 71:285 October.

Bundy, C. 1979. *The Rise and Fall of the South African Peasantry*. London: Heinemann.

labour tenancy and sharecropping – the original owners were reduced to tenants and had to provide for the new owner while also supporting themselves from their own production¹². Most of these processes were viciously resisted by indigenous communities including through the struggle led by the national liberation movement as highlighted in the Freedom Charter.

This history of land dispossession created various categories of land tenure insecurities across a broad range of spatially dispersed populations within the ex-homelands and the commercial farming areas. Consequently, farm dwellers and workers faced a systemic process of land dispossession which effectively dismantled their livelihood systems, resulting in their bearing the brunt of the triple challenges of poverty, unemployment and income inequality. This process of land dispossession forced about 80 percent of the population into the least agriculturally productive areas of the country (13%). Most of these processes were viciously resisted by indigenous communities including through the struggle led by the national liberation movement as highlighted in the freedom charter.

Whereas the Land Reform White Paper of 1997 introduced policies to address a variety of land tenure problems identified at the time, the tenure reform programme did not adequately address the growing and new land tenure insecurity problems encountered in Commercial Farming Areas, and in redistributed and restituted land areas.

Despite 18 years of democracy, the pervasive and debilitating effects of the 1913 Land Act lingers on as one of the main obstacles to government's efforts to build a just and equitable society for all South Africans. Today, South Africa has managed to redistribute 6.7 million hectares of agricultural land¹³. Farm workers and dwellers continue to be the most tenure insecure and many are often evicted, despite the plethora of measures to mitigate this. Part of the continued unabated eviction and voluntary movement off the farms is a result of increased mechanization of farming and casualisation of labour as well as the conversion of land use to low intensity labour utilization enterprises such as mining, game farming and other leisure activities.

Furthermore, various equity interventions (including farm equity schemes (FES) and Broad-Based Black Economic Empowerment (B-BBEE) initiatives) undertaken by Government to address the skewed power relations in the agricultural sector have not effectively tackled

¹² Wegerif, M. 2004. "Creating Long-term Tenure Security for Farm Dwellers" in, Roth, M, Nxasana, V, Sibanda, S and Yates, T. 2004. Finding Solutions Securing Rights. Lexis Nexis, Butterworths.

¹³Speech by the Minister of Rural Development and Land Reform, Nkwinti, G. E. (MP) 2012 Policy Speech: Rural Development and Land Reform, Vote 32. 15 May 2012 at: <http://www.info.gov.za/speech>

inequality and engender genuine transformation. While FES, which aim to deracialise and economically democratise the nation's farming sector by turning farm workers into owners through share equity partnerships, were initiated shortly after the transition to democracy as part of the land reform programme as proposed by the 1997 White Paper, these private sector partnerships thus far have generated limited intended benefits for those people living and working on commercial farms.¹⁴ Instead of expanding the ownership base of commercial farming enterprises to include significant numbers of marginalised citizens, securing their tenure, raising incomes and engendering increased production levels through enhanced job satisfaction and participation (all envisioned outcomes), reviews of FES projects implemented between 1996 and 2011 revealed that such schemes have benefited white farm owners more than the farm workers and farm dwellers.¹⁵

This is due to numerous problems highlighted by the reviews which include (among others) poor corporate governance by equity partners in management of farming operations, flawed project design and approval mechanisms, lack of genuine skills transfer to beneficiaries, inadequate post settlement support and unrealised protection of tenure rights. The fact that FES were ultimately placing more power and resources in the hands of established white farm owners rather than resulting in the empowerment of FES worker beneficiaries caused the Minister of DRDLR to place a moratorium on such projects in 2009. The moratorium was conditionally lifted in 2011 after consultations with all stakeholders produced various agreed-upon requirements for FES projects must abide by.¹⁶

As with FES schemes, B-BBEE projects, most notably those overseen by the Department of Trade and Industry (DTI) and the Department of Agriculture, Forestry and Fisheries (DAFF) under the auspices of AgriBEE, have also met with innumerable challenges and thus far made little progress in deracialising ownership, control and management of enterprises across these sectors. Such AgriBEE initiatives consist of incentives (in the form of subsidies and government contracts) provided to businesses who participate in various black economic empowerment activities including black ownership, management control, employment equity, skills development, preferential procurement and enterprise development.

¹⁴ See DRDLR, 2013. *Draft Farm Equity Scheme Policy of the Department of Rural Development and Land Reform* (Version 6 revised). Unpublished.

¹⁵ Ibid.

¹⁶ Ibid.

The original AgriBEE Transformation Charter was gazetted in March 2008 and became the subject of public hearings in September 2010, in which a multitude of problems were raised in presentations delivered by a variety of stakeholders. These included uncoordinated implementation and planning on the part of government; lack of inter-departmental cooperation, research and development, and monitoring and evaluation; maladministration and corruption; lack of support to emerging producers who were experiencing major difficulties in accessing resources, formal supply chains and ready markets; exclusion of women, youth and small-scale farmers; continued farm consolidation; weak governance structures resulting in lack of accountability, integrated planning and enforcement; and extreme shortages in internal (State) and external (private industry) skills.¹⁷ Directly as a result of the aforementioned difficulties, a revised B-BBEE sector code for agriculture was gazetted in November 2012 to address such issues.

As one component of this land tenure security policy is a programme to facilitate the creation of share equity schemes, co-management arrangements and other empowerment initiatives as discussed above, the challenges faced by previous FES and AgriBEE projects need to be considered in implementing similar interventions proposed here. One major limitation of all these economic empowerment initiatives undertaken by the State is their absence of a dedicated focus on those people living and working in Commercial Farming Areas. Thus this policy proposes an empowerment strategy that directly targets farm dwellers and workers. Taking a dual approach, both the expansion of opportunities for active participation in secondary agricultural enterprises (the empowerment component) and the extension of opportunities to own business shares and land (the redistributive component) are intended outcomes of this strategy.

Also to be addressed is the issue that, since 1994, a new configuration of land tenures and tenure insecurities have emerged within the restituted land and redistributed lands within the Commercial Farming Areas. Unlike the more widespread inter racial tenure conflicts, the new land tenure configuration has generated various land rights disputes manifested in intra-racial frameworks, as new beneficiaries of land reform in Commercial Farming Areas confront the realities of existing *de facto* and in certain instances *de jure* as well, land rights of farm dwellers and workers in such areas.

¹⁷ Parliamentary Monitory Group, 2010. Agriculture Sector Transformation & Agri BEE Charter progress: Public Hearings. 16 September, 2010. Available Online: <http://www.pmg.org.za/report/20100917-agriculture-sector-transformation-agri-bee-charter-progress-public-he>.

For instance, during the post-1994 era, the redistribution and restitution of land has created land rights conflicts among those holding or owning land through CPAs and leaseholds, including tenure problems among the beneficiaries and competing claimants or occupiers. In redistribution and restitution cases, when land is transferred to redistribution beneficiaries and claimants, farm dwellers and labour tenants are not included in the settlement agreement and this further exacerbates their tenure insecurity. In some of these areas, second generation conflicts and land tenure insecurities have emerged among competing land claimants and beneficiaries within the freehold Commercial Farming Areas. The nature of land tenure insecurity in these areas is now more complex and involves a diverse range of persons with vested interests in land, including established and new farm owners, farm workers, dwellers, occupiers and various groups of restitution land claimants.

The state (national, provincial and municipal authorities) also has a vested interest in commercial farming land under freehold title for various public purposes and interests and this impacts on tenure security issues in these areas. This includes the state requirement for land for infrastructure improvement, conservation, urban development, as well as its interest in acquisition of land for land redistribution. The state also owns a substantial amount of land in these areas. In this situation, the rights of the state and interests in commercial areas are also of critical concern. Thus the state can be vulnerable to tenure conflict and is required to contribute to the resolution of land conflict on its own land and in relation to conflicts around its land.

One of the increasingly most contentious land rights issues in Commercial Farming Areas is state ownership of land acquired for redistribution, and the efficacy of the practice of leasing such lands to individual or corporate actors. In some instances, leasehold rights granted to beneficiaries of the redistribution programme have exacerbated tenure insecurity of farm dwellers and labour tenants already residing on the redistributed land.

Furthermore, a variety of land rights conflicts are also emerging in the Communal Areas¹⁸, mainly as a consequence of land shortages therein, the influx of new land investors and the creation of new land tenure systems within such areas, leading to greater demands for the redistribution of Commercial Farming Areas. Increasing problems of insecure tenure and evictions are equally manifesting in non-commercial farming areas. In peri-urban areas where

¹⁸This refers to land occupied or used by members of a community subject to the rules or custom of that community. This includes includes all state land under communal occupation that was part of the African homelands and/or is part of state trust land, it also applies to land registered in the name of a traditional leader on behalf of a tribe

long term “illegal” or “informal” land occupations have been in force without legal intervention, and on lands owned by private owners and various state authorities and trusts, a host of land tenure problems obtain. The Prevention of Illegal Eviction (PIE) from and Unlawful Occupation of Land Act 19 of 1998 (“PIE”) provides that no individual may be evicted from their home, which includes any hut, shack, tent or similar structure, or any other form of temporary or permanent dwelling or shelter, without an order of Court after all relevant circumstances have been considered. Resolving these issues involves both the provision of secure tenures on currently occupied lands and the provision of more land through redistributive resettlement schemes in peri-urban areas.¹⁹

Thus, a number of differentiated categories of persons with vested interests in the Commercial Farming Areas with varied forms of tenure (in) security have emerged, and it is imperative that land tenure security policy acknowledges the variety of land rights and vested interests in land. Such a policy ought to balance and secure the relative land rights of the various stakeholders, and strengthen such rights within the ambit of the Constitution.²⁰ The proposed land tenure security policy focuses on a range of stakeholders: Farm dwellers; Farm workers; Labour tenants; Occupiers; Farm owners; and Relevant spheres of government.

Addressing the tenure insecurities of farm workers, dwellers, and occupiers, alongside those of the land owners requires a policy paradigm shift which deals with the wider array of vested interests in land and the multiple forms of land and substantive rights and insecurities that have coalesced within the commercial farming areas as a result of the growth of multiple categories of persons/entities with vested interests in the land and associated contested rights. These tenure insecurities contribute to rural-urban migration and the proliferation of peri-urban and urban informal settlements, which are key sites of poverty, unemployment, and inequality. Resolving tenure insecurity is also a major priority of government given its objectives of reversing rural to urban migration in the context of creating broader opportunities through rural development for employment and integrated sustainable settlements.

¹⁹ The proposed Land Tenure Policy focuses on Commercial Farming Areas. However, in the recent past, the implementation of PIE has been passed from the Department of Human Settlements to the DRDLR. The implications of this new mandate with respect to the current Land Tenure Policy, as well as the on-going ESTA and LTA legislative amendment is currently under consideration and a draft policy document on PIE and suggested amendments are being developed. The alignment of PIE, ESTA and LTA in dealing with the over-arching problem of illegal eviction is under consideration through the current drafting of the eviction policy, which is at an advanced stage.

²⁰ Bosman, L. 2004. “Securing Rights of Farm Dwellers” in, Roth, M, Nxasana, V, Sibanda, S and Yates, T. 2004. Finding Solutions Securing Rights. Lexis Nexis, Butterworths.

These tenure issues also need to be addressed in the context of longer term and future land requirements and land use changes in the context of the effects of climate change and food security challenges (e.g. rising and volatile food prices). About 60% of the South African population is currently urbanized and depends on food produced on commercial farms.²¹ For this reason, it is critical to protect and enhance commercial production of food among a wide range of large-scale and small producers, while strengthening of rights of people who reside on farms. Vision 2030 calls for promoting tenure security to enhance investment in all categories of existing and new farms to ensure sustained food production.

The primary aim of this land tenure security policy for Commercial Farming Areas is to strengthen the security of land rights among the various categories of people who have vested interests in land within the freehold Commercial Farming Areas. This involves undertaking various interventions which not only provide secure access to land and land-based resources to farm workers, dwellers etc, but also that ensure their (and the nation's) food security and food sovereignty. Key here is to undertake tenure reform initiatives that are able to secure land rights without significantly interrupting agricultural production while also engendering sustainable livelihood opportunities for marginalised citizens. Attaining Production discipline whilst expanding access to land, and participation in primary and secondary production is a key envisaged outcome of the land tenure security policy for Commercial Farming Areas.

This shall be accomplished through various policy measures proposed below, including through a participatory strategy of land rights management. It is proposed to establish a national level Land Rights Management Board (LRMB) and local level Land Rights Management Committees (LRMCs) as part of the vision and broader strategy of the 2011 Green Paper. In order to achieve improved tenure security and livelihoods alongside enhanced agricultural production for people living/working in the freehold Commercial Farming Areas, the Green Paper's three underlying principles of deracialisation of the rural economy; democratic and equitable control of and access to land across race, gender and class; and sustained production discipline for food security form the basis for establishment of such institutions and implementation of the interventions discussed in this policy. The incorporation of these principles into the Land Tenure Policy form a key basis of its success and focus.

²¹ National Planning Commission, 2012. National Development Plan 2030, Our Future, Make it Work.

1.3 Rationale for change

Given this historical and contemporary context, large segments of the South African population who live in Commercial Farming Areas have few economic opportunities and social support systems due to tenure insecurity. It is evident that the creation of sustainable systems of land tenure security is basically undermined by *inter alia*, the generally limited scope for access to land among tenure insecure farm dwellers and others affected by various land rights conflicts.

As will be reviewed in section 3.1, the promulgation of the Land Reform (Labor Tenants) Act (LTA) and the Extension of Security of Tenure Act (ESTA) has not achieved the intended outcomes aimed at protecting farm dwellers, workers and tenants. Farm dwellers have remained in a disadvantaged position due to the poor enforcement and resource endowment of the ESTA and the LTA.

Persons in need of tenure reform security are not a homogenous group and cognizance shall be made with respect to youth, gender, female-headed households, child-headed households, people with disabilities, and more generally qualifying beneficiaries who require land for a variety of on- and off- farm needs. Secondary rights holders such as farm dwellers and labor tenants should be accorded priority in tenure reform programmes. A number of reviews²² undertaken on land reform vindicate the view that gender mainstreaming within land reform is yet to be achieved. The DRDLR has prioritised the vulnerable groups (e.g. persons with disabilities) as its principal beneficiary target, yet progress, particularly with respect to the numbers of beneficiaries within the People with Disabilities category, remains slow at 29 as the total number of disabled beneficiaries who have benefited from land reform.²³ In essence, land tenure policy and land rights management reforms should involve an integrated and inclusive approach to promoting land access and land tenure security, based on increased land administration capacities to systemically address the complex range of tenure insecurities identified which affect a range of persons as discussed hereto.

Land tenure reform cannot be isolated from the broader political and socio-economic rights issues facing farm dwellers and farm workers.²⁴ Not only do the large majority of farm workers and farm dwellers suffer insecurity of tenure and uncertain employment, but they also experience

²² Commission for Gender Equality (CGE), 2009. A Gendered Analysis of Land Reform Policy and Implementaion Outcome in South Africa (2006 – 2008/09).

²³ Department of Rural Development and Land Reform (DRDLR) Midterm Review, 2009 – 2012. Pretoria, pp. 20 -21

²⁴ Cousins, B. & Hall, R., 2011. Rights Without Illusions: The potentials and limits of rights-based approaches to securing land tenure in rural South Africa. Working Paper No. 18. PLAAS.

considerable human rights abuses which result in their further impoverishment and in particular women whose *de facto* rights to land is derivative in nature. It is essential that approaches to bettering the plight of those who live and work on farms include measures that go beyond tenure reform to address broader aspects of socio-economic development.²⁵

Farm dwellers are often treated as a general category amongst the disadvantaged, landless, rural poor, vulnerable and marginalised groups. Such a universalistic approach unintentionally masks the dire need for a targeted response to the socio-economic plight that bedevils farm dwellers as one of the most marginal groupings. They have, in general, not received much from the expected gains of land reform and other broader development initiatives post 1994. This is despite the fact that farm dwellers, workers and labour tenants are among the most vulnerable groups and poorest in rural South African society. It is estimated that approximately three million black South Africans live largely on commercial farms that are held in title by white commercial farm owners or operating companies²⁶, and commercial farms held by a few black owners.

Farm dwellers are not merely wage workers who happen to be employed and therefore live on commercial farms (though some are); many live on farms because they have always lived there and regard these farms as their only family home, the site of their identity and a place to bury their dead. Traditionally, most farm workers lived on farms that employed them, but some live on commercial farms and undertake independent cultivation and grazing based on a range of tenure arrangements.²⁷ The category of 'farm dwellers', as opposed to 'farm workers' is an all encompassing one as it exemplifies farm dwellers' struggles for recognition of their prior connection to land and, therefore, their right to remain on the farm.²⁸

Given the aforementioned, this proposed land tenure security policy thus targets the following categories of people with vested interests in Commercial Farming Areas:

- Farm dwellers - any person, other than the owner, who is living on a farm;

²⁵ Cousins, B. & Hall, R., 2011. Rights Without Illusions: The potentials and limits of rights-based approaches to securing land tenure in rural South Africa. Working Paper No. 18. PLAAS.

²⁶ Mayende, G. 2004. The Challenge of Land Tenure Reform in South Africa. Issues, Problems and Prospects in, Roth, M, Nxasana, V, Sibanda, S and Yates, T. 2004. Finding Solutions Securing Rights. Lexis Nexis, Butterworths.

²⁷ Cousins, B. & Hall, R., 2011. Rights Without Illusions: The potentials and limits of rights-based approaches to securing land tenure in rural South Africa. Working Paper No. 18. PLAAS.

²⁸ Cousins, B. & Hall, R., 2011. Rights Without Illusions: The potentials and limits of rights-based approaches to securing land tenure in rural South Africa. Working Paper No. 18. PLAAS.

- Farm workers - persons who work on a farm regularly, whether full-time, part-time or seasonally, including those who are not necessarily farm dwellers, but live elsewhere. For the purposes of this definition, a “farmworker” means a person who is employed on a farm in terms of a contract of employment which provides that in return for the labour which he or she provides to the owner or lessee of the farm, he or she shall be paid predominantly in cash or in some form of remuneration, and not predominantly in the right to occupy and use land; and he or she is obliged to perform his or her services personally²⁹;
- Labour tenant - means a person:
 - who is residing or has the right to reside on a farm;
 - who has or has had the right to use cropping or grazing land on the farm, or another farm of the owner, and in consideration of such right provides or has provided labour to the owner or lessee; and
 - whose parent or grandparent resided or resides on a farm and had the use of cropping or grazing land on such farm or another farm of the owner, and in consideration of such right provided or provides labour to the owner or lessee of such or such other farm, including a person who has been appointed a successor to a labour tenant (in accordance with the provisions of the Land Reform (Labour Tenants) Act, but excludes a farmworker³⁰;
- Occupiers - means a person residing on land which belongs to another person, and who has or on 4 February 1997 or thereafter had consent or another right in law to do so³¹ (excluding a “labour tenant” as defined in the relevant legislation as well as a person using or intending to use the land in question mainly for industrial, mining, commercial or commercial farming purposes, but including a person who works the land himself or herself and does not employ any person who is not a member of his or her family);
- Farm owners – farm owners as private persons or legal entities with recognised formal rights and vested interests in land. These include those who have since 1994 benefitted from land reform and/or purchased farm land, whether they own and/or control land on the basis of freehold titles, leases and/or CPA land rights; and

²⁹ Definition derived from: Act No. 3 of 1996: Land Reform (Labour Tenants Act) , 1996.

³⁰ Definition derived from: No. 3 of 1996: Land Reform (Labour Tenants Act) , 1996.

³¹ Definition derived from: Extension of Security of Tenure Act 62 of 1997

- Relevant spheres of government (municipalities; the state etc) who have interests in private commercial farming.

1.4 Outline of the proposed land tenure security policy

This proposal provides the over-arching land tenure security policy framework for all those in freehold, restituted and redistributed areas. It excludes the tenure security issues on state owned and public lands, peri-urban areas and in communal areas, as these are dealt with in separate policy development processes. The policy document first outlines the nature of tenure problems that need to be addressed (section 2) and subsequently elaborates on the vision and objectives of the policy (section 3). The context of this tenure policy is however a wider and expanded land reform policy framework linked to a comprehensive rural development agenda, intended to promote agrarian and social transformation, and to meet the long-term development goals of the country. The document then outlines a comprehensive and coordinated approach to land tenure reform within Commercial Farming Areas. This includes measures to promote the tenure rights of farm dwellers and workers, and of existing and potential land reform beneficiaries through various redistributive measures (e.g. of farming and residential land, social services, settlement and post settlement support) and other legal and institutional measures required to address the tenure rights of farm dwellers and workers. Section 5 identifies and proposes key institutional reforms to the land tenure administration system, while section 6 identifies the legal arrangements required.

2 KEY LAND TENURE SECURITY AND LAND RIGHTS CHALLENGES

2.1 Farm dwellers and farm workers land rights in commercial farming areas

Since 1994, one of the key principles of tenure reform has been to move away from subservient forms of land rights into legally enforceable rights to land, in a manner, which is consistent with the Constitution's commitment to basic human rights and equality. Significant laws promulgated in this regard and dealing with the subject matter of this policy, include the LTA and the ESTA. Despite the promulgation of these laws in the post-1994 era, farm dwellers have remained in a disadvantaged position due to the poor enforcement and resource endowment of the ESTA and LTA.

Efforts to promote land tenure security in isolation from promoting wider development programmes to address the living and working conditions on farms has practically extinguished many of the other basic human rights of farm dwellers and their families – such as the rights to adequate housing, health and education. In essence, the ESTA has defined procedural rights that underpin legal evictions at the expense of creating a strong regime of substantive rights that supersede the procedural rights process. With estimates of those either evicted or displaced from commercial farms reaching over six million in 2004, the South African farming sector continues to lose its most important component, black farmers.³²

The main reason for farm dwellers being evicted relates to farm workers losing their jobs and, as a direct result, the family having to leave the farm. This is at least in part due to the connection between employment and land tenure rights.³³ Most of the evictions are attributed to the farmers' inability to meet their work obligation. Therefore, if they are unable to work on the farm, the owners can legally apply for the eviction of the farm worker. However, most of the cases do not pass through the legal system.³⁴ Evictions were also prompted by the promulgation of the ESTA and LTA Acts themselves, as well as by wider economic conditions and strategic concerns of farmers. Levels of evictions have also spiked in years coinciding with droughts and with the promulgation of tenure and labour laws. Farm sales, liquidations and changes in land use also led to evictions, as did cost price squeezes experienced in industries such as the apple industry in the late 1990s.³⁵ Most farm evictees have ended up impoverished living in informal urban settlements, exacerbating overcrowding, urban poverty, stress on public resources and crime.³⁶

Indeed, the current legislation intended to curb evictions (e.g. ESTA, LTA and PIE) and policy interventions to protect evictees are extremely inadequate to address the growing problem of evictions. Moreover, the administrative framework within which these laws have been managed is uncoordinated and poorly resourced. The issue of evictions is been addressed through a separate policy document.³⁷ Thus, the wider range of land rights problems faced by farm dwellers suggest that a more expansive system of land rights provision for such dwellers is

³² Cousins, B. & Hall, R., 2011. Rights Without Illusions: The potentials and limits of rights-based approaches to securing land tenure in rural South Africa. Working Paper No. 18. PLAAS.

³³ Wegerif, N., Russel, B., and Grundling, 2005. "Contextualising the Study" Still Searching for Security. The reality of Farm Dweller Evictions in South Africa. Social Surveys and Nkuzi Development Association. Pp. 41

³⁴ South Africa: Farmworker's Dismal, Dangerous Lives, August 2011, www.hrw.org

³⁵ Cousins, B. & Hall, R., 2011. Rights Without Illusions: The potentials and limits of rights-based approaches to securing land tenure in rural South Africa. Working Paper No. 18. PLAAS. Pp. 17

³⁶ Wegerif, N., Russel, B., and Grundling, 2005. "Contextualising the Study" Still Searching for Security. The reality of Farm Dweller Evictions in South Africa. Social Surveys and Nkuzi Development Association

³⁷ 2012, Evictions Policy on PIE, Draft Document

required. In studies on farm workers and farm dwellers, members of these groups reported that more than anything else, they wanted their own piece of land to farm.

Some land owners and agricultural representative organisations (e.g. Agri- S.A.) argue that the current weaknesses of the land tenure security policy and laws governing farm dwellers and workers rights complicate their relative rights and create more land rights conflicts and land owner tenure insecurities. They argue that some farm workers and dwellers do not observe the laws (e.g. fence cutting, resource poaching, etc), and they make expansive demands for land rights. Moreover, they argue that the smaller white commercial farmers have limited capacities to deal with many of the legal requirements of addressing such rights. They also believe that the limited capacity of the state to mediate farm dwellers land rights in some areas, given also that the land owners do not receive legal subsidies, is also a key source of some of the land tenure insecurity found in Commercial Farming Areas. This view suggests that the current approach to tenure security does not balance the felt need for all the relative land rights to be addressed. Furthermore, farm dwellers in most instances are often unable to get the help (which is their right) due to their remote geographical locations in the rural areas.³⁸ Moreover, efforts to resolving tenure conflicts *in situ* have been plagued with numerous challenges.

The unequal power relations between land owners and others (such as farm workers and dwellers) as a result of unequal access to information and resources to mobilise the enforcement of land laws, is one source of the persistence of land rights disputes on the farms. Such disputes often lead to unlawful evictions of dwellers, the unlawful occupation of commercial farmlands, and conflicts over the use of land on such farms.

One of the core aims of the farm equity schemes and other empowerment initiatives is to establish an equitable balance of power between land owners and farm dwellers, workers etc. Such projects intend to generate a class of skilled black owners, managers and protected workers in the agricultural sector that enjoy equal say in farming operations as well as an equal share of profits. However, comprehensive reviews of share equity schemes have indicated that this has not come to fruition. Unequal relations between equity partners (established land owners) and worker beneficiary shareholders (farm dwellers, workers etc.) have meant that the latter are not able to effectively participate in decision making processes, with beneficiaries often “given

³⁸ Hall, R 2003, Farm Tenure, Programme for Land and Agrarian studies. School of Government, University of the Western Cape, September 2003

perfunctory status on the Board of Directors as a ruse to diffuse possible tensions".³⁹ Thus it is common for FES projects to undergo changes in their shareholding structures and for equity partners to enter into major contracts with outside investors without adequate consultation of beneficiaries. These arrangements most often do not benefit shareholding beneficiaries and therefore exacerbate conflicts as expectations of improved incomes are not fulfilled. Furthermore, beneficiaries commonly lacked understanding of the shareholding agreements and were unaware of their tenure, housing and dividend rights as a result. In the past, Government has neglected to adequately monitor FES arrangements, with the projects largely failing to generate tenure security, enhanced livelihoods or increased production as intended.⁴⁰

The problems noted above, especially those related to management and poor governance of agricultural enterprises is also true of strategic partnerships and co-ownership or management schemes under the auspices of AgriBEE. Two core interlinking objectives of AgriBEE initiatives (that businesses are scored on) are Management Control and Employment Equity. The first entails increased black participation and control (particularly of black women) within senior management, which is measured by the relative numbers of black people employed as executive managers and serving on the boards of agri-businesses. The second, Employment Equity, aims to increase the numbers of black people filling highly skilled positions within the sector including at the senior and junior management, supervisory, specialist, technical, foremen and superintendent levels.

In assessments of the progress agribusinesses have made in advancing black economic empowerment, it has consistently been found that AgriBEE scores received for Management Control and Employment Equity are the lowest.⁴¹ Thus far, ownership, executive and junior level management, professional and highly skilled positions held in the agricultural sector are overwhelmingly occupied by whites. Reasons cited for this include lack of knowledge and expertise, ineffective skills development programmes and lack of State enforcement. In the minority of cases where businesses do have some level of black ownership and/or leadership, these are often mired in the same problems found in the FES projects described above. Unequal decision-making powers, lack of accountability and weak governance structures often result in

³⁹ See DRDLR, 2013. *Draft Farm Equity Scheme Policy of the Department of Rural Development and Land Reform* (Version 6 revised). Unpublished.

⁴⁰ *Ibid.*

⁴¹ van Rooyen, J. Hobson, S. & J. Kirsten. 2010. *The Contribution of Agribusinesses to Broad-Based Black Economic Empowerment in South African Agriculture: Summary report and main findings*. Pretoria: Agricultural Business Chamber.

only token representation of blacks on executive boards etc., with original power structures remaining in tact.

Furthermore, the benefits of AgriBEE (and FES) interventions have been captured by more affluent and educated blacks, while the poorest and most historically marginalised rural citizens (most notably farm dwellers and workers) have been excluded from the process. This is largely attributable to the absence of any empowerment (or for that matter financing) programme targeted at this group, especially one that incorporates redistribution of land and ownership as one of its core objectives.

Records on the rights of those living on farms are also not well documented, while growing family membership raises questions about the right of members to succeed the land rights of protected farm dwellers. Information on current land rights infringements and tenure insecurities is not adequately collated and disseminated and is often disputed by various stakeholders. The lack of an impartial and credible mechanism for the monitoring of those found to be infringing on the land rights of others and poor measures of addressing such infringements have resulted in the absence of reliable information on these processes and associated inadequate policy responses.

Resultantly, in large scale farming areas, farm workers and residents have precarious access to residential land. Some have access to smaller plots for cropping and/or grazing land, largely on the basis of informal tenure, and for many, only as labour tenancies. The current law on freehold land tenures protects mainly the landowners' interests against these long-term land occupiers whose generations of labour enhanced the value of the private property. The existing laws (ESTA, LTA) have been ineffective in protecting the wider land rights needs of farm dwellers and workers. In addition, farm workers typically rely on their wage incomes and access to land on the farm to provide for their families' basic needs, such as shelter, water and food. If they are dismissed and subsequently evicted, they lose access to their income as well as to natural resources. The focus on rights has overshadowed overarching developmental concerns. As a result, attaining tenure security has not created viable livelihood outcomes.

From a development perspective, the tenure policy has been unclear about how public services are to be provided to indigent people living on privately owned farmland, and a stand-off is evident between line departments and municipalities on the issue of how to provide support and

services to farm dwellers.⁴² Some local governments have argued that farm workers or labour tenants living on private land are not within their service provision jurisdiction.⁴³ Therefore, the constitutional rights of access to adequate housing, shelter and security of tenure remains largely illusory in practice for millions of farm workers and dwellers on commercial farms.⁴⁴ Despite local government's mandate to respond to threatened or actual evictions and to monitor the forced movement of people off farms, the reality on the ground is that most municipalities in South Africa have no coherent plan for responding to evictions of farm dwellers by private landowners.⁴⁵ Local governments are expected to provide land and housing for those who have been evicted, but they are not funded for this. They are expected to raise money on their own.⁴⁶

The extent to which land rights are translated into substantive gains for the poor is contingent on a host of factors such as the capacity of the farm dwellers to mobilise, resource endowment and capacity of implementing institutions and enforcement of the rights enshrined within the legislation. However, these legislative rights of farm dwellers are not protected in practice by institutions that should play a pivotal role in this regard.⁴⁷ In terms of benefiting from land reform programmes, farm dwellers have at a minimum benefitted from the few equity schemes. The collapse of parts of the rural economy is evidenced by the increased rural to urban migration which is clearly a structural manifestation of the inability of rural economies to create viable economic opportunities. Agricultural land is being converted to game farms and other tourism ventures, with a significant decrease of 10% in areas of farmed land between 1994/95 and 2002/03. Thus more farm workers and farm dwellers are losing their jobs and being displaced from the land on which they live, as operations of such enterprises require significantly less labourers than ordinary commercial farming. The urban economy is in the same vein unable to absorb all the migrants, and the growth of informal settlements on the fringes of town and increasing pressure for services exacerbates the crisis of social reproduction, as neither adaptive mechanisms (rural-urban, urban-rural drift) are able to meet the needs of the migrants.

⁴²Cousins, B. & Hall, R., 2011. Rights Without Illusions: The potentials and limits of rights-based approaches to securing land tenure in rural South Africa. Working Paper No. 18. PLAAS. Pp. 17

⁴³Ndlela, B. Farm Dwellers are also Citizens: Aspirations of Equity in Municipal Attention, http://www.afra.co.za/jit_default_979.html

⁴⁴ Land & Tenure Rights for Farm Dwellers & Worker: Meeting with Rural Development/Land Reform stakeholders & Deputy Minister, *Op. Cit.*

⁴⁵ Mhlaba Wethu 13: A bulletin tracking land reform in South Africa, *Op. Cit.*

⁴⁶ Mhlaba Wethu 13: A bulletin tracking land reform in South Africa, <http://www.plaas.org.za/sites/default/files/publications-pdf/UW%2013.pdf>, p.3

⁴⁷ See for example: Hall, R 2003, Farm Tenure, Programme for Land and Agrarian studies. School of Government, University of the Western Cape, September 2003

A 2005 study on farm evictions found that half of all evictees were not aware of their rights, with a few reporting that they enjoyed no rights, while two-thirds of them reported that they required assistance with evictions, and almost 75 percent had no idea where or how to find such. Between 1994 and 2004, 942 000 people were evicted from farms, 77% of which were women and children and only 1% of these evictions had gone through the legal process.⁴⁸ The low education levels among these groups, difficulty of union organizers in accessing farms and the government's lack of enforcement of legislation and failure to implement programmes explain this phenomenon.⁴⁹

The provision of legal support to farm dwellers has not been very successful with regard to securing tenure security for the elderly, women and children. Farm owners rarely acknowledge their long-term occupier status since its derivative nature is defined primarily via their relationship with a male head of household's tenure status. Loss of his income, job or historical agreement exacerbates their tenure insecurity. Child headed households are also particularly vulnerable to eviction after the death of the parents or the household head. However, the overwhelming victims of land tenure insecurities in Commercial Farming Areas are farm dwellers, workers and tenants.

2.2 Land tenure and land rights in restituted and redistributed areas.

Another growing source of land tenure insecurities among farm dwellers and workers arises from tenure regime changes within Commercial Farming Areas. These tenures now include pockets of common property rights held through CPAs and trusts with perimeteric freehold titles, and various forms of land leaseholds (including caretaker rights in the transition to land reform allocation) on land which is now state owned and leased out. The post-1994 land redistribution (e.g. SLAG, LRAD) and restitution beneficiaries mainly provided land rights as individuals with freehold title and/or as groups in various forms of common property, and introduced new types of land rights insecurities within the commercial farming areas. Land rights insecurities are manifested in various land disputes among land reform beneficiaries themselves, between them and existing farm dwellers, and among other competing land claimants.

Fundamentally, the failure of the land restitution and land redistribution programmes to systematically and substantially supply land to farm dwellers and workers (on- or off-site) is a

⁴⁸ Wegerif, N., Russel, B., and Grundling. 2005. "Contextualising the Study" Still Searching for Security. The Reality of Farm Dweller Evictions in South Africa. Social Surveys and Nkuzi Development Association

⁴⁹ SAHRC (2008) *Progress made in terms of Land Tenure Security, Safety and Labour Relations since 2003*. South African Human Rights Commission. South Africa. Pp. 45

major source of land tenure insecurity among these populations. Programmes of land reform such as restitution have served a very specific purpose, namely dealing with the social injustice experienced by victims of land dispossession. Restitution claimants as beneficiaries are however not often conceived as including farm dwellers, who instead have been conventionally addressed through a narrow land tenure reform policy. Historically dispossessed farm dwellers tend to be marginalized by new claimant communities within the restitution programme.

The land redistribution programme has tended to target aspiring black commercial farmers or a range of black South Africans in need of land for agricultural production. The DRDLR's Proactive Land Acquisition Strategy (PLAS), in which the government buys land available on the market directly from owners to redistribute to land reform beneficiaries, has hardly reached farm workers or farm dwellers. Farm workers as a specific category of people in need of land for agricultural production are rarely prioritized in the land redistribution programme. Moreover, another major source of land tenure insecurity among farm dweller populations is the inadequate clarification and protection of farm dwellers and workers land rights on land that has been redistributed and/or restituted.

There has been a shift in policy orientation over the forms of tenure to be assigned to the land reform beneficiaries, but consensus is yet to be achieved. Some beneficiaries expect freehold land tenures to continue being provided, while it has been proposed that long-term leases ranging from 30 to more years be allocated to land redistribution beneficiaries. What land use and management covenants should bind the beneficiaries to enhance productivity (discipline) is still hotly debated, while some beneficiaries see such regulations as a constraint to their investment. The PLAS programme has sought to provide leasehold tenure to land redistribution on the basis of uniform land tenure and land use regulations, but these are seen as being only suitable for the better endowed land reform beneficiaries who can afford some of the expected investments and levies for local development services. Lacking access to adequate credit, even such beneficiaries plead for less onerous land use conditions. Furthermore, the PLAS type leasehold system is considered to be inappropriate for the poorer land seekers, such as farm dwellers and farm workers who are at any rate not beneficiaries of a full scale land redistribution programme.

Moreover, it has been suggested that the resale of freehold property rights gained through the various subsidized land reform programmes be regulated to prevent the re-concentration of redistributed lands (and land market profiteering from state buying) and land loss among the poor. The specific tenure policy proposals, which could include attaching covenants onto the

freehold and leasehold lands, held by land reform beneficiaries need to be clarified. However, many of those with short term leases, and other commercial agriculture players, believe that all the leaseholds should be convertible to longer term leases and freehold property after proving beneficial use of such lands. These proposals are yet to be adequately formulated and debated even though they have been partially implemented. Resolving these forms of land reform tenures is critical to addressing a broader range of tenure insecurities among the farm dwellers and workers.

In addition, a variety of other programmes such as the Recapilisation and Development Programme (RADP) which are intended to deal with the problem of production in the restituted and redistributed land have themselves also introduced new land rights conflicts and tenure insecurity food problems. For instance, the introduction of new partners and investment finance has created more conflict amongst land reform beneficiaries regarding the utilization of land and the role of various beneficiaries in such projects, leading to land tenure conflicts. Some of these problems are more acute in land held through CPA and Trusts.

In respect of user rights (specifically where former white owned commercial agricultural land is divided and set aside for access by individuals subject to "group" agreed terms and conditions), the LRC argues that adequate administrative support is a precursor to the success of such arrangements. It further states that⁵⁰:

"...if land reform projects do not give rise to secure and equitable access, the state is constitutionally obliged to take steps to ensure that it happens. The result is that, despite the fact that the land has been transferred in private ownership; the constitutionally sanctioned land reform programme is such that the state's obligations are ongoing and that it may be obliged to intervene and take steps to ensure that the objectives of land reform are achieved in a particular land reform project".

"By themselves, however, land rights have limited value. For these to make a contribution to livelihood security, they must be part of a package which enables key social development needs to be met, household provisioning to be improved, and capacity and business acumen to be developed".

⁵⁰ LRC submission CPA Land Policy: November 2012

2.3 **Related land tenure conflicts in state, mining, tourism and communal areas**

Land insecurity and conflict have emerged in Commercial Farming Areas that are now under mining concessions, game farming and other non-agricultural uses as a result of their conversion from agricultural uses and their ownership by entities other than commercial farmers. Such problems include the loss of farm employment, and land rights on such land by existing farm dwellers, workers and tenants. These areas consequently fall under the jurisdiction of mining and tourism authorities rather than the Department of Rural Development and Land Reform, and as such, have tended to be neglected by land tenure programmes, which seek to address the plight of farm dwellers.

Part of this problem relates to the absence of transitional mechanisms to deal with the land rights of farm dwellers in the context of dynamic land use and land ownership changes within the Commercial Farming Areas. This arises due to the absence of clear legal mandates and institutional capacity to enforce the existing land use conversion regulations, and/or the dereliction of responsibilities by the competent local authorities, and possibly due to corrupt practices. Consequently, the relevant authorities may neglect many land rights conflicts affecting farm dwellers in such areas.

Furthermore, within the Commercial Farming Areas, there are state owned lands with titles in which various land rights conflicts and land rights infringement obtain for farm dwellers, tenants and occupiers. Although these are a small part of the Commercial Farming Areas, they do pose serious sources of land rights insecurities. It is doubtful to what extent the existing land rights management programme are sensitive to and targeted towards conflicts on such state owned lands as well as mining and tourism areas. It is clear that land rights conflicts within state lands, mining land and tourism areas located within commercial farming areas has a bearing on the general land conflict in their surrounding areas. On the other hand, the state is also vulnerable to a variety of land rights conflict that arise from the eviction of farm dwellers and workers from other private commercial farms as informal settlers drift towards state owned land, and because the state is expected to accommodate persons affected by land rights infringement on its own land, even if such land may not be suitable for certain types of settlement (e.g. protected areas). Addressing these issues is also critical in addressing the broader tenure security question in Commercial Farming Areas and may require particular measures.

Additionally, a variety of land rights insecurities are emerging in the Communal Areas, mainly as a consequence of land shortages therein, the influx of new land investors and the creation of

new land tenure systems, as well as due to the conflicting land administration structures. New rural centres and peri-urban centres have spawned a variety of land rights transgressions and disputes. Land concentration, foreign land ownership and land under-utilisation continues unabated in freehold land tenure areas. It is conceivable that the institution of new tenure regulations, such as the imposition of land ceilings and limitations on foreign land ownership will generate another generation of land rights disputes in the freehold land tenure areas, such consequences being considered and mitigated as part of this overall policy development process.

2.4 Environmental challenges

The issue of land tenure reform is closely related to the environment. One of the most visible unintended consequences of past practices is the environmental degradation related to poor land use management practices, such as overgrazing, exceeding carrying capacities, as well as over population of available arable land etc. Such consequences directly impact on the ability of communities to lead a sustainable livelihood. In order to ensure long-term sustainability of the land reform programme, the environmental conditions and sustainable use of natural resources need to be factored into land tenure strategies and alternatives.

2.5 Summary of the land tenure security policy challenges

Current government and civil society efforts to address the land rights of farm dwellers have been limited mainly to narrow measures aimed at the protection of their land rights on site with inadequate attention and resources paid to redistributive measures which enhance their access to agricultural and residential land, and access to viable social services. Nor have the policy measures sufficiently addressed the land rights needs of the wide range of farm dwellers, workers, tenants and occupiers. Furthermore, due to the weaknesses and narrow focus of the measures used to protect farm dwellers rights, some of the legitimate land rights of land owners who may be in compliance with the law tend also not to be protected. This calls for a wider land tenure policy reform agenda in this regard.

3 VISION, PURPOSE AND PRINCIPLES OF THE PROPOSED LAND TENURE POLICY

3.1 The Vision of the Land Tenure Security Policy for Commercial Farming Areas

The vision of this tenure security policy is: the realisation of equitable access to land in terms of race, gender and class; secure rights over land among various categories of persons with vested interests in the land; the economic deracialisation of the agricultural sector in which black South

Africans become capable owners, managers, professionals and well-compensated workers; the sustainable utilization of land to enhance shared growth, food security, employment development; and sustained investments to achieve socially inclusive rural development.

3.2 The Purpose of the Land Tenure Security Policy for Commercial Farming Areas

The overall purpose of the proposed land tenure security policy is to create a sustainable institutional framework, which strengthens the security of tenure of all categories of persons who have a vested interest in land, in terms of land ownership, livelihoods and access. This throws into sharp relief the quality of rights of each of these categories of holders of rights to land, while calling for a nuanced but integrated resolution of their varied insecurities and strengthening the land rights of all. As noted previously in this policy, this purpose advances the three-pronged principles that underpin the Green Paper:

- De-racialisation of the rural economy for shared and sustained growth;
- Democratic and equitable land allocation and use across gender, race and class; and
- Sustained production discipline for guaranteed national food security.

The operational objective of this land tenure security policy is to set out the principles, define the issues and to propose policy measures, institutional arrangements and laws and/or legislative reform which can promote this vision and purpose.

3.3 Key principles of land tenure policy for Commercial Farming Areas

The key principles of the national land tenure policy in line with the Constitution (Section 25 (6)) are to⁵¹:

- ✓ retain the **multi-form land tenure system**, whilst improving upon the existing **customary and other statutory tenures** to become drivers of economic development;
- ✓ ensure that all South Africans (including youth, women, female-headed households, child-headed households, people with disabilities) have a **reasonable opportunity to gain access to land** with secure rights, in order to fulfill their basic needs for housing and productive livelihoods (including subsistence and commercial farming);

⁵¹ This conforms with the FAO guidelines on Land Tenure Principles: Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. 11 May 2012.

- ✓ build a unitary land tenure system for all South Africans;
- ✓ ensure **clearly defined property rights** supported by an effective judicial and 'governance' system, which ensures that all citizens have access to a fair, equitable and accountable land administration system;
- ✓ facilitate long-term security of tenure that unlocks and enhances socio-economic development;
- ✓ provide a co-ordinated and integrated support system for state, civil society and private sector actors to ensure democratic participation in integrated land rights management initiatives;
- ✓ promote partnerships between various arms of government and other stakeholders in dealing with land tenure security matters;
- ✓ To provide and leverage various incentives and mechanisms (e.g. AgriBEE charters, Forestry Charters) to encourage commercial farming enterprises and land owners to enter into share equity, co-management and other empowerment initiatives with farm dwellers, workers, labour tenants and others which would provide meaningful benefits both in terms of security of tenure and economic empowerment.
- ✓ encourage relevant parties to accept the primacy of social solutions to social problems and land disputes; and
- ✓ promote the effective **integration of land reform beneficiaries** into the local economy and the provision of services.

These principles are complementary with the state's wider land reform efforts aimed at ensuring the progressive realization of effective and stable land tenure administration regimes that enhance rural transformation, through growth in agricultural production among a broad based section of society and social cohesion.

3.4 **Specific land tenure security policy objectives for Commercial Farming Areas**

The following specific objectives shall guide policy formation and implementation strategy:

- to promote long lasting solutions to land tenure insecurities among farm dwellers and workers through a dedicated programme of land redistribution for agricultural production and settlement;
- to facilitate the creation of share equity, co-management and other empowerment schemes arrangements in which historically marginalised persons residing in Commercial Farming Areas are empowered to share in the ownership and management of farming operations in ways that will increase security of tenure;

- to curb unlawful evictions of farm workers and dwellers;
- to promote an all inclusive tenure security of “second generation rights” holders with a special focus on vulnerable groupings (women, youth, children headed households, persons with disabilities);
- to develop sustainable vibrant rural communities;
- to promote awareness and appreciation of land rights among all the actors including farm workers/dwellers, land owners, as well as other key functionaries such as law enforcement agencies, local land administrators and non-state organisations;
- to promote effective land rights adjudication and mediation processes, including the design of alternative dispute resolution mechanisms;
- to support existing local land rights management structures involving a variety of stakeholders to ensure effective management of land rights;
- to establish mechanisms that effectively monitor land rights infringements and undertake monitoring and research that will subsequently address policy gaps;

4 PROPOSED LAND TENURE SECURITY POLICY OPTIONS

4.1 Land tenure security policy framework

This land tenure security policy for Commercial Farming Areas is a key component of the overall land tenure policy of the state, which is to recognize, protect and enhance the multiform system of land tenure. This comprises four land tenure regimes: **state land including** leasehold rights; **private land**: entailing freehold tenure with limited extent; restricted **foreign land ownership**; and a reformed and strengthened **communal tenure regime** (the latter forming part of a separate policy).

This land tenure policy is guided by the Constitutional requirement of Section 25 (6), which states:

A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress (Section 25 (6)).⁵²

⁵² South Africa, 1996. *Constitution of the Republic of South Africa*. Pretoria: Government Printers.

identified in the municipal IDPs, associated land reform and human settlement sector plans/chapters of the IDPs/SPLUMB and the local spatial development plans.

In these centres, the farm workers and dwellers will be provided with secure land rights, social services (education, health etc) and infrastructural facilities to enable them to develop multiple sustainable livelihoods. Other non-farm dwellers, skilled persons, artisans and professionals, including those involved in SMMEs serving rural areas, will/should also be provided for in such settlements, and these shall be supported to grow into viable rural centres and, for some, into small rural towns, within the existing and/or strengthened local integrated development planning frameworks and associated legislative parameters.

Local land administration structures, which adequately represent farm workers communities, shall also be promoted to oversee the establishment of such settlements in collaboration with municipalities, SALGA and the National and Provincial Departments of Human Settlements. These centres shall comprise an integral component of the national sustainable settlements and rural development agenda, supported by various other national programmes (e.g. PPP, PICC etc).

4.2.4 Farm Owner Incentives to Provide Services to improve farm dweller rights

Commercial farmers, as a key stakeholder, embedded in rural areas are a potentially greater future resource in the context of land reform and rural developments and shall be encouraged to play a substantive role in enhancing farm dwellers land rights through the above measures. Their land rights shall be strengthened by the above redistributive measures, awareness raising and other legal protection to address the rights of farm dwellers. The DRDLR shall design an incentives programme to support land owners to play a critical role in assisting the state to improve the land rights of and service delivery to farm dwellers. Those farmers who support the development of new entrants into the farming sector, including the farm dwellers who benefit from redistribution shall also be prioritized for incentivization. The wider established farming sector shall also be mobilized to support the advancement of sustainable transformation in the land and agrarian sectors, especially to enhance productivity and ensure the overall viability and sustainability among the farm dwellers (agriculture and non-agriculture e.g. tourism, crafts, etc.). The landowners shall be invited to propose systemic solutions pertaining to the farm dweller land rights problem/s, and to put forward progressive interventions to address tenure insecurities of all in these areas through the local level LRMCs.

However, in light of the challenges of past land tenure policy in progressing the advancement of land rights as stipulated in Section 25 (6) of the Constitution especially the difficulties faced in efforts to secure farm dwellers security of tenure through on-site development initiatives, more innovative commitments from municipalities, landowners and established agriculture will need to be proffered at the national and provincial levels and specifically locally through the LRMCs.

Providing incentives to landowners to support the enhancement of farm dwellers land rights will require a combination of financial outlays (e.g. under the RADP, etc) enabling them to gain tax exemptions (e.g. income tax, sales tax) and subsidies for service provision. Such options and applications shall be managed in a public participatory, transparent and accountable manner to avoid prejudicing the land rights, social services and grants that may be due to farm dwellers, tenants and workers. Furthermore, this initiative shall not be a substitute for the redistributive and rights protection measures to be implemented, but shall complement such measures.

4.2.5 Land rights and tenure options for redistribution and restitution

Promoting land tenure security within commercial farming areas shall also entail measures to enhance the rights of the beneficiaries of land redistribution and restitution in order to address their internal land rights conflicts and to manage such to prevent any of the effects of such land rights conflicts into neighboring Commercial Farming Areas, state land and communal areas. The other proposed measures entail diverse options, including:

- Strengthening tenure security of individual freehold titles; this entails the identification of land rights conflicts in these areas, clarifying the existing/conflictual land rights and instituting measures to strengthen such land rights.
- Strengthening leasehold tenure provided to farm dwellers where such form of tenure prevails.
- The main policy options are to strengthen the current form of leasehold tenure to serve a wider category of land redistribution beneficiaries other than those currently provided for under PLAS. It also entails resolving any land rights conflicts associated with land care-takers.
- Strengthen common property landholdings (CPAs) in Commercial Farming Areas.
- The creation of an office of a Registrar of CPA within the DRDLR in order to improve the State's capacity to support CPAs shall promote the mediation of a range of disputes in these areas. This office shall collaborate with the Land Rights Management Board and LRMC's to

provide dispute resolution and related land tenure support services to CPAs within Commercial Farming Areas.

- In general, the DRDLR shall support those whose land rights are inadequate/insecure within the redistributed and restituted areas, as well as the commercial farming areas, through promoting their access to land through the redistributive and other measures as outlined above in collaboration with LRMCs.

4.2.6 Legal protection of rights and alternate dispute resolution

Despite the above substantive proactive, redistributive and empowerment measures that will be instituted by this policy, there will be continued need for the upholding of procedural rights. The DRDLR shall create and support stakeholder fora to institutionalise alternate land dispute resolution processes and to promote the effective realization of land tenure security among all actors within commercial farming areas. Such a mechanism shall combine pro-active conflict mediation and dispute resolution procedures in all localities, through the proposed LRMCs in collaboration with and supported by the DRDLR, to monitor, record and process the land rights disputes in a participatory manner. This mechanism shall first seek socially grounded solutions to land rights conflicts and resolutions before resorting to formal legal conflict resolution fora. Legal aid shall continue to be provided by the LRMF and the DRDLR. The conflict resolution mechanism shall also entail the identification of land for redistribution to enhance land holding among affected parties to enable them to pursue agricultural, non-farm and residential opportunities within the context of a rural development programme. The land rights awareness and capacity building programmes shall reinforce this legal protection and dispute resolution service by ensuring that the local structures of the judiciary, law enforcement agents and land administration authorities are adequately equipped to support the land justice delivery system.

4.2.7 Share equity, co-management and other empowerment schemes⁵³

The principle approach in this option is to acknowledge that acquiring equity will involve acquiring shares in land as well as in farm enterprises as an optional intervention to strengthen tenure security of farm workers and dwellers. The tenure security and livelihoods of farm

⁵³ See DRDLR, 2013. *Draft Farm Equity Scheme Policy of the Department of Rural Development and Land Reform* (Version 6 revised). Unpublished.

dwellers and workers will therefore be significantly improved by acquiring and incentivising equity in the form of shares in established or new agricultural enterprises including commercial farming, forestry, game and tourism and secondary agro-processing enterprises. In combination with the other interventions described above, this option holds the potential for increasing employment and income generation opportunities for those people living/ working in Commercial Farming Areas, and enhancing agricultural production, deracialising the commercial farming sector and promoting social cohesion between the forenamed and land owners.

The primary objective of the share equity, co-management, preferential procurement and other empowerment schemes is to enable farm dwellers and workers to participate more equally in the farming sector as owners, managers, professionals, protected and skilled employees and consumers. Additionally the programme aims to promote their empowerment and advancement in the commercial farming sector (through improved tenure security, participation in management and ownership of such enterprises and an enhanced skill base); the overall advancement of South Africa's agricultural sector as such schemes shall improve labour relations and productivity as well as promote worker empowerment and secure jobs on farms; and enhanced living and working conditions for people living/ working on commercial farms (through increases in income and business opportunities as a result of dividends and capital growth received from shares as well as increased opportunities to participate in the rural economy).

The above objectives of this proposed programme are overlapping or closely linked to overarching aims of other empowerment initiatives including those falling under B-BBEE schemes. Implementation of B-BBEE has included the establishment of B-BBEE Codes of Good Practice and the development of Sector Charters in Agriculture, Forestry, Tourism, Construction, Transport, ICT and Finance. Many components found within these Charters complement the share equity programme proposed here and should thus serve to bolster said objectives. While numerous implementation difficulties have been experienced in realising the overall goals of each of these Charters, such challenges can serve as lessons to inform implementation of this programme. The following B-BBEE Charter transformation objectives are especially relevant to the share equity, co-management and other empowerment schemes (preferential procurement, skills development and entrepreneurial development) proposed under this land tenure security policy (these include AgriBEE, the Forest Sector Code, and the Property Sector Code):

- Advancing equitable access and participation of black citizens in the entire agricultural and

forestry value chain;

- De-racialisation of ownership, control, skilled professions and management of both new and established agri-businesses;
- Helping black South Africans to realize the full scale of their entrepreneurial potential in the sector;
- Providing comprehensive support to new black-owned or black-managed enterprises to undertake new value-adding activities;
- Socially uplifting and restoring the dignity of black South Africans within the sector;
- Increasing marginalised citizens' access to economic activities, infrastructure, machinery and skills training;
- Providing decent living and working conditions for farm workers, women and youth;
- Improving the protection and standards of land rights and tenure security for labor tenants, farm workers and other vulnerable farm dwellers;
- Addressing the inherently paternalistic nature of relationships associated with insecure tenure by promoting more permanent forms of tenure with the emphasis being on the transfer of ownership of land.
- Promoting investment initiatives that lead to sustainable B-BBEE growth and development;
- Encouraging equitable, fair and sustainable employment and contracting practices;
- Enabling a conducive environment for transparent and accountable governance and strong institutional capacity within enterprises;
- Unlock barriers to property ownership and equal participation in the property market by black citizens;
- Increase the pool of intellectual capital amongst rural South Africans, particularly black women, youth and those with disabilities;
- Increase the procurement of goods and services from black-owned and black-managed businesses; and
- Facilitate the accessibility of finance for property ownership and development.

4.3 Sustainable funding of land rights management programmes in Commercial Farming Areas

4.3.1 New and Additional Resources Allocation

For this land tenure security policy, including its decentralized and participatory land rights management system, to succeed, the state shall mobilize existing, and new additional finance, material and human resources to support the newly created structures, to finance the redistributive measures, share equity and co-management schemes, and other empowerment schemes to maintain legal aid and protection services. Such resources will also be required to strengthen the capacities of DRDLR. These resource requirements shall be elaborated upon in the implementation plan (Section 7) and may include the establishment of a Rural Development Agency, as a public entity (in terms of the PFMA), associated with and accountable to the Minister of Rural Development and Land Reform.

Possible sources of financing include AgriBEE and other B-BBEE funds (Forestry, Property, etc) micro-finance programmes provided under Micro Agricultural Financial Institutional Scheme of South Africa (MAFISA), Comprehensive Agricultural Support Programme (CASP) grants, and funds available under the Agricultural Business Chamber Co-operative Development Initiative.

4.3.2 Dedicated Land Tenure Grant for Farm Dwellers and related beneficiaries

To give full effect to the land tenure security initiatives targeting farm dwellers, workers, tenants and occupants, the DRDLR shall allocate adequate funds for a dedicated land tenure grant for land redistribution in support of the agricultural and settlement initiatives identified earlier. Securing farm workers' rights to land is crucial given the fact that they have lived on farms for lengthy periods of time and acquired tacit skills pertaining to agricultural production. Farm workers and farm dwellers require a dedicated grant because the existing PLAS mechanism does not adequately cater for the site specific needs of vulnerable farm dwellers and workers on particular farms, while its leasehold tenure arrangement is not amenable to the variety of tenure arrangements which poorer farm dweller communities require. Moreover, PLAS is more broadly targeted at a wide range of agricultural land reform beneficiaries while the farm dwellers require more broadly socially integrated land access programmes within and around their current living areas.

A dedicated tenure grant will ensure farm workers are able to secure permanent rights to land acquired for their agricultural and settlement purposes and enable the state to promote a coherent

rural development initiative around farm dweller communities. The grant will seek to give priority to land needs identified among vulnerable groupings (gender, persons with disabilities, youth, children headed households etc).

It shall also mobilize resources for the integrated support required for the creation of viable rural settlements, productive land utilization, share equity, co-management schemes and other empowerment schemes and for the social services required to address poverty, unemployment and inequality. This grant shall be administered by the land tenure branch of the DRDLR, which shall benefit from the advice of the proposed LRMB, working in close collaboration with the local LRMCs.

This grant and the other new resources mobilized by and delivered through the DRDLR's administrative structures shall also be complemented by the wider rural development resource mobilization (including the proposed Rural Development Agency) and interdepartmental alignment of rural development funding. The DRDLR shall design the systems and procedures for effective disbursement of the grant and other resources, in line with the clearly defined implementation plan as outlined in Section 7.

4.3.3 Supporting Broader Institutions involved in rights management

The DRDLR shall, in collaboration with various stakeholders such as NGOs, the private sector and donors, mobilize resources towards building the capacity of civil society organizations (e.g. people's fora, farm dwellers' associations, etc) as well as to support their involvement in the various programme interventions proposed. Such support shall also include resources to enable them to effectively participate in the LRMCs, and for them to support the participation of farm dwellers/tenants/workers/occupants' representatives. Such government support should also enhance the effective networking and coordination of independent civil society perspectives and programming.

4.4 Effective monitoring of land rights and research on tenure insecurity

This policy shall be systematically refined on the basis of adequate monitoring and evaluation systems, in line with best practise. However, the DRDLR shall also design and implement a participatory land rights monitoring and research programme to track the evolution of the range of land rights disputes and their resolution, and to identify the obstacles faced in this effort, in order to institute early warning systems in support of policy development and adaptive implementation tactics. This shall be linked to and enable the relevant dispute resolution

structures to be adequately prepared when executing their responsibilities. The research programme shall constantly monitor public opinion regarding the performance of the land reform programme, with particular reference to the progressive realisation of land rights in order to inform the ongoing refinement of land reform programmes.

The research programme shall be designed in a manner that enables longer-term analyses of the emerging land rights questions in relation to broader issues such as changing land ownership, land use and wider access to land within the Commercial Farming Areas. The research programme will incorporate gender sensitive participatory methodologies that will contribute to our understanding of women farm dwellers' situations on commercial farms. The land tenure security policy programme shall regularly assess the capacity of various land rights management and land disputes resolution structures e.g. government, the judiciary, civil society and other stakeholders at the national and local level to deliver land justice services. This shall be used in the design and implementation of a sustainable programme to build the capacity of all the critical actors to ensure the effective management of land rights issues. The DRDLR shall promote the involvement of a variety of relevant academic and research institutions in the monitoring, research and capacity building processes in support of improved implementation of land reform programme in general.

4.5 Land Tenure Administration reforms and enhanced institutional capacities

To ensure the effective implementation of this land tenure security policy, the strategy shall entail various institutional reforms intended to create an integrated and uniform land rights administration system and build the capacities of the state and stakeholders to effectively manage the rights of all those with vested interests in Commercial Farming Areas. The new land administration institutions proposed are discussed further in section 6. Such institutional reform will entail strengthening those existing land administration structures and laws that currently work well, and creating new structures and associated legislative frameworks (if required) in response to real demand for these based upon the institutional and legislative gaps identified.

5 LAND RIGHTS MANAGEMENT INSTITUTIONS: PROPOSED REFORMS

5.1 Rationale for Land Tenure Administration Reforms

Implementing the above proposed land tenure security agenda will require much greater capacities within the state and among the key stakeholders, and a restructuring of the land rights

management system as it currently obtains in Commercial Farming Areas and in the redistributed and restituted land areas. Moreover, the existing institutional framework for land administration has a number of weaknesses related to the absence of participatory structures and processes, limited skills and resources to address land rights conflicts and various other capacity deficiencies.

Indeed, the failure to protect the rights and security of tenure of farm dwellers and workers has been considered to arise from a total-system failure (TSF) rather than that of a single piece of legislation (e.g. ESTA). It reflects:

“.....inadequate articulation of policy and legislative regime to protect farm dwellers; poor implementation of existing policies and legislation by organs of the state; weak enforcement of legislation by law-enforcement agencies; the judicial system not being worker-friendly in handling eviction cases; labour unions not organizing effectively on farms; non-complementary (almost adversarial) relationship between non-governmental organizations and state organs in addressing problems of farm-dwellers; and, poor or non-existent monitoring, co-ordination and communication amongst state organs, within and across the three spheres of government, and other interested parties, on matters negatively affecting the rights of farm dwellers and dwellers”⁵⁴.

5.2 Land Administration gaps

The systemic land administrative weaknesses, which undermine the resolution of, land rights conflicts and tenure insecurities in Commercial Farming Areas need more careful analysis. Certain of the identified aspects include: the failure to enforce existing land tenure security laws, ineffective land rights protection programmes, poor information on and awareness of rights, the weaknesses or absence of local land rights structures leading to the poor participation of the public and key civil society actors in the process, and the poor coordination of government structures involved in land tenure matters (e.g. the DRDLR and local municipalities) as well as capacity constraints at all levels of government to implement all land administration systems effectively.

5.2.1 Weak capacity and coordination of public land rights management

The weak capacity and coordination of the institutions charged with protecting the rights of farm dwellers/tenants/workers/occupants and responding to threatened evictions has substantially compromised the success of ESTA in averting illegal evictions. When enforcement mechanisms fail to provide the necessary protection, it leads to, *inter alia*, a lack of compliance with the legislation. Many cases of eviction go unreported due to a lack of knowledge about the law or a

⁵⁴ South Africa, Department of Rural Development and Land Reform (DRDLR), Green Paper, 2011, Section 10.3

lack of access to justice to enforce rights contained in the law⁵⁵. When threats of or actual evictions occur, there are many state role-players such as the DRDLR, police, court prosecutors, magistrates, and social workers, amongst others, that need to work together. Indeed, there is insufficient capacity within the DRDLR, (and in related institutions) to administer the existing laws and to address the wide range of land tenure problems that obtain in Commercial Farming Areas.

5.2.2 Land rights awareness and information gaps

The current strategy of addressing tenure conflicts is also constrained by poor public awareness of and limited information on such issues. There is widespread evidence that despite the institution of various land rights laws and protection programmes, many of those who are land tenure insecure and the landowners, and law enforcers, including and elements of the judiciary, are not familiar with these laws. Indeed some argue that the country does not have a culture of respecting land rights, especially those of the poor. Existing government and civil society programmes to raise awareness on land rights are limited in scope and capacity and do not reach most of the needy. Many of these programmes have so far been ineffective such that the lack of a sustainable land rights awareness programme has inevitably resulted in the misinterpretation of legislation and misinformation of the affected persons about the extent of their rights and obligations. The state currently lacks the capacity to mobilise relevant government departments and other stakeholder capacities to address this gap. Quite critically, most of those with vested interests in Commercial Farming Areas and who suffer tenure insecurities are not involved in efforts intended to resolve their land rights conflicts.

5.2.3 Absence of and weak local level land rights management structures

The absence of or weaknesses of local level institutional arrangements for land administration in the freehold land tenure regime does not enable stakeholders to effectively participate in dealing with their land tenure insecurities, and land disputes. Relatedly, the challenge facing government in the effective management of land rights at the local level is the competing jurisdiction and overlapping responsibilities for land rights management among a range of authorities. The existing strategy of the Land Rights Management Facility, which mainly entails legal mediation and litigatory services, does not adequately involve those with competing or conflicting land

⁵⁵ SAHRC (2008) *Progress made in terms of Land Tenure Security, Safety and Labour Relations since 2003*. South African Human Rights Commission. South Africa. Pp. 45

rights (e.g. farm dwellers and land owners) in the systematic identification and definition of the conflicts, and in the formulation of pre-emptive mediatory processes, as well as in proposing alternative solutions. Moreover a range of land administration structures such as CPA's were introduced in Commercial Farming Areas without adequate institutional mechanisms to address the new land disputes that have emerged within them.

The DRDLR has over the last few years initiated a number of beneficiary and civil society structures that are responsible for landholding, project implementation and programme design and policy consultations. Such structures include the following: Land Caretakers, Mentors and strategic partners, CPAs and COOP, as well as rangers and para-technical agents at the project levels; Council of Stakeholders at ward level levels to coordinate governance; NARYSEC; DRECs, Provincial and national reference groups and consultation forums; etc. The effectiveness of these structures in coordinating broad based public and stakeholder participation and influencing the land reform and rural development process has been limited by resources and skills constraints among the actors, and within the DRDLR. For these to effectively and contribute to land rights management, their organisation and capacities need to be enhanced, while greater social mobilisation is required to ensure that these participatory forums are more inclusive and representative. This suggests the need for an integrated approach involving the various government structures and stakeholders, to strengthen public participation and to facilitate the development of more democratic and adequately resourced land rights management structures.

5.2.4 Weak monitoring, research, and documentation of land tenure insecurities and disputes

Another cause of the systemic weakness in land rights management is the limited sources of knowledge and documentation of the nature and scope of such land rights conflicts, which currently inform policy and programmes. Detailed empirical work on how land rights conflicts underpin livelihood's of vulnerable groupings (gender, children headed households, persons with disabilities, youth) is markedly underdeveloped. Land tenure relations and practices are embedded in complex social and political relations grounded in contested historical grievances and involve dynamic changes in the extent and scope of land rights sought by various classes and social groups. There have been extensive efforts to undertake research on the land tenure system and the changing effects of land reform on land rights in society. Much of this work is focused on particular localities and scattered around selected tenure issues, such that the body of

knowledge available is not collated to effectively inform land tenure policy and legal reforms. The state ought to facilitate the collation, analyses and dissemination of such knowledge and promote further research to support land tenure reform and land dispute resolution. A critical gap in this vein is the limited use of local knowledge and actors in the monitoring and research work undertaken. This is largely due to the absence of forums to tap such information for its use in resolving land rights conflicts.

5.2.5 Farm dwellers organizational capacity weaknesses

Whereas some NGOs' have played a critical role in supporting farm dwellers, workers and tenants in advocating for their land rights, this constituency remains ineffective in lobbying for meaningful policy change. This problem is exacerbated by the fact that traditionally farm dwellers have not been well organized, and there is an absence of strong unions within the farm dwellers sector at a national level.⁵⁶ The challenges of farm dwellers organisation are compounded by their geographic isolation, the fact that the workplace is on privately owned land and the high levels of intimidation on freehold farms. Organizations which support the farm dwellers and workers' struggles for their land rights are also not adequately coordinated, and have limited interactions with government structures.

Thus, farm dwellers' rights are not adequately protected in practice by institutions that should play a pivotal role in this regard. This creates an environment in which farmers feel that they are immune to prosecution and can continue with gross human rights violations with impunity. Landowners also argue that farm dwellers abrogate their land rights with impunity. However, the balance of social and economic power is tilted towards most of the farm-owners who can afford access to legal resources to enforce evictions. This inequity significantly compromises the implementation of the ESTA legislation. Moreover, changing the tenure policy and legislation may not yield the desired results without improvements in the organization and advocacy of farm dwellers.

5.2.6 Inadequate dispute resolution mechanisms and proposed alternative mechanisms

Currently there is no sustainable land dispute resolution and/or legal aid mechanism for poor people in general and for farm workers and dwellers in particular. This results in the widespread loss of land rights and/or the use of costly litigation processes. Moreover, there is inadequate

⁵⁶ Human Rights Watch. 2011. Ripe with Abuse Human Rights Conditions in South Africa's Fruit and Wine Industries. 350 Fifth Avenue, 34th floor New York, NY 10118-3299 USA

enforcement of legislation by law enforcement agencies (such as South African Police Service and National Prosecuting Authority), while the reach of the formal court system is limited especially for the poor in rural areas. Existing local land dispute resolution structures lack the necessary technical and administrative capacities to manage land records and dispute resolution processes, leading to the abuse of such structures by the more powerful and the inadequate delivery of justice.

In 2008, the Land Rights Management Facility (LRMF) was introduced by the DRDLR to provide legal services to farm dwellers, with the following objectives:

- to offer a basket of options on land rights and tenure issues;
- to offer legal representation;
- to offer mediation of disputes and settlement thereof;
- to provide monitoring on evictions;
- to raise land rights awareness and promote access to services and products offered by the DRDLR through a call centre;
- to train stakeholders on applicable legislation and policies; and
- to establish district, provincial and national forums.

The LRMF has performed relatively well within its limited mandate and resource base, having successfully protected land rights in about 2000 cases over a three-year period⁵⁷. However, this represents a limited coverage of the larger scale of land rights problems that exist and the LRMF strategy is also not adequately backed by state capacities and programmes to provide for alternative forms of redress, such as land redistribution.

The current approach of outsourcing the mediatory and litigatory aspects of the land rights dispute resolution systems, through the LRMF, may not be appropriate in terms of strategy, coverage and the effective utilisation of scarce resources. The DRDLR could indeed carry out many of the LRMF functions as effectively, if its capacity was reinforced. A new dispute resolution strategy, which involves the key actors, could be institutionalized within the DRDLR

⁵⁷ Land Rights Facility Management, 2011. Three Year Review Document. Pretoria

to track some of the current constraints. Moreover, it is conceivable that many more land rights disputes could be permanently resolved if land redistribution measures were more effectively used for farm dwellers. Even then, it is expected that some degree of support for legal protection of land rights and dispute resolution will continue to be required for some time, as the extent of land rights violations farm dwellers face in South Africa remains high.

For instance, the Nkuzi Development Association found that between 1994 and 2004, about a million people were evicted and only 1% received some form of legal representation⁵⁸. The state is obliged to ensure the availability of legal services for indigent farm dwellers whose tenure is under threat⁵⁹. This responsibility falls with the Minister of Rural Development and Land Reform and the Minister of Justice. It is the duty of judicial officers to bring this right to the attention of occupiers appearing before them. Failure to do so could result in an infringement of the right of the occupier to a fair trial, and result in a miscarriage of justice. The then Department of Land Affairs and the Department of Justice were ordered to put in place a reasonable programme to realise this right.⁶⁰ The Department of Justice instructed Justice Centres and Legal Aid Clinics not to turn away the ESTA occupiers facing eviction, and to note that they are a special category.

5.3 The proposed land tenure administration system

As noted in the preceding section, while the existing policy and laws intended to protect the farm workers and dwellers from evictions and other forms of land rights transgressions in the Commercial Farming Areas have not been adequate, the existing institutional arrangements and capacities have also not been sufficient to address the quality and scale of land rights conflicts and tenure securities found therein. Innovative strategies, which go beyond procedural redress to include the conferment of substantive rights to farm dwellers, and which use sustainable participatory structures at the local level, are sorely required, as outlined in section 4. However, both the national, provincial and local level land administration structures, which cover the Commercial Farming Areas, and the redistributed and restituted land areas, are not strategically organized and capacitated to address, *inter alia*, the diverse and complex tenure disputes there. Also, given the limited capacity of the DRDLR and other government land administration

⁵⁸ Wegerif, N., Russel, B., and Grundling. 2005. "Contextualising the Study" Still Searching for Security. The reality of Farm Dweller Evictions in South Africa. Social Surveys and Nkuzi Development Association

⁵⁹ This was confirmed by the Land Claims Court in its ruling in the case Nkuzi vs. Government of South Africa (LCC 10/01).

⁶⁰ Source: Rural Legal Trust (RLT) literature resources (2007 – 2008).

structures to address the tenure security conundrum, there is a clear need to reform the overall land administration systems, and strengthen their capacities.

This land tenure security policy proposes to institute various institutional reforms so as to address the above weaknesses in land rights management. The main institutional objective is to create an enabling environment for land rights management, and greater capacities within the state and among relevant stakeholders to promote the durable tenure security. The proposed strategy is based mainly on the improved coordination of the key stakeholders that ought to be involved in land rights and tenure security administration, within the framework of a more effective and integrated land reform programme, as outlined in the Green Paper of 2011. Central to this is the proposed LRMB.

5.3.1 National Land Tenure Management Structures: Land Rights Management Board

The DRDLR shall create and support the Land Rights Management Board (LRMB) as a stakeholder forum to institutionalise land rights management and land dispute resolution in order to promote the effective realization of land tenure security among all actors within freehold land tenure areas. This structure shall advise the DRDLR and, in collaboration with the national provincial and municipal land management structures, shall oversee the creation and functioning of Land Rights Management Committees (LRMCs).

The LRMB should not be a structure that implements a host of administrative functions (e.g. communicating land rights) as some of these administrative functions would be best undertaken by the DRDLR. The LRMB would perform an advisory, regulatory and oversight function. The LRMCs would in this respect perform the key dispute resolution function at the local level. It is further proposed that the DRDLR will play a key role in implementing the related policy measures proposed in this policy including supporting the administrative actions overseen by the LRMB. A wider range of implementation roles and administrative functions are furthermore proposed, including enlarging the responsibilities of the LRMB in relation to providing finances, facilitation and certain, defined rural development services.

Powers and Functions of the LRMB

The LRMB:

- shall act as a coordinated and integrated support system for state, civil society and private sector to ensure participation in integrated development initiatives in rural settlements;

- shall also promote partnerships in dealing with tenure security matters;
- shall further encourage its members and relevant parties to accept the primacy of social solutions to social problems and disputes;
- may, in consultation with the Minister, establish relevant provincial and / or local structures comprising of relevant stakeholders (LRMCs);
- shall make resources available for the efficient and effective operation of the LRMCs established at a local level;
- shall provide mechanisms for dispute resolution amongst persons affected by the provisions of relevant land tenure reform legislation;
- shall facilitate information dissemination measures to develop awareness of the provisions of relevant legislation. Facilitate communication of legal reforms to farm owners, farm-dwellers and potential land reform beneficiaries;
- shall in collaboration with relevant organisations, facilitate the development of systems to ensure the collection of relevant statistics as well as monitor and evaluate the impact of its functions and provisions of laws relating to its functions;
- shall create mechanisms for the provision of legal aid and legal representation to affected persons (qualifying farm dwellers and farmers) in line with case law to this effect, and in this regard;
- shall formulate a means test governing situations in which the LRMB will fund legal representation and mediation;
- may identify and recommend acquisition of land for settlement/resettlement of farm dwellers, including the implementation of related holistic and sustainable development measures (public amenities, required services, environmental sustainability etc.);
- shall facilitate the provision of municipal services on the acquired land, in consultation with local government. This should not be construed to mean that the Board will directly provide municipal services and this facilitation will take place within the ambit of prevailing legislation governing the powers and functions in respect of the provision of such services;
- utilize and facilitate the improvement of institutional capacity of organisations involved in carrying out any aspect of its mandate. This shall specifically include training of Law Enforcement Agencies;

- shall generally deal with any other matter referred to it by the Minister; and
- may engage persons with specialised skills on any area of interest;

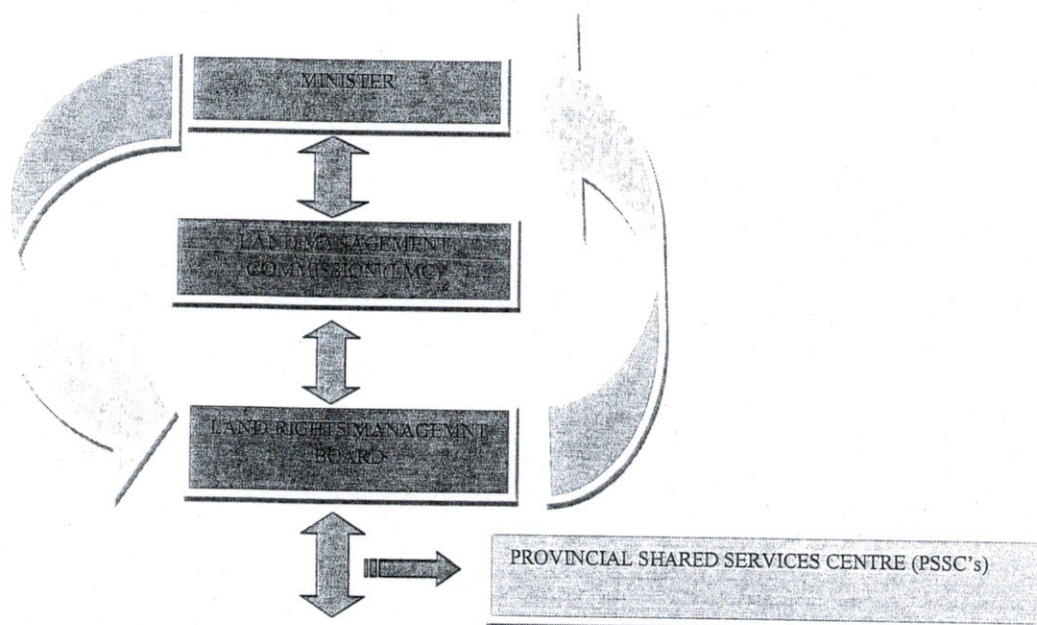
In this regard, it should be noted that the LRMB may, when required, intervene or provide services in relation to land disputes, adjudication within areas such as state land and communal areas under traditional councils. In undertaking these functions the LRMB shall be supported by a 'secretariat' within the DRDLR. This unit shall mobilise the necessary technical, administrative and financial resources required by the LRMB to achieve its planned programme of work. However, in order for the LRMB to develop a credible land rights management mechanism throughout the freehold Commercial Farming Areas, and recognising that many South Africans continue to hold tenuous rights and that all such rights need to be improved upon, it shall maintain a sufficient degree of autonomy from the various stakeholders' own structures.

In respect of the principle of subsidiarity the LRMB shall delegate some of its institutional powers to local LRMCs. The LRMB shall involve all the various structures and representatives of organisations with vested interests in land within the Commercial Farming Areas. These include representatives of the state, civil society, private sector agents and traditional leaders to promote the effective ways of monitoring, mediating and regulating land rights disputes. Below is the proposed structure of the LRMB, the details of which shall later be annexed. Representation on the LRMB and its local structures shall be gender sensitive and ensure adequate participation by representatives of vulnerable groups. The appointment of the Board and lower level committee members shall be done with due regard to the expertise and/or knowledge in respect of land matters. A code of conduct shall be designed to ensure the accountability of the board and committee members.

The LRMB will form one of the key constituent structures under the Land Management Commission (LMC). The purpose of establishing the LMC is to strengthen the National Land Administration System. The LMC shall effectively coordinate land policy reform and land administration at the national and local levels, and ensure the participation of a variety of state, private sector, traditional authorities and civil society actors in land management. The goal is to create a single system for land management in the country through an autonomous LMC which is accountable to the Ministry and Department of the Rural Development and Land Reform (DRDLR). In terms of composition, the LMC will be made up of four (4) full-time commissioners (Chief Commissioner & 3 Deputy Commissioners) and six (6) part-time

commissioners (consisting of Deeds Registry Head, Surveyor-General Head, Land Claims Head, SPLUM Head, Valuer-General Head and the LRMB Head). Each Deputy Commissioner (DCLMC) will be responsible for 3 provinces. Fig 1 below illustrates the envisaged LRMB structure and its interface with the LMC, the LRMCs and the Provincial Shared Services Centres (PSSCs). The PSSCs will play a coordinating role to facilitate effective functioning of the LRMCs. The PSSCs coordinating role will not lead into the creation of a new structure at the provincial level rather a re-alignment of relevant and appropriate entities within the PSSCs that will be tasked with this function.

Fig 1: Tentative structure of the LRMB and LRMC Structure



LAND RIGHTS MANAGEMENT COMMITTEES (Located at the level of the Regional DRDLR offices at district level)

EASTERN CAPE	FREE STATE	GAUTENG	KWAZULU NATAL	LIMPOPO	MPUMALANGA	NORTH WEST	NORTHERN CAPE	WESTERN CAPE
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5.3.2 Land Rights Management Committees (LRMCs)

The DRDLR has proposed to establish various CRDP structures at the local, district and provincial levels to strengthen participation in the land reform and rural development processes in order for people to influence their own destiny. The Green Paper specifically proposes to create the LRMCs at the local level which will be composed of representatives of residents in a specific rural environment or settlement: farm-workers and dwellers, commercial farmers, relevant municipal councils, government

departments such as the DRDLR, Human Settlements, as well as the South African Police Service. The LRMC shall explore and mediate local land rights conflicts through a variety of locally relevant mechanisms, and adopt the norms and standards set by the LRMB.

The LRMCs shall be constituted within an appropriately defined local geographic area, namely at the level of the regional offices of the DRDLR and work mainly within the freehold, restituted and redistributed land areas. Their representation will include: local representatives of farm dwellers, tenants and workers (inclusive of women and persons with disabilities); various land owners; key DRDLR officials; national and other state institutions with vested interests in land (landholding, planning and developmental agencies); various relevant NGO's and civil society organisations specialized in gender rights and issues pertaining to persons with disabilities; organized agriculture structures at local level, local farming and business development agencies; and representatives of the relevant local government structures.

In practice, the LRMCs shall operate at the coalface of identifying and addressing the concrete land rights conflicts found in their locality. Their specific land conflict mediation functions include:

- The identification, monitoring, recording and processing of the land rights disputes observed through the adequate participation of all the actors whose relative rights are contested. This work will entail adequate definition of the issues and first seeking alternative socially grounded forms of conflict resolution before referring these to more formal legal conflict resolution fora.
- The efforts to resolve contested land rights shall also include the pro-active identification of land for the state to acquire for the redistribution of such land to those potential beneficiaries that the LRMCs identify to be in need of agricultural and/or residential land, as well as land that would be required for the wider rural development needs of the locality.
- As and when required, and with the assistance of the LRMB and the DRDLR, the LRMCs shall recruit, use and oversee the services of various panels of experts (e.g. researchers, land experts, lawyers, planners, etc), alongside the expertise of the DRDLR and other relevant government departments (e.g. agriculture, water, environment, infrastructure, social services, etc). These panels will facilitate the LRMCs' analysis, planning and resolution of land rights conflicts, including the provision of a variety of remedies. Such expertise as may be required to support farm dwellers to engage in more effective agricultural land uses (e.g. mentors, partners, skills transfer etc.) will also be mobilised by the DRDLR in collaboration with the LRMCs.

5.3.3 Enhanced DRDLR capacity to promote land rights management

To give effect to the above policy proposals and institutional arrangements, the state shall restructure and/or expand the scope of work and capacity of existing land rights management and/or facilitation structures established within the DRDLR in order to promote the proposed participatory strategies of land rights management. The DRDLR shall procure sufficient capacities to create and support the proposed Land Rights Management Committees (LRMCs) and national Land Rights Management Board (LRMB). To complement and better support these structures' initiatives, the state shall strengthen and rationalize the DRDLR's branches, which deal with land tenure policy programmes, including the LRMF, the deeds and survey offices, and other relevant units. The functioning of the LRMB and LRMCs shall thus also benefit from the improved and focused land administration capacity and environment provided by the newly created Land Management Commission (LMC) and the Land Management Information Systems of South Africa (LISA).

The DRDLR shall thus also promote the institutionalisation of alternate land dispute resolution mechanisms, through the LRMB/LRMCs and the enhanced DRDLR facilities and resources for legal aid services, to democratise wider access to land adjudication processes and to ensure that the state complies with its constitutional duty to do such work. Furthermore, the DRDLR shall enhance its capacity to support the law enforcement agencies and the courts to be better informed in dealing with land disputes and to ensure their accountability to the poorer sections of society, within prevailing legislative frameworks (including the IGR Act). This shall require greater inter-departmental coordination facilitated by the DRDLR. In this vein the DRDLR shall beef up its role in land rights awareness promotion, research and capacity building capabilities.

To this end, the DRDLR shall mobilise adequate budgetary resources for the department to support the LRMB, and to administer the proposed "Dedicated Land Tenure Grant", in support of the long lasting land rights solutions proposed in section 4. Thus, the DRDLR shall be responsible for accounting for the resources used to implement the proposed participatory strategy.

5.4 Roles and Responsibilities in Programme Implementation

The implementation of the Land Tenure Security policy for Commercial Farming Areas will be led by the land tenure branch of the DRDLR but should involve the collaboration of various DRDLR branches, such as the land redistribution, and policy and legislation and STRIF as

shown in Table 2. The role of various stakeholders is also defined according to each of the programme, including their core function in the LRMB and LRMCs as indicated in Table 2. The DRDLR shall elaborate the specific roles and responsibilities of the key actors and departments as part of the implementation planning exercise outlined in section 7.

Table 2: Roles and Responsibilities of the various role players

Actors/ Programme	Tenure Grant	Redistributive Programme		Awareness and Capacity Building	Land Dispute Protection Resolution	Monitoring and Research	LRMCs
		Farming Land	Settlements				
DRDLR							
i) Land Reform and Administration Branch	√√	√	√	√	√	√	√
ii) PSSCs							√
iii) LRMF					√√		
iv) Strategic Land Acquisition		√	√				

Actors/ Programme	Tenure Grant	Redistributive Programme		Awareness and Capacity Building	Land Dispute Protection Resolution	Monitoring and Research	LRMCs
		Farming Land	Settlements				
v) Policy and Legislation						√	
vi) STRIF		√	√	√			√
vii) Rural Development (Infrastructure)		√	√				
3) Civil Society Organisation, farm dwellers, NGOs etc	√	√		√	√	√	√
3) Civil Society Organisation, farm dwellers, NGOs etc	√	√		√	√	√	√√

6 LEGAL FRAMEWORK AND PROPOSED LEGISLATIVE REFORMS

The DRDLR is reviewing the various options required to give effect to the above policy proposals and associated institutional reforms. One preliminary option proposed is for an Act of Parliament to be instituted to give effect to Section 25(6) of the Constitution, as well as to the new land rights management and adjudication structures that are proposed above. In addition, the DRDLR is also considering what amendments would be required to review various other laws such as ESTA, LTA and any other relevant laws, to enhance land rights management in Commercial Farming Areas as proposed in this policy.

7. IMPLEMENTATION STRATEGY OF THE LAND TENURE SECURITY POLICY FOR COMMERCIAL FARMING AREAS

7.1 Planning Methodology

The DRDLR shall design an implementation plan for this land tenure security policy Commercial Farming Areas to direct and coordinate the variety of proposed initiatives. The plan shall entail the integrated implementation of the range of programmes and projects, as listed in Table 3. This shall involve the rationalization and reconfiguration of existing land tenure project plans to suit the proposed land tenure security policy and institutional arrangements, within the requirements of, *inter alia*, the PFMA and Treasury Regulations. Programme implementation shall begin with some pilot projects and testing of some proposals in the field, followed by the implementation of some pilot projects in some Commercial Farming Areas.

7.2 Sequencing of Programmes

This Security of Tenure Policy for Commercial Farming Areas shall be implemented in a phased manner over the next 4 years, although some of the projects shall continue beyond this. The proposed tentative implementation schedule is outlined below (Table 3). This schedule shall be revised with a view of ensuring alignment and integration with other policy processes unfolding within the DRDLR.

The LRMB shall begin immediately through the creation of an interim committee of stakeholders and professionals. It shall draw staff from the DRDLR at various national and the provincial levels to service the establishment of the LRMCs. Setting up the fully operational structures of the LRMB and LRMCs shall require 18 months. During the first year (by mid-

2013) the administrative structures and procedures of the LRMB shall be established. Its other key functions shall be set up over time as indicated in chart 2. The internal reforms required by the DRDLR to implement this policy shall be completed within four years.

Table 3: Proposed :and Tenure Security for Commercial Farming areas Activity Schedule

OUTCOMES	ACTIVITIES	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017	2017
Outcome 1: Design and implement capacity building programmes for DRDLR	-Identify DRDLR units to be involved in the LTS implementation	X	X	X			
Outcome 2: Undertake Regulatory Impact Assessment (RIA)	- Initiate terms of reference and procure RIA services	X					
Outcome 3: Establish the LRMB structures/procedures	-Establish interim board	X	X				
	-Develop norms and standards						
	-Pilot LRMCs and various programmes (X 9 sites)						
Outcome 4: Land redistribution for farm dwellers	-Design dedicated redistribution programme	X	X	X	X	X	X
	-Test the programme as joint DRDLR/LRMC	X	X	X	X	X	X
Outcome 5: Sustainable rural settlement programme	-Design dedicated settlement programme	X	X	X	X	X	X
	-Test the programme as	X	X	X	X	X	X

	joint DRDLR/LRMC						
Outcome 6: Incentives to land owners for farm dwellers support	-Stakeholder design of programme		X	X	X	X	X
	-Financing and management mechanism design		X	X	X	X	X
Outcome 7: Strengthen land tenures in CPAs and leasehold Areas in resettled and redistributed areas	- Design measures to strengthen leasehold and CPA tenures		X	X	X	X	X
Outcome 8: Strengthen the land rights information systems	- Design and develop land rights data base at local to national level; design a communication strategy		X	X	X	X	X
Outcome 9: Establish land dispute resolution mechanisms	- Strengthen LRMF and adopt its work towards LRMCs		X	X	X	X	X
Outcome 10: Design and implement awareness campaigns	- Collate and disseminate relevant land rights information; train key LRMCs functionaries to propagate land rights information	X	X	X	X	X	X
Outcome 11: Develop DRDLR support system for LRMCs	-Establish administrative and financial routines in support of LRMCs activities	X	X	X	X	X	X

Outcome 12: Establish rights monitoring, evaluation and research systems	-Design participatory monitoring and evaluation system; develop links with research institutions to support land rights research programmes		X	X	X	X	X
Outcome 13: Mobilise sustainable land rights management funding	-Establish dedicated land rights grant		X	X	X	X	X
	-Mobilise and allocate rural development resources for farm dwellers	X	X	X	X	X	X

A key planning methodology of the Land Tenure Security Policy for Commercial Farming Areas shall be its deliberate articulation with existing programmes of land redistribution, rural development and within the wider regional development strategy appropriate to their situation. For instance this may involve the use of PLAS and Area Based Planning Land Reform measures to widen the land and resource base available to the farm worker/dweller community in each area. Moreover, the DRDLR shall negotiate the design of its programmes with resource commitments from relevant government departments to ensure time-bound results. In pursuit of its overall participatory approach, the implementation of this strategy shall be guided by the views and requirements of all stakeholders in the Commercial Farming Areas. The DRDLR shall support the mobilisation of public participation in the programme planning and implementation process.

7.2.1 Monitoring and evaluation plan

The programme shall be monitored and evaluated by the DRDLR in accordance with best practice and compliance with statutory requirements. However, the Monitoring and Evaluation plan will be gender sensitive and shall entail public participatory procedures, involving relevant stakeholders and their structures.

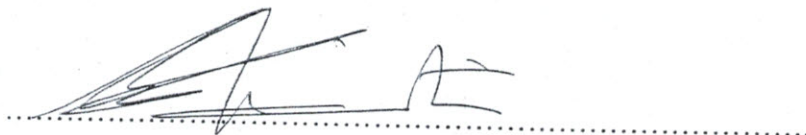
7.3 Resources required

Officials of the DRDLR will stipulate the resource implications of this plan as the policy development nears its completion of the RIA.

7.4 Policy Owner

Chief Directorate: Tenure Systems Reform

Branch: Land Reform and Administration



NKWINTI, GE (MP)

MINISTER: DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM

DATE: 24/07/2013