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Martin Adams

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ACRONYMS AND ABBREVIATIONS

| | |
|--------|--|
| AFRA | Association for Rural Advancement |
| ANC | African National Congress |
| CFS | Community Facilitation & Support fund |
| DANIDA | Denmark's Department of International Development Co-operation |
| DANCED | Danish Co-operation for Environment and Development |
| DAC | Development Assistance Committee |
| DFID | Department for International Development, United Kingdom |
| DLA | Department of Land Affairs |
| EU | European Union |
| IMSSA | Independent Mediation Service of Southern Africa |
| LAPC | Land & Agriculture Policy Centre |
| LRCF | Land Reform Credit Facility |
| LRPP | Land Reform Pilot Programme |
| LRSP | Land Reform Support Programme |
| ODA | Official Development Assistance |
| PDLA | Provincial Office of the National Department of Land Affairs |
| RDP | Reconstruction and Development Programme |
| SDC | Swiss Agency for Development and Co-operation |
| SIPU | Swedish Institute for Public Administration |

EXECUTIVE SUMMARY

Land reform is generally accepted to mean the redistribution and/ or confirmation of rights in land for the benefit of the poor. Its potential scope is very wide. So also are the opportunities for donor support. This has been demonstrated in South Africa over the last five years where official development assistance has been extended to a variety of land reform measures.

The donor-funded programmes and projects in the Department of Land Affairs for the period of the Mandela government, 1994-1999, are summarised in Table 1. The bulk of the resources for the implementation of the land reform programme were provided by the government budget. Official development assistance provided complementary support.

Table 1: Grants to the South African Department of Land Affairs (1994-99)

| Source | Total Grant (millions) | Purpose |
|-----------------------------------|---------------------------------------|---|
| EU Denmark (Danida) UK-DFID | ECU 11,2 m DKK 52,3 m GBP 5,5 m | Land Reform Pilot Programme: to devise and test efficient, equitable and widely replicable means of transferring land to the rural poor and ways of providing them with access to basic needs and livelihoods. Land Reform Support Programme: to achieve a participatory, transparent, efficient and sustainable means for land reform by enhancing capacity in the DLA and other relevant institutions to deliver quality land reform at scale. |
| Ford Foundation | US\$ 0,9 m | Transformation of DLA: to strengthen the policy and analysis skills of staff to work effectively with rural communities and facilitate linkages with non-governmental organisations with expertise in rural policy and land reform |
| Netherlands | NLG 6,8 m | Land Restitution Trust: to supplement DLA funds and capacity of the Commission on the Restitution of Land Rights and in particular to support the research and mediation process arising from restitution claims. |
| Netherlands | NLG 1,5 m | Land Reform Mediation and Conflict Management: to provide dispute prevention resolution capacity to manage land and land related conflict. |
| Netherlands | NLG 1,0 m | Upgrading of Land Tenure in the Ex-Homeland Towns: to finalise the legal and administrative processes that will enable the transfer of affected urban land to the provinces and the upgrading of land rights of occupiers. |

| | | |
|------------------|------------|---|
| Switzerland | ZAR 6,72 m | Piloting of a Land Facilitation Service: to establish and operate three district-level DLA offices in two provinces where labour tenants and farm occupiers faced eviction and to assist the DLA with the enforcement of new tenure legislation. |
| Switzerland | ZAR 3,3 m | Tenure Reform Research and Test Cases: to assist DLA with the reform of tenure relations in the rural areas of the ex-homelands and draft new legislation. |
| Switzerland | ZAR 1,5 m | Tenure Security Project, KwaZulu Natal: to develop interventions that facilitate collaboration between landowners, tenant associations and the public and the private sector to promote stability and economic development within the rural economy. |
| Switzerland | ZAR 3,35 m | Development of Land Restitution Archives: to locate, collect together, sort and index documentary material, pertinent to the restitution process which was scattered throughout the country in government offices. |
| Belgium | ZAR 2,0 m | The Land Restitution 'Stake Your Claim Campaign': to inform potential claimants of their right to lodge claims before the cut-off date. |
| Denmark (Danced) | DKK 14,8 m | Integration of Environmental Planning into Land Reform: to insure that institutional arrangements, procedures and guidelines for incorporating environmental concerns into land reform are reflected in DLA policy and to build the capacity and knowledge of officials and NGOs in these matters. |

Donor funds were used for a range of activities directly related to the delivery of the three principal components of the South African national land reform programme, namely land restitution, redistribution and tenure reform.

Funds were applied to research and policy development, the piloting of initiatives and different approaches, particularly in the development of market-assisted land redistribution, tenure reform and initiatives to support new land rights legislation for people living on freehold farms (farm occupiers and labour tenants).

The assistance added value to government's land reform budget by providing funds for research, mediation and conflict management, community facilitation and technical assistance for the resolution of technical and legal problems. Disbursement of donor funds took place via a number of mechanisms: via the National Treasury; by the establishment of a trust to avoid lengthy government

procedures; by channelling funds through NGOs and established accounting and engineering firms.

Donors did not set the agenda for land reform in South Africa. Agreements were based on requests from the government to support components of the national land reform programme already laid down in the initial policy document of the RDP (1994) and the White Paper on South African Land Policy (DLA, 1997).

The overarching rationale for assistance to the government's land reform programme was the desire to support a peaceful transition to majority rule, devoid of conflict over land. The subtext was the provision of land to the poorest segment of the population. At the time of the transition to majority rule, there seems to have been little disagreement about the purpose of land reform, even if it is more broadly debated today.

Given this consensus regarding the aims of land reform in South Africa, the assistance offered did not unduly influence the nature and direction of the government's programme. It merely served to reinforce and complement a programme, to which South Africa was already contributing the lion's share.

From the outset, both the donors and the DLA were sensitive to the issue of foreign technical assistance. It was recognised by both parties that the involvement of foreigners could be a source of tension in matters as politically sensitive as land policy and the planning and implementation of land reform. Foreign technical assistance was therefore not a condition attached to donor funding. The bulk of technical assistance has been sourced in South Africa with funds provided by the donors.

In the case of the Land Reform Pilot Programme and the Land Reform Support Programme, which provided the bulk of donor funding, a South African technical assistant directly assigned by the EU became responsible for the *de facto* day-to-day co-ordination and management of donor inputs. The person had an advisory and not an executive role. While he remained, there was reluctance on the part of the departmental officials to take over executive responsibility. The management of the LRSP was eventually taken over by the DLA, not before it was due.

From an early stage, the DLA was heavily dependent on South African staff contracted with donor funds because a new government function, land reform, had to be established from scratch. For the first few years, many of the establishment posts remained vacant. However, concern grew that the situation was not sustainable.

Problems arose when long-term contract staff, funded by external sources, were perceived to be essential for the continued operation of the programme, but could not be absorbed by the establishment in the absence of posts or because they were hired at rates that were unaffordable at government salary scales. These problems are being overcome, but with difficulty. This is particularly true in land rights work relating to tenure laws, which aim to protect farm workers and labour tenants.

The arrangements made by the Department for out-sourcing the administration of donor funds for various tasks (e.g. technical assistance, government staff and

NGO training, community facilitation and support) to business firms have proved helpful in the establishment of the land reform programme. This is in view of the large number of land reform projects that the Department undertakes and for which it must provide community facilitators and technical support. The outsourcing of these functions aids transparency and allows the DLA managers to focus on strategic issues and to cut back on administrative staff. The regular reports prepared by the administering agencies, with details of expenditure and assessments of the performance of service providers (based on the written reports of the DLA officials responsible for supervising them), are a useful independent source of information for the donors. Consideration should seriously be given to allowing the agencies to monitor service providers more closely where they feel that this is necessary.

In the wake of the land-related conflict in neighbouring Zimbabwe, attention has once again been drawn to the paucity of funds allocated to land reform in South Africa, as a proportion of the total government budget. This tends to obscure the fact that inadequate administrative capacity is a recurring problem in land reform the world over and the principal factor constraining delivery in South Africa. A numerous and widely deployed army of well-trained field staff, with the necessary administrative and legal support, is essential to inform people of their entitlements and to facilitate the many and complex tasks involved in the processes of land redistribution and confirmation of rights.

The long drawn out process of establishing and re-engineering the Department of Land Affairs diverted officials from attending to the Department's core business. In the period 1994-99, its voted budget as well as ODA was consistently under spent. It was not until 1998/99 that the Department managed to spend 80% of its voted funds. By that time, its staff establishment was more or less adequate to spend its allocated budget, but wholly inadequate to support the scale of redistributive reform called for in the RDP manifesto (ANC, 1994).

Notwithstanding the very great strides made in the last five years, the overall performance leaves no room for complacency. Despite a degree of weariness with providing assistance to land reform on the part of at least one major partner, South Africa's friends are expected to continue to show an active interest in assisting with the resolution of the nation's central agrarian problem. This report provides a record of the development co-operation in the sector to date.

1 BACKGROUND TO LAND REFORM IN SOUTH AFRICA

1.1 THE CASE FOR LAND REFORM

Prior to the dismantling of apartheid legislation at the beginning of the 1990s, some 87% of South Africa's land resources were owned by (or reserved for) whites (12,6% of the population). Land for black people was effectively limited to the remaining 13% of land in the former homelands, state-owned land under customary forms of tenure. This land was very often agriculturally marginal due to its location, over-cultivation and over-stocking, which arose from insecure tenure, overcrowding and low investment in land improvement.

The inequality of land ownership in South Africa mirrored massive inequality in the distribution of income and other assets, as well as access to services. Unemployment was as high as 40% and the poverty rate 53% - three quarters of the poor lived in the rural areas.

The underlying problem to be tackled was the unravelling of the preferential treatment of white commercial farmers and the resulting imbalances that had characterised apartheid, while ensuring that the economy functioned at a level that would generate equitable growth and incomes. While the share of commercial agriculture had been falling and was currently contributing only 5% to GDP and 10% to employment, it was perceived that it had the potential to create employment and raise incomes of the rural population.

The case for South Africa's land reform and its scope were set out in the initial policy document of the Reconstruction and Development Programme (ANC, 1994):

2.4.1 Land is the most basic need for rural dwellers. Apartheid policies pushed millions of black South Africans into overcrowded and impoverished reserves, homelands and townships. In addition, capital intensive agricultural policies led to the large-scale eviction of farm dwellers from their land and homes. The abolition of the Land Acts cannot redress inequities in land distribution. Only a tiny minority of black people can afford land on the free market.

2.4.2 *A national land reform programme is the central and driving force of a programme of rural development. Such a programme aims to redress effectively the injustices of forced removals and the historical denial of access to land. It aims to ensure security of tenure for rural dwellers. And in implementing the national land reform programme, and through the provision of support services, the democratic government will build the economy by generating large-scale employment increasing rural incomes and eliminating overcrowding.*

The RDP must implement a fundamental land reform programme. This programme must be demand-driven and must aim to supply residential and productive land to the poorest section of the rural population and aspirant farmers. As part of a comprehensive rural

development policy, it must raise rural incomes and productivity, and must encourage the use of land for agricultural, other productive or residential purposes

The land policy must ensure security of tenure for all South Africans, regardless of their system of land-holding. It must remove all forms of discrimination in women's access to land.

2.4.14 The land reform programme, including costing, implementing mechanisms, and a training programme, must be in place within one year after the elections. The programme must aim to distribute 30 per cent of agricultural land within the first five years of the programme. The land restitution programme must aim to complete its task of adjudication in five years

The White Paper on South African Land Policy (DLA, 1997) states that the case for the government's land reform policy is four-fold:

- ◆ To redress the injustices of apartheid
- ◆ To foster national reconciliation and stability
- ◆ To underpin economic growth, and
- ◆ To improve household welfare and alleviate poverty.

It argued that by helping to create conditions of stability and certainty – both nationally and at the household level – land reform was essential for sustainable growth and development in South Africa.

As anticipated in the 1994 RDP policy framework, government's land reform programme has had three elements, all of which are provided for in the Constitution

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.

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.

A person or community dispossessed of property after 19 June 1913 as a result of 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.

Chapter 2: Bill of Rights, Act 108 of 1996

1.2 PROGRAMME ELEMENTS

1.2.1 Land restitution

The purpose of the Land Restitution Programme is to restore land and provide other remedies to people dispossessed by racially discriminatory legislation and

practice. This is to be done in a way that will support the process of reconciliation and development, and with due regard to the over-arching consideration of fairness and justice for individuals, communities and the country as a whole.

The government's policy and procedure for land claims are based on the provisions of the Constitution (Chapter 2 Bill of Rights quoted above) and the *Restitution of Land Rights Act, 22 of 1994*. A restitution claim qualifies for investigation by the Commission on Restitution of Land Rights provided that the claimant was dispossessed of a right in land after 19 June 1913, as a result of racially discriminatory laws or practices, or was not paid just and equitable compensation. Restitution can take the form of the following: restoration of the land from which claimants were dispossessed; provision of alternative land; payment of compensation; alternative relief comprising a combination of the above; or priority access to government housing and land development programmes.

The state aims to compensate certain successful claimants where restoration of the land and other remedies are not appropriate. Landowners whose land is expropriated for the purposes of restoring land to successful claimants are compensated in a just and equitable manner.

1.2.2 Land tenure reform

Under the Constitution, the government is obliged to develop laws which set out the interests in land which were undermined by discriminatory laws and ensure that such interests in land are legally secure. Tenure reform must address a range of problems arising from settler colonisation and dispossession.

Many of the areas referred to as 'communal' were deliberately created to further colonial policies. They served as reservoirs for cheap migratory labour. A factor complicating post-transition attempts to dismantle the apartheid map is the complex and unstructured nature of the legislation governing the communal areas, much of which has yet to be repealed. Under these laws, officials of provincial governments still issue 'permissions to occupy'.

Without the *Interim Protection of Informal Land Rights Act, 31 of 1996*, the great majority of people (31.4% of the national population) would have no right, independent of the will of the state, to occupy or use their land. Work is in progress on the drafting of legislation which, it is hoped, will provide for far-reaching land tenure reform in the rural areas of the ex-homelands and the former South African Development Trust, all of which land which is registered in the name of the State.

1.2.3 Land redistribution

During the Mandela presidency, Land Redistribution aimed to provide the disadvantaged and the poor with land for residential and productive purposes. The government developed a single, yet flexible, grant mechanism to embrace the wide variety of land needs of applicants. Land redistribution took several forms (e.g. group settlement with some production; group production;

commonage schemes; on-farm settlement of farm workers and farm worker equity schemes).

Under the *Provision of Land and Assistance Act, 126 of 1993*, the government assisted eligible persons to obtain a Settlement/Land Acquisition Grant to a maximum of R16 000 to purchase land directly from willing sellers, including the State. Because land was unavailable in small grant-sized parcels, people wishing to acquire land formed groups to purchase farms. By mid-1999, some 600 000 hectares had been redistributed to about 35 000 households, about 0.6 per cent of the country's total area of arable and natural pastures.

1.3 GENESIS OF THE DEPARTMENT OF LAND AFFAIRS

In 1994, following South Africa's first democratic elections, the new Department of Land Affairs came into being. It emerged through a series of restructuring exercises involving the bureaucracy existing at that time. It drew its staff from a number of different tributaries of the old government:

- ◆ the Chief Directorate Land Surveying and Information
- ◆ the Chief Registrar of Deeds
- ◆ the Chief Directorate Physical Planning
- ◆ the Office for Regional Development and the Department of Development Aid

The last-mentioned structure contained personnel who had been instrumental in laying out the apartheid map of the so-called independent states and self-governing territories. Thus, from the beginning, the challenge for the new department has been to build a shared organisational culture. This has now been largely achieved. Although transformation is not yet complete, the majority of those now responsible for the planning and implementation of land reform are drawn from a different generation of South Africans, both in terms of attitude and ethnic diversity.

Pre-existing and newly recruited personnel have been reorganised into the structure. From the point of view of land reform, there are currently two key branches, Land Reform Policy and Land Reform Implementation. As part of the ongoing land reform re-engineering process, these are soon to be merged into a single branch.

The long drawn out process of establishing and re-engineering the Department of Land Affairs diverted officials from attending to the Department's core business. In the period 1994-99, its voted budget as well as ODA remained consistently under spent. See Appendix 2.

1.3.1 Milestones in the institutional development of the DLA

The two-year **Land Reform Pilot Programme (LRPP)** was established in November 1994 and financed by the Reconstruction and Development Programme. The project document (DLA, 1994) stated that the LRPP had the following key aims:

- ◆ To initiate land transfer to landless and disadvantaged rural people, especially women;
- ◆ To establish them as self reliant lease-holders and owners;
- ◆ To test the most appropriate financing mechanisms for land transfers, and for infrastructure provision;
- ◆ To test the most appropriate administrative structures and systems for the implementation of a decentralised land reform programme, including the management of common property resources, where this is required.

The programme was implemented in nine pilot districts, one in each province, by way of agency agreements between the national DLA and the Directors-General of the provinces, each of which designated a responsible provincial department to implement the programme. The arrangement was necessary because the newly created national Department of Land Affairs had inadequate administrative capacity at provincial level.

Each LRPP office dealt with redistribution projects in its district, which involved face-to-face contacts and facilitation with communities and associated NGOs. A provincial Land Reform Steering Committee was chaired by the responsible provincial department, sometimes the responsible provincial minister, with a secretariat provided by that department or by the national DLA's newly established provincial office.

Funding for the pilot projects (i.e. for project planning, land acquisition, and settlement) was provided by the national DLA, via the responsible provincial department.

Funding of bulk infrastructure and post-settlement support services was meant to be provided by the budgets of provincial government departments, but the provincial sphere of government was unwilling or unable to provide post-settlement support to land reform farmers. The Land Reform Pilot Programme was wound up by 1997 having redistributed about 125 000 ha of land to about 8500 households. In most cases, the people who were employed on the programme were subsequently hired by the newly established DLA provincial offices (DLA, 1996).

In 1994, when the DLA started work, there were only four regional offices located outside Pretoria (excluding offices of the Survey and Deeds Branch). Provincial offices of the DLA were established in the new provinces over a period of eighteen months, beginning in early 1995. Recruitment and training of staff to fill provincial-level vacancies have been ongoing since that date. As early as February 1996, the Department of Land Affairs made known its intention to establish district land offices (DLA, 1996a) The White Paper on South African Land Policy (DLA, 1997) states:

In the long-term, the vision is for a decentralisation of functions to the local government level. The long-term success and sustainability of the land reform programme is to a large extent dependent on the ability of potential beneficiaries to be able to access the programme easily, and to have a clear understanding of what assistance they can get from government. The commitment to decentralised delivery in the long term is founded on a belief that this is the only viable way to ensure effective

participation in the programme. Providing services close to the local level, where delivery can most effectively take place, requires the development of a local-level land administration. Building the capacity for this will be a long-term process. It will require strong support at the provincial level. (pp 96-97)

In mid 1999, the DLA was in the final stages of putting its district-level offices in place. Within each province, there were to be five or six district offices at the level of the local government district. The DLA recognised that only by working closely with district local government would land reform be a central component of rural development.

1.4 THE ROLE OF OFFICIAL DEVELOPMENT ASSISTANCE

1.4.1 International background

In the restructuring which followed World War II, a major objective of donor support to land reform was to break up feudal estates and prevent the advance of communist revolution. Reforms in East Asia (e.g. Japan, Taiwan, South Korea) were comprehensive, creating a class of independent property-owning peasants and alleviating poverty and landlessness. After initial enthusiasm in the post-war period, land reform fell out of favour with donors from the early 1970s (Adams, 1995). Land reforms in Africa, for example, were perceived to have increased state power and patronage in ways that were considered inconsistent with traditional land reform objectives.

However, in the 1990s, decollectivisation and privatisation in the former socialist economies provided a new dimension to land reform. Once the Cold War was over and attitudes to land reform became less polarised, land reform won the support of donors in the Philippines. In South Africa, where the racially skewed ownership of land was under challenge and where market-based measures to achieve land redistribution in favour of blacks were being tried, donors were keen to provide assistance to redistributive land reform.

In the context of post-colonial Africa, the role of donors in land reform has not been without controversy. Colonial associations have continued, with the British involved in Kenya, Zimbabwe, Uganda and South Africa, the Belgians in Rwanda, the French in Mali, etc. Relations with the former colonial powers have not always been amicable.

In Zimbabwe, controversies over land have dogged relationships between the British and Zimbabwe governments for the last twenty years. ODA in an area so politically contentious as land reform can never be unproblematic. In the eyes of Sam Moyo, the real aim of donors in Southern Africa is to block radical land reform, rather than encourage it (Moyo, 2000).

The contentious history of land reform has affected what donors are prepared to fund. Neither the European Union nor the World Bank is allowed to fund compensation to landowners. Given the fungibility of aid funds, their unwillingness is not entirely logical. Under an amendment to the US Foreign Assistance Act in 1985, Congress permitted the funding of compensation to

landowners provided that the President deemed it in the US national interest. The UK government, in an immediately post-colonial situation, has financed land acquisition from white settlers in Kenya, Swaziland and Zimbabwe.

The funding of land acquisition can be a difficult area for purely operational reasons. These relate to difficulties associated with the valuation of farms and the auditing of transactions. Valuation of fixed-property is not an exact science, especially where government is entering the market in a major way. There may be few, if any, truly independent valuers.

Even a national land bank's valuers may have an interest in 'talking up' land values, if they hold a large portfolio of farm property arising from unpaid mortgages. Comparative market sales, normally the basis for arriving at the market value of a farm, might not provide a good indication of current market value, because the number of such transactions may be too limited in extent or not transparent. These uncertainties can open up opportunities for corruption by officials and make accusations of malpractice and favouritism difficult to refute.

1.4.2 Recent developments

Over the last five years, South Africa has been an important arena for the development of land reform policy. Events have been followed with close interest by international agencies, particularly the World Bank and bilateral donors such as UK and the Netherlands. As a result, donor policies have been influenced in the process. The attitude of donors to the provision of assistance to land reform, particularly tenure reform, has changed significantly.

In 1975 the World Bank issued a Land Reform Policy Paper which recommended:

- ◆ formal land titling as a precondition of modern development;
- ◆ the abandonment of communal tenure systems in favour of freehold title and sub-division of the commons;
- ◆ the promotion of a land market to bring about efficiency-enhancing land transfers;
- ◆ and support for land redistribution on both efficiency and equity grounds

In the light of practical experience gained in Sub-Saharan Africa, including South Africa, and continuing policy debate since then, the Bank has now considerably revised its guidance (Toulmin and Quan, 2000).

The Bank now recognizes that:

- ◆ communal tenure systems can be a more cost-effective solution than formal individual title, if transparency and local accountability can be assured;
- ◆ the circumstances in which land titling is in the interests of the poor are limited, especially where credit is not widely available to the rural poor;
- ◆ titling is likely to be biased in favour of the rich and precautions against land-grabbing need to be taken;
- ◆ widespread market distortions limit the effectiveness of land markets in enhancing efficiency and equity;
- ◆ there can be greater benefits from the development of land rental markets;

- ◆ more flexible and decentralised alternatives to private titling or public ownership and state-led land distribution can be developed.

The underlying theme in current Bank policy is that secure, transparent and enforceable property rights are critical for investment and economic growth.

Within Africa, the World Bank is now engaged in the promotion of:

- ◆ land policy reforms to reflect the new understanding and to eliminate conflicts between dual systems of rights;
- ◆ pilot programmes to register and adjudicate customary rights and provide titles on a communal basis;
- ◆ and piloting of negotiated and market-based programmes for land redistribution and for this purpose the Bank recently agreed a Learning and Innovation Loan for Zimbabwe (World Bank, 1999).

In addition the World Bank now places more emphasis on gender rights, on those of pastoralists, and on the importance of stakeholder participation in inclusive land policy processes, partnerships with civil society, and building capacity of local institutions for decentralised land management.

Land reform policy seems to be an area where there is high level of consensus among donors. At the World Bank's Rural Week, at the end of March 2000, representatives from eight national and multilateral donor organisations, met to discuss their strategy related to land policy and administration as well as possible next steps and joint actions to implement these strategies.¹ The meeting revealed a high degree of agreement on the central aspects of land policy.

These included the objective of establishing a sound legal and institutional framework, improving the functioning of land markets, and helping the poor gain and maintain access to land and other critical assets (World Bank, 2000).

In particular, all of the agencies agreed on the following:

- ◆ Land policies and institutions are a critical determinant for the ability of the poor to accumulate assets, sustainable resource use, agricultural productivity, financing of local government, the development of financial markets, and in many cases a post-conflict reconstruction.
- ◆ Without having a good governance structure and a coherent and consistent policy framework, complemented by an institutional environment to implement such a policy, interventions in the area of land policy will not achieve their objectives and can actually do more harm than good.
- ◆ As most client countries have largely completed measures of macro-economic adjustment there has been a significant increase in demand for assistance in land policy issues, which have become to be recognised as essential for removing longer-term structural obstacles to development.
- ◆ Policy formulation needs to involve civil society at large, with a strong element of capacity building. Experience shows that community-based

¹ AusAID, DFID, FAO, GTZ, IDB, the Popular Coalition for the Eradication of Hunger and Poverty, USAID, and the World Bank

approaches at the local government level have great potential to demonstrate how even politically very sensitive issues of land access and conflict resolution can be resolved.

- ◆ The current openness [of governments to take a fresh look at land policy, and for donor agencies to assist] provides a window of opportunity to deal with deep-rooted structural problems. Missing it could well imply that maldistribution of assets and all the associated problems will, once again, turn into an obstacle to prevent peaceful and inclusive development in many client countries (e.g. South Africa, Nicaragua, Zimbabwe).

1.4.3 Background to ODA for land reform

The justification for donor assistance to land reform in South Africa is encapsulated in the various project documents. Generally the overarching goal has been the alleviation of rural poverty and injustices caused by previous apartheid policies. The underlying case for donor support may be more textured.

Prior to the official opening of negotiations in 1990, the ANC had stated:

The redistribution of the land is the absolute imperative of our conditions, the fundamental national demand. It will have to be done, even if it involves some economic cost, in order to continue to mobilise the people whose support has brought the democratic forces to power. (Slovo, 1986).

Since the mid-1950s and the days of the Freedom Charter, the ANC had put nationalisation forward as the mechanism necessary to redress decades of dispossession and destruction of black property and economic rights. Anthony Sampson (1999), in his authorised biography of Nelson Mandela, describes how these ideas were not abandoned by the leadership until 1992. Fears of nationalisation had caused widespread concern among white farmers, business people as well as foreign governments. DAC countries were understandably keen to support the search for alternatives to nationalisation and the expropriation of assets.

From 1990, the World Bank entered into a series of dialogues with prospective policymakers in South Africa concerned with housing and urban issues, education, health, land and agriculture and macro-economic strategy. It took the lead in the early stages of preparing the Rural Restructuring Program for South Africa.

In February 1992, the World Bank initiated a report on the agricultural sector. In November, the World Bank and the UNDP organised a workshop in Swaziland on international experience in selected areas of agricultural policy and land reform. The purpose of the workshop was to review experience and to explore implications for South Africa (Christiansen, et al 1993). At the Land Redistribution Options Conference in 1993, the World Bank put forward proposals for market-assisted land redistribution in South Africa (LAPC, 1994).

From 1993, a number of donors assisted the Land and Agriculture Policy Centre (LAPC), the think tank on these matters for the ANC government-in-waiting. The

European Union financed the core budget of LAPC. Danida provided funds for the development of a South African land reform policy from 1993 - first through a multi-lateral arrangement with the World Bank, later through allocation of bilateral funds. The UK Government assisted the LAPC from its establishment in February 1993. The explicit purpose was to develop capacity in the rural and agricultural sector policy, particularly on the improvement of the position of low-income and politically disadvantaged groups.

2 ODA TO DEPARTMENT OF LAND AFFAIRS (1994-99)

2.1 THE CONTEXT OF ASSISTANCE

On coming to power, the ANC government was quick to reassure landowners that land redistribution would proceed according to market principles and in line with of the interim constitution and the bill of rights, which was negotiated by South Africa's main political groups during 1993, independent of any external influence.

Section 28 of the *Constitution of the Republic of South Africa, Act 200 of 1993* provided that every person had the right to acquire and hold rights in property and that no deprivation of any rights in property was permitted except by law. In the event of any rights in property being expropriated by law, such expropriation would be permitted only for public purposes and would be subject to the payment of compensation. This section became known as the 'property clause' in the Act's chapter on Fundamental Rights. Foreign donors were keen to assist the ANC government through the Department of Land Affairs to deliver on its undertakings and ensure that the transition to majority rule would not be disrupted.

The Department of Land Affairs, charged with implementation, emerged through a tortuous restructuring of the old-order bureaucracy, drawing its staff from a number of different tributaries of the former government. The new Minister of Land Affairs inherited the former Department of Regional and Land Affairs, within which Land Affairs was a relatively small component of a large bureaucracy.

Land Reform was established as a Chief Directorate in the Department in 1991 following the abolition of the 1913 and 1936 Land Acts. From the time that it received its first budget in 1993, its work expanded enormously, but its resources and staff numbers were unequal to the great demands made upon them (DLA, 1994).

Technical assistance to the new Department was perceived by the donors to be of the utmost importance. On the other hand, the former non-governmental land reform advocacy group, which was spearheading policy development and piloting implementation in the DLA, was not over anxious to accept foreign technical assistance. They were confident in their own abilities and had experienced tense relations with the World Bank's early initiative to influence the land reform policy process (see Williams, 1996). (Technical Assistance is further discussed in section 3.5).

ODA agreements were based on requests to support the components of the national land reform programme already laid down in the initial policy document of the RDP (1994). The bulk of the resources for the implementation of the programme emanated from the government budget. ODA provided complementary support.

The donor-funded programmes and projects in the Department of Land Affairs for the period of the Mandela government, 1994-1999, are listed in Table 2.1. Under a separate project, DFID funded a Rural Strategy Unit in the Free State, which was concerned, amongst other things, with policy development for the land reform programme in the province. In Northern Cape Province, the Swedish Institute for Public Administration (SIPU) was assigned by SIDA to advise and assist the provincial government to co-ordinate the work of the Ministry of Agriculture, Environment and Land Reform.

Table 2.1: ODA to the Department of Land Affairs (4/1994-7/1999)

| Donor | Purpose | Managing & Administering Agency | Total Grant ¹ | Term | Disbursement ² | Notes |
|--------------------------------------|-------------------------------|---------------------------------|----------------------------------|---------------------|--|--|
| EUROPEAN UNION | Land Reform Pilot Programme | DLA | ZAR 53 000 000 ECU 11 230 000 | 4/96 - 3/98 | ZAR 27 432 000 | DSE data 06/09/99 |
| | Land Reform Support Programme | DLA, Africon & PWC | Rolled over | Extended to 3/2001 | | |
| UK-DFID | Land Reform Pilot Programme/ | DLA/ Africon & PWC | ZAR 30 360 000 GBP 5 500 000 | 5/96 - 5/98 | ZAR 12 901 000 ³ | DSE data 06/09/99 Excludes TA for which GBP 626 518 was disbursed direct up to 7 August 1999. |
| | Land Reform Support Programme | DLA | Rolled over | Extended to 3/2001 | | |
| DENMARK (DANIDA) | Land Reform Pilot Programme | DLA | ZAR 29 749 000 DKK 52 300 000 | Extended to 12/1998 | ZAR 29 749 000 | DSE data 06/09/99; Closed |
| (FORD FOUNDATION)⁴ | Transformation | LAPC | ZAR 1 302 000 US\$ 325 000 | 2/95 - 1/97 | ZAR 1 301 710 | DLA data; Closed |
| | Transformation | LAPC | ZAR 2 757 000 US\$ 600 000 | 2/97 - 3/99 | ZAR 2 287 000 US\$ 500 000 ⁵ | Audit in progress |

| Donor | Purpose | Managing & Administering Agency | Total Grant ¹ | Term | Disbursement ² | Notes |
|------------------------|--|--|--------------------------|---------------------------------|---------------------------|--------------------|
| SWISS (SDC) | Land reform services Ermelo, Mpumalanga | IDASA/ Loxton, Venn & Associates | ZAR 2 036 000 | 1/97 - 3/99 | ZAR 2 036 000 | Closed |
| | Land reform services extension | IDASA/ Loxton, Venn & Associates | ZAR 920 488 | 1/99 - 12/99 | Not available | |
| | Land reform services Vryheid & Port Shepstone KwaZulu Natal | AFRA | ZAR 3 766 764 | 1/97 - 3/99 | ZAR 3 236 172 | DLA data |
| | Tenure security project KwaZulu Natal | AFRA | ZAR 1 542 323 | 8/98 - 7/00 | ZAR 750 000 | DLA data |
| | Tenure reform test cases etc. | Africon | ZAR 3 314 362 | 1/1997 - 3/1999 Ext to 12/99 | ZAR 2 814 362 | DLA data |
| | Land Restitution Archives | Deloitte & Touche | ZAR 3 351 798 | 3/1998 - 2/99 Ext to 8/1999 | ZAR 3 351 798 | DLA data Closed |
| | Tenure reform; piloting of land rights legislation ⁶ | Africon | ZAR 6 001 900 | 7/99 - 6/01 | Nil | |

| Donor | Purpose | Managing & Administering Agency | Total Grant ¹ | Term | Disbursement ² | Notes |
|-------------------------|---|---------------------------------|--|-------------------------------------|----------------------------|------------------------------|
| NETHERLANDS | Land Restitution | Land Restitution trust | ZAR 15 714 000 NLG 6 836 000 (Forex Increase ZAR 20 354 000) | 11/96 - 3/ 99 Extended to 3/2000 | ZAR 13 154 258 | DLA data |
| | Land Reform Mediation Panel | IMSSA | ZAR 1 835 257 | 12/95 - 8/96 Ext to 3/97 | ZAR 1 835 257 | DLA data; Closed |
| | Nat. Land Reform Conflict Management | IMSSA | ZAR 1 615 184 | 4/97 - 3/98 | ZAR 1 615 184 ⁷ | DSE data 15/12/97; Closed |
| | Sectoral budget support: transfer of township land to Provincial Govts. | DLA & Africon | ZAR 2 976 000 NLG 1 000 000 | 1/99 - March 2000 | ZAR 1 474 394 | DLA data 9/99 |
| BELGIUM | Restitution: National Information Campaign | Land Restitution Trust | ZAR 2 000 000 BEF 12 000 000 | 1/1998 - 12/98 | ZAR 2 000 000 | Closed |
| DENMARK (DANCED) | Integration of Environmental Planning into Land Reform | DANCED/Dana gro | ZAR 9 900 000 DKK 14 839 000 | 9/1996 - 3/2001 | Not available ⁸ | |

Principal source: Land Reform Policy Branch, DLA (file donor/donor99a; 1 October 1999)

Notes:

- 1 These figures represent the amount in rand at the time of signing the agreement. Commitments were invariably made in foreign exchange. In most cases, the rand value of the grant was subsequently adjusted upwards to take into account exchange rate changes and/ or interest accrued.
- 2 Data on disbursement are incomplete and represent the information available at the time of the review in March 2000.
- 3 Excludes UK technical assistance costs disbursed direct. These amounted to GBP 626 518 on 7 August 1999. Some GBP 2,9 million remained to be disbursed at that date. (Email dated 7 August 1999 from Emily Singini at DFID-SA to Martin Adams at DLA)
- 4 Technically this does not fall under the definition of 'Official Development Assistance', not being government to government..
- 5 US\$ 500 000 transferred to the LAPC by Ford Foundation but still unaccounted for; funds were to be used for both Land Affairs and Agriculture but no separate record of allocation available. Audit in process.
- 6 The disbursement of the grant awaits a review of tenure reform policy by the Ministry.
- 7 An amount of ZAR311 802 was unspent within the budget year ending 3/98. No authority given by the donor for expenditure beyond that date.
- 8 The Chief Technical Adviser in collaboration with Danagro administers the DANCED funds. The initial feasibility study conducted in 1996/7 was contracted to the Land and Agriculture Policy Centre by DANCED.

Table 2.2: Capital and current budgets voted by Parliament for land reform (Restitution, Redistribution, Tenure Reform) 1994/95-1999/2000 (excludes donor funds)

| Financial Year | ZAR | TOTAL ZAR |
|------------------|-------------|-------------|
| 1994/95 | 92 714 000 | 92 714 000 |
| 1995/96 | 312 365 000 | 559 565 000 |
| + RDP allocation | 247 200 000 | |
| 1996/97 | 480 143 000 | 850 043 000 |
| + RDP allocation | 369 900 000 | |
| 1997/98 | 447 172 000 | 447 172 000 |
| 1998/99 | 497 608 000 | 497 608 000 |
| 1999/2000 | 491 504 000 | 491 504 000 |

Note that in all years the Department did not necessarily spend voted funds (see Appendix 2) and that budgets were augmented at the end of each year by the Adjustments Budget (which is not specified here). These budgets exclude funds allocated to senior management current costs and exclude financial management functions that serve the Department as a whole.

2.2 THE JOINTLY-FUNDED LAND REFORM PILOT PROGRAMME (LRPP) AND THE LAND REFORM SUPPORT PROGRAMMES (LRSP)

The Land Reform Pilot Programme, financed under the Reconstruction and Development Programme, was established in November 1994 by the Department of Land Affairs.

The pilot land redistribution programme was the outcome of studies by South African NGOs, universities and research institutions, both prior to and following the change of government. The initial LRPP project document (DLA, 1994) stated the donor funds would be sought for the programme. In early 1995 an appraisal mission was sent to Pretoria by Denmark, UK and the EU, all of which had been assisting the LAPC.

The initiative for a combined donor mission came from the DLA so as to reduce the administrative burden for the Department, which also asked that the donors put together a joint agreement for financial and technical support.

The financing proposal drafted by the appraisal mission for DLA, requested assistance for the following principal activities over the period 1996/97-97/98 (DLA, 1995):

- ◆ the operations of nine pilot district Land Reform offices;
- ◆ the development of implementation procedures for transferring land title to landless people, tenants and farm labourers;
- ◆ participatory planning of land settlement and development; and
- ◆ the delivery of services and infrastructure.

The planned commencement of donor funding was January 1996. ZAR 45,00 million was the sum needed from donors to reach the total of ZAR 315,81

million, the amount initially budgeted by DLA for the LRPP, following the commitment of ZAR 270,81 million by the RDP (see Table 2.2).

The apportionment of the ZAR 45,0 million among the donors was based on an initial pledge by Denmark of ZAR 19,5 million and an equal split of the balance of ZAR 25,50 million between EU and UK. The proposed allocation between funding partners in currency equivalents was as follows: Denmark, ZAR 19,5 million (c. DKK 30,0 million) under the Danish Transitional Assistance Fund to South Africa; European Union, ZAR 12,75 million (c. ECU 2,7 million); UK, ZAR 12,75 million (c. GBP2,3 million).

RDP funds were to be used for all components; Danish and UK funds for all components except land acquisition; and EU funds for homestead basic needs grants only. Funds for the LRPP were initially to be equally divided between provinces and rolled over from year to year.

Table 2.3: Estimated LRPP project costs (Million ZAR)

| Financial/Project Year | 1996 | 1997 | Total |
|--|---------------|---------------|---------------|
| (i) District Management and Facilitation | 9,90 | 8,10 | 18,00 |
| (ii) Planning Grants | 23,60 | 3,40 | 27,00 |
| (iii) Land Acquisition Assistance Grant | 67,80 | 24,00 | 91,80 |
| (iv) Surveys and Land Transfer | 9,26 | 1,00 | 10,26 |
| (v) Homestead Basic Needs Grant | 84,37 | 84,38 | 168,75 |
| Total | 194,93 | 120,88 | 315,81 |
| From donors | 22,50 | 22,50 | 45,00 |
| From RSA | 172,43 | 98,38 | 270,81 |

To soak up available ODA resources in excess of the initially requested input of ZAR 45,00 million, the Department also secured donor funds for so-called extension areas to the Pilot Districts.

These areas were to be identified at a later date, applying lessons learned in the pilot districts. In addition to the above components, the appraisal mission recommended, and the donors and DLA accepted, that an additional ZAR 23,35 million be set aside for training, community facilitation, *ad hoc* technical assistance, and communications (Table 2.3).

Table 2.4: LRPP Consolidated Donor Contribution (Million ZAR) (source: DLA 1955)

| PROGRAMME | 1996 | | | 1997 | | | Total |
|---|--------|-------|-------|--------|--------|--------|--------|
| | DK | EU | UK | DK | EU | UK | |
| LRPP PILOT PROGRAMME | 9,75 | 6,375 | 6,375 | 9,75 | 6,375 | 6,375 | 45,0 |
| LAND REDISTRIBUTION EXTENSION | | | | 5,0 | 32,5 | 8,5 | 46,0 |
| APPENDIX I | | | | | | | |
| NGOs Training and Capacity Building (Interfund) | 2,25 | 2,25 | | | 4,5 | | 9,0 |
| DLA Staff Training (LAPC) | 1,62 | | | 1,62 | | | 3,24 |
| LRPP Communications (DLA) | 1,5 | | | 1,5 | | | 3,0 |
| TA fund for LRPP (LAPC) | | | 4,055 | | | 4,055 | 8,11 |
| TA seconded by donors | 0,5 | 0,5 | 0,5 | 0,5 | 0,5 | 0,5 | 3,0 |
| Subtotal | 5,87 | 2,75 | 4,555 | 3,62 | 5,0 | 4,555 | 26,35 |
| APPENDIX II | | | | | | | |
| Land reform research, LRPP reviews, LRPP M & E (LAPC) | 7,565 | | | 7,565 | | | 15,13 |
| Total | 23,185 | 9,125 | 10,93 | 25,935 | 43,875 | 19,43 | 132,48 |
| Disbursed through DLA | 11,25 | 6,375 | 6,375 | 16,25 | 38,875 | 14,875 | 94,0 |
| Disbursed through LAPC | 9,185 | | 4,055 | 9,185 | | 4,055 | 26,48 |
| Disbursed through INTERFUND | 2,25 | 2,25 | | | 4,5 | | 9,0 |
| Disbursed direct (seconded TA) | 0,5 | 0,5 | 0,5 | 0,5 | 0,5 | 0,5 | 3,0 |

In 1995, reliance was being placed on non-statutory bodies to implement aspects of the government's land reform programme. The LRPP financing proposal (see table 2.3) reflected these transitional arrangements. In the event, no funds were disbursed through INTERFUND. Only ZAR 15,13 million from Denmark was disbursed directly to LAPC for the purpose of research, reviews, and M&E. All other assistance provided under the LRPP was channelled through the state treasury.

The DLA, in turn, contracted private sector 'managing agencies' to administer those aspects of the programme that involved the contracting of service providers without going through the sometimes very lengthy Public Service and State Expenditure procedures.

Initially, efforts were made to encourage NGOs, in the land reform and rural development sector, to respond to invitations to tender for the administration of the funds. Some prominent NGOs, including the National Land Committee, declined to bid for the work on the grounds that to do so would be in conflict with their mission. The LAPC, which successfully bid for the management of the Technical Assistance and Training Fund, proved unable to meet basic financial management standards. As a result, the agency function was eventually withdrawn and placed with a private firm.

At the invitation of DLA, each one of the donors assigned a specialist to advise and assist with programme implementation. Denmark provided an institutional development and training specialist, EU a specialist in organisation and management and the UK a land reform policy analyst. In the course of implementation DFID was asked to assign three additional 'Technical Co-operation Officers' to assist with specific aspects of the programme. These were deployed in KwaZulu Natal to work on Farm Labour Tenants' land rights; in the Eastern Cape on post transfer agricultural support; and in the Northern Cape on the resolution of issues relating to restitution of land to San communities. The acceptance of technical assistance by the government was not a pre-condition for the provision of the overall assistance package provided by the donors.

2.2.1 Assessment of the LRPP

The aims of the Land Reform Pilot Programme, as described in the financing proposal to the three principal donors, were to:

devise and test efficient, equitable and widely replicable means of transferring land to the rural poor and ways of providing them with access to basic needs and livelihoods

An institutional review of the LRPP (DLA, 1996) found that a considerable amount was achieved in terms of devising and testing institutional arrangements for land reform, although unevenly across the nine provinces. The LRPP failed to realise some of the intended diversity in testing approaches to land redistribution and tended to produce relatively standard types of projects.

There were considerable delays in transferring land and disbursing funds. It was concluded that the delays in setting up the institutional framework and completing individual projects were to a considerable extent inevitable. The evaluation confirmed that the original time-scale, for expenditure and land transfers, was unrealistic. As with land redistribution programmes in other countries, there were too many players.

There was a lack of clarity about lines of responsibility. Policy uncertainties in the early months also slowed down implementation. Above all, there was a lack of awareness of land reform as a component of rural development, rather than a

more limited process of land transfer. The LRPP was wound up by the end of 1997 having redistributed about 125 000 ha of land to about 8500 households, instead of the 13 500 originally intended.

Unspent donor funds were reallocated to a second phase programme, the Land Reform Support Programme (LRSP) and the purpose statement of the logical framework was amended:

To achieve a participatory, transparent, efficient and sustainable means for land reform by enhancing the capacity of DLA and other relevant institutions to deliver quality land reform at scale.

This was in accordance with the findings of the mid term review (DLA, 1997a) that the major constraint facing the implementation of land reform was the capacity of the Department of Land Affairs to deliver.

Accordingly, donor funds were switched to the funding of resources for change management/business process re-engineering in the Department of Land Affairs; longer-term specialist technical support at provincial and national level; independently administered funds for staff and NGO training, community facilitation and *ad hoc* technical assistance. Thus assistance was extended from a pilot land redistribution programme to cover the length and breadth of the department's land reform programme.

By this time the DLA management at national and provincial level had found that the 'donor' funding mechanisms, administered by the private sector managing agents, allowed much more convenient access to outside professional services than the department's 'professional and special services' budget with its complex tendering requirements. On the other hand, the new mechanisms laid the DLA open to accusations of favouritism in the appointment of particular consultants and service providers. Box 2 provides more detail on the use of LRSP funds for land reform delivery.

An important initiative under this phase of the programme was the establishment of a joint government and donor-funded Land Reform Credit Facility (LRCF) to promote partnerships between beneficiaries and the private sector and provide deferred repayment credit facilities to profitable small and medium-sized projects. The initiative stemmed from the EU's concern that too high a proportion of donor funds were being allocated to consultants and long-term technical assistants and that insufficient resources were reaching the intended beneficiaries.

There was disappointment on the part of EU that, despite the initial intention under the LRPP to use EU funds for homestead basic needs only (see above), most of the funds had gone to covering the operating costs of the programme. After a feasibility study of options for the support of commercially sustainable land transfer, and the subsequent establishment of the LRCF, this became the preferred destination for all EC funds.

2.2.2 Assessment of the LRSP

In August 1999, some six months before the scheduled end of the LRSP, the DLA commissioned an external review of the national land reform programme and the contribution of the LRSP to the programme. In addition to South Africans, the review team made included two international experts on land reform, nominated by DFID-UK in order to place the South African experience in an international context. The review team concluded that:

One of the important contributions the DLA and the Land Reform Programme made in the context of post-apartheid South Africa is that its policies, legislation and programmes kept the issue of the rural poor alive within the national political discourse. To this extent, the debates it has generated have largely supplanted what had been the role of land-based NGOs (in association with the liberation movements) in promoting these interests in the 1980's. This has been critical in a context where rural constituencies are less organised and more marginal than their urban counterparts, more likely to be overlooked and where the pool of NGO advocates has shrunk. It is also critical in the light of the tendency of post-liberation governments to drop land reform a few years into majority rule. (McIntosh et al, 1999)

The review found that, with respect to the land reform programme as a whole, there had been a significant improvement in the delivery of land redistribution and restitution projects in the period of the LRSP (1998-1999). Comparison with land reform elsewhere suggested that other African countries had delivered more land as a proportion of total population, but over a longer period than the South African programme had been in place.

The review concluded that the programme had also been successful in testing different approaches to land reform in different provinces. The review repeated what had become well known criticisms of the programme, but made very few suggestions for overcoming the problems identified. For example it found that application-based land redistribution had high transaction costs.

The process had resulted in scattered projects, often without reference to people's specific needs, without infrastructure or provincial or municipal plans to provide it. The small size of the government land reform grant encouraged people to form groups to purchase land in order to raise the sum necessary to meet the asking price for the land. These groups later tended to fall apart.

The LRSP Annual Implementation Report 1998/9 provides a useful overview of the LRSP's contribution to land reform in 1998/99

LRSP funds were used for a range of activities directly related to the delivery of the three principal components of the national land reform programme. In addition, and consistent with the 'programme purpose' set out in the logical framework, funds were allocated to 'outputs' considered to be critical for the delivery of 'participatory, efficient and sustainable means for land reform' and for the delivery of 'quality land reform at scale'. These outputs included: departmental restructuring and transformation; decentralisation of financial management; more effective collaboration

between the national department and provincial government; improved land reform project planning and management; review.

Land restitution

The Department relied on the Technical Assistance Fund for the Ministerial Review and South African expertise for drafting policy documents and preparing manuals and guidelines on:

just and equitable compensation to landowners; feasibility issues; whether and how to take into account compensation or compensatory land received by claimants at the time of dispossession; mineral rights; calculation of the monetary value of a claim; resettlement planning and initial development assistance to returning communities.

Land tenure reform

LRSP resources were used to hire additional support for consultation with stakeholders, the development of policy, the drafting of legislation, drafting regulations, developing implementation strategies and manuals and training of DLA and other personnel in implementation procedures, as well as putting in place implementation arrangements at provincial level. The Technical Assistance Fund of the LRSP provided a vital source of funds for the hiring of South African expertise for the drafting of legislation to secure the rights of people living on land held by the state in the ex-homelands and the ex-South African Development Trust areas. In particular, it funded the work of the legal drafter, the hiring of expertise for the drafting team, the holding of two national workshops with provincial DLA staff and NGOs, and a major study into the financial, economic, training and organisational implications of the proposed legislation. LRSP funds were used to fund important feasibility studies both in the Lubumbo SDI and on the Wild Coast of KwaZulu Natal, to facilitate development and protect land rights.

Land redistribution

Assistance under the LRSP was central to the achievements of the land redistribution programme in 1998/99, at both national and provincial level, both in terms of the 'purpose' and 'outputs' of the logical framework. The LRSP funded: South African technical assistance for policy development (e.g. legal advice on notarial deeds for commonage projects, feasibility studies of the land reform credit facility); technical assistance for specific projects, and a series of national training courses in redistribution policy, systems and procedures for provincial staff and NGOs. The LRSP also funded the longer-term recruitment of a land reform economist in the national office. At provincial level in 1998/99, the LRSP funded technical support for mediation, project planning and management and training in project planning and financial management.

Source: LRSP Annual Implementation Report, 1998/9 (DLA, 1999)

The review team noted deficiencies in the 'largely legal and rights-driven land restitution process', which caused long delays and excluded claimants from

participating in the search for solutions. It noted the continuing difficulties faced by the DLA in obtaining the support of other organs of government.

Reasons included policy differences with some departments and the fact that local government was still in the process of being put in place. This had resulted in provincial offices of the DLA accumulating functions, which should belong to other spheres of government. The reviewers noted the lack of a national rural development policy, needed to ensure that the various national departments integrated the work at the local level.

The review team found that the contribution of the LRSP had been critically important to the land reform programme as a whole.

It has undoubtedly increased the capacity of the DLA and other relevant institutions to deliver land reform during its life span. However, the challenge will now be to carry forward the lessons learnt and to institutionalise many of the programmes that were established as a result.

The key lessons of the LRPP/LRSP include:

- ◆ transformation can only be successful if all stakeholders understand the costs and benefits of change and commit themselves to the process; management and staff need to anticipate the inevitable dip that will occur and strategies must be in place to minimise this;
- ◆ whilst progress has been made in terms of co-operative governance, the existing capacity of other organs of government has been over-estimated;
- ◆ given the enormous number of projects being managed by the DLA, basic project management activities, such as regular updating of data, consistent reporting and monitoring of project milestones, should be strictly adhered to and project managers need to be held accountable for the status of their projects and project documentation;
- ◆ the demands of projects, and not simply compliance with the National Qualifications Framework, need to dictate training needs of DLA staff and other stakeholders in order to impact on quality delivery of DLA products;
- ◆ a multi-pronged communication strategy needs to be employed by the DLA, that has an emphasis on development communication, so as to reach the largely illiterate beneficiary communities;
- ◆ conceptualising a post-transfer fund as solely the Land Reform Credit Facility will not meet the broader post-transfer needs of beneficiary communities; and
- ◆ in order to effectively assess the impact of land reform in South Africa, M&E must be viewed as a management tool and not a policing tool, and this will require buy-in from all managers and staff in DLA.

Whilst mistakes were made and work is still to be done, the legacy of the LRPP/LRSP has been enormous. New systems are in place that DLA will be able to carry forward. These include: financial management, programme and project management, information technology, monitoring and evaluation, training and human resource development, decentralisation and communications.

2.3 GRANT FOR THE TRANSFORMATION OF THE DOL

One of the first foreign assistance agreements to be signed by the then Minister for Land Affairs, Derek Hanekom, was with the Ford Foundation. Although technically not under the rubric of 'Official Development Assistance', not being government to government assistance, this agreement was of crucial importance to the emergence of the Department of Land Affairs. As explained earlier, the DLA emerged through a restructuring of the old bureaucracy. The Department had to make basic changes to how it was organised and operated and how it communicated with its partners in civil society.

Historically the Department had functioned to control and to direct the settlement of rural black people according to an apartheid design of racial separation and domination. Its relations with communities and organisations outside of government were typically hostile and contentious. White males held all the senior management positions in the Department. Most lacked appropriate skills and experience of rural communities and many had no intention of contributing to fundamental transformation of the public service.

Beginning in June 1994, the Ford Foundation held discussions with the Minister on possible support for a programme of organisational change and capacity building within the Department, which had no provision for this in its budget. A new organisational plan, approved in October 1994, placed land reform planning at the centre of the Department's work. A grant of US\$ 325 000 was made to the Department of Land Affairs to assist it 'to strengthen the policy and analysis skills of staff to work effectively with rural communities and facilitate linkages with non-governmental organisations with expertise in rural policy and land reform (Ford Foundation, 1995).

The grant was used for support for the development of policy skills, community outreach initiatives and affirmative action programmes. Much of the grant was allocated to the operations of a Change Management Unit in the Department led by a change management specialist, an Afro-Caribbean woman, recruited from the UK. To obtain the flexibility needed to recruit and deploy personnel and organise functions with the necessary dispatch, LAPC served as the fiscal agent for this grant, receiving and disbursing funds.

In March 1997, the Minister for Agriculture and Land Affairs applied to the Ford Foundation for a further grant. This time for US\$ 600 000 for policy development in the areas of agriculture and land affairs, institutional development, staff training and capacity building and diversity. Once again, the Ford Foundation nominated LAPC as the fiscal agency. In June 1998, the Department became aware of financial irregularities in the LAPC and arranged for an internal audit.

The Ford Foundation suspended the transfer of the remainder of the grant to the LAPC. In October 1999, there was still balance of US\$ 200 000 with the donor. The Department is still not clear on how much of the US\$ 400 000, which was transferred to the LAPC, has been properly spent and what the balance is remaining. The funding of the Department's Change Management team and business re-engineering process was transferred to the LRSP following these difficulties.

No independent assessment of significance of the Ford Foundation assistance was available for this review. The reviewer's impression is that the initial grant was of key significance in the transformation of a former apartheid institution into one that was directed and managed by the mostly white recruits from civil society - the land advocacy NGOs. It was less effective in facilitating a second seamless transition to one dominated by blacks. The internal racial tension within the DLA in 1999 comes under the spotlight in the review of the LRSP (McIntosh et al 1999).

2.4 DUTCH GRANT TO THE LAND RESTITUTION TRUST

For the period under review, the Government of the Netherlands signed agreements to an initial value of ZAR 22 million. The Department's Land Restitution programme was the focus of its assistance with a grant of ZAR 15,7 million. In terms of the agreement, the main purposes of the grant was the employment of field workers, and community liaison officers, the provision of office equipment and motor vehicles for staff and related costs, fees for mediators and those of researchers on special projects.

The Land Restitution Trust was established in terms of the Trust Property Control Act, initially for the purpose of managing the Dutch grant. The Trust is not part of the government administration and, like the managing agencies established under the LRSP, it is able to make decisions and allocate resources without going through lengthy procedures.

The purpose of the Trust is to supplement the funds available to the Department in order to provide additional resources and capacity to the Commission on Restitution of Land Rights, established under the Restitution of Land Rights Act. The trustees are two persons nominated by the Minister, two persons nominated by the Chief Land Claims Commissioner, and one person nominated by the above trustees. As required by law, the Trust is audited by registered auditors and functions under the oversight of the Master of the Supreme Court.

Resources from the Dutch grant to the Restitution Trust feed into most aspects of the restitution process. Following the ministerial review of 1998, the pace of land restitution has increased significantly. By February 2000, some 700 claims, mostly in urban areas, had been settled and about 300 had been rejected. Amendments to the Act in 1999, provided for simpler processes for the resolution of cases.

The Netherlands grant to the Trust came to an end in March 2000. Funding of the work performed under the Trust has been taken on within the Commission's voted budget.

2.5 BELGIAN GRANT TO THE LAND RESTITUTION TRUST

The Belgian government granted R2 million to Trust for the purposes of The Restitution "Stake Your Claim" 1998 Campaign. The purpose was to inform potential claimants of their right to lodge claims before the end of 1998. The campaign was organised by the Department in partnership with the National

Land Committee and the Commission on the Restitution of Land Rights. Extensive use was made of national and regional radio stations and television to reach the remotest communities in the rural areas. Face-to-face encounters in workshops, rallies and road shows were also organised in townships and rural communities throughout the country.

Closer working relations were established with stakeholders such as local government structures, political organisations, the Parliamentary Portfolio Committee on Land, chiefs and representatives of claimant communities. Thus, in addition to informing the public about the cut-off date for the lodgement of restitution claims, the campaign also assisted people in coming to a fuller appreciation of the land restitution programme.

The campaign had a very significant impact and resulted in the doubling of land claims to a number in excess of 63 000 by the beginning of 1999.

2.6 GRANTS FOR MEDIATION AND CONFLICT MANAGEMENT

In December 1995, an agreement (valued at ZAR 1,835 million) was entered into between the Department of Land Affairs, the Government of the Netherlands and the Independent Mediation Service of South Africa (IMSSA). The purpose was 'to provide immediate dispute prevention and resolution capacity to manage land and land related conflict'.

Under this agreement, IMSSA established a national panel of mediators, duly trained and accredited, to be used as a resource in preventing and resolving disputes in land reform projects (IMSSA, 1997). In April 1997, a further grant was provided, this time to the Department's account through National Treasury for 'National Land Reform Conflict Management', whose administration was again outsourced by the DLA, but this time through standard tender procedures, to IMSSA. This grant came to an end in April 1998 and funding of the work was taken on within the Department's voted budget. This important service continues to be provided in support of all land reform projects.

2.7 GRANT TO UPGRADE TENURE IN EX-HOMELAND TOWNS

The programme, costing ZAR 2,98 million and funded by the Ministry for Development Co-operation of the Netherlands, focuses on the urban areas in the former homelands of Venda, Lebowa, Gazankulu, Kwandabele, Kangwane and other urban land held in trust by the national DLA in Northern Province and Mpumalanga. The purpose is the finalisation of legal and land administrative processes, which will enable the transfer of affected urban land to the provinces and the upgrading of the land rights of some 390 000 families.

The transfer will enable municipalities to administer and provide services to the affected areas and promote investment. The programme has contributed significantly towards clarification of several legal, policy and procedural aspects relating to the tenure upgrading process. It has enhanced the degree co-operation between the different state departments and spheres of government

in the joint task of dismantling the apartheid state and created a foundation for future programmes of this nature.

2.8 GRANTS FOR LAND FACILITATION SERVICES IN MPUMALANGA AND KWAZULU-NATAL

Beginning in 1997, the Swiss Agency for Development and Co-operation (SDC) made a series of grants available to assist the piloting of a number of initiatives, which would strengthen the land rights of the black population.

In January 1997, a grant of some ZAR 7,0 million was made available to the DLA to establish district offices, two in KwaZulu/Natal (Vryheid and Port Shepstone) and one in Mpumalanga (Ermelo). The grant was initially for two years but was extended to three, i.e. until the end of 1999. The district offices were seen as forerunners of district offices to be established by the department throughout the country (see Section 1.3.1).

In the absence of DLA capacity, the staffing and establishment of these offices was undertaken by non-statutory administering agencies, which were contractually accountable to the DLA's provincial director. The selection of the three districts was related to government's enactment of laws relating to the land rights of labour tenants - *Land Reform (Labour Tenant) Act*, 1996 - and to the protection of farm occupiers, i.e. people living on rural land owned by others - *The Extension of Tenure Security Act*, 1997.

Thus the immediate aim of the land facilitation service was to address the plight of farm workers and labour tenants facing eviction and to assist communities with insecure tenure of state land. It was also intended that the programme would provide information relating to the long-term aim of the DLA to decentralise its activities from the provincial to the district level. Part of the grant was set aside for providing information to communities in the area.

Under the Tenure Security Project in KwaZulu Natal Province, SDC provided ZAR 1,5 million to develop interventions that would facilitate collaboration between landowners, tenant associations and the public and the private sector to promote stability and economic development within the rural economy.

The Swiss funding for this land rights work came to an end in March 2000. The work of the District offices is being funded by the extended LRSP until permanent staffing arrangements can be made by the Department.

2.9 GRANTS FOR TENURE REFORM RESEARCH AND TEST CASES

The SDC provided a grant of ZAR 3,3 million for a number of initiatives that would allow the DLA to deliver the promises, which were made in the White Paper on Land Policy (1997), to reform tenure relations in the former homelands. It made a number of commitments:

- ◆ to the transformation of all 'permit-based' and subservient forms of land rights into legally enforceable rights to land within an integrated non-racial system of land rights for all South Africans;
- ◆ to people's right to make decisions about their own tenure systems and to accommodate a variety of tenure options;
- ◆ to ensure that tenure options and systems are consistent with constitutionally guaranteed human rights and the constitutional provisions set out in Box 1.

The grant was used, together with resources from the LRSP Technical Assistance Facility, for the hiring of South African consultants for research, for the investigation of test cases and for the preparation of draft legislation. At the end of the grant period, the work was substantially completed.

However, the outcome remains uncertain, pending a review of tenure reform policy under Minister Thoko Didiza appointed by President Thabo Mbeki. A second grant of ZAR 6,0 million by SDC remains to be disbursed pending this clarification.

2.10 GRANT FOR DEVELOPMENT OF LAND RESTITUTION ARCHIVES

Restitution research depends largely on the archival records in the custody of the National Archives of South Africa. Many of these records were unordered and unsorted and resulted in the process of research being unnecessarily protracted. A further problem is that many records remained scattered in government offices around the country, often in unknown locations, because of the diverse nature of the departments that administered apartheid policy.

The Archives Project was set up by the Department to overcome these problems in collaboration with the National Archives and with a grant of ZAR 3,35 million made available from the Swiss Agency for Development and Co-operation. As with its other projects, the SDC disbursed the grant directly to the administering agency, Deloitte and Touche.

Phase One of the project was concluded at the end of July 1998. It resulted in the sorting and indexing of 94 489 files (1,47 km of files) pertinent to the restitution process. Most of the magisterial districts throughout the country were visited and reports were compiled on the files discovered at the magistrates, local government and district offices of the Department of Home Affairs.

Phase Two involved the unearthing at the National Archives of a further 2,99 km of files relevant to the restitution process. These were sorted and indexed. The final phase enabled the National Archives to access important files, which were located in provincial and former homelands' archives.

2.11 GRANT FOR THE INTEGRATION OF ENVIRONMENTAL CONCERNS INTO LAND REFORM

Concerns about the negative environmental impacts of land reform have been voiced since the inception of the programme in 1994. In response to these concerns, Danish Co-operation for Environment and Development (DANCED) commissioned the Land and Agriculture Policy Centre to carry out a study with the Department of Land Affairs in 1996 (LAPC, 1997).

It was found that responsibility for the natural environment in South Africa was spread over different national and provincial departments, each with jurisdictions in terms of various laws. The institutional framework generally frustrated the integration of land use planning and environmental management because of the lack of clarity over roles and responsibilities.

After a delay of about a year, during which time the elements of an appropriate project were worked out and agreed between DANCED and DLA, work commenced in two pilot districts in Mpumalanga and the Free State. The project aims to make environmental planning an integral part of the whole land reform process. The immediate objectives are:

- ◆ to ensure that institutional arrangements, procedures and guidelines for incorporating environmental concerns into land reform and land development are reflected in DLA land policy; and that
- ◆ DLA, local government, NGOs and other service providers have the knowledge and capacity to implement those policies.

3 THE MANAGEMENT OF ODA FOR LAND REFORM

3.1 THE RATIONALE FOR ODA TO LAND REFORM

Donors did not set the agenda for land reform in South Africa. Agreements were based on requests from the government to support components of the national land reform programme already laid down in the initial policy document of the RDP (1994) and the White Paper on South African Land Policy (DLA, 1997). The nature of the assistance to land reform reflected a high degree of consensus regarding what needed to be done.

The overarching rationale for assistance to the government's land reform programme was the desire to support a peaceful transition to majority rule, devoid of conflict over land. The subtext was the provision of land to the poorest segment of the population, an aim that coincided with that set out in the RDP (1994) document, in other earlier policy statements by the ANC and subsequently by the DLA. The principal donors, EU, Denmark and UK, agreed with the new government that priority had to be given to redressing the appalling inequality of incomes in rural South Africa and to providing the largely impoverished rural population with basic needs and more secure incomes.

Closely linked to the objective of poverty alleviation was that of support to good governance, a common theme linking the grants provided by Switzerland, the Netherlands and Belgium.

Land reform debates in other countries had seen a confrontation between those who believed that land reform must focus on the redistribution of productive agricultural land to the poor and those who opposed extensive redistribution and who wished the reform to focus on measures to raise agricultural production. However, in South Africa at the time of the transition to majority rule, there seems to have been little disagreement about the purpose of land reform, even if it is more broadly debated today. Increased agricultural production at that stage took second place to equity and income security considerations.

For the mass of the rural population, food security was seen to be primarily a matter of income security and only to a very limited extent affected by national agricultural output. It was recognised that most small-scale farmers in South Africa were women producing from sub-optimal holdings, incapable of producing full subsistence, and thus dependent for part of their livelihood on transfers from the non-agricultural sector.

3.2 EXTENT OF DONOR INFLUENCE ON LAND REFORM POLICY

Given this consensus regarding the aims of land reform in South Africa, the assistance offered did not unduly influence the nature and direction of the government's programme. It merely served to reinforce and complement a programme, to which South Africa was already contributing the lion's share (see Table 2.2).

It is probably the case that the attitudes of international agencies have been significantly influenced by what they have witnessed in South Africa. Although not directly assisting land reform in South Africa, since funding policy development work in 1993, periodic visits have been made by the World Bank experts to learn what is happening and to provide contacts with other countries undergoing land reform processes. From time to time references are made to developments in South Africa in its policy papers (e.g. Deininger, 1999).

DFID's current interest in land tenure reform, its link with sustainable livelihoods and its place on the human rights and governance agenda, owes much to its involvement with land reform in South Africa. Early in 1997, DFID convened a meeting of its Africa-based advisers in Cape Town, which was addressed by two DLA consultants on the subject of tenure reform in southern Africa (Overseas Development Administration, 1997).

Since that date, DFID has provided increasing assistance to land policy development and tenure reform in other parts of Africa too. In March 2000, DFID published a major review entitled *Evolving land rights, policy and tenure in Africa*, which includes three chapters by South Africans (see Toulmin and Quan, 2000).

3.3 INTER-GOVERNMENTAL RELATIONS

Initially two or three people within the Ministry of Land Affairs and the new Department had a key role in establishing relations with the donors.² The then Minister for Land Affairs had a cordial relationship with donors from the time that he was Co-ordinator for Land and Agricultural Policy in ANC's Department of Economic Planning in 'Shell House', Johannesburg in 1993.

It was at this time that agreements were entered into with Denmark, the European Union and the United Kingdom for the establishment of the LAPC. After the LAPC was up and running, these donors went on to assist the Land Reform Pilot Programme of the Department of Land Affairs.

By the end of 1996, the land reform programme had expanded in scope and geographical coverage. Subsequent agreements between the Department and external agencies were the outcome of a more formal and structured decision-making process in which the senior programme managers participated. Donor liaison was mainly the responsibility of the DDG Land Reform Policy who chaired the relevant DLA Donor Committee in Pretoria (see Appendix 1 for TOR).

Province-level inputs were important in the design of the LRSP and the SDC assistance. Some provincial directors of the national Department of Land Affairs proved to have a high propensity to attract donor funds to supplement their budget. These provinces have also proved to be the most effective in terms of land reform delivery, although the relationship need not be causal.

3.4 THE TECHNICAL ASSISTANCE ISSUE ON THE LRSP

From the outset of the LRSP, both the donors and the DLA were sensitive to the issue of foreign technical assistance. It was recognised by both parties that the involvement of foreigners could be a source of tension in matters as politically sensitive as land policy and the planning and implementation of land reform. As stated in section 2.1, the land reform advocacy group was not enthusiastic about accepting foreign technical assistance. It was therefore not a condition for funding. The DANCED project, which is jointly managed with a Danish firm, may be an exception.

In the financing agreement for the LRPP ZAR 8.11 million was for the Technical Assistance Fund, which was primarily for the recruitment of South African expertise. This compared with ZAR 3.0 million set aside for directly funded technical assistance (see Table 2.3). The financing proposal stated:

The DLA faces an acute shortage of qualified staff in the field of policy analysis and implementation for land reform and rural development, at national and provincial level and below. Much of the needed expertise is to be found in South African academic institutions and in the non-governmental sector. In some instances, personnel may have to be

² The main actors were Joanne Yawitch, the Minister's Adviser and Sue Lund, LRPP Consultant and subsequently DDG Land Reform Policy

recruited from overseas. Under the proposed programme, the Overseas Development Administration [i.e. DFID] would support a technical assistance fund to strengthen the policy analysis capacity of the DLA and the implementation of the LRPP at district level. (DLA, 1995)

Under the LRSP, the relative proportion of donor funds allocated to South African technical assistance greatly expanded (see Box 2). The recruitment of foreigners under this facility was the exception rather than the rule. On five occasions, foreigners were recruited for short inputs using the Technical Assistance Fund. The fees charged were a source of concern to the administering agency (section 3.7.2). Two of the service providers in question were international experts on African land law, one from the University of Nairobi and the other from the University of London.

The Department already knew the three directly funded technical assistants, who joined the LRPP Support Project in 1995. One of them was a South African who had been working as an assistant programme officer in the European Commission. The second, a Dutch citizen, was already working with the Department of Land Affairs on the Land Reform Pilot Programme.

The third, an UK citizen, had been working in South Africa with the LAPC and had headed the international team, which prepared the joint funding proposal. At a later date (in the period 1996-98) three more British technical assistants joined the programme. In each case, the process of persuading the UK government to pay for their assignment to the programme (from foreign exchange savings) required a certain amount of 'arm twisting' on the part of the Department of Land Affairs. In each case the Ministry or the Department on the basis of a track record in southern Africa nominated the candidates.

3.5 THE ROLE OF TECHNICAL ASSISTANCE IN PROGRAMME MANAGEMENT

In the case of the LRPP and LRSP, which provided the bulk of donor funding, a technical assistant assigned by the EU was responsible for the day-to-day co-ordination and management of the programme. He reported to the senior managers of the DLA (initially the DDG Land Reform Policy, subsequently the DDG Land Reform Implementation).

This assignment was problematic as the person in question had an advisory and not an executive role (see Box 3). In 1998, the official moved to Khula to assist with the establishment of the Land Reform Credit Facility, funded by EU under the LRSP. The management of the LRSP was then taken over by the DLA.

Other foreign technical assistants, for example the four funded directly by DFID, advised on aspects of policy development and implementation and were not directly involved in management of the LRSP. Their role was not significantly different from that of long-term technical assistants recruited in South Africa under the LRSP Technical Assistance Facility to work in the national and provincial offices of the Department of Land Affairs.

3.5.1 Management of the LRSP

For the period 1996-98, the financial and administrative responsibility for the LRPP/LRSP lay with a technical assistant, based in the Department, who was funded directly by the EU for the purpose. This technical assistant was conveniently available, and so the DLA did not assign staff to these administrative activities early in the programme. In early 1997, management of the LRPP/LRSP within the DLA was handed over from the DDG Land Reform Policy to the DDG Land Reform Implementation. These, together with technical difficulties experienced with out-sourcing operational administration all contributed to:

- ◆ the under-utilisation of certain facilities;
- ◆ management deficiencies which *inter alia* resulted in budgetary problems for the Department during hand over of the administration of operational components from one agency to another;
- ◆ and deficiencies in reporting which prompted repeated intervention by the donors.

A line functionary started to administer the fund only after the establishment of the Directorate Strategic Management Support in 1998. Responsibilities for the Programme are now located as follows:

Programme Director: The function is performed by a Chief Director (CD) who accounts to the Deputy Director General (DDG) Land Reform Implementation regarding the fulfillment of the LRSP's objectives. The DDG reports to the Director General (DG) of the DLA, a Departmental Control Committee and the donors on all aspects of the programme's implementation (financial & operational).

LRSP Co-ordination: This is facilitated through a monthly meeting of the LRSP Programme Directors. It includes the Programme Manager and the Project Managers responsible for respective components of the LRSP. It is chaired by the DDG.

LRSP Programme Manager: The Director: Strategic Management Support is responsible for the day-to-day management of the LRSP (operational & financial) and the completion and submission of monthly quarterly and annual reports.

LRSP Project Managers are responsible for the operational and financial management of specific operational components of the LRSP (i.e. the facilities) and the compilation of standard monthly, quarterly and annual narrative and financial reports to the Programme Manager and supervising the designated administering agencies.

Administering Agencies are responsible for administering operational components of the LRSP in accordance with their respective terms of reference. They are accountable to the Programme Manager with whom they meet on a quarterly basis. They are responsible for completing standard monthly narrative and financial report summaries for submission to the respective project managers. In addition they are responsible for the preparation and submission

of quarterly and annual reports to the LRSP Project Manager for inclusion in reports to the DLA and the Donors. Source: McIntosh et al (1999)

3.6 SUSTAINABILITY OF DONOR-FUNDED PROGRAMMES

From an early stage, the DLA was heavily dependent on South African staff contracted with donor funds for the establishment of the programme. This was due to the fact that a new function, land reform, was being created from scratch and that for the first few years many of the establishment posts remained vacant. However, concern grew within the Department (and on the part of donor agency officials) that the situation was not sustainable.

Problems arose when long-term contract staff, funded by external sources, were perceived to be essential for the continued operation of the programme, but could not be absorbed by the establishment in the absence of posts or because they were hired at rates that were unaffordable at government salary scales.

The issue came to the fore at the time of the scheduled closure of the LRSP in March 2000. In the event the LRSP was extended for one year, subject to certain conditions. It was agreed that contract posts would continue to be funded only where the capacity-building process was incomplete and where a function had proved essential to the normal working of the DLA.

At the same time, the Department was asked to seek to locate the necessary function within the DLA, or in sister departments in the rural development cluster, or at local government agencies at district level. If this proved impossible, then subsequent contracts would have to be funded through the DLA's professional and special services allocation. In the past, it had been noted that this particular budget line had been under spent because it had proved relatively more difficult to access than donor funds.

The transfer of financial responsibility for other LRSP components such as training and community facilitation has not generated the same problems. Land reform training is an ongoing function within the Department, which already funds the bulk of training. The same applies to community facilitation, that is the provision of advice and assistance to land reform farmers and communities. This work is partly being taken over by sister departments, where possible. Where it is not possible or appropriate, the Department will have to find resources from its own budget.

The sustainability of the land rights work funded by the Swiss Agency for Development and Co-operation (SDC) in KwaZulu Natal and Mpumalanga provinces remains a concern. Beginning in 1997, the SDC provided funds for the piloting of a number of initiatives, to assist the Department of Land Affairs to build the capacity to protect the lawful rights of farm workers and labour tenants and their families. SDC paid for the establishment and staffing of rural advice centres by non-statutory agencies who were made contractually responsible for assisting farm workers and labour tenants facing eviction.

Three years later, the resources for extending legal services to remote rural areas continue to be extremely scarce. Poor rural people have little or no

recourse to the legal system, which is based in distant urban centres. Often illiterate and poorly served by public information services, they are unaware of their rights under the Constitution and other new laws. The few rural legal advisory offices, operated by NGOs, are inadequate, and in key respects, statutorily inappropriate, for the immense task of providing advice, information and representation.

3.7 THE ROLE OF ADMINISTERING AGENCIES

The arrangements made under the LRSP for out-sourcing the administration of donor funds allocated to various tasks (e.g. technical assistance, government staff and NGO training, community facilitation and support) to business firms have proved helpful in the establishment of the land reform programme. The proposals for this type of arrangement were first made in 1995 as part of the donor funding for the Land Reform Pilot Programme. At that time, it was anticipated that some funds would be channelled through an NGO, but this did not prove feasible (see above).

Apart from relieving the Department of an administrative burden, out-sourcing of fund management allowed the Department to make decisions about the hiring of service providers without having to go through lengthy tender board procedures. Once the umbrella contract between the administering agency and the Department was concluded according to tender board regulations, the agency could contract service providers (e.g. community facilitators, mediators, lawyers, agronomists, planners) at the Department's request without the DLA having to go back to the tender board repeatedly.

The arrangement is essential in view of the large number of land reform projects that the Department undertakes and for which it must provide community facilitators and technical support. It also helps to ensure adherence to systems and procedures including the preparation of regular reports and audited accounts. In some cases donors advance funds to the administering agency directly (e.g. in the case of the SDC to Africon). In other cases, the agency is paid by DLA with funds provided by donors via the treasury, either in advance or by re-imbursement.

The out-sourcing arrangement is not without problems, most of which seem to be encountered by the agencies (McIntosh et al, 1999).

3.7.1 The administration of funds by Africon

Africon, a firm of management and engineering consultants, is managing the Community Facilitation and Support Facility (CFS) in terms of a contract awarded in an open tender.

The current contract commenced in August 1998. Africon's brief is to administer the CFS facility in support of restitution, redistribution and tenure reform projects undertaken by the DLA and funded through the LRSP. A team located in Johannesburg manages the facility. The team comprises the following positions: Project Manager, Provincial Co-ordinator, Training Advisor, Administrative Assistant and Project Director.

This core team is responsible for:

- ◆ administering and managing the fund on behalf of the DLA;
- ◆ processing funding applications received from the DLA;
- ◆ making recommendations to the DLA to fund projects;
- ◆ exercising financial control over funds and projects;
- ◆ rendering advice regarding facilitation and capacity building;
- ◆ facilitating the contracting of service providers by Provincial DLA (PDLA) offices;
- ◆ assisting in the evaluation of service providers;
- ◆ co-operating with the DLA in preparation of work plans, annual and other reports, and providing information on request to the DLA and donors.

In the course of the review of LRSP, Africon raised a number of concerns.

- ◆ Africon believe that independent audits (not by the DLA or the Agency) are essential to assess the impact of projects at the field level and to report on their management (because Africon themselves were not mandated to monitor impact at grassroots level).
- ◆ Africon is concerned about the inadequacy of skills' transfer by service providers, partly because the duration of many projects is simply too short to effect the transfer required.
- ◆ There is need for improved lines of communication between the DLA and the Agency.
- ◆ Africon is concerned about the lack of transparency in the allocation of contracts to service providers in some provinces.
- ◆ Africon believes there is a compelling need to expand the CFS facility to provide long-term assistance, post transfer.

3.7.2 The administration of funds by PWC

PriceWaterhouseCoopers (PWC) won an open tender to manage the Provincial Land Reform Delivery Services Facility, the National Technical Assistance Facility, the Technical Assistance Facility, the Training Facility and the Business Process Re-engineering Facility from 1 July 1998. The management team located in Pretoria consists of a Project Director, a Project Manager, a Technical Specialist, a Financial Manager and Administrative Assistant. Their responsibilities are fundamentally the same as those outlined above for Africon.

PWC reported a number of problems in administering the facilities and raised a number of concerns.

- ◆ differences of opinion between PWC and the DLA about the quality of work delivered has arisen regarding certain projects, which were nevertheless certified by the DLA after having been notified by PWC of their concerns;
- ◆ a number of projects in the application stage had to be referred back to the DLA primarily to inquire about: repeated use of the same service provider, or the use of extremely expensive foreign service providers;
- ◆ the existing contractual arrangement does not adequately provide for the monitoring of projects; the Agency sees a need to be involved in post-project

monitoring; consideration should be given to producing close out reports for each project;

- ◆ a logical framework is seen as a desirable management and the possibility of introducing the logical framework at the project level should be considered;
- ◆ under-performing provinces generally have insufficient capacities to apply for and manage the technical assistance they require.

3.7.3 Conclusions about the LRSP and administering agencies

The LRSP funds for assisting operational components of the land reform programme have generally proved successful and administratively functional. The system facilitates other donors joining the programme, as recently occurred in late 1999 with a contribution from the Netherlands of ZAR 15 million in the form of budgetary support to DLA.

The main problem with the arrangement seems to be the tendency of DLA officials, in their urgency to deliver projects, treating the agencies as rubber stamps for the contracting and payment of service providers and as a way of avoiding lengthy tender board procedures. The administering agencies, on the other hand, see themselves as having to meet certain contractual responsibilities, principally those of ensuring that both the government and the land reform community receive value for money. The dynamic tension between the DLA and the agencies is not unfruitful.

The out-sourcing of these functions facilitates transparency and allows the DLA managers to focus on strategic issues and to cut back on administrative staff. The regular reports prepared by the administering agency, with details of expenditure and an assessment of the performance of service providers (based on the written reports of the DLA officials responsible for supervising the service providers), are a useful independent source of information for the donors.

The alternative, for the DLA is to set up its own Programme Management Unit to support these functions, an option that has been rejected until now and for good reason. Consideration should seriously be given to instructing the agencies to monitor a proportion of service providers in the field. Not much reliance can be placed on pro-forma reporting by hard-pressed officials on the performance of service providers.

3.8 THE PROSPECTS FOR ODA TO LAND REFORM

The LRSP, which has been extended for one year, will expire at the end of FY 2001. A number of agreements have run out or are on the point of expiring. What are the prospects for further support to the sector?

Danida's assistance to land reform was suspended at the end of 1998. The UK has announced its wish to reach agreement with South Africa on a new programme of assistance to land reform beginning in FY 2001. Other partners are expected to renew their support.

The EU's enthusiasm for the further funding of land reform in South Africa seems to have waned. In September 1999, the responsible programme officer from the European Commission announced the EU's intention of terminating its support, on the grounds that the current 3-year 'multi-annual indicative programme', signed between the EC and South Africa did not include 'rural development' as a priority sector. This reflects the EC's intention to reduce the number of priority sectors to 3 or 4, and the decision of the SA Government not to give priority to rural development in the bilateral negotiations.

It may still be possible to obtain EU resources in support of 'land reform' from the 'private sector and enterprise support' budget line for initiatives that are in support of commercially viable land redistribution projects, which qualified for funding under the Land Reform Credit Facility.

Some of the reluctance on the part of the EU not to support land reform may be related to the irritation created by DLA's perceived failure to meet certain bureaucratic requirements, although difficulties with such EU requirements do not appear to occur with the DLA alone.

The decision on whether or not the EU funds should be allocated to land reform should be reviewed at a high level. Judging by recent statements by senior ministers and diplomats about the importance and urgency of land reform to South Africa, following the disastrous events witnessed in Zimbabwe, funds are likely to be forthcoming from the EU and other major partners. There can be absolutely no doubt that land reform in southern Africa remains the most important unresolved agrarian issue.

Notwithstanding the positive assessment of donor assistance to land reform so far, the overall performance in South Africa over the period 1994-99 provides no room for complacency. Despite the great differences between the political economies of Zimbabwe and South Africa, there are strong reasons for believing that land invasions could take place in South Africa, at some point in the future, provoking government to respond in terms of the property protections enshrined in the Constitution.

As in Zimbabwe, land invasions would call attention to the country's failure adequately to tackle deepening rural poverty and would highlight the starkly unequal and racially skewed land ownership. Between 1994 and 1999, only about 800 000 hectares of land, a mere 0,8 per cent of the country's total area of arable and natural pastures, were redistributed to about 56 000 black households. Until now, very little progress has been achieved with tenure reform in the former homelands. Despite the new dispensation, farm workers and their families remain vulnerable and are often exploited by employers and landowners. Only a small number of the land restitution claims have been settled. As elsewhere, land reform is proving an extremely difficult process to carry through.

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5 APPENDIX 1: DEPARTMENT OF LAND AFFAIRS: DONOR COMMITTEE

The Departmental Donor Committee (DDC) was established by the Director General in May 1999. It is made up of the Chief Land Claims Commissioner, DDG Land Reform Implementation, DDG Financial Management, DDG Land Reform Policy (Chairperson).

The Terms of Reference of the DDC are:

1. To register funding needs of the various land reform programmes with suitable donors;
2. To negotiate funding agreements with the donor agencies;
3. To negotiate Departmental access to and incorporation of land reform priorities into country-wide donor strategies and agreements with South Africa;
4. To provide Departmental strategy for the appropriate allocation of available donor funds within the framework of the MTEF voted budget allocations to land reform;
5. To monitor progress in the use of all committed donor funds, and therein to scrutinise regular reports of Departmental Donor Project Managers to ensure compliance with conditions and effective and efficient implementation;
6. To liaise on an on-going basis with the Department of Finance in respect of donor consultations and conclusion of country-wide, and department-specific agreements;
7. To liaise on an ongoing basis with the Department of State Expenditure in respect of the transfer of donor funds from the RDP account to the Department, and in respect of accounting therefor;
8. To collate and maintain a data base of all Donor contracts;
9. To ensure the production of summarised Quarterly reports on progress in respect of expenditure, output achievements, and contract deviations in each Donor project, based on information supplied by the Departmental Donor Project Managers;
10. To play a supportive role in assisting Departmental Donor Project Managers to manage their responsibilities optimally, engage with donors, ensure smooth financial flows, and to negotiate deviations to contracts where required;
11. To report quarterly to EXCO on the status of all existing Donor agreements and recommend future strategies when applicable;
12. To provide reliable information in respect of all Departmental Donor funding to the Minister, parliament, the Director General, donors, other Departments, and the public, as required.

The Chairperson of the Committee undertakes the work of the DDC on a day-to-day basis, assisted by the Assistant Director in her office, and by the respective Donor Project Managers. She reports to the DDC on progress in respect of all donor matters, and for strategic decision-making as required. The DDC meets on a quarterly basis.

6 APPENDIX 2: LAND REFORM VOTED BUDGET AND SPENDING (1994/95-1999/00)

| CURRENT AND CAPITAL FOR LAND REFORM | 1994/95 | 1994/95 |
|--|--------------------------------|--------------------------|
| Programme 5 Restitution | 50 840 000 | |
| Programme 6 Redistribution | 4 277 000 | |
| Programme 7 Tenure and Land Admin Reform | 3 912 000 | |
| Programme 9 Settlement Support | 33 685 000 | |
| TOTAL | 92 714 000 | |
| | 1995/96 | Disbursed 1995/96 |
| Programme 5 Restitution | 62 530 000 | |
| Programme 6 Redistribution | 175 620 000 | |
| Programme 7 Tenure and Land Admin Reform | 10 244 000 | |
| Programme 9 Settlement Support | 63 971 000 | |
| TOTAL | 312 365 000 | |
| Plus RDP Funds | 247 200 000 | |
| GRAND TOTAL (under spent 390 550 000) | 559 565 000 | 169 015 000 |
| | 1996/97 | 1996/97 |
| Programme 3 Restitution | 115 730 000 | |
| Programme 4 Redistribution | 328 671 000 | |
| Programme 5 Tenure Reform | 8 395 000 | |
| Programme 6 Land Reform Implementation | 27 437 000 | |
| TOTAL | 480 143 000 | |
| Plus RDP Funds | 369 900 000 | |
| GRAND TOTAL (under spent 619 100 000) | 850 043 000¹ | 230 943 000 |
| | 1997/98 | 1997/98 |
| Programme 3 Restitution | 64 147 000 | |
| Programme 4 Redistribution | 321 808 000 | |
| Programme 5 Tenure Reform | 31 899 000 | |
| Programme 6 Land Reform Implementation | 29 318 000 | |
| TOTAL (under-spent 245 500 000) | 447 172 000 | 201 672 000 |
| | 1998/99 | 1998/99 |
| Programme 4 Land Reform Policy | 79 531 000 | |
| Programme 5 Land Reform Implementation | 389 620 000 | |
| Programme 6 Restitution | 28 457 000 | |
| TOTAL (under-spent 92 100 000) | 497 608 000 | 405 508 000 |
| | 1999/2000 | 1999/2000 |
| Programme 4 Land Reform Policy | 79 008 000 | |

| | | |
|--|--------------------|--|
| Programme 5 Land Reform Implementation | 385 899 000 | |
| Programme 6 Restitution | 26 597 000 | |
| TOTAL | 491 504 000 | |

- 1 In financial year 1996-1997, the Department was able to roll over RDP funds from the previous year, but this was not allowed in subsequent years.