



**rural development
& land reform**

Department:
Rural Development & Land Reform
REPUBLIC OF SOUTH AFRICA

**AGRICULTURAL LANDHOLDING POLICY FRAMEWORK: SETTING UPPER AND
LOWER BANDS FOR THE OWNERSHIP AND USE OF AGRICULTURAL
LANDHOLDINGS**

JULY 2013

TABLE OF CONTENTS

A. CONTEXT	4
a) Reversing the legacy of the 1913 Natives Land Act	4
b) The Constitution	5
c) Legislation	5
d) The principles and strategic thrust of the Green paper on Land Reform	6
e) The National Development Plan and the Medium Term Strategic Framework	6
B. THE PROPOSED POLICY FRAMEWORK	7
a) Focus of the Policy Framework	7
b) Principles of the Policy Framework	7
c) Scope of the Policy Framework	8
d) The Approach of the Policy Framework	8
FIGURE 1: AGRICULTURAL LANDHOLDINGS APPROACH	8
C. THE IMPLEMENTATION STRATEGY	9
a) Proclamation of District Agricultural land use zones	9
b) Disclosure of ownership to and user rights in agricultural landholdings	9
c) Mapping of agricultural landholdings	9
d) Value Chain Analyses	9
FIGURE 2: GENERIC VALUE CHAIN ANALYSIS FLOW CHART	10
e) Proclamation of agricultural landholdings floor and ceiling bands per district	10
f) Setting of floor and ceiling levels for each agricultural landholding	10
g) Agricultural landholdings development plans	11
h) Implementation of development plans	11
i) Monitoring and Evaluation	12
D. THE GENESIS OF THE AGRICULTURAL LANDHOLDINGS FRAMEWORK IN SOUTH AFRICA	12

Minister:

Date:

Page 2

GEN

E. INTERNATIONAL BENCHMARKING	12
a) India	13
b) Egypt	14
c) Mexico	15
d) The Philippines	16
e) Taiwan	17
f) Lessons for South Africa	17
F. SUMMARY	19

Minister: _____ Page 3
Date: _____

A. CONTEXT

a) Reversing the legacy of the 1913 Natives Land Act

The mandate of the Department of Rural Development and Land Reform (hereinafter DRDLR) is to create and maintain an equitable and sustainable land dispensation and to act as a catalyst for rural development that ensures rural livelihoods, decent work and continued social and economic advancement for all South Africans. South Africa's apartheid-history resulted in the skewed distribution of land ownership and access to the country's natural resources. The promulgation of discriminatory land laws such as the Black (Native) Land Act, 1913 (Act No. 27 of 1913) is evidence of the fact that racial interests, and not the public interests, were promoted.

At the beginning of the 20th century, restrictions were placed on the entire black majority population forbidding them to own agricultural land and to engage in farming in the mainstream agricultural sector up to the dawn of the democratic order at the end of the 1980s. No restrictions were placed on white farmers. State support encouraged them to own any number and hectares and agricultural landholdings. Consequently, more white farmers entered farming. They owned and operated more land holdings. Output, employment and the number of landholdings increased. But the size of agricultural landholdings decreased in hectares to its smallest average farm size of about 700 ha in the 1950s. From the process described above, it is worth noting that the result of the land market operations from the beginning of the 20th century to the 1950s was a shift in mainstream agricultural landholdings from large to smaller average sizes.

But state intervention from the 1950s onwards reversed the above process. It imposed floor restrictions in mainstream agriculture by declassifying as farms agricultural landholdings of less than 100 hectares. This meant that state support would not be rendered to farms of 100 ha and less. Further, the subdivision of agricultural land to anything less than 100 ha was forbidden and public support was denied to these farms. These restrictions, together with other measures, led to the increase of agricultural landholdings to more than 1 200 ha today, the growing mechanisation of farming operations and the decline of agricultural labour.

The subject of placing a ceiling on the ownership and use rights of agricultural landholdings for post-1994 democratic South Africa is based on two realities. The first reality comes from the evidence of vast amounts of theoretical and empirical literature over time that family owned and operated agricultural land holdings are more efficient and profitable than large scale mechanised commercial agricultural land holdings, and state owned agricultural land holdings. This literature is backed by the experience of South African agriculture. The conclusion that emerges from this reality is that the redistribution of agricultural land holdings from large scale mechanised commercial, and state owned agricultural land holdings to family owned and operated agricultural land holdings - would promote efficiency and profitability in the agricultural sector.

The second reality was first articulated in the 1950s by the mass democratic movement through the Freedom Charter, that agricultural land should be shared among those who work it. The Freedom Charter was later adopted by the present governing party, the African National Congress. This position of the Freedom Charter to undertake land reform in favour of family owned and operated agricultural land holdings was later reiterated by the Reconstruction and Development Programme of the first democratic government under President Nelson Mandela. It was also later endorsed by the South African Constitution in 1996 on the basis of public interest in section 25.

Minister:

Page 4

Date:

The Freedom Charter wanted the restrictions on landownership and participation of Black farmers in agriculture removed. It also wanted the agricultural development path that is consistent with family owned and operated agricultural landholdings promoted. Post-1994 land reform must be judged on the basis of the goal to remove all the existing implicit and explicit barriers to the entry and participation of subsistence and emergent farmers into mainstream agriculture. Performance should be measured by agricultural landholding becoming less than its average size in the 1950s, the increase of output, job creation and the number of agricultural landholdings.

b) 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. In terms of section 25 (read with section 36), land reform initiatives must be contained in a law (or laws) of general application and may not authorise arbitrary deprivations. The implementation of this policy may lead to expropriation in some cases and therefore Section 25(3) of the Constitution stipulates that compensation must be just and equitable in terms of amount, the time and the manner of payment. In addition, the section defines the concept just and equitable by including the qualification reflecting an equitable balance between the public interest and the interests of those affected. To ensure that this equilibrium is achieved, an open-ended list of relevant factors are listed that should be taken into account when compensation is determined.

"(3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including

- (a) the current use of the property;*
- (b) the history of the acquisition and use of the property;*
- (c) the market value of the property;*
- (d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and*
- (e) the purpose of the expropriation."*

In addition to other substantive provisions in section 25 of the Constitution, section 25(5) provides that "[t]he 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".

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 it compels the state to *spare no effort* in addressing land reforms and racial disparity and inequity in land ownership by South Africans.

c) Legislation

Existing legislation, both provincial and national, on agricultural land use and ownership would have to be assessed before new legislation is drafted. Departmental legislation such as the proposed Spatial Planning and Land Use Management Act, Land Management Commission and Land Valuation Bill would need to be also carefully considered and/or

Minister:

Page 5

Date:

amended. The Regulatory Impact Assessment Study would provide further direction in this regard. A number of related statutory instruments administered by other organs of state within the three spheres of government exist (e.g. the National Environmental Management Act 62 of 2008, the Subdivision of Agricultural Land Act 70 of 1970, the Expropriation Act 63 of 1975) as well as national and provincial planning legislation) provides a basis for this framework but within the ambit of the Constitution. In relation to the Constitution, in terms of section 25 (read with section 36), land reform initiatives must be contained in a law (or laws) of general application and may not authorise arbitrary deprivations. Due to the fact that the implementation of this Policy may inevitably lead to expropriation in some cases, the compensation issue would probably also become a constitutional issue.

d) 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":

- (a) "State and public land: Leasehold;
- (b) Privately owned land: Freehold, with limited extent;
- (c) Land owned by Foreigners: Freehold, but Precarious Tenure, with obligations and conditions to comply with; and,
- (d) Communally owned land: Communal Tenure, with institutionalised use rights".

The principles and the strategic thrust underlying land reform, as set out in the Green Paper on Land Reform, are as follows:

- (a) deracialising the rural economy;
- (b) democratizing the allocation and use of land across gender, race and class; and
- (c) sustained production discipline for food security (and food sovereignty).

It is critical that the tenure system integrates well with the cultural, social and political heritage of South Africa, as well as the projected national strategic direction. Tenure systems evolve over centuries and cannot be said to be immutably fixed. In order to craft a new tenure system for the next generation the position is to take from the past and retain the current only in so far as they advance the cause of fundamental change in power relations over land. The overriding concern is that the land tenure system of South Africa must facilitate efficient land use while, at the same time, eradicating established inequalities (87%/13% spatial inequalities) and unequal opportunities.

e) The National Development Plan and the Medium Term Strategic Framework

Land reform within the context of the National Development Plan (2012) is accorded the daunting task of ensuring that economic growth and integration is facilitated as an intended outcome of land and agrarian reform. Poverty alleviation and job creation are therefore key hallmarks that will measure the success of land reform. The NDP land reform proposals are aligned with the Medium Term Strategic Framework (2014-19) on:

- (a) Sustainable land reform (agrarian transformation);

Minister:

Page 6

Date:

- (b) Improved food security; and
- (c) Smallholder farmer development and support (technical, financial, infrastructure) for agrarian transformation.

Within the MTSF period (2014-19), the Policy will seek to contribute to the followings targets:

- (a) 8 million hectares of land acquired and allocated by March 2019; and
- (b) 50% of the total acquisition of productive land allocated to smallholders by March 2019.

B. THE PROPOSED POLICY FRAMEWORK

The overall aim and objectives of the policy is to eradicate poverty, create job opportunities and promote equity in the agricultural sector by:

- (a) Facilitating the entry and participation of small farmers into mainstream agriculture;
- (b) Redistributing land from large agricultural holdings to cooperatives and family owned landholdings; and
- (c) Increasing efficiency, competitiveness and sustainability of all agricultural landholdings.

a) Focus of the Policy Framework

The development of the Agricultural Landholding Framework: Setting Upper and Lower Bands for the Ownership and Use of Agricultural Landholdings (hereafter referred to as "the Policy") focuses on the identification of a balanced approach that would, on the one hand, provide for access to land and the shared distribution of agricultural land to all South Africans, especially people from rural areas while maintaining the positive perception – and reality – that South Africa is an investor-friendly country that can also achieve its social transformation goals.

This policy framework is therefore part of a range of instruments that Government is employing to protect land-use, access to land and food security in the country. It should be noted that the majority of these instruments would be applicable to all people in South Africa.

b) Principles of the Policy Framework

The Policy is guided by the following principles:

- (a) Agricultural land is a common heritage for all South African citizens;
- (b) Agricultural land must be shared amongst those who use it to produce values;
- (c) Every owner and user of agricultural land must protect and preserve it;
- (d) Every owner and user of agricultural land must strive to produce optimum values;
- (e) Agricultural landowners and users must be part of the governance of agricultural landholdings;
- (f) Every person can enter and participate in the different value chains of the agricultural sector;
- (g) Assistance must be rendered to bring landholding sizes below to above the floor level;
- (h) Assistance must be rendered to bring landholding sizes above to below the ceiling; and

Minister:

Date:

Page 7

- (i) Assistance must be rendered to agricultural value chains with landholding within permissible levels to be efficient, sustainable and competitive.

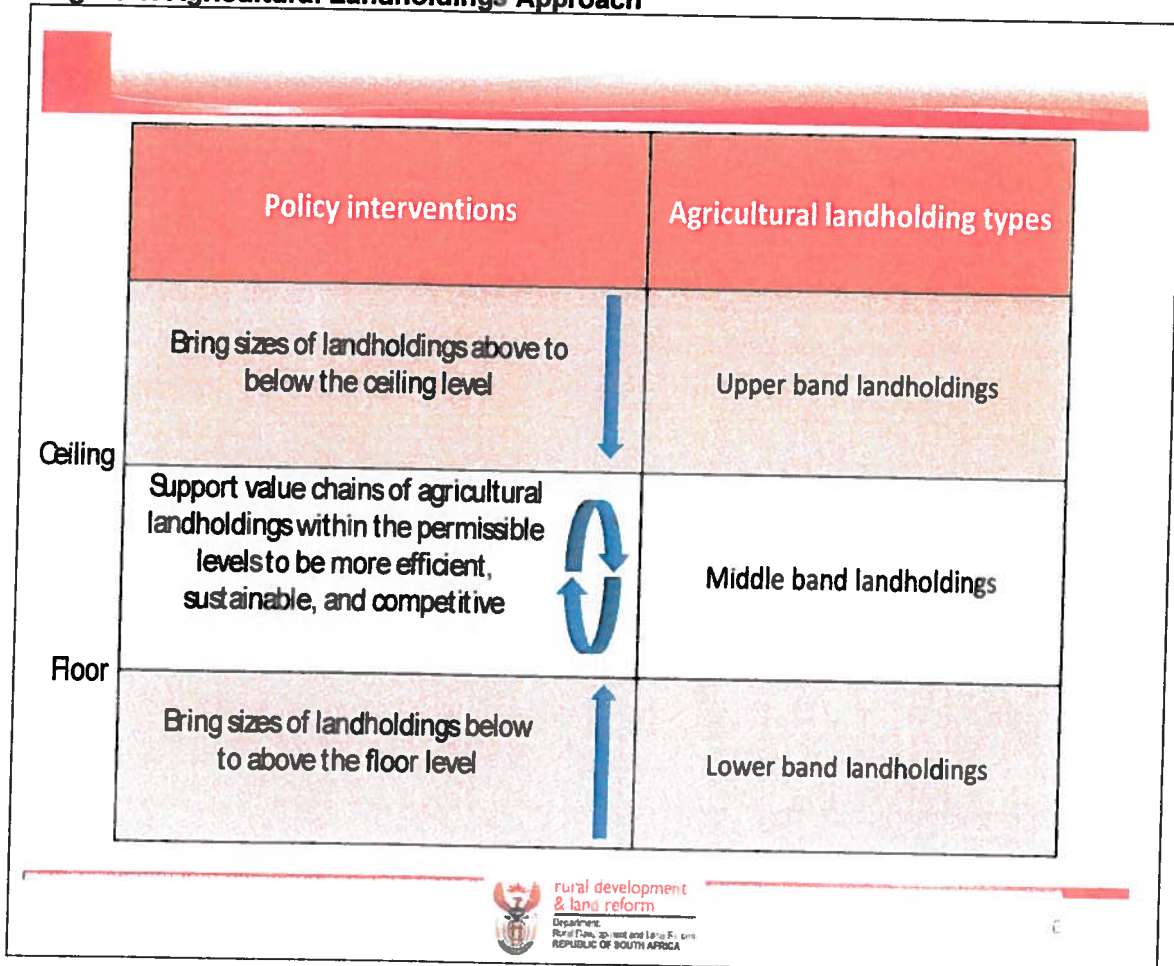
c) Scope of the Policy Framework

The scope of this Policy is applicable to:

- (a) land officially designated as agricultural land in the Republic of South Africa;
- (b) agricultural landholdings under all farming industries;
- (c) agricultural landholdings of all sizes;
- (d) agricultural landholdings in urban and rural areas;
- (e) agricultural landholdings in former homeland and commercial white farming areas;
- (f) publicly and privately owned agricultural landholdings;
- (g) dormant and active agricultural landholdings;
- (h) land reform and non-land reform farms; and
- (i) the 4-tier tenure system.

d) The Approach of the Policy Framework

Figure 1: Agricultural Landholdings Approach



The establishment of upper and lower levels of optimum efficiency for agricultural landholdings would enable the Department and government in general to adopt a three pronged approach (Figure 1). For those agricultural landholdings that are located above the

Minister:

Date:

GEN

ceiling, the Department and government in general would take the necessary legislative and other measures to bring the said agricultural landholdings below the ceiling point. For those agricultural landholdings that are below the floor level, the Department and government in general would take the necessary legislative and other measures to lift those agricultural landholdings to operate above the floor level. Finally, for those agricultural landholdings that operate within the upper and the lower levels, the Department and government in general would take the necessary legislative and other measures to ensure that those farmers become more efficient, more profitable, more competitive, and more sustainable at provincial, national and international levels of their respective value chains.

C. THE IMPLEMENTATION STRATEGY

Theoretical and empirical evidence has established as fact the existence of a ceiling in every agricultural land holding of a given agricultural industry. That ceiling is at the optimum level beyond which the total factor productivity of a family owned and operated agricultural becomes negative. The point of that ceiling is dynamic and is continuously changing upward or downward as it is impelled by movements of total factor productivity.

Similarly, there is a floor for every agricultural land holding in a given agricultural industry. The floor is set at the minimum level below which the total factor productivity of a family owned and operated agricultural becomes negative. The point of that floor is dynamic and continuously changing upward or downward as it is impelled by movements of total factor productivity. The key determinants of total factor productivity for agricultural landholdings include legislation and other implementation measures that either encourage or discourage explicit and implicit barriers to the entry and participation of farmers in the different value chains of the agricultural sector.

a) Proclamation of District Agricultural land use zones

Through legislation such as the envisaged Spatial Planning and Land Use Management Act, district agricultural land use zones may be proclaimed.

b) Disclosure of ownership to and user rights in agricultural landholdings

In order to get an accurate picture of district agricultural landholdings, compulsory disclosure may be introduced in the new or amended legislation. This will be applicable across all sectors of society (public and private sectors).

c) Mapping of agricultural landholdings

The mapping of agricultural landholdings should be conducted to identify barriers to entry and participation, rent-seeking and governance factors that must be removed in agriculture in order to facilitate competitiveness, sustainability and efficiency in the different industries. Ideally, these areas need to be mapped at a district level in order to determine the floor and ceiling levels with a variety of district-based stakeholders.

d) Value Chain Analyses

The above-mentioned mapping exercise would also reveal and deficiencies within value chains that must be corrected and efficiencies, competitiveness, profitability and sustainability enhanced.

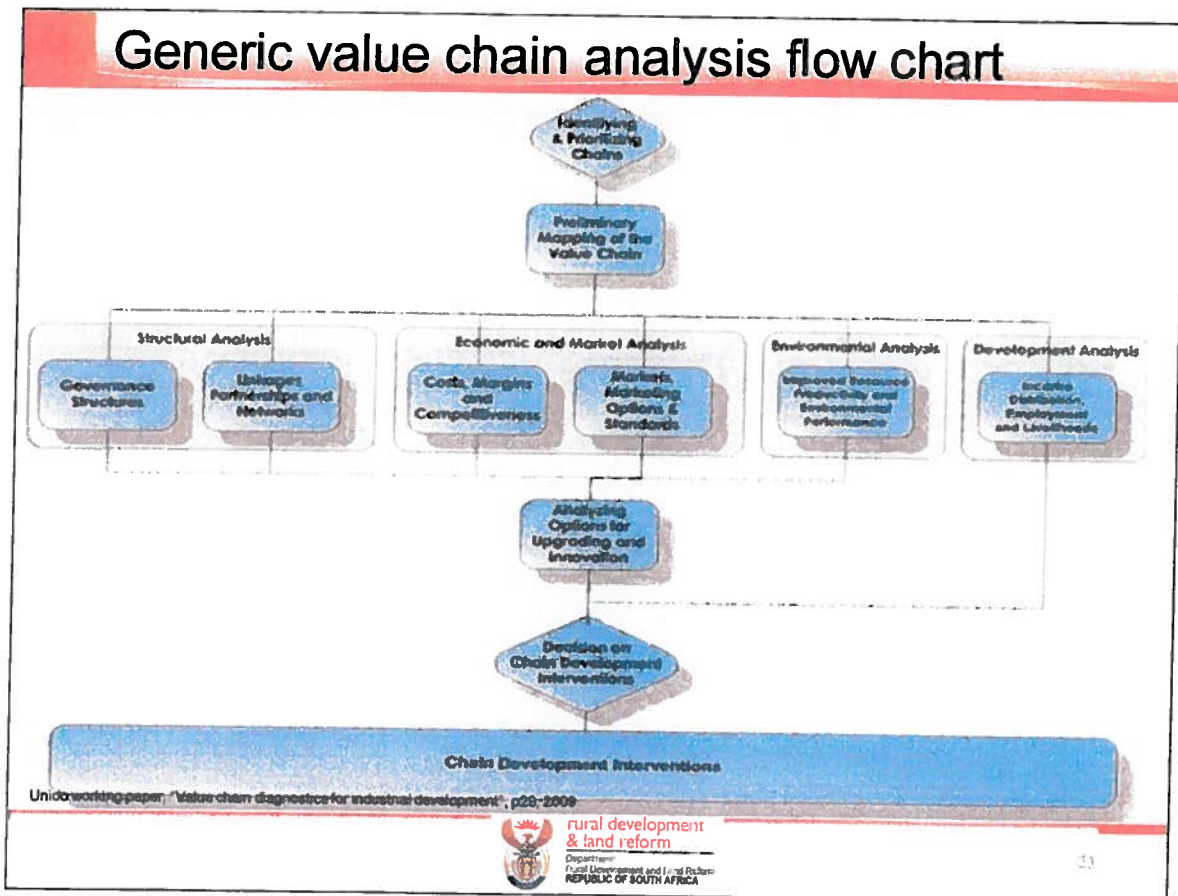
Minister:

Date:

Page 9

GEN

Figure 2: Generic Value chain analysis flow chart



In the generic value chain depicted above one would examine the structural issues inclusive of governance, linkages, partnerships and networks; secondly economic and market issues including cost margins and competitiveness as well as markets and marketing option and standards; thirdly environmental issues inclusive of improved resource productivity and environmental performance and lastly development issues inclusive of income distribution, employment opportunities and livelihoods. The above-mentioned value-chain reports would further reveal opportunities which the Department and government in general should exploit in the public interest. This could include expropriation and share equity schemes to ensure the entry and participation of targeted farmers to a value chain of a specific agricultural industry.

e) Proclamation of agricultural landholdings floor and ceiling bands per district

Once these areas are mapped, it would be easier to designate or proclaim the upper, middle and lower band landholdings (See Figure 1). This can be done through legislation such as the Provision of Land and Assistance Act, 1993 (Act No. 126 of 1993).

f) Setting of floor and ceiling levels for each agricultural landholding

A district land reform committee (See Annexure A) may then determine floor and ceiling levels once the lower, middle and upper bands have been proclaimed in a particular district. Calculating the floor and ceiling levels of agricultural landholding in South Africa, although not limited, may include the following factors, among others:

Minister:

Date:

GEN

- Climatic factors, which can have significant variations within small geographical areas;
- Matters pertaining to high value, medium value and unique agricultural land, grazing and cropping land;
- Matters pertaining to the current production output, commodity-specific constraints, farm size, farm viability, economies of scale, the existence of agro-industries on the farms, number of farm workers and dependents;
- Variations in physical potential in terms of soil type, soil depth and quality, grazing capacity, water availability and quality, distances from markets, infrastructure available etc.;
- The relationship between resources, such as between cultivated land and natural pasture, dry land and irrigated land, soil types on croplands, etc., would have an influence on determining the economic size within an area;
- Adoption of technology and the effect of economies of scale would influence profitability in certain types of enterprises. Efficiency is improved by reducing the quantity of fixed resources and/or by reducing the consumption of variable resources per unit of output. Efficiency gains are often achieved through the introduction of new technologies, learning curve effects, training, or the substitution of resources;
- Capital requirements of different enterprises;
- The relationship between product prices and price margins would also influence the size of the unit, especially the relationship between cropping and livestock enterprises.

g) Agricultural landholdings development plans

Once the District Land Reform Committees establish floor and ceilings for every agricultural holding in the district, development plans in line with the National Development Plan, land reform and rural development programmes, will be further developed and enhanced through local level participation.

h) Implementation of development plans

The implementation of the development plans may follow a phased approach, dependent on budget and on the full cooperation of all stakeholders in a particular district.

In some areas it may be necessary to impose a right of first refusal to empower the state to purchase agricultural landholdings in excess of the proposed ceilings especially where markets are thin and where normal land redistribution efforts have failed to equitably distribute agricultural land to smallholders.

In districts where it may not be viable to expropriate the excess land, equity sharing arrangements based on an appropriate valuation may be negotiated. Legislation would need to be introduced to make such arrangements compulsory and again the Constitutional implications would need to be considered *inter alia*, Section 22 of the Constitution, dealing with the freedom of trade, occupation and profession. Such arrangements should be linked with other development programmes such as the Recapitalisation and Development Programme and the Agri-Sector Code in terms of the Broad Based Black Economic Empowerment Act. Land owners voluntarily participating in such schemes may be able to qualify for a maximum of 5 bonus points in terms of the scorecard if they transfer more than 30% of agricultural land. According to the Code, land transferred as a result of expropriation will not qualify for bonus points or if the state buys on the open market, the seller will not qualify for bonus points.

Minister:

Page 11

Date:

i) Monitoring and Evaluation

The Department of Rural Development and Land Reform at a national, provincial and district level will develop monitoring indicators. Formative and summative evaluations will be carried out periodically to assess the impact of the policy. The role of the District Land Reform Committees will be vital as they would need to monitor trends in the agricultural sector in order to assist in the determination of floor and ceiling levels for each landholding.

D. THE GENESIS OF THE AGRICULTURAL LANDHOLDINGS FRAMEWORK IN SOUTH AFRICA

In 2008, the former Department of Land Affairs finalised research *Ceilings on Agricultural Land: An International Comparative Study* as part of the proposals dealing with alternatives to the WSWB. Limitations on private land ownership was also highlighted in the 2011 *Green Paper on Land Reform*, which 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":

- (a) "State and public land: Leasehold;
- (b) Privately owned land: Freehold, with limited extent;
- (c) Land owned by Foreigners: Freehold, but Precarious Tenure, with obligations and conditions to comply with; and,
- (d) Communally owned land: Communal Tenure, with institutionalised use rights".

Six workstreams were set up as part of the consultative process for the Green Paper on Land Reform in 2011. The workstreams formed part of a multi-stakeholder National Reference Group (NAREG) that has been instituted by the Minister of Rural Development and Land Reform to discuss, refine and influence policy and legislative proposals made by the Department. One workstream is dealing with policy proposals on the first 3 tiers of the 4-tier system. Three pieces of research were commissioned to aid in the formulation of this Framework:

- (a) international case studies using eight countries namely Mexico, Chile, Zimbabwe, Taiwan, the Philippines, Romania, Egypt and India;
- (b) international legal jurisprudence especially from India, Egypt, Mexico and Taiwan and an analysis of the South African Constitution; and
- (c) an assessment of a ceilings policy on the agricultural economy of South Africa.

Apart from discussions emanating from the Green Paper workstreams, this Policy is also based on the critical assessment of the above-mentioned studies.

E. INTERNATIONAL BENCHMARKING

The placing of restrictions on the ownership and use of agricultural land is a practice that is well known as the historical development process of contemporary agriculture as part of the economic, social and political formations of countries in the world. The reasons for these restrictions are many and varied. Countries like Mexico, Chile, Zimbabwe, Taiwan, the Philippines, Romania, Egypt and India imposed restrictive landholding measures to curb a growing and disturbing trend around land concentration commensurate with an increasing concentration of capitalisation of agriculture (both in its downstream and upstream sectors). This increase in land concentration is indeed an outcome of a free market philosophy, which embraces the notion that if markets remain unfettered, they tend to be self regulating and able to attain optimal outcomes and efficiencies within the economy. This in turn secures the

Minister:

Page 12

Date:

competitiveness of the agricultural sector. The exercise of options, largely seen as dividends the market confers to participants, only benefits those who are resourced. This idea in favour of the supremacy and efficacy of free-markets, demands rigorous scrutiny because even the most open-market economies embrace aspects of "regulatory oversight mechanisms" on their respective land markets and this has not distorted or created inefficiencies within the economy as demonstrated on the brief case studies below:

a) India

India is an important case study of land reform. It is both home to a significant fraction of the poor in the developing world and in the post independence period was subjected to the largest body of land reform legislation ever to have passed in any country¹. Land reform legislation in India consisted of four main categories – tenancy reform, abolition of intermediaries, land ceilings, and land consolidations. Although efforts for land redistribution in general were limited, ceilings legislation was primarily aimed at redistributing surplus land to the poor, landless, or marginal farmers².

In India, land, including land reform, is a matter for the individual states. Central guidelines are, however, offered at federal level. In the Indian land reform initiative the ceiling on landholdings was intended to:

- (a) Meet the land needs of the landless;
- (b) Reduce the glaring inequalities in land ownership so that it may lead to the development of a cooperative rural economy; and
- (c) Enlarge self-employment in owned land as distinguished from subletting and tenant cultivation.

To pave the way for land ceiling legislation, the fundamental rights to property and fair and equitable compensation in cases of compulsory acquisition of property have been deleted from the Constitution of India. The Constitution also provides 'supreme' protection to legislation aimed at land reform by listing such pieces of legislation under the Ninth Schedule and thus indemnifying them from being declared void by a court of law because they encroach on one or more of the fundamental rights stated in the Constitution. India's solemn declaration that it is a socialist republic sets the background against which steps taken to implement land reform programmes should be evaluated.

In the decades following independence, India passed a significant body of land reform legislation. The 1949 Constitution left the adoption and implementation of land and tenancy reform to state governments. Land reform legislation consisted of four main categories – tenancy reform, abolition of intermediaries, land ceiling and land consolidation. This report is mainly concerned with the third form of land reform. Land ceiling legislation is aimed at, amongst others, preventing the extreme concentration of land in the hands of a few individuals and/or organisations and redistributing the excess to poor landless or marginal farmers. Legislation that placed ceilings on the amount of agricultural land that a person or family can own was adopted and implemented by all the states in India. Due to the National Policy guidelines that were published in 1972, land ceiling laws currently in force follow a common pattern with variations on several key aspects including the ceiling area,

¹ Besley, T., and Burgess, R. (2000). Land reform, poverty reduction and growth: Evidence from India. *The Quarterly Journal of Economics*, Vol. 115(2): 389 – 430.

² *ibid*

compensation for above-ceiling land expropriation and the defining and prioritising of beneficiaries.

However, with a few exceptions, land ceiling legislation has not lived up to expectations. Recent legal research indicates that by the end of 2002, the total amount of ceiling-surplus land distributed to individual farmers amounted to approximately 1.4 per cent of India's agricultural land. The states of Kerala, West Bengal and Assam (and to a lesser extent Andhra Pradesh) were identified as the few states where benefits were realised by beneficiaries. Excluding the achievements of these states, the imposition of ceilings has not led to any worthwhile redistribution of agricultural land in the rest of the country. The legal literature review indicated that the land ceiling initiative aggravated the existing problem of uneconomical fragmented land holdings. In many instances productivity has declined and the majority of the poor have not reaped any sustainable benefits from the implementation of land ceiling legislation. Some unintended or unforeseen consequences are *inter alia* the fragmentation of land, as mentioned above, with a consequential drop in productivity and the stagnation of redistribution since the highpoint in the 1970s.

The study of the available legislation explains the legal framework within which land ceiling legislation is applied in the four states Assam, Andhra Pradesh, Kerala and West Bengal. Of these four states, West Bengal is in some quarters seen as being the most successful in implementing its land ceiling initiative as part of the total land reform programme. West Bengal's land ceiling success is attributed to the fact that the relevant legislative provisions were supported with focussed implementation and support programmes.

In order to facilitate the land reform programmes, and specifically in order to implement land ceiling legislation, the 1949 Constitution of India has been amended at least six times. The right to property has been weakened from a fundamental right to a mere legal right. Simultaneously, provisions were written into the Constitution allowing state legislatures to enact legislation aimed at land reform which, if incorporated in the Ninth Schedule of the Constitution, would not be void merely on the ground that they infringed on any fundamental rights.

b) Egypt

Although ceilings on land-holding were imposed in Egypt, it wasn't central to the land reform program of the country. Central to the land reform program was the introduction of security of tenure to farmers in order to give small holders and the near landless confidence and security. The reason was because an estimate 60 percent of total cultivated land was worked by tenants, with rental values set at seven times the agricultural land tax. In 1992, the agrarian reform Law of 1952 (i.e. tenancy guarantees) was reversed by Presidents Mubarak's Law 62 of 1992. It stipulated a five year transition period during which time rent was raised from seven to 22 times the land tax. After the transition period in 1997, landowners retook the land from tenants and levied a market-based rent.³

Nevertheless, during the midst of the previous century, the ceiling on land-holdings made provision for the state to seize properties in excess of 200 *feddan*⁴, and to restrict private

³ Bush, R. (2007). Politics, power and poverty: twenty years of agricultural reform and market liberalisation in Egypt. *Third World Quarterly*, Vol. 28 (8): 1599 – 1615.

⁴ An Egyptian unit of area equivalent to 1.038 acres or 0.42 ha

Minister:

Page 14

Date:

land owners to a maximum of 100 *fedden* with families that collectively owned up to 300 *feddan*.⁵

Largely to the contrary of what was experienced in other countries, the state was successful in implementing the ceiling on land-holdings legislation, and especially in seizing properties in excess of 200 *feddan*. Land that was seized was distributed to agricultural labourers and people with less than 5 *feddan* (2.1 ha), which resulted in almost 2 million people benefiting: holders with less than 5 *fedden* rose by 13 percent and the land they owned by 74 percent. In total, about 12 percent of the country's land was redistributed. Although estates of over 200 *feddan* disappeared, disparities remained with large land owners that distributed land between family members and by doing so retained the family wealth (Bush, 2007 (2)). As a result, disparities in land holding and rural inequality continued despite the ceiling on land-holdings.⁶

However, it is reported that the disparities in land holding and inequality ran alongside dramatic improvements in the rural standards of living, income distribution, diets and agricultural productivity. It may therefore be argued that the agrarian reform laws of the mid 1950's early 1960's have contributed towards an economic rationale of improved productivity and employment/ reduction in poverty. However, the contribution from ceilings on land-holdings towards the above mentioned, specifically towards the poor and landless, remains unclear when considering that wealth of large land owners, to a large degree, was only redistributed within their families. Moreover, cognizance should be taken when considering the contribution of the agrarian reform laws; with other economic developments (i.e. a regional oil boom and surge in the number of Egyptian labour migrants working in neighbouring oil-producing states) that have also contributed towards the reduction of poverty/ income and economic growth during the period under consideration.⁷

c) Mexico

It's being reported that the Mexican land reform is one of the most ambitious experiments of its kind in Latin America, both in terms of the area covered and the lengthy period during which private property has formally been exposed to potential expropriation.⁸ While the principle of private ownership was conceded in Mexico, Article 27 of the 1917 Constitution allowed the state to reserve itself the right to modify the existing tenure pattern in order to ensure a more equitable distribution of wealth⁹. Consequently, the state was empowered to expropriate private holdings when they exceed specified limits and to repossess parcels when they are improperly managed. However, confusion exists with regard to the holding-size limits and the legitimacy of leasing parcels which contributed towards farmers having no

⁵ Bush, R. (2007). Market Violence in Egypt's Countryside. *Peace Review: A Journal of Social Justice*, Vol. 19(1): 15 – 21.

⁶ Bush, R. (2007). Politics, power and poverty: twenty years of agricultural reform and market liberalisation in Egypt. *Third World Quarterly*, Vol. 28 (8): 1599 – 1615.

⁷ Ibid.

⁸ Heath, J.R. (1992). Evaluating the impact of Mexico's land reform on agricultural production. *World Development*, Vol. 20(5): 695 – 711.

⁹ Zaragoza and Macias, (1980). Developing pleased to Mexico and its legal framework. National Center for Agricultural Research, Mexico City.

set security of tenure¹⁰. For example, the ceiling for cattle ranches was calculated according to the land area needed to support 500 head of cattle or an equivalent number of small livestock. However, in the 1971 addition to the reform law, reference is made not only to the 500-head of cattle but also to a ceiling of 800 ha for cattle ranches in areas of poor quality pasture.¹¹ The author elaborates by arguing that the two specifications are mutually inconsistent because it is impossible to support 500 head of cattle on 800ha of poorest quality of grazing land. In addition, no reference was made between the equivalences between head of cattle and head of sheep, pigs, goats etc.

As a result, the above-mentioned as well as other inconsistencies, lead to lower investments, especially amongst private farmers. However, no clear conclusion was drawn in terms of the impact of lower investment levels on productivity due to the shortage of evidence. It is argued that data limitations make it impossible to provide definite answers concerning the relationship between land reform and productivity in Mexico.¹² However, the author did state that on the face of it, the law does not support investment; it proved an ineffective guard against the subdivision of parcels; fragmentation has reduced tenure security and is probably conducive to lower productivity.

With regard to redistribution; the contribution in terms of redistribution of privately owned land to the landless or peasants was severely hampered by the laxity of enforcement of the legislation. It is reported that one indicator of the laxity of enforcement of the reform legislation is the reduction, since 1976, in the amount of private land that has been expropriated and handed to the 'landless'.¹³ They elaborated by stating that during 1977-88, the average area of land formally redistributed each year was only 0.8 million hectares compared to the 3.1 million hectares in the previous 12-year period (1965-76). The reasons for the decline include claims by government officials that no more land was available during the period¹⁴; administration process allowed for the blocking of land redistribution at individual state level¹⁵, corruption, lack of accurate data on land-use capabilities and land values etc. Again, on the face it seemed that the legislation was not very effective in redistributing the land amongst the landless, especially considering that during the peak 12 years only 3.1 million hectares was redistributed.

d) The Philippines

Ceilings legislation in the Philippines was introduced to alleviate physical constraints i.e. reduce the cost of land acquired under the umbrella of their land redistribution program. In general, land reform in the Philippines has proved to make a positive contribution i.e. higher

¹⁰ Heath, J.R. (1992). Evaluating the impact of Mexico's land reform on agricultural production. *World Development*, Vol. 20(5): 695 – 711.

¹¹ Ibid

¹² Ibid

¹³ Ibid

¹⁴ Ibid

¹⁵ Sanderson, S.W. (1984). Land reform in Mexico, 1910 – 1980. Orlando Academic Press.

investment in physical capital, a greater increase in the intergenerational transmission of human capital, and greater household welfare and productivity.¹⁶

Notwithstanding the overall positive contribution, results revealed that ceilings legislation actually reduced access to land for the landless and led to a worsening of the functional land rental markets¹⁷. Moreover, in view of the limited number of beneficiaries, and because in case studies ceiling legislation has been shown to effectively block entry by landless, the net social benefit may not be that large - and could even be negative.¹⁸

Ceiling legislation in the Philippines failed due to unintended consequences of administrative efforts aiming to increase the supply of land (or to reduce the cost at which such land can be acquired), possibly together with the failure to target land reform to the landless, the cost of implementation, circumvention by spurious subdivisions, and restricted access to land through the rental markets which are likely to discourage land-related investment in labour intensive agro-export and other crops/ infrastructure¹⁹. However, it is clear that ceiling legislation did not yield a positive outcome, which is similar to the experiences from other countries.

e) Taiwan

An immediate result of Taiwan's land reform and ceiling exercise was an increase in the number of owner-cultivators and a greater concentration of small (less than one hectare) farming units, although demarcation of landholdings countered some of the effects of fragmentation. Increased production, lowered purchase prices for land, and limitations on rents brought about increased incomes for both owner-operators and tenants. Agricultural productivity was augmented during the decade following land reform as new production incentives led farmers to intensify their labour and capital investments". However, it should be noted that the above-mentioned outcomes is due to the land reform program, which include but is not confined to land ceiling legislation. As mentioned, land reform programs in other countries also yielded positive outcomes, however, in most instances the contribution of ceilings itself was neutral or negative.

f) Lessons for South Africa

It is imperative to take into account that India's land ceiling legislation is founded upon and developed from within a very context-specific situation and has a particular underlying philosophical and ideological foundation, which differs from the constitutional framework of South Africa. In this regard, it has to be noted that India is a socialist republic. It is also important to take cognisance of the fact that India had a semi-feudal agrarian system at the time of independence. The land was mainly owned and controlled by large absentee landowners or intermediaries and mostly 'tilled' by sharecroppers or tenants living on the land. Leasing out land was a common practice. Landowners cared little for land and agriculture and they were mainly interested in extorting high rents from tenants. Tenants and

¹⁶ Deininger, K., Olinto, P., and Maertens, M. (undated). Redistribution, investment, and human capital accumulation: The case of agrarian reform in the Philippines, World Bank. Available from <http://www.citeseerx.ist.psu.edu> (Accessed 7 September 2012).

¹⁷ Ibid

¹⁸ Hayami, Y., Quisumbing, M.A.R., Adriano, L.S. (1990). Towards an alternative land reform paradigm. Ateneo University Press, Philippines.

¹⁹ Deininger, K., Olinto, P., and Maertens, M. (undated). *Op Cit*

sharecroppers had little motivation to farm effectively and sustainably as they had no security of tenure.

Constitutional amendments that paved the way for the implementation of the land reform initiatives in India were inherent to the constitutional land reform framework in India. Constitutional amendments were necessary to:

- (a) Immunise land reform legislation from fundamental rights contained in the Constitution;
- (b) Limit the judicial review of land reform legislation;
- (c) Limit government's liability to pay compensation in cases of expropriation of land for the purpose of land reform; and
- (d) Differentiate between fundamental rights and overarching constitutional principles.

In addition, Directive Principles of State Policy surpassed fundamental rights contained in the Constitution, resulting in the downgrading of the fundamental rights concerned. Furthermore, unintended and unforeseen consequences of the ceiling approach in India have necessitated the review of existing land reform initiatives and the development of new land reform initiatives.

Taken the experiences of the maximisation of the number of landholdings in Egypt, Mexico, Philippines and Taiwan into account, it can be concluded that:

- a) Land size that is too limited can be representative of poverty and under-development. Furthermore, in determining the limitations/ceilings it should be taken into account that too limited land size negatively impacts on agricultural production while too high ceilings risk excessive concentration.
- b) The distribution and readjustment of land is complimented (and even dependent) on government assistance to owner-farmers and owner-users. However, the presence of corruption in institutions responsible for supporting smallholder farmers can be detrimental to the success of a land ceiling programme.
- c) Agricultural productivity improves as a result of greater production incentives, improvements in land use, and increased use of farm implements and agricultural equipment.
- d) Security of title is needed for self-investment and higher input in property. Owners of land are more willing to invest in their own land without the fear that their rights can be terminated. Agricultural outputs are increased in the process. Ownership of land is also fundamental to acquire access to credit.
- e) Land-to-the-Tiller programmes/land ceilings programmes constitute a comprehensive technical process and the availability of human resources is paramount to the implementation of such programmes.
- f) The success of land ceiling programmes is dependent on the cooperation and assistance of landlords.
- g) Despite the fact that Land-to-the-Tiller reform measures in Taiwan comprise of a combination of market buy-out and expropriation measures, landlords were compensated for their land in excess of the prescribed limit based on 2.5 per cent times the total annual main crop of the lands according to their productivity grades. This leads to the question whether such measures lean more towards expropriation than market buy-out, since the value of land based on productivity grades and crop yields alone is not necessarily evident of true market buy-out.
- h) Land-to-the-Tiller programmes/land ceiling programmes require sound economic strategies.

Minister:

Date:

Page 18

GER

F. SUMMARY

Upper and lower levels of profitability and efficiency for agricultural landholdings have been known and documented throughout the development of contemporary agriculture and the economic, social and political formations it was a part of in the world.

Governments took legislative and other measures with respect to these levels bring into existence three main categories of agricultural landholdings in the most of Latin America, North America, Europe, Asia and Africa today. These are family owned and operated agricultural landholdings, state owned agricultural landholdings, and large mechanised commercial agricultural landholdings.

At the beginning of the 20th century, South Africa restricted the entire black majority population to own agricultural land and to engage in farming in the mainstream agricultural sector up to the dawn of the democratic order at the end of the 1980s. No ceiling was placed on white farmers. They could own unlimited hectares in an agricultural landholding. Consequently, more white farmers entered farming. They owned and operated more land holdings. Output, employment and the number of landholdings increased but the size of agricultural landholdings in hectares decreased to its smallest average farm size of about 700 ha in the 1950s. This land market process moved the mainstream agriculture towards smaller, and not larger, agricultural landholdings.

From the 1950s onwards, floor restrictions were imposed within the mainstream agricultural sector. Those restrictions brought into existence large scale mechanised commercial agricultural landholdings in South Africa today. The vast amounts of theoretical and empirical literature have established as fact that family owned and operated agricultural land holdings are more efficient and profitable than large scale mechanised commercial agricultural land holdings. The conclusion is that the redistribution of agricultural land holdings from large scale mechanised commercial to family owned and operated agricultural land holdings - would promote efficiency and profitability in the agricultural sector.

The Freedom Charter wanted the removal of restrictions on landownership and the participation of Black farmers in the mainstream agriculture and the agricultural development path that is consistent with family owned and operated agricultural landholdings. Post-1994 land reform legislation and other measures must be judged on the basis of their goal to remove all the existing implicit and explicit barriers to the entry and participation of subsistence and emergent farmers into mainstream agriculture. Their performance would be measured by agricultural landholdings becoming less than its average size in the 1950s, the possible increase of output, job creation and the number of agricultural landholdings with smaller average landholding sizes.

The existence of a ceiling in every agricultural landholding of a given agricultural industry is an established fact. Similarly, there is a floor for every agricultural land holding in a given agricultural industry. It is absolutely imperative for the Department to establish where and then to follow the movements of agricultural landholding ceiling and floor points across the single four-tier system, as proposed in the Green Paper on Land Reform.

The establishment of upper and lower levels of optimum efficiency for agricultural landholdings would enable the Department to adopt a three-pronged strategy based on defined principles (see **section B**) and a sound implementation strategy (**Section C**). A chief land economist within the Land Management Commission or the Office of the Land Valuer General should publish the movements of agricultural landholding ceiling and floor points on a continuous basis, just like the Food Price Monitoring Committee does with food prices. The Department may need to set agricultural landholdings floor or ceilings points legislatively.

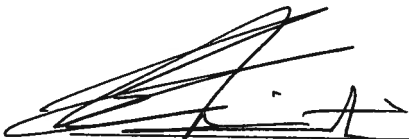
Minister:

Page 19

Date:

GEN

Further, a number of structures would need to be rationalised to support the implementation of this policy and possible legislation (Annexure A).



NKWINTI, GE (MP)

MINISTER OF RURAL DEVELOPMENT AND LAND REFORM

DATE: 29/07/2013

Minister:

Date:

Page 20

ANNEXURE A: DEVELOPMENT SUPPORT

1. THE LAND MANAGEMENT COMMISSION

The purpose of establishing the Land Management Commission (LMC) is to strengthen the National Land Administration System in relation to the land reform imperatives outlined in the Green Paper. 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). It is envisaged that Commissioners would include critical stakeholders with interest in land, including persons nominated by their respective constituencies and other appointed by the Minister based on relevant special attributes.

The LMC is guided by South Africa's Constitution (Section 25) which recognises citizens' right to hold property and protects them from arbitrary deprivation of property. Markets are in principle the best determinant of the optimal utilization of resources such as land, but a regulatory and facilitative framework is deemed necessary to mediate transactions. In order to support the agricultural landholdings policy, there is a need to create the Chief Land Economist Office (CLEO) within the LMC. Some of the broad functions that such an office should perform include:

- (a) Manages setting agricultural holdings floors and ceilings;
- (b) Identifies and prioritises small business value chains;
- (c) Maps and profiles key actors and product flows in the value chain;
- (d) Determines the costs, margins and competitiveness of value chains;
- (e) Identifies options and responses to market requirements and standards;
- (f) Analyses value chain governance and linkages;
- (g) Analyse value chain productivity and environmental performance;
- (h) Analyses for development, innovation and upgrading;
- (i) Analyses actual and future income distribution, employment and livelihood impacts; and
- (j) Coordinates the value chain development programme.

2. LAND RIGHTS MANAGEMENT BOARDS AND LOCAL COMMITTEES

The DRDLR plans to create and support a 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 would perform an advisory, regulatory and oversight function. The LRMCs would in this respect perform the key dispute resolution function at the local level. 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.

Minister:

Page 21

Date:

GEN

3. OFFICE OF THE VALUER-GENERAL

The basic role of the Office of the Valuer General is to act as a final authority on matters of land and property valuation where the government is a party or has an interest. The OVG shall, in addition, provide specialist valuation services and property market advice to government. The primary purpose for the Office is to create norms and standards for the determination of just and equitable compensation for land acquired for land reform and in the public interest, and to ensure their enforcement. In executing its mandate, the OVG shall be subject to the following fundamental principles. First, the OVG shall not 'manipulate' property prices or impose values on the market place. Second, the OVG cannot, and shall not, oust the jurisdiction of the courts in the adjudication of disputes with government as to the amount of compensation payable or owing. Thirdly, the OVG shall ensure that compensation paid reflects an equitable balance between interests of the public and those of individuals or corporations.

4. DISTRICT LAND REFORM COMMITTEES (DLRC)

At district level, a number of stakeholders (including farmers, farmers unions, non-governmental organisations, traditional leaders) may form part of the DLRC. Ideally, the district municipality should chair such a forum with representatives from all spheres of government but the following core departments should be there:

- (a) Department of Agriculture, Forestry and Fisheries;
- (b) Department of Cooperative Governance;
- (c) Department of Rural Development and Land Reform (including the Chief Registrar of Deeds and the Chief Surveyor-General); and
- (d) Department of Water and Environmental Affairs.

These committees should be set up in all 44 districts of the country. Their functions may include:

- (a) Managing district agricultural landholding stakeholders;
- (b) Engaging agricultural landowners & users on the agricultural landholding floor and ceiling levels Report of the OCE;
- (c) Producing district agricultural holdings reform plan in consultation with farmers;
- (d) Coordinating the implementation of the district agricultural landholdings reform plan; and
- (e) Reporting on the progress and outcome of the district agricultural landholdings reform plan.

5. INTER-GOVERNMENTAL TECHNICAL COMMITTEE

An Intergovernmental Technical Committee should be established at National Government Level to ensure high-level participation by a number of core Government departments, assisted in appropriate cases by other Government departments.

The Intergovernmental Technical Committee's responsibilities would include the following:

- (a) Advise on all matters relating to this Policy Framework;
- (b) Monitor trends in land ceilings and changes in land use;
- (c) Recommend to the Government appropriate corrective interventions;
- (d) Consider policy and legislative amendments that would improve the control of land in South Africa and meet the stated objectives of this framework;
- (e) Consider submissions on the norms and standards for land ceilings and make recommendations to the Inter-Ministerial Forum; and

Minister:

Page 22

Date:

GEN

- (f) Consult on, and provide advice regarding the norms and standards.

The Intergovernmental Technical Committee would comprise of a Core Group and, where relevant, also of other national departments. The Core Group would consist of officials from the:

- (a) Department of Agriculture, Forestry and Fisheries;
- (b) Department of Cooperative Governance and Traditional Affairs;
- (c) Department of Justice and Constitutional Development;
- (d) Department of Public Works;
- (e) Department of Rural Development and Land Reform (including the Chief Registrar of Deeds and the Chief Surveyor-General);
- (f) Department of Water and Environmental Affairs,
- (g) South African Local Government Association; and
- (h) National Treasury (including SARS).

Other Government departments may be invited from time to time, when the need arises, to form part of the intergovernmental Technical Committee. Additional experts may also be requested to advise the Intergovernmental Technical Committee with regard to specific matters, e.g. an agricultural expert in a case that involves agricultural land or the relevant municipal manager in a case affecting such a municipality. The District Land Reform Committees and the Intergovernmental Technical Forum should also work with the proposed Land Management Commission and Office of the Valuer-General on these matters.

6. INTER-MINISTERIAL FORUM

Existing inter-ministerial structures should be utilised to ensure cooperation between national, provincial and local government departments responsible and/or involved in land issues, as well as to ensure cooperation and consensus between different national departments on the policy and legislative framework.

A number of issues stimulated the debate including the failure of the market to redistribute land and the limitations presented by the willing-buyer-willing-seller mechanism for land reform purposes, increasing land prices, large-scale land consolidations since the 1990s resulting in the decrease of viable commercial farms on the market, undesirable land use changes, absentee landowners, and the need to promote effective land use, increase food production and ensure household and national food security.

The placing of restrictions on either the ownership and or use rights of agricultural land is a practice that has been known and is well documented as being part of a general development process of contemporary agriculture and the economic, social and political formations it was, and continues to be, a part of in the world. The circumstances and historical under which these restrictions were administered and the reasons advanced to explain and justify them were many and varied. They ranged from the overthrow of political orders by means of colonial, revolutionary or military means to set countries on specific social, economic and political paths of development.