DIDACTIC ANALYSIS OF LACUNAE IN THE INSTITUTIONAL FRAMEWORK FOR IMPLEMENTING LAND REFORM IN KWAZULU-NATAL

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PREFACE

The world's poor and underprivileged are mainly rural. The key asset of rural people, the indispensable resource for survival strategies and the locus of power, has always been the land. In consequence, it has become the essential problem of underdevelopment. This land reform is a main key for my understanding of rural underdevelopment, to freedom from hunger and to peace. It is therefore my contention that unless the problem of land is squarely faced, competently assessed, and its implications successfully incorporated into development strategies, there is little hope of tackling such underdevelopment.

One cannot, in fact, study land reform and efforts to contain it, in isolation from socio-political system. Land reform provides the most opportune moments for observing the workings and reactions of the socio-political system when touched on its raw nerve. A proper study of land reform provides a rare vantage point from which to watch the whole system coping with provocation. These and other weighty issues require analysis and evaluation, but make overwhelmingly difficult any treatment of the subject that is both comprehensive and effective.

The main area of focus in this exercise is to examine underlying situations and likely causes and sources of land reform, to identify forces and processes at work, to look at the dramatis personae and the supporting cast, to sketch in the stage for events and its control system, and to illustrate these with examples of conjunctures and action. The aim is to probe to the fullest extent that situations are known or understood by the writer. This study is concerned with pertinence, not with norm-setting. Lessons, may thereby be drawn, directly and perhaps more firmly.

The vast world canvas with its bewildering contrasts and complications require any practitioner to put some order onto his/her conception and method of work if his/her actions are to become relevant and effective, and not merely a formal response. Exposure to the real problem *in situ* is the best education. The writer's experience dictated divorce between diplomatic niceties and ugly realities; the comfortable conferences which contrasted with the urgent needs of humanity outside; the deceptions practised by politicians concerning real problems; and the low, if not at times negative, returns for colossal efforts and considerable funds. These and similar goings-on compelled a profound reappraisal of policies, methods and attitudes and a search for real causes. This dissertation can be read as a reaction based on experience. It is also a positive attempt to put the core issues where they belong and an invitation to view matters from where the real dynamic is generated. The main thrust is that the intensity, direction and effect of that dynamic varies with prevailing conditions, contending forces and institutional instruments in what in essence is a power struggle.

ACKNOWLEDGEMENTS

My thanks go to many people whose contribution has given me the needed inspiration to undertake the difficult task of preparing this dissertation. To begin with, I thank my supervisor, Professor Mike Morris who provided constant support, open exploration and prompted me to make a necessary brutal excision. I register my gratefulness to my colleagues, for the assistance they gave me in proofreading and obtaining some of the information and ideas I needed for this exercise. Their inspiration sustained my writing momentum even when the going was rather tough.

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CHAPTER ONE
CONTEXT AND RATIONALE

1. INTRODUCTION AND BACKGROUND

The essence of the land problem in South Africa is the unequal distribution of resources brought about by the 1913 Land Act, and the 1936 Native Trust and Land Act. The effects of these segregationist polices were later exacerbated by apartheid which used pigmentation to deny the majority of South Africans the right to own or use land. The White Paper on South African Land Policy (drafted by Department of Land Affairs and approved by Cabinet in June 1997) responded by developing a crucial and commendable land policy that is aiming to foster national reconciliation, stability, growth and development in an equitably sustainable manner (Department of Land Affairs, 1997). The realisation of this government's vision is more than a simple technical issue of creating an appropriate institutional framework for its delivery and ordering its implementation. It is about what the contemporary prevailing orthodoxies of land reform refers to as rigorous and effective institutional transformation that should focus on power relations around land and mediating processes of political struggles over land ownership, land access and land use (Marcus, 1995). Hence, land reform has been identified as one of the development policies that are central in the transformation of South Africa.

The greatest challenge facing reborn South Africa is to reach common agreement in redressing the effects of apartheid and other past injustices. South Africa's land reform has an ethical, economic and social dimension because whilst equity, or equality of opportunity seems to be a principle that can be easily applied, it requires favouring some interests over others. Hence the status quo was the consequence of the exclusion of one group by another. Future equality of opportunity should start by using the present distribution of ownership of wealth in terms of land rights as a point of departure. The principle of equality of opportunity will thus question the status quo with respect to the distribution of wealth and economic power and, at the very least, suggest an affirmative action approach to ensure a more equitable starting point. The acid test should therefore be: is land reform sustainable and will identified communities' overall living standards be improved by the three land reform programmes?

The land reform policy has three main components: restitution, redistribution and land tenure reform. The restitution programme is designed to restore land to people who have been dispossessed; the redistribution programme is aimed at increasing access to land by those too poor to get land through normal capitalist market forces. This programme is very important to make sure that there is significant shift in land ownership towards people who were previously landless and thus providing them with land for residential and productive purposes and the land tenure reform programme seeks to convert insecure tenure rights of the occupants of communal land which is nominally owned by the state (Department of Land Affairs, 1997). These programmes

are very necessary if the country is to move towards political, social and economic stability. A daunting but necessary challenge is therefore placed on the shoulders of the bureaucracies to effectively implement the objectives of this land policy.

Functionaries of the Department of Land Affairs (DLA) are always advocating that successful implementation of land reform in South Africa is dependent on more than merely access to land. The provision of support services, infrastructural and other development programmes, is essential to improve the quality of life by contributing to poverty alleviation and to economic growth. This necessitates a constructive partnership between all spheres of government administrations and cooperative partnership between the state and private sectors. Contrary to this theory, the practical implementation of land reform is characterised by extensive disjointed coordination between different government departments, technocratic stringent regulation of land development, market-based constraints and bureaucratic administrative 'bottle-necks'.

It is against this backdrop that the didactic analysis of this research will be concerned with more than just puncturing illusions and pointing out how things in practice really work. Instead, it hopes to place in context the dilemma faced by all practitioners mandated to implement land reform within a Constitution which is aimed to promote social justice in an institutional framework that is clouded with confusion. The dilemma is that although the Constitution enjoys full political support, it is caught between the imperatives for equity and redress which drives national land reform policy and the dwindling financial resources allocated to the provinces provided for supportive developmental needs. The ultimate goal is to highlight to the government and in particular the Kwazulu-Natal Provincial Administration (KZNPA) how these institutional constraints can be overcome in the process of developing a sustainable and integrated land reform. Specific focus is placed on unpacking the lack of policy coherence that emanates from constitutional provisions which places land reform within the national competence whilst making provincial planning and development a provincial competency.

2.   DEFINITION OF ACTUAL PROBLEM

A central theme of the White Paper on South African Land Policy (drafted by Department of Land Affairs and approved by Cabinet in June 1997) is to translate the government's commitment to social justice and alleviation of poverty onto a set of concrete land reform and land development programmes, legislation and procedures. However, the performance of land reform delivery in KwaZulu-Natal has been slower and of lower quality than was intended. Many studies that have been commissioned by DLA have identified a range of institutional and technical failings which need to be addressed. The White Paper principles will remain a dream if national land reform continues to be carved out with scant attention being paid to provincial and local planning and development variations. Provincial governments and particularly KwaZulu Natal have

continuously argued that constitutional obligations are inextricably linked with budgetary provisions. The processes of budgeting and prioritisation of land reform projects is done by DLA and is not prepared in line with provincial or local planning and development budgetary and legislative provisions.

The Constitution of the Republic of South Africa (Act 108 of 1996) created a fundamentally new legal and institutional environment within which the delivery of land services must take place. The Constitution assigned land matters and legislative powers regarding land matters as a competence of National Government. Political accountability for land affairs lies with the Minister of Land Affairs. Two serious problems have emerged with this constitutional provision. The first of these is a systematic tendency of the DLA to bypass provincial and local service providers. Although such approaches can facilitate fast-track development, they have also served to obviate inter-sectoral cooperation, local planning and co-ordination of development activities. Another problem arises out of the fact that land reform is a centrally driven programme which has had difficulty in securing the commitment of Provincial and Local Governments. This has resulted in DLA having to bear exclusive responsibility with its very limited capacity and resources.

The Constitution states that government is constituted by three spheres that are distinctive, interdependent and interrelated. Although these spheres are governments in their own right, the Constitution also requires each sphere to observe the principles of co-operative government. This Constitution has laid a fertile ground for developing effective partnerships but the White Paper on Land Policy has failed to rationally and clearly define roles and responsibilities of each sphere so as to minimise confusion and maximise effectiveness. The White Paper stipulates that decentralisation of function and authority to its provincial offices is a necessity for efficient and effective delivery of land reform. These offices are mandated to negotiate with Provincial and Local Governments about co-ordinating service delivery and providing complementary development support to beneficiaries of land reform. These negotiations have been hampered by the Constitution which confines land matters within the national competency. This has created a situation where land reform implementation programmes have encountered bottle necks because Provincial and Local Governments have not been delegated with comprehensive funded mandates.

The KwaZulu Natal Cabinet approved the Provincial and Growth Development Strategy on the 03 July 1996. This Strategy committed the provincial administration to a process of development planning that would result in the social and economic upliftment of KwaZulu-Natal's population. The logic of the Strategy is to be informed by and inform the development of national policies and also be premised on a shared responsibility in its formulation and implementation. The existing vacuum between the constitutional obligation and budgetary provisions triggered the author's attention as he is directly involved with the formulation of many provincial policies and the co-ordination of planning and development projects in the Northern Region of this province.

The reason for focussing on the implementation of land reform is to transfer knowledge to action by specifically showing how synergy between provincial initiatives and national policies can be harmonised to positively influence the vision of the Strategy. It is contended that the principles of co-operative government and intergovernmental relations as enshrined in the Constitution can be used to effectively implement land reform. Much effort has been made by DLA in preparing the ground work but their approach lacks effective networking with provincial and local planning and development initiatives. This target will never be realised within the constitutional turf that exists in the institutional framework responsible for implementing land reform.

3.   RESEARCH METHODOLOGY

This study has made use of both primary and secondary sources of information. The primary information was mainly influenced and drawn from empirical experience and intuition about the implementation of land reform in the Northern Region of KwaZulu-Natal (Map 1) . The everyday life as experienced by Department of Local Government and Housing (DLGH)-Northern Region, in the interactions with government departments and affected parties in the land reform projects calls for the need of focussed approach in interpreting and synthesising many facets affecting the successful implementation of land reform. Basic justification of this approach is provided by the author's (Director: Land, Planning and Survey - Northern Region) direct involvement in these processes.

(1)   All the existing land reform projects in the Northern region have experienced delays caused by institutional weaknesses attributed to the difficult terrain of constitutionally-defined roles regarding the performance of land functions within the framework of the new Constitution and also in regard of the new land policies of the government.

(2)   The Northern Region office is directly involved in the frustrated land reform development process and also in negotiations of providing complementary development support to beneficiaries. The implementing agencies have not as yet shared a coherent understanding of their roles and responsibilities. The conflict ridden process of post settlement support is consuming considerable time and energy of departmental officials in conflict management.

(3)   The transformation process of Regional Councils and uncertainties associated with unclear mandates exacerbate the bureaucratic infighting in the land reform delivery process. It is still not explicitly clear who is responsible for what and who is most accountable between the Department of Land Affairs and the Regional Councils.

(4)   Officials from this office are part of the leading team discussing decentralising of land reform implementation to the lowest possible level within the Regional Council. The author is currently identifying the strength of the linkages between institutions involved in the land reform delivery process. This is done to formulate an institutional design that identifies an ideal set of institutional relationships for the implementation of land reform.

(5)   Three Regional Councils in the Northern Region are in the process of drafting their development plans. The need for an integrated land reform process and other related policies are continuously communicated to the participants. One problem that has been identified is that beneficiaries are not being sufficiently involved or informed in relation to post settlement support and how should be incorporated into the Regional plans.

(6)   The Northern Region office is inextricably linked to the conflict-ridden process of assigning responsibilities in relation to post settlement support. The Department of Land Affairs fulfills its mandate with no reference to provincial planning and budgeting. The level of provincial/local government involvement in deciding spatial settlements is miniature and makes a mockery of overall integrated regional development planning.

Review of Documentation
A review of all documentation regarding the land reform projects in Northern region was undertaken. Minutes of the District Committees were used with a provision that individual names and issues of confidentiality were not going to be disclosed. Other documents related to the implementation of land claim were accessed from the Department of Land Affairs, Pietermaritzburg Provincial Offices. The Regional Councils (Umzinyathi, Zululand and Uthungulu) gave permission to review their correspondence with Department of Land Affairs with regard to specific projects within their areas of jurisdictions.

Group Meetings
The monthly District Meetings held at Regional Councils were used by the author (as the member) to raise critical issues that were of relevance to this exercise. The purpose of the study was clearly explained to the co-members and it was emphasised that this study was not commissioned by any government department. The study was undertaken so that other participants in the land reform implementation could learn from the findings of this study. It was minuted in all meetings that the author's recommendations will not represent his mother department (Department of Local Government and Housing) nor the views of the District meetings that he is currently serving.

Case Studies

Visits were made to all illustrative case studies. However, no formal questionnaires were used in collecting data because the authorities felt that the position of the author as he is also serving in the committees would be compromised. It was strongly suggested that the author should only conduct informal individual interviews because communities would find it difficult to differentiate whether the interview was held on government's behalf or on the interviewer's interest.

Secondary Data

The secondary information used included information drawn from land reform publications, journals, Department of Land Affairs unpublished documents, Regional Development Plans and press clippings. The KwaZulu-Natal Development Planning publications were targeted specifically because KwaZulu-Natal has been at the forefront in introducing a model of integrating different planning and development legislations.

4.   STRUCTURE OF THE DISSERTATION

In order to contextualise the problem statement, this dissertation begins with a discussion of land reform in Sub-Saharan Africa **(chapter two)** where the origins of land reform are traced with particular reference to two African countries, that is, Zimbabwe and Kenya. This is followed by **chapter three** which is an overview of key land reform programmes in South Africa and closes by highlighting critical areas of policy considerations. An in-depth analysis of policy and institutional framework for implementation is extensively covered in **chapter four** where problems and prospects for effective implementation is are outlined. **Chapter five** attempts to locate the policy and institutional framework of land reform within the development planning process of KwaZulu-Natal, with the sole purpose of emphasising the need for an integrated land reform delivery process in KwaZulu-Natal. Obstacles to effective implementation of land reform in KwaZulu-Natal are discussed in **chapter six** where reference is made to specific illustrative case studies as experienced in the Northern Region. In the final section **(chapter seven)** of the dissertation, specific policy proposals are discussed with an aim of stimulating thinking and debate about effective institutional development for implementing land reform.

CHAPTER TWO
LAND REFORM IN SUB-SAHARAN AFRICA

1.   INTRODUCTION

The heterogeneous structure of land reform in Africa is primarily a result of the political history of the continent. The post-independence African governments inherited the conceptual, and the major part of the legal framework on land reform from the colonial period. Africa has seen a series of land reform programmes intending to change the rights and duties underlying tenure. Most of the programmes have attempted by legal means to privatize and individualize land holdings, but have failed to carry out effective reform and have suffered from a weak administrative capacity to see the process through and sustain the system after the reforms have taken place. Furthermore, they did not recognize the variety of traditionally-based tenure systems already present in the countries and the security of tenure these can provide.

The social and economic forces of modernization that swept Africa beginning in the late 1960s, brought fundamental socio-cultural, political, and economic changes that essentially benefitted a small minority. The literature review reveals that land policy implementation has remained the same or worsened in terms of organization and function since independence (Ahmed, 1998). Mabogunje (1992) assessing literature of land reform in Sub-Saharan Africa, mentioned that little progress in land reform could also be attributed to the rapid introduction of structural adjustment programmes that drastically reduced public resources and the role of the state. Economic liberalization and privatization schemes have led Southern African countries to revise their land reform policies and to consider land markets as a future strategy for their land policies.

It is worthwhile for South African policy makers to review this African literature so that it can profit from the experiences of African countries thereby enhancing their land policy administrative management efforts. This chapter therefore attempts to explain what makes land policy development so central to economic, political and social discourse. Kenya and Zimbabwe are used as case studies to show what mechanisms and processes have been used to initiate and administer land policy in specific country contexts, and what outcomes have been experienced and whether beneficiaries received a worthwhile course.

2.   INFLUENCE OF WORLD BANK'S PARADIGM SHIFT

Any analysis of land reform which ignores the global political context, the influences of international donors and how it affects the policy formulation and implementation is fundamentally flawed (Morah, 1996). Since the beginning of the step-by-step redirection from neoliberalism in the late 1980's the World Bank's annual development reports have given research-based attention

DLGH - REGIONS

N

Zululand

Umzinyathi

uThungulu

uThukela

iNdlovu

iLembe

Ugu

Regional Councils
Departmental Regions
COASTAL
INLAND
NORTHERN

20 0 20 40 60 80 100 Kilometres

MAP 1
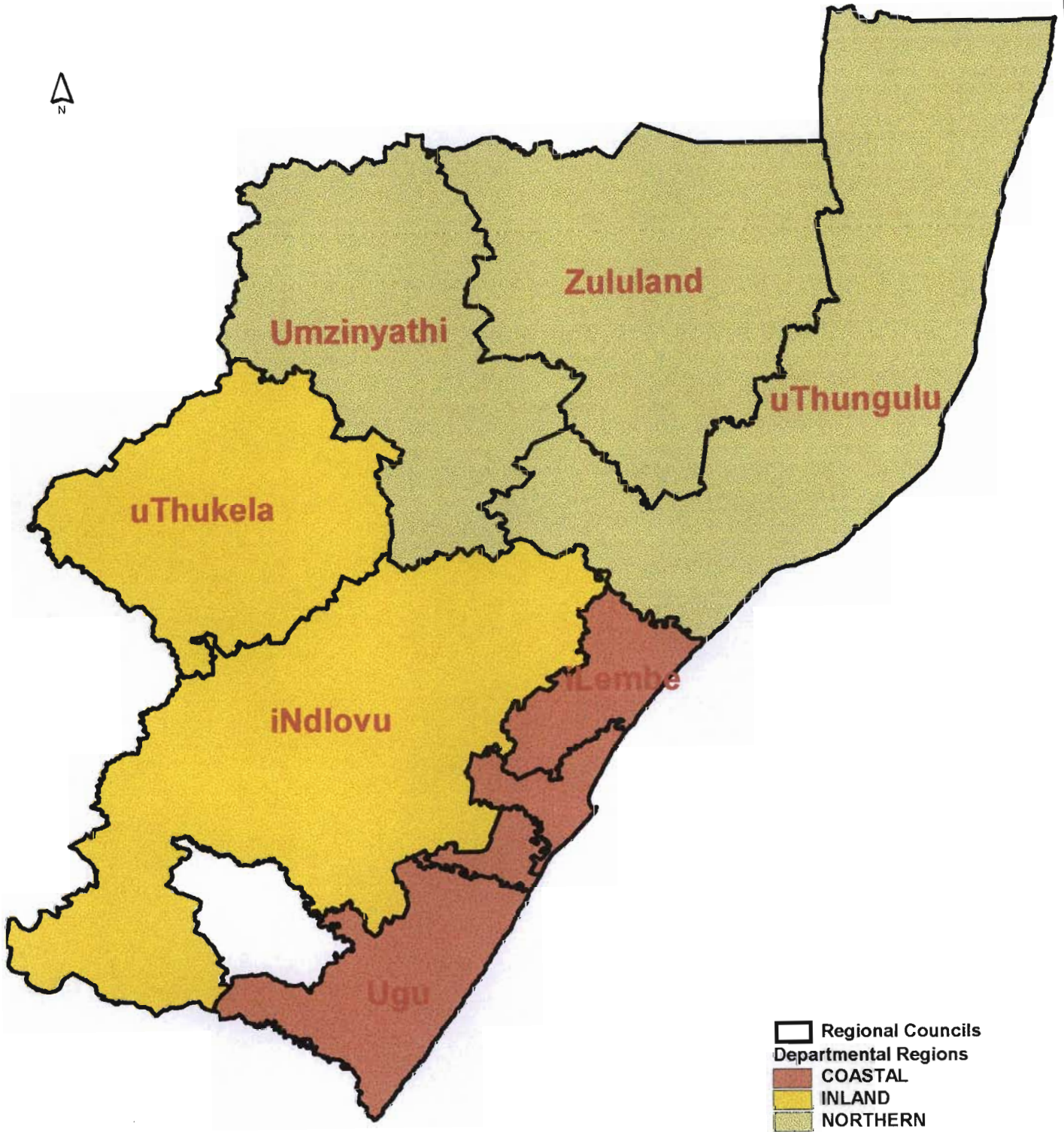
to poverty (1990), general development policies (1991), the environment (1992), health (1993), infrastructure (1994), labour market integration (1995), and from planning to market-led growth (1996). These reports raised fundamental issues about new developments in state-market relations and the relations between the state and society. It is therefore not surprising that the Bank's 1997 annual development report addresses *The State in a Changing World* (World Bank, 1997). World Bank's learning by doing experience has revealed that comparative success and failure in its economic reform and social-sector programmes depend greatly upon the competence of a state in policy development and technical proficiency.

The last report differentiates 'market-friendly' approaches from *laissez-faire*: it deliberately enhances markets and associated human capital and institutional reform. Human capital is here understood as the value of the additional lifetime income to society and this is derived from household economics, from state programmes and from some experiences in labour markets (Pugh, 1997). The Bank's terminology and its discourse help to define its line of thinking. For example, South Africa is to be assessed as to whether it has capability, effectiveness, credibility, useful partnerships, and incentives in its institutional arrangement in order to overcome the cost of compliance (World Bank, 1997). Owing to the possibilities of distortion and bureaucratic self-interest, compliance is at risk, with bureaucracies taking directions different from those intended by politicians and electorates. However, the Bank has now relied on both theorists of positive attitudes to the state as well as on those with cautious or negative attitudes. This most remarkable development marks the World Bank's first steps to balance its historically strong economics with some selective politics.

The aim is to improve development performance; this being instrumental for growth and welfare. That is to say good states, good institutional arrangements and good policies raise social and economic performance in development. It is argued (Turner and Hulme, 1997) that 'goodness' depends on bringing the state closer to the people, reducing corruption to insignificance, developing the range and depth of the state's capability of achieving some reasoned redistributive welfare and having regard for context variations. These variations are very important, and requires some selective attention because the range of achievement is contingent upon whether particular states are weak or strong. Stronger states can do large and complex things, whereas a weaker state should do only what is feasible, with regard to basic priorities. As the World Bank has had to deal with regimes of very different characteristics (democratic, authoritarian, progressive,), it has tended to avoid the politically contentious by emphasising economic, technical and project feasibilities.

The South African government should be commended for not fully importing this notion as it has inherent difficulties because of its propensity to achieve unequal progress rather than effective convergence, largely because institutional change has longer and more difficult histories than some

relevant economic reforms. One can conclude that World Bank's Development Report 1997 is a cautious and limited first step to bring more politics into its political economy, although the economic still dominates. This is significant for policy makers, and challenges them to deepen their understanding of politics, governance and institutions. If the World Bank is starting to realise the significance of land reform and view macro-spatial planning as essential for economic development, then South African land policy will most probably start to feature strongly in the World Bank's development agenda.

3. THE GENESIS OF LAND REFORM

Land is at the heart of land reform and is the pivot of power. Rousseau powerfully expressed this 'collective claim from natural law' as follows: " Land is the gift from God, and land property did not enjoy the same legitimacy as property acquired by labour". In his *Social Contract and Discourses* he wrote: "The first man who, having enclosed a piece of ground, bethought himself of saying *This is mine*, and found people simple enough to believe him, was the real founder of civil society" (Offer 1981:3). The problems associated with effective implementation are those of human or social relations with respect to control and use of land and access to the accruing benefits. Land becomes the pivot of power because people depend on it for their vital needs: the greater the dependence, the more strategic becomes control of land and the more power it confers.

Monopoly control of land may lead to monopoly control of power over people. Institutionalised control of land operates through the political system. The reciprocal relationship between the land system and the political system makes them interdependent; the land system becomes the pillar of the wider socio-economic and political system. The land system is a network of these relations in institutionalised form. It follows that, whenever those who have no privileged access to land, especially those who are wronged or oppressed by the system, find it unacceptable, there is no easy way change that system.

Landowning interests, especially if they are privileged and entrenched, will not give up their privileges or power unless they are forced to do so. Only an acute conflict and shift in the power structure will bring about significant change. This, simply put, is the nature of land reform and the political economy of reform. Because land has a special role as a means of production while its use satisfies vital needs, the concept has persisted over centuries, if not millennia, that land is a free gift of nature and, is therefore, meant for all inhabitants. The eighteenth-century writer, Jeremy Bentham, in his *Principles of Civil Code* suggested that "land was not the gift of God, the gift of the State ... Property was a social construct which was only justified by expediency; what has been granted could be taken away" (Ibid.p.1). Appropriation of land for private use is thus in some way unnatural and wronging to others. This tenet of land as a free gift of nature is based

on classical economic concepts and the related moral stand, namely, that land and social functions cannot be appropriated for exclusive and selfish use and profit by some at the expense of others.

Land reform is a drastic, planned public intervention aimed at bringing about a new structure of access to land that is more appropriate to the requirements of the socio-economic and political system which it supports or with which it is closely linked. Thus land reform inescapably involves a network of power relations and brings into play a vast range of forces. In the context of South Africa, one can illustrate this distinct perception of land reform. It is viewed as an integral part of the overall socio-economic and political system because it is rests on a structure of access to land resources in which those resources are concentrated in the hands of a small class of large owners.

Land reform has become a critical element, even the spearhead, in a complete transformation of the total socio-political system. The complexity and magnitude of the task of an urgent and drastic transformation is barely within the capacity of the government and administrative system and also faces strong opposition from powerful and entrenched landed interests. The real situation is, of course, much more complex and varied, but it should be stressed that the basic inequities tend to worsen as interventions take the form of an enactment of a basic land law (or review of an existing one) modelled on English or French principles (Okoth-Ogendo, 1998) .The seeds, however, are engendered by the malfunctioning of the government and or institutional system.

4.   LAND REFORM PERSPECTIVES

The repertoire of development literature encompasses a significant body of theory and philosophy about land reform. Despite the overwhelming array of recent publications, it is impossible to find a definition or a concept of land reform that is self-evident and uncontroversial. The wide variation of social and economic circumstances, political aims and history of land acquisition makes the definition of land reform difficult. Some might argue that this does not really matter, because the strength of a concept lies in its performance (what it does) rather than in its exact meaning (what it is). Yet definition is important because some land reform policies are not in fact intended to change the distribution of land ownership and rural power. For the purposes of this exercise, land reform is generally accepted to mean the redistribution of property or rights in land for the benefit of the landless, tenants and farm labourers (Warriner, 1969). This is the narrow definition but it has received wider acceptance because it reduces land reform to its simplest element.

Land reform and agrarian reform are often used interchangeably. Agrarian reform, a construct of the Cold War to counter communist land reform, embraces improvements in both land tenure and agricultural organisation. Its policy prescriptions urged governments to go beyond redistribution

by supporting other rural development measures such as extension of services to facilitate the productive use of the land reallocated. Whilst conceptually sound, a problem with these wider prescriptions is that they may discourage governments from doing anything until they can do everything. Thus, land reform pertains to the remodelling of tenure rights and the redistribution of land, in directions consistent with the political imperatives underlying the reform. For example, policies advocating a drastic, planned, public intervention to redistribute land normally invites strong opposition from landed interests. Another determining factor is budgetary impediments, which distract from more feasible evolutionary policies aimed at improving access and security of tenure (Adams, 1995).

5.   LAND REFORM IN SUB-SAHARAN AFRICA

Questions have been raised regarding land reform experiences in Africa and how they might inform post-apartheid rural transformation. The need to restructure access, ownership and use of rural land in post-apartheid South Africa encouraged policy makers to consider viable rural development models from the international and in particular African experience (Masilela and Weiner, 1996). An approach in this exercise investigates the experiences of those African countries that have histories and socio-political structures which have significant parallels with those of South Africa and from which some lessons can be learned and imported. Kenya and Zimbabwe are important case studies because these countries have a similar agrarian history characterised by the dominance of white settler farming and the existence of severely constrained African reserves. (Hazelwood, 1985 and Weiner 1988).

Although there are many important areas of difference between South Africa and other countries, the common historical features serve as a strong base for drawing similarities. These are notably the strict division between land occupied by whites and that available to Africans; the striking contrasts between the contrived socially engineered African areas with their densely populated and over-farmed character and the sparsely settled and underutilised white areas; the disproportionate percentage of the prime land owned almost exclusively by whites; the unequal provision of support services in favour of whites.

Kenya and Zimbabwe are among those countries that perceived land reform as a crucial mechanism for achieving production efficiency and equity in distribution of agricultural resources. However, the majority of land reform policies effectively failed to achieve their optimum potential and fulfil socio-economic and political expectations (UF Research, 1995). On the contrary, these countries have entrenched the success of commercial white farmers while ensuring that most Africans and particularly in rural areas lived in abject poverty (Cousins, Weiner, and Amin, 1992).

In Kenya and Zimbabwe, the struggle for land has been a major factor in post-independence development. Decisions about the ownership and distribution of land have had a fundamental impact on the social structure and political economic paths chosen by their governments after independence. Initial enthusiasm was followed by substantial changes in the government attitudes and adoption of both neo-classical and neo-marxist approaches to resolve the land question. This inconsistent and unclear development path became apparent with the decollectivisation and privatisation in the former socialist economies and the increasing pressure from the international donors for adoption of structural adjustment policies. Important agents in the development scene, such as the Bretton Woods institutions, advocated a resurgence of the market and a reduction in state control. Countries were expected to demonstrate their commitments to controlling inflation and reducing of the balance of payments deficit through the introduction of stabilisation programmes. Tight monetary policies were introduced which resulted in the reduction of public-sector expenditure which included cutting subsidies. South Africa is no exception given that the majority rule government has, in the face of racially skewed land ownership introduced market-based measures to achieve land distribution in favour of blacks.

It is crucial for policy makers to accept that land reform policy is extremely value-loaded. Since the 1980's the international institutions and the donor community have increasingly devoted time and effort towards gaining universal acceptance for the liberal-democratic and free market model which is based on the assumption that democratic politics and slim, efficient and accountable public bureaucracy are not simply desirable, but also necessary for a thriving free market economy and vice versa. Ideology is the driving force behind much development thinking, but it is not always a good master. The confrontation between ideologically motivated ideas and real life situations convincingly demonstrates the limitations of ideologically-driven approaches. Structural adjustments in the global economy and the international political order have resulted in Africa's increased marginalisation and impoverishment. Furthermore, the African state and civil society are moulded by a rather peculiar set of forces which makes it hard to compare them with, for example, South-east Asian states (Stren, 1992).

The key lesson for South Africa is the need for carefully conceptualized and coherent land reform policies. The challenge is to define appropriate roles and responsibilities in specific situations for the actors involved, notably the public sector (at different levels), the private sector and social, non-governmental sectors. However this does not advocate universal land reform formulae that can be seen as the panacea for the land question. From the development perspective, land reform should be seen as one input into a national process which will hopefully empower policy makers to freely and consistently formulate approaches consistent with current national goals. For policy makers it is critical to understand the extent to which the state should intervene in land reform programmes and to know whether decisions to proceed with land reform are inherently political. An increased awareness of the crucial role of politics is needed, one that must be seen as the

framework within which plans are to be designed and implemented. An accurate political analysis should identify different kinds of vested interests (the commercial elite, the central government, the administration) to ascertain how they influence decision making (formally and informally) and to assess how the excluded segments of society could participate in and be mobilised by the land reform process. Furthermore, the outcome of policy reform is to a large extent dependent on the commitment of those who are in power as well as on the disposition of government officials (Batley, 1994). For example, when growing landlessness, chronic indebtedness and evictions of tenants threaten stability, the state should intervene to regulate ownership rights, sometimes with the tacit agreement of landowners seeking to prevent land invasions.

6.   LAND TRANSFER IN KENYA

Land ownership continues to be a key problem in contemporary Kenya. Lack of non-farm employment and the individualization of legal title led to more unequitable distribution of incomes and did not afford equal respect to the different rights and interests in land. The government engaged in a land reform process that was to be achieved without disrupting existing operations. The land hunger of the Africans had to be assuaged within programmes which prevented the exodus of white farmers in the face of the advancing reforms. The implication of this approach was government paralysis (especially after independence) in that the state failed to achieve an equitable division of land as well as protect land rights which adversely effected the poor and has been a source of some fierce land disputes in recent years (Roth, 1994).

6.1   Pre Independence Period

The foundations for land reform in Kenya were laid in the 1950's during the Mau-Mau period. Problems in the African reserves were acute and similar in pattern to those in the South African 'Native' reserves, which later became *bantustans:* the land was over-cropped, over-grazed and eroded and land that was fertile and of high potential was often fragmented into tiny plots because of Africans limited access to the land, as well as the traditional tenure and succession systems. Most the 'white' land, an area of over 3 million hectares, was not used to its full capacity and lay idle (Hazlewood, 1985). Many Commissions that were appointed in an effort to reduce the pressure for African access to white 'Scheduled Areas' failed to recognise the rights of the poor to have security of access to land. The 1954 Swynnerton Commission brought about change in African agriculture by the introduction of individual tenure and the cultivation of profitable exports. It argued for the eventual concentration of land in the hands of the most efficient producers and anticipated the exodus of surplus population and its absorption into industry or as labour for the new landed class. Recommendations of this Commission are still being implemented in the tribal areas or reserves and are having a profound impact on Kenya's political economy. The better-off segments of rural society as well as urban residents aspiring to own rural property are becoming the primary beneficiaries of land reform. Consequently what followed was

further landlessness and a polarization of the rural classes since land was concentrated in the hands of the efficient farmers, a minority, and inevitably a rich minority.

The 1955 Royal East African Commission compounded the problem by adopting a principle of promoting commercial agriculture and private enterprise through the transfer of land from white to black farmers, and in the case of African land holdings, consolidation, adjudication and registration of title, thus abandoning the tribal approach to land ownership. One effect of this reform was the transformation of land into a commodity that could be owned initially by clans, then families and eventually by individuals and could be sold without reference to traditional norms. This gave rise to a class of landless people, especially women. Land reform in Kenya, as it favoured men against women, also downplayed the status and role of women as the actual utilisers of land. Further, it was designed for a sedentary mode of agriculture and served to marginalise pastoral communities which lost access to key land resources during droughts (Nthia Njeru, 1991)

6.2 Post Independence

In the first 10 to 15 years after Kenya's independence in 1963, the government was occupied with the settlement of Africans on high potential land alienated from Africans in the early years of the century. The main focus of this policy was the transfer of land to allow for the continuation of large scale farming units leased to suitable tenants. This policy was based on the following principles: the redistribution of land and wealth to Africans; redistribution without a loss in productivity; the maintenance of a large farm sector and payment by settlers for land they acquired. Whereas it was accepted that the redistribution of wealth and income was to favour Africans, development was the overriding principle. Land transfer was necessary to defuse the time-bomb of landlessness but on a scale no larger than was needed to prevent political upheaval. Redistribution was to be achieved without a fall in productivity and without disrupting existing operations. The land hunger of the Africans had to be assuaged within programmes which prevented the exodus of white farmers in the face of the advancing reforms. Also new African farmers had to be capable of the same level of output (UF Research, 1993). This implies that the favoured tenants were those with farming experience who had managed to accumulate some capital already. Thus it was not those who came to be called 'the absolute landless' and who had given the political impetus to settlement who were the beneficiaries of most of the programmes.

Another school of thought also cites bureaucratic muddles as another major contributor in the unsuccessful implementation of land reform in Kenya. The Ministry of Agriculture operated independently of the Ministry of Lands and Settlement. This lack of co-ordination coupled with inefficient and technically inadequate management made it difficult for farmers to achieve target incomes. It soon became evident that large scale farming was less productive, hence the principle became less convincing (Hazlewood, 1985). Apart from agricultural farm holders, squatters on

farms and pastoralists, all of whom have been hit hard by evictions and dispossession, there are other marginalised groupings within Kenyan society whose needs also have to be urgently dealt with in the land reform process. For women, basic inequities with respect to property rights and access to land inhibit their livelihood security. Although changes in the succession laws should enable women to buy and sell land in their own names, matrimonial property still remains subject to dominant patriarchal tendencies in customary family laws.

6.3   Lessons From Kenyan Experience

A critical lesson that features prominently from Kenyan experience is that the poorest of the poor, many of whom have good farming skills, did not benefit from the land reform process and their productive potential was unrealised because of a discourse that wrongly assumed that ability to pay is an indication of ability to farm.

(a)   The Kenyan experience has shown that farms should not be larger than can be worked by a family, bearing in mind those members who engage in employment off the land and the extent to which landless workers can be employed. The extent of land transfer should therefore not be limited by a belief in the need to maintain a large-farm sector, except where this is necessary under relevant conditions.

(b)   The importance of developing policy measures that adopt a pluralist approach to ensure where there is scope for parallel systems of modern and customary tenure within different areas. This emphasises the view that developers, politicians and planners need a clear and accurate understanding of the situation, not broad unsubstantiated assumptions.

(c)   Priority be given towards ensuring the access and ownership rights of women, and there is a need for a comprehensive land rights process that would review the needs of agricultural and pastoral women.

(d)   It shows how important it is for Kenyan society and policy formulators to recognise the rights of the poor to have security of access to land as land is their livelihood asset. Hence the urgent need for a wider awareness of land rights, support for legal authority and a well informed leadership knowledgeable about the needs of poor communities.

7.   ZIMBABWE'S RESETTLEMENT PROGRAMME

Large parts of rural Zimbabwe had been ravaged by almost two decades of guerilla insurgency and counter-insurgency when that country finally attained independence on 18 April 1980. The new government was confronted with the problem of inequitable distribution of productive resources between racial groups, particularly land. A numerically small white commercial farming sector (approximately 6 000) controlled over 15,4 million hectares of mostly the best land. In addition, commercial farmers were well capitalised and benefited from extension, credit, marketing and infrastructural facilities. In contrast, the smallholder peasant farming sector

(communal areas) supported about 800 000 families suffering from poor access to natural resources, environmental degradation, low and very variable rainfall, poor social and physical infrastructure and limited off farm employment opportunities (Bush, R and Cliffe, L. 1984).

The land question was one of the major grievances behind the liberation struggle. From the founding of Rhodesia in 1890 onwards, successive colonial regimes sought to enforce a system of racial segregation with the apportionment of land by race as its cornerstone. After independence, the government announced plans to settle some 18 000 households over five years. The following year it multiplied this target threefold to 54 000 families; and in March 1982, this figure had trebled once again, to reach the famous 162 000 households which it was hoped would be settled as early as 1984. However, fourteen years on, the targets have still not been reached. The strategies of achieving these targets were based on the inherited development planning process that the government found itself unable to alter significantly (Gwebu, 1991) . Weiner and Levin (1993) mentioned that the Rhodesian technicism permeated the colonial civil service and the institutions of newly independent Zimbabwe and was a historical continuation of a purposive rational planning paradigm.

7.1   Zimbabwe's Land Reform Blue Print

The resettlement programme operationalised four settlement models which were designed to facilitate standardisation in the planning process. Model A, which currently accounts for over 90 per cent of all resettled households, provided for arable land allocations of five hectares per family and grazing rights on communal pastures of up to 15 livestock units. It envisaged individual family homesteads and arable holdings, with communal grazing and nucleated villages. Model B schemes were designed as producer cooperatives and were assumed to be prototype models for the socialist transformation of agricultures. This model received hostile reception from the very influential emerging black elite. This group assiduously lobbied government to slow down resettlement on the grounds that undermining white confidence would have dire economic consequences. Model C had the same characteristics as Model A, except that it revolved around a core state-owned estate providing services while settlers reciprocated with labour. They could also be out-growers to the core estate. Finally, Model D, unlike the other three models, was developed as a cattle-based scheme designed to promote the optimal use of semi-arid lands with limited dry-land arable potential. This model was intended to permit controlled periodic grazing by livestock from adjacent communal areas (Government of Zimbabwe, 1984).

This blueprint approach invited criticisms from many observers and analysts. Three widespread criticisms are: poor agricultural performance; a seriously flawed land allocation process; and bureaucratic state control which undermined other rural development institutions. The third pillar of the failure thesis stipulates that Zimbabwean resettlement was too statist and dependent on top-down rural development institutions. This prescribed approach was successful in reaching many

people who historically were socially and spatially isolated and did so as rapidly as possible. However, these development initiatives were also associated with attempts to consolidate the ruling party by allocating productive land to those who voted for it whilst 'outsiders' were located in places where the government perceived that it was politically weak (Alexander, 1991). The Zimbabwean government therefore failed to articulate a comprehensive rural land reform programme in which the main development activities were linked to genuine participation by local communities in the restructuring process.

The top-down directive changing land allocation authority precipitated a struggle with some chiefs and their patrons and alienated many people. Land reform and resettlement became a technical exercise for planners. Recipients were to play by the rules that resettlement officers articulated at the local level (Masilela and Weiner, 1996). These problems associated with statism and bureaucratisation do not legitimise a neo-liberal land reallocation process as articulated by the policy makers associated with the World Bank's agricultural mission to South Africa. The Kenyan example has shown that market driven reform often strengthens the political and economic position of the emerging black bureaucratic bourgeoisie. A critical factor often overlooked by neo-liberal analysis is the pervasive nature of the purposive rationality that characterised the colonial state and remains the operational paradigm of centralised institutions in post liberation periods. Cousins and Robins (1993) in their analysis of Zimbabwean institutions concluded that those who work for state institutions are trained and socialized into the language of goals, policies, programmes and plans. This approach (as generally referred to as 'comprehensive approach') has the tendency to achieve goals that alienate and are far removed from the genuine concerns of the people being planned for.

8.   RELEVANCE TO SOUTH AFRICA

The experience of Zimbabwe's resettlement planning provides lessons that are very pertinent to contemporary debates on the appropriate institutional framework for implementing land reform in South Africa. In short, the Zimbabwean government inherited an approach to planning that laid the foundations for planning principles and procedures that still apply today (Masilela and Weiner, 1996) but also the centralised institutions socialised in the exercise of power through purposive rational action. As a result, the resettlement exercise became over-bureaucratised around the production of specific physical land use plans that used the same methods as the former regime. Though there may have been a changing of the guard in South Africa, the heritage of purposive rational action is alive and well. The whole implementation programme of land reform is still constituted in the comfort of planning offices with little regard for developing local institutional capacity and allowing political and socio-economic variations at the local level. Consequently, many people in rural areas still have difficulty differentiating between the actions of their new government and those of the past regime.

Analysing Zimbabwe's resettlement programme is useful for policy makers in South Africa. It is important, however, not to homogenise the resettlement experience as there is a significant social and spatial variation in household performance. The need for an open minded approach in dealing with land reform also highlights the need for greater flexibility in developing and implementing land reforms. People in communities have knowledge that is fundamental to the rural land use planning process. The acceptance of the concept that the poorest members of the community are inferior farmers, which is then conceptually connected to the belief that households receiving land should pay a significant portion of its market price is a dangerous argument when applied in South Africa. In the same vein, the reification of the market as the most efficient allocator of rural resources has important locational and political consequences for South Africa. Local people do have skills and knowledge pertaining to their areas and a predetermined planning approach makes it difficult for the comminutes to fully participate in the process, thus making the whole implementation programme a mere mockery of the concept of participation.

CONCLUSION

It has been discussed in this chapter that the persistence of a technicist planning culture within the inherited central institutions retards the capacity for the programmes to address local problems adequately and alienates many rural communities. The failures of rational planning approaches will not be blamed on the planning itself nor the inherited bureaucratic structures and procedures but on the ruling government. An alternative land reform approach conducive to enhancing the full participation of local communities should be based on the development of a truly participatory process of land use planning. Communities have a store of valuable local knowledge that is waiting to be tapped and a strong political consciousness, despite the historical weakness of rural organisation. Participation however, must not be a legitimisation of top-down policy and project development but genuinely popular and community based. One pertinent question following this line of thought is whether the South African constitution is geared towards welcoming local contingency and assisting the creation of institutional structures that will enhance local knowledge?

CHAPTER THREE
LAND REFORM IN SOUTH AFRICA

1. INTRODUCTION

The move towards democracy in South Africa has been characterised by an emphasis on reconciliation. This is demonstrated in the protracted period of negotiation leading to the new constitution (Act 106 of 1996), with its emphasis on seeking consensus and reconciliation, the Government of National Unity, the Truth and Reconciliation Commission, and the role President Mandela continues to play in promoting reconciliation. One of the areas in which this move toward reconciliation is likely to be challenged is that of land reform, where initiatives to redress the effects of apartheid must confront the historically unequal allocation of land among the race groups. The government outlined its vision for land reform through a White Paper which was released in March 1997 where it provides a fairly detailed policy statement covering where the government is prepared to go with the land question (Department of Land Affairs, 1997). However, it is not clear whether or not the land reform programme will be able to pursue its goals of distributive justice and reconciliation without in the process reinforcing the very problems of inequality, competition and conflict that it seeks to overcome. To pursue this justice and reconciliation, it is the contention of this dissertation that a concerted effort should be made to understand the political realities of implementation and bureaucratic delays experienced in the land reform process.

This chapter identifies a variety of political compromises that have constrained meaningful land reform. These are essentially linked to the balance of political forces as they manifested themselves in the process of democratic transformation and are expressed in the nature of the political transition itself, as well as in the character of local government, the role of civil society, the constitution of the new government and its bureaucracies. Points of departure include an analysis of influences of the 1991 White Paper on Land Reform prepared by the former regime and analysing the extent of deviation of the development path from the 1996 White Paper on South African Land Policy. It is argued in this chapter that the current land policy needs to be realistic about the context of social relations within which the programme takes place. An attempt is made to show that policy objectives and the institutional framework are contradictory. It closes by highlighting and summarising constrains on meeting the stated objectives of land reform.

2. REVIEW OF 1991 WHITE PAPER ON LAND REFORM

Over the past century a particular colonial vision has been carved out by successive white minority governments, with the backing legislation. The 1913 and 1936 Land Acts fragmented South African rural regions into racially defined land parcels within each of which control over

land - control over access, utilisation and exchange was restricted to a racially defined population groups (Bekker, Cross and Evan, 1991). This legislation made it impossible for black people to acquire legal rights to land in most of the country. They generated social dislocation and impoverishment on an awesome scale for the majority of South Africans.

The 1991 White Paper proposed to repeal discriminatory legislations and to supplant the underlying philosophy of those Acts with a new policy framework. The long term aims of the 1991 White Paper include

- access to, and security in, land for the disadvantaged majority of the South African population, including deracialising access to land;
- individual title to land and a land market;
- viable economic land use and also conservation of land and
- a uniform state system of land registration and transfer.

The contentious ideological positions of the previous government and its practices of restricting popular participation came out quite strongly in the process of analysing the 1991 White Paper by many scholars. Many contestable assertions were made about private property, free market protection of individual rights and ethnic traditional, tribal natural communities. Claassens and Budlender (1991) contended that the White Paper represented a minimal ameliorative reform package to remove legal structures which had either become obsolete or which impeded policy and structural socio-economic trends. They mentioned that the White Paper was designed to protect and entrench white privilege and rights which were built up through systematic discrimination.

Another prevailing feature was the couching of solutions to land issues in terms of the language of development which were made in an attempt to cast land policy within the acceptable international mould. While it proposed important goals in regard to equity on the land, the actual policy provisions could be criticised as falling far short of providing what it was advocating. The White Paper did not begin to live up to the explicitly stated promise that 'land reform should be dealt with fundamentally and comprehensively'. There was a considerable discrepancy between the actual implementing thrust of the proposed legislation and the expressed aims of the policy statement. The accompanying bills appeared to be expressing a relatively conservative line which were intended to implement rural apartheid at the least cost to white interests. The limitation of their approach were illustrated by Ferguson's comment on the development apparatus as an 'anti-politics machine, depoliticising everything it touches, everywhere whisking political realities out of sight, all the white performing, almost unnoticed, its own pre-eminently political operations of expanding bureaucratic state power' (Ferguson, 1990: xv).

2.1 Ownership

The 1991 White Paper in its first page stated that *" Private ownership of land, including agricultural land, is a cornerstone of the Government's land policy. This is in keeping with the Government's opposition to any form of redistribution of agricultural land, whether by confiscation, nationalisation or expropriation ... a programme for the restoration of land to individuals and communities who were forced to give up their land on account of past policies or other historical reasons would not be feasible"* (White Paper, 1991:1). This statement is the clear standpoint of the previous government and how it prepared itself to reinforce the definitive objective of entrenching and perpetuating land ownership patterns and thereby protecting its 'constituency'. This policy document advocated an unfettered free market with minimal state intervention to redress the existing inequalities. It aimed to preserve the status quo with regard to white landholding whilst it did not resolve problems of land hunger because it ignored the inter-relation between commercial agriculture and petty commodity production as well as white monopoly and black dispossession.

2.2 Equity/Access to land

The government strategy was geared towards promoting general economic use of land through giving priority to the development of individual title and a market in land. It stated that *"Provision is made for the continued use of land as a multi-purpose commodity and a productive asset, but without the racial restrictions. Private ownership is broadened and also extended to land in respect of which it was previously not available"* (White Paper, 1991). This strategy was aimed at developing individual title and a land market, with the goal of promoting economic land use ahead of the first aim, that of access to and security in land for the previously disadvantaged communities. It is supported that land may be a multi-purpose commodity and productive asset but it also served as a fundamental source of security against the ravages of the policies and practices of apartheid which generated successive means of destitution and impoverishment. This illusion reduced land relations to an obtuse economism which placed the free market at the centre of distribution and meted out inequalities by an allegedly neutral force that was held to be just, unavoidable and inherently fair.

2.3 Bureaucratic Centralisation

Implementation of the land reform was to be based on a centralised decision making process where all decisions were in the hands of ministers and their senior officials. Little provision (if there was any) was made for community participation in managing their own initiatives. A single state authority made the implementation of land reform to be centralised and technical in nature without an adequate local institutional base. Enormous discretion was left with the relevant Minister and with the bureaucracy over both land administration and land purchase. For instance, obtaining final title to land in a settlement scheme depended on approval by the Minister or his representative. This centrally prescribed government restrictions on access and

utilisation of land was seen as demoralising and demeaning to a rural community (De Klerk, 1991). It is clear that it is important that state administration should be decentralised and be participative so that all the initiatives can be accepted by the beneficiaries.

2.4   Lack of Integrated Rural Development

The framework for socio-economic upliftment of rural communities was constructed on the shallow foundations of privatising land access within the reserves and the promotion of freehold farmer settlement schemes (Marcus, 1991). This line of thinking was flawed because it did not place land reform within the rural community by relating it to household survival strategies. The proposed settlement schemes viewed rural development as essentially agricultural in nature and ignored the thriving and diverse forms of 'off farm' economic enterprise. An effective strategy must encompass both urban wages and part-time rural agriculture, which also brings in the informal sector. In fact what was missing from the state was a realistic political and economic vision for the future of rural South Africa. That is, a new paradigm for rural restructuring, one which can generate a dynamic rural economy able to provide fair land access and a just living environment for all.

2.5   Institutionalised discouragement of public participation

Apart from the fact that the whole process of drafting the 1991 White Paper occurred without the participation or consultation with organisations representing African interests, there was a systematic mechanism of discouraging participation in the implementation process. A classical example is reflected in the promotion of freehold farmer settlement schemes. These schemes were laid out, divided into farming units and developed under ministerial supervision and allocated on the advice of a committee experts (Marcus, 1991). This centrist and technist approach which was gave administrators powers in deciding which families shall be allowed entry to different schemes deprived rural communities of a basic right of participation in the allocation process. It proved to be difficult to promote a purposeful and self-reliant communities scheme, since it was 'foreign' driven. This was consistent with a long established legislative approach which acted distinctly, differentially and partially against the land interests of Africans. In fact it made black people objects of administrative decisions which was one of the classic hallmarks of apartheid and colonial rule.

2.6   COMMENTS

The appropriateness of the policies of this 1991 White Paper was highly questionable, particularly at a time when South Africa was entering a new political dispensation. However, it succeeded in preserving racially sectional interests by entrenching the notion of a free market approach and reinforcing the ahistorism of prevailing approaches to land reform by denying the need for redressing the past wrongs. The condemnation of this policy document was echoed by many practitioners but the very same scholars have also agreed that experience with

land reform elsewhere in Africa has shown that efforts to redistribute land to the 'disadvantaged' have tended to reinforce existing forms of inequality, and given rise to new dimensions of inequality, within beneficiaries (Hall, 1998). Many authors have found it easy to define what was wrong with the past and slightly less easy to define a future vision, but when it came to specifying how the vision was to be achieved in precise terms, great difficulties were encountered. The gap between vision and reality is a regular and patterned trend in land reform programmes. It appears to be a systematic problem. The extent of the disjuncture between aim and effect cannot be explained merely as shortfall from projected targets but must be understood as a failure of the policy itself. The questions this raises are: will this happen in the new South Africa, if so why, and in what ways could this be avoided?

3.   THE SOUTH AFRICAN TRANSITION : POLITICAL CONSTRAINTS

The inheritance of apartheid and the political compromises that brought it to an end have shaped and constrained the land reform programme. Critics of the new government characterise it as a minimalist land reform, pointing to the compromises which were agreed in the negotiations preceding the 1994 elections. These saw the inclusion of a Property Clause in the new Constitution which limits the powers of government to expropriate land and limiting restitution to those cases which occurred after 1913. Another restraining factor was the adoption of a market-based programme of redistribution which some assert will fail to address the land needs of the poor and marginalised (Levin and Weiner, 1997). The preservation of landholding with regard to large commercial farms, the release of land through the willing-buyer/willing-seller market-based land transfer process, which in Zimbabwe and Kenya limited black 'disadvantaged' communities' access to good arable land, will continue to happen as it was outlined in the 1991 White Paper. These compromises have constrained the state by limiting its interventionist role in redistributing land to those in need.

This means that the effectiveness of land reform will depend on the efficacy of the rights-based laws. The resultant situation is that white farmers are going to continue controlling the bulk of productive natural resources. It is starting to be clear that the politics of market-led land reform will increase conflict over scarce land, infrastructure and this will paralyse the state in its endeavour to restructure grand apartheid land use patterns (Christiansen, 1993). The discourse within South African land policy perpetuates the notion that strong state intervention is a problem and market-based resource allocation is the solution. This means that for the majority of the rural population much will depend on the efficacy of the rights-based laws and programmes currently being enacted and implemented. Policies that are born out of this discursive framework are going to entrench the neo-apartheid geographies that are already emerging.

From a comparative perspective, it is recognised that this is but the first round of land reform in this country. Looking from experiences of other African countries (such as Kenya and Zimbabwe) one can see that land reform seldom is accomplished in one try. It emerges on the political agenda as a result of widespread landlessness and insecurity among the population as a whole where access to the land is marked by historical legacies of inequality. Land reform will continue to re-emerge over time as an important political issue for as long as large numbers of the poor reside in rural areas in conditions of poverty and extreme inequality. The most important and positive point of emphasis is that land reform in this country is being carried out by a government that is wholly committed to political, social and economic transformation. The success so far in getting land reform up and running in South Africa, despite enormous obstacles, has been due to the intense political commitment of the highest level of government. However, the measure of relevance of the reform would be its ability to redress recognised national problems and issues.

The Minister of Land Affairs is continuing to listen to the critics of the land policy on the basis of the spirit of constructive criticism. It is accepted that South Africa's post apartheid government did embark on a wide-ranging and ambitious programme of land reform, designed to redress the legacy of decades of dispossession, racially defined and discriminatory legal frameworks and deep rural poverty (Cousins, 1997). One of the primary aims of the South African government's land reform programme is to contribute towards reconciliation by addressing the injustices and inequalities of past land allocation. It is therefore central to the new government's commitment to transform the lives of the large proportion of the population who live in the rural areas in conditions of poverty as a direct result of the past apartheid regime.

4.   MAJOR ASPECTS OF THE LAND REFORM PROGRAMME

The three principal components of land reform are a market-assisted redistribution programme, restitution of land to people who were dispossessed by racially discriminatory legislation and a tenure reform programme aimed at creating tenure security within a variety of tenure systems.

4.1.   RESTITUTION

Like indigenous land claims in other parts of the world, restitution claims turn around fundamental issues of historical injustice and are highly political in character. The Restitution of Land Rights Act of 1994 (Act 22 of 1994) provides priority treatment for those who lost their land after 1913 as a result of discriminatory legislation and who were not fairly compensated. This includes people expelled from 'black spots' and people moved as a result of the Group Areas Act. Where feasible, the state will restore the original inhabitants to their land. Where it is not feasible, the state will provide 'just and equitable compensation' (op cit:

39). Applicants for restitution will enjoy priority treatment, as will their submissions to the Land Claims Court, which has been established to adjudicate on land disputes. The slow progress in meeting restitution claims is related to the very lengthy and detailed work carried out by the Commission. Once claims reach the court they are likely to be bogged down for years (DLA, 1997).

4.2   REDISTRIBUTION

The purpose of the land redistribution programme is to provide the poor with access to land for residential and productive purposes in order to improve their livelihoods and is intended for those who do not qualify for restitution. Redistribution is to assist the poor, labour tenants, farm workers, women as well as emergent farmers' (op cit: 25). The government envisages a facilitative role for itself, and a market-assisted approach as the principal mechanism for transferring land. This is based on the premise of willing-buyer/willing-seller where the state makes available a once-off grant of R15 000 to individual households and by implication encouraging people to club together so that they can raise enough money to purchase the identified land.

Pilot projects that have been lodged in KwaZulu Natal raise a number of unanswered questions: who is to decide which people get access to what land on what terms for which purpose? The means of answering these questions are rarely available from the current redistribution paradigm. Any answer is subject to the perils of prediction. Perhaps at the very least, one could assert that redistribution is not occurring form the 'haves' to the 'havenots', but is funded from public revenues spent by the government on beneficiaries in the context of a (very imperfect) market transaction.

4.3   LAND TENURE REFORM

The land tenure reform programme is trying to create new laws which will recognise and protect the different ways in which people hold land. The tenure issues seem to be becoming unstable and contentious in black rural areas because there are vocal demands for clear forms of individual title, on the one hand, and on the other demands for communally controlled land. The government therefore intends not prescribing land tenure system for various communities. Instead it wants to establish a unitary system of rights within a diversity of tenure forms but which also eliminates land holdings based on permits (op cit: 43). The rights-base approach also involves the upgrading of current de facto relationships to land to formal legal rights to land. One cannot opine strong arguments about this programme because several initiatives are currently being tested. However, it would be naive not to suspect that the introduction of unfettered land markets into rural communities could lead to increased landlessness and poverty.

5. POTENTIAL CONTRADICTIONS AND TENSIONS BETWEEN POLICY OBJECTIVES

The potentially contradictory process of engendering inequality while seeking to achieve distributive justice and reconciliation, makes it inevitable to examine the objectives set out in the White Paper and how they relate to each other.

5.1 The Dichotomy of Equity and Productivity

Equity and productivity become conflicting objectives in the absence of any rationale for how equity might lead to productivity or vice versa. The policy states that 'equity is aimed at achieving a better quality of life for the most disadvantaged' (op cit: 7) and supports access to land for the landless poor, including women. The productivity objective on the other hand aims to transform the agrarian structure by supporting the emergence of a viable new sector of black commercial farmers (op cit: 13). Although in principle these may not be mutually exclusive objectives, Kenyan experience showed that they may prove to be antagonistic in practice.

The rationale for equity is premised on arguments about social justice, while the rationale for productivity is grounded on assumptions about growth in the rural economy being brought about by the emergence of entrepreneurial black farmers in commercial agriculture. There appears to be no causal link between the two. The dualism of objectives within the policy is mirrored by the divide among role players in the land reform, between 'welfarists' and 'productionists'. These have been used as derogatory terms used to denote, on the one hand, an unrealistic, irrational and romantic pursuit of social justice, and on the other, a hard-nosed economistic denial of the necessity to address social justice. This dichotomisation of the objectives of land reform is both misleading and destructive because it reflects a flawed understanding of equity as inimical to productivity.

5.2. Competing Qualification Criteria

The policy mentions that "priority will be given to the marginalised and the needs of women in particular" but also placing a condition that " priority will be given to cases where the institutional capacity exists to implement quickly and effectively" (op cit: 28). The latter priority criterion is no more than a glossy statement, and incongruous to say the least. These criteria are not necessarily compatible with each other. The marginalised and women in need are precisely those who are last to know about available opportunities and mechanisms to lodge claims. One fails to follow the logic of starting to use institutional capacity as the criterion knowing very well that rural local government structures are weak or non-existent and largely oppressive to women. The marginalised are not likely to predominate among those whose projects can be implemented quickly and effectively, or to provide leadership to claimant groups. By default, Hall (1998) argues, those who already have resources,

particularly political and commercial contacts will win out every time. While the commitment to equity is overstated, the need for land reform to deliver speedy and tangible results is likely to override this commitment in practice.

5.3 A Mockery of Private-Public Partnership

As anticipated by De Klerk (1991), market-based redistribution requires that beneficiaries have some money and this means that " as a rule disadvantaged will be excluded". The result of the imminent contradictions and tensions within policy objectives and beneficiary criteria, especially in a context where market relations are allowed to operate largely unchecked, is the creation of an implicit hierarchy. Equity is then seen as a cost, rather than a contribution to the overall programmes, and productivity considerations, implying a preference for emergent entrepreneurs, are likely to gain priority. The policy is almost silent in outlining objectives of enhancing healthy private-public partnership. It only states that "the government will seek to enlist support of the private sector wherever this is possible and practical (DLA, 1997). A cursory examination of this statement leads one conclude that the policy gratuitously belittles the role that the private sector can play. The policy does not identify strategies, including policy instruments which might be expected to realise this objective. The involvement of the private sector in the land reform process is not either/or but is inevitable for this programme to be sustained. Such a discussion would need to define what is meant by private-public partnership and identify how each might or might not be efficient in relation to the resources they require. It should also include an outline of the procedures by which institutional and allocational decisions will involve them.

5.4 What or who is a Household?

The once-off grant of R15 000 is the major policy instrument for the implementation of the redistribution programme. This grant is intended for households, defined as a unit comprising two adults who are married or habitually cohabit, or a single adult with proven financial dependants (op cit: 71). When describing the practicalities of how the grant system will work the policy switches to describing the beneficiary as an individual that would be allowed to access the grant in order to meet land needs (op cit: 45). The assumption underlying the treatment of a household as a person is that household heads will be claimants and beneficiaries and that benefits will trickle down to other family members. The realities on the ground are that households are not spheres of resource pooling and joint control. In families where polygamy exists, household access to land would not necessarily benefit the other women, yet the policy relies extensively on the household as a unit of allocation. Many authors have picked this major weakness such as Hall (1996) who asserts that given power relationship at household level, women will not directly benefit from the grants.

5.5 Implementation in the Face of Shrinking Resources

The result of an ambitious policy with high resource implications, which the policy certainly is, and insufficient state capacity to implement the programme to its full extent, is a gradually diminishing optimism about land reform (Wixley, 1995). How will difficult choices be made in the context of a squeeze on financial and institutional resources? The tendency to aggregate the effects of land reform may cause the prioritisation of overall effects at the expense of the distributional effects. This would justify an emphasis on ensuring the land is transferred, at the cost of establishing to whom the land is transferred and whether this is consistent with the equity principles of the policy.

In attempting to weigh up the value of prioritising certain aspects of policy given the limited resources for implementation, one may be faced with sets of costs and benefits which cannot be seen as equivalents. The critical point in this issue is the location of the decision making structure. Experience shows that, to deal effectively with local requirements and to ensure that land reform fits into local developmental goals, land reform has to be implemented in a decentralized fashion.

6. KEY ISSUES FOR SOUTH AFRICA

6.1 The complexities and critical land issues facing South Africa resemble the historically more difficult reform contexts when compared to Kenya and Zimbabwe. Maintaining productivity and actually enhancing the living standards of reform beneficiaries is not a foregone conclusion, but requires careful planning for post-reform developmental needs. Policies expected to promote both equity and productivity should identify how these can work together. It also needs to state how conflicting criteria to promote these objectives should be reconciled in practice. The White Paper in Land Policy does not do this. Instead, equity appears to be seen as a cost to productivity. The tendency to see equity and productivity as necessarily hostile to one another precludes opportunities to advance productivity through equity.

6.2 Providing beneficiaries with only land, and not a package including other supporting services, undermines the potential of land reform to enhance the lives of beneficiaries. The present land reform will inevitably not achieve maximum benefits because its option for a market-based model treated reform as a series of transactions between buyers and sellers. This has obscured the urgency of government meeting its stated objectives. The scattered locations of land acquired through both the restitution and market-based redistribution programs make this an especially challenging unfinished risk.

6.3 **Tenure reform is not just a matter of changing rules, but of implementing those rules, and this requires reorganization and reorientation of existing institutions** in order to provide beneficiaries with secure tenure that does not undermine their incentives to invest and produce. Secure tenure does not necessarily mean individual private property, though it may mean that in certain contexts given beneficiary aspirations and expectations. But it does necessarily mean property forms which local people can manage themselves and with which they are comfortable. This requires substantial commitments to public education, creating new systems of records of rights in land and training for those participating in the system.

6.4 **It is difficult to create new institutions *ex nihilo*, and it will generally be better to build on existing institutional arrangements to the extent** possible. Institutional innovation is exciting and challenging, but in fact it is extraordinary complex and cyclical. This means that the resource implications of the policy should fit within the constraints of the institutional, human and financial resources at the disposal of the state. If the resources available are adequate to meet the requirements of policy, priorities will be made in the course of implementation. While flexibility and adaptation in the light of empirical experience are important, the urgency to transfer land may result with stated objectives being sacrificed, marginalised lost or subverted.

CONCLUSION

Many of the points made from the comparative analysis are cautionary in nature. The discussion indicated that although it does present new opportunities for people to gain access to resources they were previously denied, the land reform programme may not be able to deliver on its promise as stated in its vision. The land policy provided necessary but by no means sufficient mechanisms for previously disadvantaged people to claim their land rights and to exert greater control over productive resources in rural areas.

Analysis of the two White Papers on Land Reform shows that it was easy to define what was wrong with the 1991 White Paper but slight less easy to define a realistic future vision and more difficulties were encountered when specificities were outlined. It is plausible to conclude that the 1997 White Paper is extraordinarily ambitious. It is ambitious because of the range of injustices it proposes to right within a relatively short time, and because it proposes to do so while respecting the property and process rights guaranteed by the Constitution. Lastly, it is ambitious because so many fundamental changes required for effective implementation are still being debated, such as reorganisation of local government structures. Overreaching is perhaps the cardinal sin in land reform: daring too much, then achieving so little that confidence in the reform is undermined.

It has also been argued that a plan is ultimately judged in terms of its measurable effects on the economy at large, an aggregate assessment in which the failure of particular projects may be excused. In the case of the current land policy, this will hinge substantially on the amount of land which changes hands: a quantitative rather than a qualitative measure. If the state chooses to prioritise equity considerations in land reform, it needs to redefine what is meant by success. This requires explicit priority to equity considerations to be consistent and sustained throughout the policy. If this is not done, the net result is likely to be the sacrifice of equity in practice.

CHAPTER FOUR
POLICY AND INSTITUTIONAL FRAMEWORK FOR IMPLEMENTATION: PROBLEMS AND PROSPECTS

1. INTRODUCTION

The land reform challenge facing the new South African government is immense and, from the perspective of policy formulation, the government has responded in a credible fashion. From the perspective of implementation, however, current progress does not appear to have met neither the expectations of policy makers nor those of the poor. There are many reasons for this, the most important of which relate to the underlying distortions in economic markets and institutional frameworks introduced by apartheid, which continue to produce and reproduce poverty and inequality in South Africa. This has created a necessity for understanding the state, market and civil organisation as historically constructed institutions whose relation to one another changes over time. Marcus (1994) asserted that in this century and especially over the past two decades, policy emphasis has been redirected from market to state, back to the market and most recently to civil organisations. This refocussing is in part an outcome of the development failures of each set of institutions.

The President's genius at bringing the country together and inventing a vision of South Africa in post-apartheid unity, undoubtedly created the first essential preconditions for viable nationhood. The sustainability of this momentous achievement squarely relied on the ability of the government to begin delivering essential services to all those deserving a decent chance in life. It is now universally acceptable that the provision of services is seen by many communities as the foundation for building a brighter future. One new technocrat was quoted while wondering and looking out of the panoramic windows at Table Mountain saying that " how on earth would this government get its arms around a bureaucracy calcified by 342 years of racial oppression". Matisonn (1998) elaborating on the complexities of government procedures, compares working in government to standing in front of a long piece of string. "You want something to be done. You can't do it yourself, because it's too far away. So you push the string - and all that happens is that your end compresses a few centimetres. Nothing else moves".

The weekly newspaper, Mail and Guardian (November 13 to 19, 1998), contained an article on administrative constraints that confronted the ANC government when it took over government. In this article, Minister Naidoo is quoted as saying that " ... what we didn't think through clearly enough was the institutional mechanisms to implement the service delivery programme (RDP). My view changed on what could be done by the public sector as well as the private sector because a lot of delivery is about innovation, risk and entrepreneurship". This statement clearly shows that revolutionaries such as Minister Naidoo were sobered by high office responsibility and the obligation to perform.

These observations are starting to manifest in the frustrations experienced at ground level as projects get off to a slow start. The biggest and most serious problem was that many departments lacked the equipment to perform the real, basic tasks of a government department: to develop policies, plan strategically, and ensure that their sectors of the economy were regulated to achieve their objectives fairly. Many departments were geared to serve a static white population under siege, and run by a civil servant class that did not have a meaningful policy making capacity.

These departments were not equipped to develop strategies nor did they have the ability to regulate their sectors. Services were provided by monopolistic parastatal companies which regulated the industry themselves. The abolition of the RDP ministry showed a major shift in government thinking and a move away from a romantic idea of what government could do. RDP ministry's had no control over fiscal policy - that is, spending levels, and line function departments considered the RDP office at minimum an intrusion, at most a threat. In government, delivery is tied up in a lot of formal government procedures.

In short, there is no simple institutional (technical) answer for the effective implementation of land reform because the capacity and willingness of authorities to act are largely determined by the balance of power within and beyond the institutions concerned. Since the politics of land distribution are intimately related to control over the means of production, any institutional arrangement will become the focus of social conflict and mobilisation. In order to begin to explain and interpret policy formulation and practice, this chapter explores assumptions about the state, and its relation to markets and civil organisations which underlie institutional designs for implementation of land reform programmes and the delivery of services.

2.   CONSTITUTIONAL CONSTRAINTS ON LAND REFORM

An overarching theme of the transition to democracy was the notion of nation building and the development of a common patriotism among all South Africans. A Constitution characterised by broad consensus was seen by many as the cornerstone for successful implementation of nation building. It emerged from the constitutional discussions that the resources of the various provinces were unequal and provinces could 'lock in' their own resources to the detriment of others, and that the provinces lacked financial, technological and administrative capacities required in the land reform process (de Villiers, 1996). Hence, land matters were placed within the national competence to effect strong centrally driven land reform, so that nationhood and economic development can be promoted (Louw, 1997).

What does the surge in democracy and capitalism portend for economic growth? The shift toward popular government was predicted by some to accelerate growth, by others to retard it. Often left out of the equation is property rights as a factor distinct from democratic rule. The process of drafting the new Constitution reflected the chasm separating those who favour and those who

oppose a strong system of property rights. The interpretation of "The property clause: section 28" of the Constitution of the Republic of South Africa 200 of 1993 was discussed extensively by various authors. The Constitution of 1996 which superseded the interim Constitution of 1993 continued to receive criticisms that were based on the negative implications of this clause, that is, the case for protection of properties is somehow in conflict with the case for restitution and will provide severe limitations of accessing land for landless. Section 25 of the new Constitution continued with this property clause although it was a bone of contention until it was settled by the Constitutional Court.

2.1 Section 25: Stumbling Block to land reform

Property rights were at the centre stage of South Africa's recent effort to write a new Constitution. While provisions protecting such rights were included in the Constitution, they are less than perfect. The reason being that both opponents and supporters of strong property rights safeguards, continue to look at this critical issue from their own historical vantage point. Whites who supported strong property rights seemed to be primarily concerned with not losing what they gained under apartheid. Blacks, opposing such rights, saw in them only the protection of illegitimate white privilege.

Under the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) the government in fact has a duty to make land rights stronger. Section 25(6) of the Constitution states: *a person or community whose tenure of land is legally insecure as a result of past 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.* This means that the government is constitutionally bound to take active steps to correct the results of past discrimination. However, the very same Constitution contains section 25 which is still a bone of contention. Section 25 deals with the property clause which was the major compromise reached between the then ruling party and the ANC. The ANC was concerned that section 25 would hamper the land reform process while the National Party was trying to protect individual land ownership (especially those of farmers).

The property clause remained a matter of contention until the matter was settled by the Constitutional Court. Two major objections against section 25 were raised, namely that (a) this section did not expressly protect the right to acquire, hold and dispose of property and (b) the provisions regarding expropriation were inadequate. The Constitutional Court found that the right to property although mentioned in the Bills of Rights of some countries and in article 17 of the Universal Declaration of Human Rights, no universally recognised formulation of property exists. The protection was implicit in clause 25 (Du Plessis and Olivier, 1997). The Court also found that from a comparative international perspective, various formulations and a wide range of criteria regarding expropriation and compensation exist. It rejected an objection against calculation of compensation on the basis of market value.

In the final version of section 25, the reference to the protection of rights in property was left out and provision was made for expropriation and deprivation in the case of land reform. This ruling, effectively constrained the vigorous land reform as it was envisaged in the RDP policy document and forced the state to follow strict legal procedures in the implementation of land reform. Institutions for implementing land reform were then organised and designed in accordance with the legal parameters that would enable the state to follow strict legal instruments.

Although the new order is primarily concerned with facilitating a reallocation of land rights without major departure from the pre-existing model, it is worth observing that the land reform programme is being implemented within the framework of the constitution which, of course, is now the ruling feature to the extent that the common law no longer has its former pre-eminence. To this extent, many policy makers have found it difficult to see the scope for an assertion of common law rights against a position supported by the reform agenda. What is largely involved in the reform process has not, and apparently will not, affect the fundamental character and substance of the law of property. The radical aspect appears to lie primarily in features external to the law of property which are present to facilitate the implementation of the reform process - the form of adjudication applied to restitution being an instance of this.

Section 25 (5-7) constitutionalises the three land reform programmes as set out in the government's 1997 White Paper on South African Land Policy. Section 25(5) empowers the State to take reasonable legislative and other measures within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis. Section 25(6) puts the validity of the tenure reform programme beyond doubt, and provides for national legislation to ensure tenure security. The most prominent subsection is section 25(7) which states that *" a person or community dispossessed of property after 19 June 1913 as a result of past 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"*. In addition, section 25(8) enables the State, notwithstanding the content of the other subsections of section 25, to take legislative and other measures to achieve land, water and related reform (provided that such departure should be in accordance with section 36 (1) - general limitations clause). These provisions in sections 25 (5-9) compel the national legislation to form a detailed framework for the implementation of the land reform programme.

2.2 Dimensions of Interjurisdictional Cooperation

The Constitution guarantees the right of the provinces to legislate on a range of matters although the National Parliament can override such legislation whenever certain vague and general criteria are not met. It is the supreme law of the land which means that any act that violates the Constitution is null and void. This applies to all spheres of government. Land matters fall in the category of residual or undefined powers that remain with the National Parliament. The functional

areas of concurrent national and provincial legislative competence (Schedule 4) and functional areas of exclusive provincial legislative competence (Schedule 5) do not include land reform programmes [The Constitution (Act 108 of 1996)]. The powers of the provinces are not wholly concurrent because national laws can nullify provincial laws when the latter do not comply with the criteria for a national override - thus indicating some limited scope for exclusive powers for provinces. Land matters have been made by the Constitution to be one of those areas where the national Parliament can use its powers to legislate by means of its 'implied' powers, hence, land matters fall in the category that is neither fully concurrent nor exclusive. A number of constitutional authors have asserted that constitutions and practical realities have enabled national parliaments to influence, direct and even dictate provincial policy to a far greater extent than could be deduced from the text of the Constitution.

In strict legal terms, the National Department of Land Affairs is the only department assigned to implement the land reform programme. However, section 41(1) of the Constitution deals with the principles of co-operative government and intergovernmental relations. Section 41(1)(g) states that spheres of government must exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere. This provision makes it quite crucial for the Department of Land Affairs to devise a form of symbiotic relationship which will as far as possible, require the department to provide the foundation for a centrist approach with substantially decentralised implementing agents. This means that an institutional framework for implementing land reform should be based on a pragmatic relationship that would ensure that national policy is addressed on an integrated basis, that provincial policy adheres to overarching national interests and cooperation between spheres of government is ensured in as many fields of activity as possible.

This type of cooperation will not be divorced from Interjurisdictional conflicts that were experienced in the debates of unitary versus federal states. The provincial autonomy debate stressed competitiveness where the national and provincial governments were in opposite camps and cooperation was the exception rather than a rule. Those debates were characterised by absolutes that largely ignore the myriad of federal, unitary and hybrid systems that have been developed internationally. As highlighted by de Villiers (1996), a comparison of centralized federations and decentralized unions reveals a grey area where a rigid application of theoretical models does not work. The best known relationships were not so much as a result of clear philosophical plan, but rather the outcome of pragmatic considerations and historical forces at that particular time.

The approach of interpreting relationships between spheres of government tends to focus much on the allocation of powers as outlined in the Constitution, ignoring constitutional obligations in terms of financial relationships, grants-in-aid by the central government, intergovernmental

relations and accords. A famous clause in the Constitution that is always referred to is Section 41 (1)(f): which states that spheres of government must not assume any power or function except those conferred on them in terms of the Constitution. This provision has been approached by many as it has only a single meaning, incapable of any alteration or improvement, and as if it excludes the opportunity for experimentation, creativity and compromise. As a result, this narrow interpretation has made it more difficult to develop a land reform programme based on the middle ground. Instead, there is too much emphasis being placed on powers and too little on pragmatism and problem solving.

In the context of prospective constitutional obligations, where the Constitution sets up a political structure within which national institutions engaged in a wide range of shared functions with other spheres of government, there is no 'one best way' to achieve effective symbiotic relationships between spheres of government. It is critical for the Department of Land Affairs to be aware of constitutional constraints and not be driven by a belief in cooperation as the panacea for the land reform problems, or by some set of preconceived notions about what is and is not good for cooperation. Different cooperative strategies should be judged only against the expectations of the jurisdictions in the province where cooperation is being cultivated. What is possible in one area may be possible only in that area. There is no benchmark to denote satisfactory levels of interjurisdictional cooperation.

2.3 Constitutional Obligations and Practices: Formal and Informal Institutions

There are two dimensions that need to be considered in an attempt to deal with institutional factors that are determinants of an effective land reform implementation process. The first is that of the content and strength of the rights defined in law, and thus of the terrain of struggle within which these rights-based laws are drafted and then enacted. The second is that of how these formally defined rights intersect and interact with other institutional frameworks, both formal and informal, in the real world context of the prospective rights-holders. The latter dimension is crucial for this exercise to emphasise that no common tactical approach or institutional format meets the needs of each different provincial culture. Different tactics and approaches may achieve similar outcomes. It is thus highly pertinent to focus on the latter from an institutional perspective.

Many analysts of institutional development (e.g Gore, 1993; Moore, 1995 and Cousins, 1997) believe that different institutional development strategies should be judged only against the expectations of those institutions. They contend that institutional development is the outcome of those organisations pursuing their own interests and establishing relationships to satisfy their own pecuniary or philanthropic objectives. This is the classical form of institutional arrangement in which spheres of government pursue their own self-interest without the aid of central authority to force them to cooperate (Axelrod, 1984). Perhaps one cannot go off at a tangent to suggest that it is easier to conceptualize than to define and measure cooperation in an institutional setting.

Cousins (1997) attempted to distinguish between formal and informal institutions. In his discussion, he sees rules as prescribing room for manoeuvre rather than determining behaviour. Formal institutions, put simply, are those backed by law, implying enforcement of rules by the State, while informal institutions are upheld by mutual agreement, or by relations of power or authority and rules are then enforced endogenously. Swift (1994) provided another complementary distinction by stating that formal/de jure institutions are conceptualized as those established in written law created by conscious recorded decision with established precedents. Informal institutions are said to be unwritten rules and procedures and unofficial strategies which local people create and pursue in order to govern the use of their common objective (Cousins and Robins, 1993). A feature of informal institutions is that they are not codified in law. The kind of relationships and institutional arrangements that have evolved between the Department of Land Affairs and other spheres of governments have largely been influenced by the latter.

The old orthodox approach relating to the implementation of policies such as land reform constituted a top down, blue print approach. This was characterised by a hegemonic formal/de jure institutional order, which the state authoritatively set in place to govern the use and management of resources (Archer, 1995). One negative aspect was that this hegemonic formal/de jure institutional order, typically marginalized and undermined local people's informal/de facto institutions and forms of organization. Marinus (1998) in a case study of Namaqualand concluded that the formal institutional order envisaged communities to be isolated, homogeneous and non-literate. It was maintained that their decisions and social relations (far from being rational or scientific) were traditional, backward, whimsical and irrational. Despite the politics of the hegemonic formalized institutional order, local people established and pursued informal/de facto institutions. These took the form of 'endogenously generated' institutions to govern the use and management of natural resources as opposed to formal 'exogenously generated' institutions. This case study highlights the informal institutional role in counter balancing the inefficiency in the formal system of governance.

The illustration of the above case study is not meant to suggest that the emphasis should now shift to the adoption of a "replacement paradigm" which exclusively aims to replace, normalize and formalize the informal institutional order. What is advocated is an "adaptation paradigm" that would recognise the need to replace certain informal and even formal institutions and the recognition of the significance of the informal/de facto institutional order, and the need to build upon the latter. The unwritten nature of informal institutions makes it amenable to simplicity and flexibility, particularly within a variable and uncertain environment. Having stated this, a fundamental realization is that certain informal institutions could be formalized. However, the very act of formalising all informal institutions may result in static and inappropriate laws. According to Claassens (1994), informal institutions by their very nature may be difficult to codify in law without losing its internal complexity, flexibility and adaptability to change. In short, the

formalisation of all informal institutions may in effect devalue them.

Moore (1975) in her attempt to establish a relationship between formal and informal institutions suggested that they coexist and interact in a complex and dynamic manner. She asserted that reglementory processes (all those attempts to organise and control behaviour through the use of explicit rules) take place at a multiplicity of levels within society, and within a variety of social fields. Numerous conflicting or competing rule orders exist," characterised more often than not by ambiguities, inconsistencies, gaps and conflicts" (Moore, 1975: 3). Cousins and Robins (1993) assert that institutional analysts must include both structural analysis of complexes of rule-orders, that is, questions of domination/autonomy, hierarchy/equivalence, proliferation/reduction, amalgamation/division and replication/diversification in the relations within and among the constitutive levels and units, and analysis of institutional processes.

In the context of land reform programmes, it becomes clearer that institutions for implementation need to be located within this complex institutional framework (including all spheres of government) which links the position of role players at the micro-level to the macro-level conditions which prevail in the wider constitutional context. The complexities that arise when competence over land matters is located in the national sphere and service delivery competence is located in provincial/local spheres of government is well illustrated in planning and implementation of land reform programmes. Especially the redistribution and tenure reform. What is envisaged is an approach that would put the onus on local stakeholders to devise and implement practical solutions to issues such as tenure disputes, and which provides incentives to combine on-land solutions with off-land solutions for others.

As Marinus (1998, 1) writes " land reform programmes are constituted by and through struggle. Thus they have the capacity to be elements of emancipation, but they are neither a perfect nor exclusive vehicle for emancipation. They can only be operative as constituents of a strategy of social transformation as they become part of an emergent 'common sense' and are articulated within social practices". This institutional complexity involved in the land reform programme suggests that, however necessary constitutional provisions are in the South African context, they are far from sufficient. They are in fact, the starting point for an effective politics of implementation.

An important policy implication is that the state should offer an enabling legislative framework rather than to attempt to provide legal frameworks down to the lowest level. An enabling framework would ensure that negotiation of access, transfer and inheritance of land and resource management be done at the local level. This would entail the state promoting procedural rather than substantive and precise legislation (Marinus, 1998). Such a framework would facilitate flexibility and diversity in the institutional design, which would accommodate opportunistic use

of resources and reflect the dynamic nature of the provincial planning and development legislations. Importantly, such a framework would entail the provision of formal rule enforcement procedures to back those which may prove ineffective at lower levels, but without imposing rigid, restrictive and prescriptive structures.

3. THE DUALITY OF LOCAL GOVERNMENT

South African democracy arrived at the time when communism and African socialism were collapsing and renewed interest in alternatives to the state as a vehicle for and promoter of development was gaining momentum (Stein, 1997). Thus, 'civil society', 'popular participation' and 'people's empowerment' have replaced socialism and anti-imperialism as slogans of the day. The attitude towards the state changed and it is now seen as the problem rather than the solution. In this context, South Africa started to implement institutional reforms at the political level (democratisation and privatisation) and at the administrative level (rationalisation and reorganisation). One of the catchwords in the current wave of reform is decentralisation. This changing outlook led hard core advocates of privatisation such as World Bank to join the proponents of community development and people's participation in making the case for the transfer of government powers from the centre to local authorities (Williams, 1995)

3.1 Asymmetrical relation between Central and Local Government

South Africa has been given a rare and historic opportunity to transform local government to meet the needs of the country for the next century. Although local government will, until 1999, remain subject to the precepts of the transition process as regulated by the Local Government Transition Act of 1993 (Act 209 of 1993), the Constitution envisaged a complete transformation of the local government system. In terms of the Constitution, local government is a sphere of government in its own right and no longer a function of national or provincial government (section 40(1)). Local government has also been given a distinctive role in building democracy and promoting socio-economic development (section 153 (a)(b)). This major constitutional development in terms of giving autonomy to local governments is one of the hallmarks of the new political dispensation. However, this milestone will become meaningful only when it is connected to a substantial objective.

Local government institutions have been placed in an ambiguous position within the Constitution. They are institutions for local self-government, with their own political basis and their own priorities. In this capacity, they are supposed to represent and serve the interests of their local communities, to which they are also held accountable (section 152 (1)(2)). But they are also one element in the comprehensive public sector and, as such, are under the authority of and held accountable to central and provincial governments (section 151 (3)). This implies that central government created local government structures, both in the sense that the state is always free to

divide its territory into administrative units as it wishes (for instance, there is only one national Demarcation Board responsible for demarcating local council boundaries) and defines the responsibilities to be given to local governments. The Constitution makes provision for the central government to establish the nature and extent of local autonomy, and one may conclude that local government autonomy is therefore a 'gift' from the cental government which can be withdrawn at any time. This does not imply that local government has no autonomy; however, it means that the boundaries of its autonomy are drawn not by itself, but by the central government. This asymmetrical relation between central and local government implies that local government structures obliged to implement the policies of the central government when they are expected to do so, even if they disagree with them.

The ambitious expectations that have been created by the land reform process through the White Paper on South African Land Policy poses a question of the capabilities of current local governments in terms of matching the ambitions. The fact that local government structures are expected to represent the interests of the local community does create expectations in the community. This puts local authorities at the intersection between the state and the community. Department of Land Affairs officials are not working for local government but are directly communicating with the communities, with and in most cases without the knowledge of those local government structures. In this context, local government structures are normally faced with conflicting demands. For instance, if the policies of the central government are unpopular or at odds with the priorities of the local community, local authorities find it difficult to engage themselves and yet communities are expecting the local leaders to assist and guide them in all development programmes. This, of course puts more pressure on the local government both from the central government and from their local communities. In these situations, local authorities have been caught between a rock and a hard surface, squeezed from both sides, and unable to satisfy both parties at the same time.

There has been a tendency from the Department of Land Affairs to adopt policies which require large-scale state intervention with massive infrastructural needs. A consequence of these policies has been great expansion of the Department itself, its responsibilities and the number of staff. Many of the new responsibilities that the department has taken upon itself are of a kind that require substantial state presence at the local level. This scenario creates a situation that is prone to encountering resistance, mistrust and opposition from local government structures. Consequently, the resources that are required to succeed are enormous and beyond the state's capacity. According to one official from the department, this situation has led to the department to start establishing alliances between local government structures and provincial departments.

3.2　Land Reform: Unfinished Policy of Decentralisation to Local Government

The White Paper on Local Government, 1996 assigns tasks to local government that range from the delivery of basic needs to the protection and promotion of communities' human rights. It has also been assigned with the responsibility of being a point of coordination and implementation of national policies and programmes. These are, however, subject to national or provincial legislation.

This indicates that local government should be seen as representing the central government at the local level, and not representing the interests of the local community and its local governance structures. This also means that land reform should be seen mainly as a technical task to be handled by experts coming from outside the local structures. The subjects (technical experts at the central and provincial level) and the objects (the local community) of land reform are clearly separated, perhaps indicating the externality of the state in relation to its population. Since the influence of the local governance structures are very limited, the self-determination of the community seems to exist mainly as rhetoric.

The White Paper, while well-written, has critical omissions and lack clarity on important issues. It failed to resolve the tension between the desire for strong local government as an engine for growth and development and the reality of a sector in fundamental crisis. It did not provide an adequate policy framework for local authorities to promote the development needed to sustain the provision of at least basic services to all their inhabitants (Bernstein, 1998). The first attribute of land reform should be the awareness of the importance of the development support system. The whole structure of institutions, rules, working methods and attitudes are supposed to be geared to the daunting task of unpacking real limits in terms of local government capacity and fully engage the substantial unused capacity for local infrastructural development that exists in the private sector.

The effective implementation of land reform programmes requires a proper inventory of the precise nature and dimensions of the challenges and problems that beset local government structures. What is expected from the implementors of land reform is not an ever-lengthening list of things that local governments must do, but a more strategic approach to the question of their roles and functions as envisaged in both the White Paper on Land Reform and on the Local Government White Paper. One can then derive specific strategies and models that are realistic, practically implementable and ultimately sustainable. The challenges facing the role players in the implementation will differ from one project to the other, however common the root causes may be. The tendency of the department to impose a uniform set of solutions is not a desirable approach. Key choices concerning the priorities for action must be made within the local context, in combination with a set of nationally based performance management criteria and indicators, as suggested in the White Paper on Local Government.

4. DISCREPANCY BETWEEN PLANNING AND BUDGETING

The Minister of Finance termed the year 1998 a "People's Budget" - a budget that will take a significant step towards alleviating poverty in South Africa. The government has been hard pressed to achieve its plans for social delivery due to the fiscal constraints of the Growth, Employment and Redistribution (GEAR) strategy. This year's budget was intended to show how the government plans to effect socio-economic change and deliver on growth and equity (Krafchik and Robinson, 1998). Despite the incremental shift of resources toward the poor, the government is not maximising the effectiveness of the resources available for poverty alleviation especially in the rural areas. This is evident in the government policy document (White Paper on South African Land Policy) correctly identifying the rural areas as the focus of poverty in South Africa but failing to achieve effective rural targeting in budgetary programmes. The current budget allocations are still reflecting the urban influence and serious uncoordination.

In an effort to address this anomaly, a plethora of policies and programmes reflecting a broad commitment to the reduction of poverty and inequality has constantly formed the basis of the vision presented by the new government. However, these policies have yet to be presented as a systematic response in which priorities and sequencing is indicated. In addition, the implications of current macro-economic policy for the implementation of sectoral policies remains a subject for debate, while the micro-economic impact of different policies is unclear.

Empirical experience has also shown that an unqualified belief in the ability of the market to provide for the poor is incorrect (May, 1998). In many instances, the poor have not benefited from market-oriented macroeconomic policy reforms because the underlying institutional context has remained the same. Of particular concern are the many land reform programmes that have encountered problems in their implementation. In some instances, this can be traced to insufficient resource allocations, in others, the problems relate to poor planning and budgeting. A general concern is the capacity of the inherited institutional structure to implement a developmental agenda and the risk of corruption that it is normally associated with.

The interface and linkage between planning and budgeting raises two areas of policy formulation that need to be considered. Firstly, there is a clear tension between the demand for fiscal conservatism and the extent of expenditure requirements in state intervention. The result of this tension may well be the retardation of the kind of human resource development which is required to support future growth and development. Secondly, a zero-based budgeting process raises the expectation that each budget has been constructed from scratch to reflect current/future goals and objectives. In reality, the large bulk of the budget is predetermined by investments on long-term capital development projects that were initiated in previous years.

4.1 Growth, Employment and Redistribution (GEAR) Strategy

During the first 18 months of the new government, significant foreign exchange did come in. The macro-economic policy was on track. South Africa was out of recession for the first time in the 1990s, but was it a fundamental turnaround of the economy, when the delivery of many programmes was extremely slow (Mail and Guardian, 19/10/ 1998)? Later in 1995 it started to be become apparent that the honeymoon was over. The economy was levelling off. The government realised there were major problems with delivery, and recognised the need for a new growth strategy. At a workshop in late 1995, Deputy President Thabo Mbeki presented a document called *the National Growth Strategy*. Several financial experts felt that the document was lacking a macro-economic thrust. By early 1996, key figures in the Finance Department were increasingly convinced that the rand was too high and needed to be devalued so that it could boost the exports. Discussions began about how to achieve a devaluation, given the independence of the central bank, and how to prepare the markets and take maximum advantage of a devaluation. Investors learned about the concern of the government and they accordingly saw the direction in which the policy was moving. Hence they sold rands and the devaluation strategy became superfluous.

Work then began on the growth, employment and redistribution document that became known as GEAR. This document spelt out the macro-economic strategy of the government but it caused great acrimony, especially for those political movements that pride themselves on consultation. This document was issued without even debate in the ruling party's national executive committee. One official from the finance department defended the approach by saying that " economic orthodoxy tends to encourage non-consultation". The independence of the central bank is advocated precisely to insulate it from political influence. The whole acrimony towards the GEAR strategy is encapsulated by Jeremy Cronin of COSATU who said: "GEAR was a strategy to solicit passing global traffic. GEAR puts us on the kerbside and made us vulnerable to global traffic and it gave us no protective measures" (Financial Mail, 12/10/1998). Whatever differences might have occurred in the issuing of the document, GEAR proposes a general thrust towards reducing the deficit, reducing the role of the government relative to the private sector and expecting growth to come from private sector satisfaction with government policy leading to investment.

Specific strategies for achieving reduction of government debt, creating an export-oriented economy and increasing employment are having direct negative implications for the implementation of land reform in South Africa. Critical areas are the following:

4.1.1 Reducing the Role of Government in the Economy

Over the past decade, governments have been increasingly constrained in the actions that they are able to take to promote growth or regulate the ways in which the benefits of growth are distributed. The tacit assumption behind this approach has been that the benefits of growth would

reach the poor through a trickle down effect. All that was needed for successful development, then, was the freeing up of markets and removal of state controls and intervention (May, 1998). The unqualified belief in the ability of the market to provide for the poor requires further scrutiny before it is accepted as the norm. In many instances, the poor have not benefited from the market-oriented macro-economic policy reforms because the underlying institutional context has remained intact. It is unthinkable that the market (in this case the farmers) can contribute towards fulfilment of the goals of the land reform programme. The reason being that it is their farms that are targeted and farmer's influence in shaping the 1991 White Paper leaves no option for the state but to intervene vigorously. Experiences in countries such as Kenya and Zimbabwe tend to confirm the views that market failure calls for some form of state intervention. It is argued that the state has a central role to play in the development of non-tradable goods such as infrastructure and provision of social safety nets.

Budgeting is more than merely the automatic translation of government decisions or legislation into resource allocation. Public expenditure decision-making is intrinsically highly politicized. Budget decisions will determine the time profile of a new government coming on stream or the level at which land reform programme is at least delivered over a period of years. It is against this observation that the strategic involvement of the government in the economy requires more than just relying on the private sector. Conditions of poverty are not susceptible to operations of the market as seen in areas where land reform is a necessity.

Forcing international competition on new businesses can just as easily destroy communities. The economy will not grow unless the government invests in programmes such as land reform. These are programmes the government cannot expect the private sector to invest in because there are not sufficient profits in doing so and yet without this investment, the government will continue to have a country where the majority of people are poverty stricken, under-skilled and unhealthy. In other words, the faith that full liberalisation will automatically improve an economy has been shown to be baseless in many countries. In many poor countries, liberalisation has resulted in an escalation of poverty and landlessness, private sector disinvestment in the economy and increasingly indebted governments (Financial Mail, 12/10/1998).

4.1.2 GEAR Deficit and Growth Performance
The underlying assumption of GEAR is that if government eliminates its debt and creates an export economy, the result will be an increase in internal and foreign investment thereby resulting in increase in economic growth and creation of jobs. This outcome depends on GEAR succeeding in stimulating the economy. This assumption makes it imperative to mention that annual economic growth does not always translate into economic development for the poor in those countries. Sudan, a country whose back is being broken by starvation, has an annual growth rate of six percent (Krafchik and Robinson, 1998). Other countries such as Uganda and Brazil also have

impressive economic growth figures. However, for the majority, poverty, unemployment and inadequate access to facilities such as land remain the norm. GEAR, with its outward looking policy which emphasises an export-led approach will therefore have a propensity to frustrate any attempts at meeting the basic needs of reducing inequality and poverty.

A wide range of organisations, including the Financial and Fiscal Commission, have recently come out in favour of relaxation of the government's deficit reduction targets. Such relaxation could inject urgently needed resources into development, allowing an increase in the pace of delivery. At the very least, GEAR's deficit targets should be brought in line with its growth performance (May, 1998). The debt is large and great efforts have been made to tame inflation. Nevertheless, the Constitution demands that the government makes the maximum possible resources available for poverty alleviation and ensure that the approach to growth is congruent with the approach to poverty. GEAR's performance, juxtaposed against growing poverty, demands a full investigation into the possibility of easing up on the pace of deficit reduction without aggravating inflation. This can be achieved by increasing effectiveness in the form of integrated approach in the expenditure of implementing land reform. To avoid generating another 'wish list' of interventions, it becomes important to analyse the Medium Term Expenditure Framework (MTEF) and highlight the major impediments to its achieving the integrated budgeting system it proposes.

4.2   Medium Term Expenditure Framework (MTEF)

The introduction of the MTEF in 1996 was welcomed by many policy makers as it was seen as a major shift by the Ministry of Finance towards a multi-year budget. It represented a significant departure from the annual, incremental; and ad hoc budgeting of the past. It intended to establish transparent rolling budgets and support effective planning to meet the policy priorities of national, provincial and local governments. Although this concept is largely welcomed, it is surprising to note that little analysis of the MTEF has taken place. Concerted efforts have been directed to the analysis of GEAR and this is an unfortunate oversight, since the MTEF requires fundamental overhaul of the operation of government and reflects government priorities (Pintusewitz, 1997).

The MTEF should be understood as a tool for facilitating presentation of the spending priorities and plans of government over a number of years, and for matching these plans with the fiscal resources available. A member of the Financial and Fiscal Commission described it as a " wider overhaul of the budgetary process, intended to provide the bridge between the technical preparation of the budgets and the need to reflect political priorities in expenditure plans". The MTEF has created an opportunity where programmes can continuously be reviewed in terms of the resources devoted to them and the priority accorded to them without necessarily being any explicit change in government statements and legislations. It has a potential to be a vehicle for transforming the functioning of government, in particular to bring budgeting and planning together in a generalised manner. It has a potential of introducing dialogue within the government

budgetary system and incorporating bottom-up plans coupled with sectoral policies. The Minster of Finance has recently been quoted saying that " MTEF requires some changes to the institutions of government to ensure that the right incentives become entrenched as good governance in South Africa. For this to occur, an immediate priority is to stabilise the present system and focus on the achievement of outcomes" (Mail and Guardian, 19/10/1998).

4.2.1 Communicative Budgetary Process

The essence of the MTEF is to facilitate a dialogue within departments, with other government departments, as well as other spheres of governments which must result in matching expenditure responsibilities (and priorities) with revenue. Since this is a dynamic process, it also involves the need to support a public sector budgeting and management system with the correct incentives for efficient, effective and equitable public finance (Department of Finance, 1996). This results in a competitive budget process whereby departments compete for resources. Projects and programmes are prioritised according to the benefits expected from the expenditure, national political interests and local concerns. The intention of increasing communication within the state organs is a concept that has been viewed positively but has been hampered by the institutional context that was not geared towards this common goal. The aim of creating consensus over revenue and expenditure priorities can never be attained in an institutional environment where each department continues to make its own budget, prioritise and finish allocations without any reference to other departments.

This situation is exacerbated by the absence of a budget matrix where all priorities and expenditures of the government (National, Provincial and Local) can be weighed against one another. What is happening is that the Department of Land Affairs prepares its own budget, prioritises its expenditure, project it for a three year period and then submits it to the Treasury for final approval. In the process of preparing their budget, there is no reference nor communication with other spheres of governments to match the expenditures so that there could be continuation in the implementation process. What is more evident is that all departments show only limited capacity for rational consideration of their chosen objectives. They do not seem to examine them in sufficient detail, nor do they fully explore the consequences of their chosen actions.

It is mentioned in the Department of Finance document that MTEF will be consistent with a decentralised system of government. The existing communication gap within the government system makes the concept of accommodating both the reallocation of resources between programmes and reprioritisation within the programmes themselves just rhetoric. The government should start to realise that what the MTEF does is to provide some idea of the changing priorities of government. In the short term, changes in priority will be reflected in marginal changes in the total allocated to a particular activity, since it is difficult within the existing institutional framework to make substantial changes in the short term and impossible to consider a programme

from scratch. What this means is that there is a need to study budget, looking at how expenditures are attached to policies and how the complementaries and conflicts arising from policies competing for the same resources are resolved.

4.2.2 Institutional Change

Multi-year budgeting is new and very different from the manner in which South Africa has budgeted in the past. Putting the system in place will require substantial institutional change. For instance, no incidence or utilisation data is currently collected in the budgeting process. There are not a sufficient number of experienced financial managers with an ability to prepare sound financial planning at all spheres of government. A good balance has to be found between building an 'ideal' system and supporting the transformation of the present system. The MTEF was introduced without a system to support the shift to objective oriented budgeting and to allow for an accrual system. More support is required in provinces that have inherited the large former Self-Governing Territories and Homelands. Due to the interplay of many changing circumstances, the outcomes of which are difficult to quantify in their individual capacities, the ability to relate cause and effect has broken down.

The time-table within which the incentives and the rules for policy development are developed must be carefully monitored. At present, policies for most departments are being drastically revised. However, the cost implications of policies and their administrative requirements have not been adequately assessed. Thus priorities that are going to have a positive impact on the implementation of land reform are going to be difficult to accommodate in the budgets of governmental departments. This requires the Department of Land Affairs to pilot those areas that are backed by proper planning and also reflecting competitive administrative and managerial skills. Clarity over re-distributive goals is essential in order to resolve the political uncertainty of government programmes. In the absence of such an approach, land reform programmes are going to continue involving conflict over spending decisions which impact on provincial and local governments.

4.2.3 Accountability

South Africa has a Constitution that creates a comprehensive system of checks and balances. The Constitution, however, confers a considerable degree of powers over expenditure to local government bodies, particularly in relation to the provision of service delivery. Budgeting is therefore expected to occur in an environment where there is clarity on which sphere is accountable for what ascpect of the land reform process. This is crucial in a system with a number of spheres of government. In the absence of clear accountability, it is impossible to ensure that governments's priorities can be established and consensus over revenue and spending programmes achieved. It is suggested that there should be means of attaining consensus in institutions such as the Budget Council and the Inter-Governmental Forum, rather than through legislated co-

ordination. This is an informal institutional arrangement where informal linkages are established without necessarily conflicting with rules and regulations. This mechanism will be able to translate national priorities into implementable provincial and local government programmes without undermining the ability of these governments to determine their own priorities.

In the absence of two-way lines of communication, the MTEF becomes largely a monologue. What is also noticeable is that the section of the MTEF document on priorities is very generalised and reflects a lack of clarity over the resources required and the priorities of spending. If the MTEF is going to be a tool for bringing the macro-economic programme and the government's spending plans together, then dialogue (concerning policy, funding and planning) and the process of planning and prioritising spending have to be enhanced. The government has to reconcile these divergent policies. Without consensus over spending, clear accountability, and the tools needed for managing spending, the MTEF will be inherently limited as a means of meeting widely accepted land reform principles.

5. PRACTICAL LAND REFORM CHALLENGES IN KWAZULU-NATAL

Connecting the dots between institutional determinants and the constitutional obligations is a prerequisite to understanding the dynamic, complex nature of rural development issues in KwaZulu-Natal. Establishing and maintaining strong local service delivery structures of representation and accountability in rural KwaZulu-Natal depends on the legitimacy or otherwise of the chieftaincy and whether or how traditional leaders are accommodated within the local structures (McIntosh, 1995). Barnes and Morris (1997) assert that local service in rural KwaZulu-Natal will not operate efficiently or sustainably unless an appropriate development-oriented rural institutional environment is established. Institutional environment is, however, influenced and determined by parameters such as tenurial rights, applicable legislations and viability of local government structure. Another important constitutional element is the need to recognise that KwaZulu-Natal's present rural local government institutions differs from the other provinces. Regional Councils are currently legally recognised as *de facto* local authorities for all those areas outside formal Transitional Local Councils.

5.1 THE IMPACT OF PAST POLICIES

Rural areas throughout South Africa have been shaped and conditioned by past policies. These policies have influenced or determined settlement patterns and demographic profiles, access or lack of access to services and facilities, and the location and character of economic activity (McIntosh, 1997). Historically, the concentration of people in settlements, villages or towns came about for convenience of trade, security, social interaction and culture. In some instances, as with most of Sub-Saharan Africa, the need for extensive pastoral activities kept people in scattered locations. This was the case in KwaZulu-Natal (KZN) where over a hundred years ago most of

the Black population were pastoralists (Hornby, 1996). However, as the policies of the colonial settlers began to take effect, people became more confined with the apartheid policies. People were further forced off traditional land holdings causing premature change in the pattern of land rights. This became more acute when removals into so-called Homelands added to population density in those areas and increased pressure on the resource base. This resulted in inevitable increases in density with a reduction in the freedom of movement. This, in turn, resulted in severe environmental pressures like overgrazing, loss of vegetation and corresponding loss of livelihood.

The implementation of Betterment Planning schemes, following the recommendations of the Tomlinson Commission in the early 1950's, the extent of resistance that was experienced in this Province and its failures are well documented by many authors (A'Bear, 1986, de Wet and McAllister, 1985 Yawitch, 1982). This type of a scheme was mostly opposed because it resulted in the *de facto* loss of original Land holdings which were subsumed in communal use arrangements. The tribal people of KwaZulu-Natal were not interested in just piece of land; they associated with those particular pieces of land that were used for burying their ancestors. This cultural and spiritual phenomenon shaped the line of thinking and entitlements towards land rights.

What has been noticed and traced from the subsequent introduction of White Papers by the past and present regime is the continued erosion of the inspiration that shaped the institutionalisation of access to land in KwaZulu-Natal. Because of the former government's attempts to award land to a selected sector of communities, this was rejected as divisive and as undermining community strength. The multiple impacts of previous policies have created configurations within which livelihoods enhancing strategies could be deployed. This is convincingly demonstrated by Hart (1996) in her Ladysmith and Newcastle case studies. She shows how different aspects of apartheid policy have coalesced to produce a set of conditions within which strategic land reform interventions could open up livelihood chances for people resident in the surrounding relocation areas. Her assertions are most welcome but one is sceptical to view land reform as the supplement for livelihood, taking into consideration the serious flaws being experienced in the process of implementation.

5.2   THE ROLE OF TRADITIONAL INSTITUTIONS

Apart from capacity having been undermined by fragmented and centralized systems of service delivery in the Province, it has also been compromised by the long time that it has taken for effective systems of local government to be instituted within the rural areas. This delay was partly due to controversies in the Province about the role of traditional leaders in relation to local government. During the transition process, the Provincial Government took the view that the interim Constitution required *ex officio* representation of all traditional leaders within local government bodies (Regional Councils). The Province therefore opted for what was known as the 'remaining area model' in which elected Regional Councils would serve as local structures.

A number of difficulties arose from this political compromise. Firstly, in order to ensure that elected representatives had some say in the Regional Councils as against that of the traditional leaders, the regional councils consisted of an inordinately large number of councillors, making it difficult and expensive to convene plenary meetings. Secondly, problems of area representation arose due to the absence of ward representation. Thirdly, the regional councils have quite limited capacity and this has circumvented their assuming functions from provincial or national departments.

There is an increasing consensus within the Province about the role of Regional Councils in providing services, as is the necessity for a primary level of elected local government in rural areas. To this end, the Regional Councils have structured themselves so that between four and six standing committees operate at a local level. This arrangement which was based on the interim Constitution, incorporated the role of traditional leaders in the provision of local delivery services. On the contrary, the new Constitution provides for a role for traditional leadership as an institution at local level on matters affecting local communities (s212 (1)). These matters have been confined to issues relating to customary laws and the customs of communities.

The role of traditional leaders in the local government structure is still a bone of contention. However, as the situation currently prevails, the Constitution rules out a role for a traditional authority in the local delivery programmes. The implications of this situation are far reaching in this Province. Although it is not within the scope of this dissertation to discuss the political implications of this constitutional development, it is safe to mention that the support of traditional authorities and other locally-based bodies is crucial if services are to be made available within rural areas. This is because service delivery in this Province generally becomes affordable and acceptable only when communal structures support it. This statement resembles the extent of discussion that this Province will have to engage with should it adopt the principle of ruling out traditional authorities in local government structures.

In teasing out the debate around the future role of traditional leaders, McIntosh (1996) tried to provide a plausible explanation of the current role of traditional authorities: "...traditional authorities have not provided infrastructure, delivered services or implemented projects. But they have fulfilled some of the more basic administrative and control functions in rural areas, while keeping within the financial means of poor communities. Their judicial and dispute resolution functions have played a vital role in ensuring local stability. More important, traditional authorities, and the system of traditional tenure on which their power rests, have provided relatively secure, affordable, and equitable access to land for rural people".

What is also striking about this acceptance of traditional authority is that it occurs in a context of frequent allegations of corruption on the part of particular traditional leaders. Cases are being

reported throughout the Province where areas of communal land have been handed over by tribal authorities to developers and private interests in deals which seem to have no legal basis and which do not always take the interests or rights of local people into account (Cross, 1995). The overall lack of formal tenure rights mean administrative decisions tend to be a substitute for legal procedure. In the existing legal limbo, administrators at all levels have great discretion, and they may not be transparent or accountable, or consistent, or coherent. Administrators are also understandably reluctant to act in cases where they have no clear guidelines. These are the kinds of environments where bureaucrats and tribal authorities have been tempted to use this vacuum for their own gain.

5.3 THE DOMINANT MODE OF LAND REFORM INTERVENTION: A Centrally Driven Application-based Approach

The state's land reform programme, as currently implemented, has tended to generate land reform projects of a single type. These projects offer very little in terms of livelihood generation. The development paradigm dominating the policy arena is an application-based system which is largely driven by the state with or without the market intervention..

The application-based type of intervention is basically a demand-driven approach. It involves the allocation of resources through the receipt of applications from the communities. In terms of this approach, the responsibility for accessing infrastructure, services or development resources is located within civil society. Communities or individuals apply for projects which are approved or rejected on the basis of specific sectoral or inter-sectoral criteria. This approach (for example, Redistribution Programme) has been perpetuated by both the previous and present government as an appropriate model because it is assumed as encompassing the principles of local initiative and control (people-driven). Although this approach has been applauded as the vehicle for a consultative mode of implementation, what is emanating from the ground is that projects tend to be more accessible to better-endowed, well organised communities but less effective in reaching marginalised sectors of the community.

Two serious problems have emerged with this approach in the land redistribution and other programmes (like the community-based Public Works Programme). The first of these is a systematic tendency to bypass local service delivery providers and government agencies such as Regional Councils. Although such approaches can facilitate fast track development, they have also served to obviate inter-sectoral cooperation, local planning and local co-ordination of development activities. This has resulted in the ad hoc provision of facilities like community halls, clinics, and land reform settlements with less than adequate provision for ongoing maintenance. This approach has on occasion also alienated local government bodies and traditional authorities as well as other government departments responsible for the provision of related services.

The application-based system is intertwined with the formal delivery system of the state. Projects delivered in this mode have been provided independently of traditional systems and local development authorities such as Regional Councils. Government departments that have communicated with those communities directly without liaising with local structures have created a situation where traditional leaders became defensive and protective of their powers, especially those relating to land. One of the reasons why traditional leaders have found it difficult to engage with development processes is that they have not been well informed about the land reform developments, and have not known how to engage with them. In some cases, this has been due to the poor education (both from external experts and local people) and relative poverty of some traditional leaders. Also, traditional leaders have not been well served by the government departments which have taken responsibility for them.

The provincial office of the Department of Land Affairs has persevered in attempting to draw other departments and local government bodies into project selection and project steering committees. This approach has rarely succeeded in securing financial contributions from either the province or the municipalities (Regional Councils included). Land redistribution projects have continued to be viewed with scepticism and are being treated as the exclusive responsibility and preserve of the Department of Land Affairs. The fact that a national department has been attempting directly to implement land redistribution projects at the local level is not the sole explanation for why it has been difficult to secure active support of other departments. Other critical factors are attributed to poor integration of planning and budgeting, poor local government structures and disjointed functional portfolios as outlined in the Constitution.

Realisation of livelihood opportunities through land reform will require a somewhat different approach to current programme implementation. This present system is based on a completely literal interpretation of the concept 'demand-led'. The programme is entirely reactive, and it is this which results in poorly-located, poorly-serviced projects that do not offer livelihood chances. A more strategic and integrated approach to land reform would involve the pro-active structuring of projects for which demand can be anticipated. A more strategic approach would also involve the building of partnerships between institutions and organisations which have something to offer. Land reform could remain an application-based programme. However, to create and enhance livelihoods, it is necessary to provide a framework of opportunity within which applications can be accepted.

5.4 CHAOTIC LAND CONTROLLING SYSTEM

In 1994, the Ingonyama Trust Act located ownership of land previously owned by the KwaZulu Government with the King by means of a statutory trust. This Act contributed to a perception by many traditional leaders that they own their community land as freehold property, and can be legitimately sold to outside people including the developers. This Act, was not repealed after the

1994 elections and it continued to place ownership of all former KwaZulu areas (including the townships) under the King. However, the constitutional provision of assigning land matters as national competence compounded the confusion further. The Department of Land Affairs automatically became the custodian of the Ingonyama Trust Act and in principle, authority to make laws dealing with land could not be delegated to the provinces. The Departmentof Land Affairs therefore assumed the responsibility for land administration of the Ingonyama areas.

The practical implications of this arrangement were that development in the Ingonyama areas were blocked as there was no administrative support that was in place to implement the legislation. Warlords used this legal vacuum by taking control of land, illegally giving land to people who become their followers and then withholding access to services and land from people reluctant to cooperate. Many squatters driven by warlords mushroomed in the townships and authorities (provincial and local governments) could not act on these squatters because they were not landowners. The government did not take action to make clear who owned tribal authority land, or to stop this land being sold off. The chances of corruption were and still are enormous as long as the tenurial issues in tribal areas are unclear.

Permissions to Occupy (PTOs) in the former KwaZulu government were issued under the authority of traditional leaders, acting on behalf of the government. They took the form of actual documents in the case of permanent facilities such as schools, clinics, halls, etcetera. The relevant government department then issued the certificate after the application had been recommended by the appropriate magistrate. For ordinary community members, the transaction was secured by the community at large. Both formal developments and ordinary land transfers in communities are still going ahead without any legal base. Developers and traditional leaders appear to be concluding deals using invalid PTOs. Cross (1995) cartooned this type of arrangement as characters walking off the edge of a cliff with their eyes closed, who don't actually fall till they look down and see that they are standing on fresh air. As a result, many developments have been completely blocked by the uncertainty around tenure, resulting in delays of a year and more on specific projects.

There are many examples in KwaZulu-Natal of land being sold to commercial developers as well as to private individuals looking for cheap holiday properties. These transfers seem to be taking place without community members being fully consulted and money is rarely accounted for. In reported cases, there is little, if any, benefit returned to community members which lose rights. The Department of Land Affairs seems to be failing to conceptualise the extent of the land problems that require immediate attention. The present land reform projects are not addressing these problems, and land in the rural areas continue to be allocated and sold outside the strict limits of the law under confused conditions.

The weakness of the present land system is also destroying the legitimacy of the newly started land reform projects because the precedent that has been created in the existing rural areas creates a fertile ground for future warlords to hijack the process for their personal gain. In other words, the risk of having no clear legislative guidelines, and the snail's pace at which attempts to tackle these problems taking place will result in this informalisation running wild and being used by powerful people to build and secure positions of domination. As mentioned, warlords are popping up in many areas and seem to be turning community members into tenants. Anyone who can claim control of land by force can do the same, whilst authorities at provincial and local government level are unable to act or prevent it because the competency for dealing with land matters rests with the national Department of Land Affairs.

5.5   SUFFOCATING BUREAUCRACY

Centralised, fragmented and uncoordinated interventions have undermined the potential for rural people to benefit from the development process. The provincial and national departments have tried to provide services directly to localities, either by using their own field staff or by making use of consultants. Numerous difficulties have been encountered by the Department of Land Affairs in attempting to effect a coordinated approach. Their senior staff do not know the local conditions, and cannot respond quickly in terms of local priorities. Confusion arises where communities have to access different officials for different problems and needs.

What is still happening is that different departments have established their own forums at a local level to consult with communities about their service delivery needs. This fragmented approach to service delivery is dividing communities in the image of the state and is leading to unnecessary competition with local government structures. As the situation currently prevails, rural KwaZulu-Natal is not immune to institutional incompetencies and poor mechanisms of enabling different government departments to deliver services and development resources in a co-ordinated and integrated manner.

Provincial and national government departments should shift away from the direct delivery of services towards enabling local government structures to become the direct suppliers of local services, and the coordinators of local development activities. This is consistent with the Constitution, which makes local government the body which takes ultimate responsibility for service delivery. It is therefore critical that community-based delivery systems that are being developed by provincial and national government departments should be built into emerging local government departments. The setting up of parallel and competing systems by government departments should be avoided.

A mechanism for involving traditional leaders in development activities, is their *ex-officio* representation within Regional Councils. However, this also has shortcomings. The Regional

Councils are at a level which exceeds the area of jurisdiction of any particular traditional leader. In fact, neither traditional leaders nor individual elected councillors have been in a position to influence decision-making significantly, given the number of councillors within the Regional Councils. Greater opportunities for a more positive role for traditional leaders may be found within the emerging local government system.

5.6   FRAGMENTATION OF RURAL FINANCIAL SERVICES

The salient feature of financial services (and markets) in South Africa's rural areas is a stark institutional split between credit facilities and savings facilities. These two poles are the product of the previous government where rural financial services were provided in politically strategic ways rather than in a developmentally driven approach. The current stark polarisation of land reform projects between non-economic settlements and fully fledged commercial opportunities is parallelled by, and partially derives from the polarisation in land acquisition programme in terms of which beneficiaries can acquire a R 15 000 settlement grant. What will most rural people want to do with a windfall of R 15 000? Use it to raise another R 35 000 to go into farming or find ways of using it to extend the house or pay school fees for their children? This approach treats land reform as a cost and not as an opportunity, and therefore a cost to be minimised. The alternative to purchasing land through the market using finance raised through a commercial bank, or land acquisition through commercial farmer settlement schemes initiated by the private sector, proved to be unforthcoming in the rural areas.

The primary institutions and organisations which have provided credit facilities in both the commercial sector and the former KwaZulu areas have been government departments and parastatals (the Agricultural Credit Board, the Land and Agricultural Bank, and the provincial Development Corporations). Some of these institutions have either not been activated or, until very recently, have been of far less importance than the credit providing facilities. The fact that so many financing and development agencies have been involved in the province in the past, clearly outlines the complexity of previous institutional arrangements. People in the rural areas have access to commercial banking facilities through the ubiquitous presence of commercial banks in small towns. It therefore essential that national development agencies and parastatals restrict their funding programmes to the financing of service undertakings, within clear parameters.

Barnes and Morris (1997) are supported in their assertion that the establishment of a single development agency that deals with service delivery requirements in rural KwaZulu-Natal would go a long way towards creating a sound development-oriented institutional environment in the province. However, this one single development agency raises a question of domination by monopolies that are already existing in the rural areas. These monopolies are antithetical to the establishment of a sound development environment and it is therefore appropriate to channel all the funding resources to one structure in a form of a local authority, that is, the Regional

Councils. The role of the Regional Councils as the municipality of rural areas would address the issue of monopoly and also synergise the development agenda for these multitudes of financial agencies. Many of these agencies have a variety of development portfolios, and the Regional Council would be able to harmonise and blend them with its constituency needs and thereby ensure the maximum utilisation, and equitable spread of available scarce resources.

6. AREAS FOR CONSIDERATION

The institutional relationships and powers of the national, provincial and local administrations and of traditional authorities will probably remain undefined, and will result to chaotic and chronic conflict. In legal terms, the worst possible outcome is for formal and informal institutional arrangements to be left to the administrators without building in the checking and balancing mechanisms. The goal of framing an enabling environment is not only to be left to administrative discretion if authorities want to achieve a sound, just, coherent and consistent system with a firm base.

South African rural areas are receiving prominent attention from the government delivery programmes and it is vital to clearly define the legitimate position of traditional leaders taking into consideration the applicable legislation and constitutionality aspects. Meeting constitutional equality provisions might draw some resistance from traditional leaders, but any legislation which avoids the Constitution's principles would immediately be open to challenge in a court of law. It has been suggested that the roles and responsibilities of the various components of the institutional partnerships, and the link between these components, require clarification. Confusion about or misinterpretation of these roles, responsibilities and linkages may have adverse implications not only for democracy in South Africa but also for the successful implementation of land reform programmes.

The challenge for the Department of Land Affairs is to set in place structures necessary for other pillars of land reform: structural and institutional networking, and consolidating some progressive processes already initiated. The proposed land reform process is inadequate to introduce a fundamental programme to restructure power relations in the allocation of responsibilities and control of land. Apart from entrenching the property rights, the Constitution seems to limit the scope for involvement of provincial and local spheres of governments, instead of empowering them in the land reform process. The land reform programme and development process should also strive for effective involvement of local people and incorporation of local knowledge into development planning and implementation.

CHAPTER FIVE

DEVELOPMENT PLANNING IN KWAZULU NATAL

1.   INTRODUCTION

Since, the advent of the democratic national government and democratic local government, efforts have been made to strengthen and empower local government. Municipalities are seen as being in the front line of service delivery and development. The transformation of local governments have been finally ushered by the 1998 White Paper on Local Government which entrenched this trend toward developmental local government, an important function of which is control over land use (Pycroft, 1998). A central argument in this dissertation contends that unless each municipality has executive authority over the use of land within its area of jurisdiction, the constitutional role of local government as a sphere of government in its own right remains unfulfilled. National legislation has sought mechanisms to promote local autonomy, but within defined parameters that ensure that municipalities are developmental. It has not been easy to balance the two needs: on the one hand, establishing national norms and standards for the performance of municipalities, and a mechanism by which national and provincial government can impose sanctions on municipalities that fail to fulfil their development mandate, and on the other hand, protecting and promoting autonomous local councils.

As in many other countries which have been confronted with the challenge of governing in contexts where there has been a radical break from the past (post-colonial Africa and post-apartheid South Africa), while it was necessary to demonstrate that a fundamental break from the past was being made, it soon became clear that this cannot be done by ignoring the past and devoting too much energy to the construction of grand visions of desired futures. Once it was accepted that there is no escaping the realities of the past as a starting point for formulating realistic short and medium term strategies, the age-old issues that have challenged the most capable development planners soon emerged.

Although the thirty year old tradition of policy analysis evolved the body of knowledge that was used by public managers to build institutions and methods for governing countries, it was development planning that has generated the conceptions, approaches and institutional strategies for managing the development process. It is most telling that Michael Todaro's famous text on development planning commences with a quote from Abraham Lincoln who said

> " *if we could first know where we are, and whither we are tending, we could do better judge what to do, and how to do it*"

How different this is to those who think it is best to first reject the past, set a future vision, and only then work out "where we are" as a basis for working out "what to do", and "how to do it". The overall aim of this chapter is to expose key policy issues that would add value to existing empirical experience in a way that would enhance capacity to "better judge what to do". This approach is premised on the notion that there is no one correct way to do things because of the complexities that are specific to each context. But it is believed that capacity for sound judgement in specific contexts and situations is better than DLA technical solutions (drafted in Pretoria) that are deemed to be applicable to all contexts.

Market liberalisation in Sub-Saharan Africa has always been a contested issue. Under colonialism and in the early independence period planning failed to redress underdevelopment (Friedmann, 1992) and became a largely ideological activity intended to legitimate the colonial and post-colonial state. The introduction of a market liberalisation model valorised the market as the only genuine means of effective development. The failure of statist, top-down planning was used to legitimise a market-driven model of development in which individual 'goal orientation' is intended to overcome the excessive normativism of previous efforts. As the introductory quotation suggests, this process of development planning has major implications for knowing how to integrate land reform process with the legislative planning framework for KwaZulu-Natal. Hence, this chapter attempts to examine whether and to what extent KwaZulu-Natal, as an example, has been restructured to effect efficient local service delivery in a co-ordinated and integrated manner.

KwaZulu-Natal is an instructive case study because it has been at the forefront in introducing a model of integrating different planning and development legislations and linking them through the common thread of development planning so that they all work in support of each other and strive to achieve sustainable development in all spheres. In the quinquennium period, an immense amount has been achieved and many of the initiatives which were just concepts in 1994, have now started to come to fruition. The key feature of the progress made thus far is an endeavour to work towards an ambitious decentralisation of planning and development powers. This chapter therefore begins with an examination of planning paradigms within the neo-liberal development model. The second section briefly outlines the planning legislative framework in KwaZulu-Natal and how it integrated the national planning requirements. The final section explores the need for establishing principles to guide locational decisions of land reform and analysis of the spatial development issues facing rural people, and of the current spatial aspects of service delivery.

2.   MARKET - BASED APPROACH VERSUS GOVERNMENT INTERVENTIONS: OXYMORON OR RED HERRING?

One argument in support of planning (government intervention) is based on the concept of market failure to reach the poor sectors of communities. This position states that since monopolies are

rampant and restrictive, externalities are ubiquitous (Richardson and Gordon, 1993) and the allocative efficiency of the market system is rarely achieved. Hence, planners must intervene to put things right. An alternative, slightly more pro-market argument, posits that markets achieve a high degree of economic efficiency but often at the expense of equity. This view holds since most allocative choices involve a trade-off between efficiency and equity, planners must intervene in to achieve an appropriate degree of redistribution. In this view, markets attend to efficiency, while planners look after equity.

Neither of these arguments are convincing, both greatly exaggerate the prevalence of market failure. The idea of trade-off with markets looking after efficiency and planners watching out for equity is equally irrelevant in the contemporary planning and development issues in South Africa. It is therefore a fantasy for the South African land policy to hold a view that land reform is purely based on market-driven principles. So many market versus government driven approaches debates set up a false dichotomy between market and state programmes. A spectrum of systems rather than bipolarity implies that the choice between market solutions and planning interventions is irrelevant. The real issues are when to intervene, what types of intervention will minimize inefficiencies and inequities, and the effectiveness of the intervention (Banerjee, 1993).

Given these considerations, policy makers should attempt to decide the appropriate scope of planning and regulatory approaches? The first step is to identify when public intervention is justified, and the second step is to evaluate the conditions under which interventionist strategies are less practical than regulation. Indeed one of the central themes of market advocacy is distrust and distaste for the political process in a democratic society (Rapley, 1994) from which planning (in the public sector) derives its legitimacy. This negativity sees freedom exclusively in terms of the independence of the market from interference by others including the government and its institutions. This view is symptomatic of the deep and fundamental cognitive dissonance the marketists have with the idea of government intervention. In contrast to marketism, the ideology that informs the market fetish and is unequivocally anti-planning advocacy is not anti-market (Rapley, 1994). Planning, even in the limited sense is not meant to undermine market economy and in fact market is the medium for conduct of planning in all liberal democracies.

If the practice of planning is examined, as it should be, from a humanistic ethic (that is, if it is judged in terms of the degree to which it contributes positively to the lives of the majority of people and not just to elites or minority interest groups), it becomes apparent that the fundamental premises and concepts upon which it is based are flawed and are contributing significantly to the poor performance of land reform programmes. The current planning approaches are also entirely inappropriate to the realities of the KwaZulu-Natal context, particularly in terms of resource rationalisation. Their outcomes are non-sustainable and they need to be rethought and reconstituted from first principles.

This discussion suggests that market-based approaches to social and environmental problems are sometimes effective, but often of dubious value. They do not necessarily weaken the need for an administrative bureaucracy. In reality, the market approach may require more oversight in some cases. Market approaches may allow greater efficiency in resource allocation, but the distributive effects may be questionable, since these approaches seem to benefit minorities at the expense of the large proportion of poor communities. The Kenyan and Zimbabwean experiences showed that equity goals and other values that underlie the authority of public institutions are typically not achiefed by approaches. The creation of new property rights engenders many serious moral, ethical, and legal dilemmas. Alexander (1992) once mentioned that the market can be 'blind and deaf' for it does not have to guide, but society needs a guide. Planning must have eyes and ears for it is the guide.

3. DEVELOPMENT PLANNING: A TREND TOWARDS DECENTRALISATION

In 1994, the Forum for Effective Planning and Development (FEPD) was given the responsibility of ensuring that "development planning" was implemented in all spheres of government. The Forum defined development planning as follows: *A participatory process to **integrate** economic, sectoral, spatial, social, institutional, environmental and fiscal strategies in order to support the optimal allocation of scarce resources between sectors and geographical areas and across populations, in a manner that provides sustainable growth, security and the empowerment of the poor and marginalised communities"*(Department of Land Affairs, 1997: 3). KwaZulu-Natal not only subscribed to the definition, but participated in the national initiatives aimed at implementing development planning and has developed a vigorous provincial planning legislation which aims to strengthen the role of municipalities in the coordination of integrated development.

3.1 Communicative Land Reform Planning

The past several decades have witnessed an evolution in methods and processes of development planning worldwide. These changes have to a large extent, parallelled the widening conceptualisation of development itself. Development, in the narrower conceptualisation of 'modernisation theory', is defined merely under the auspices of economic growth (Banerjee, 1993). Over the time, the concept of development has been broadened, albeit not universally to more comprehensive views of social and human development. This was done by including concepts and objectives such as 'redistribution with growth', the satisfaction of a variety of 'basic human needs, the protection of civil and political human rights, the pursuit of economic and social rights, and the use of environmentally appropriate and sustainable technology' (Innes, 1998). Similarly, development planning methods have evolved and now commonly include community participation as opposed to mere reliance on outside experts, technicians and planning professional.

While there is now a wider consensus on the importance of participation in development, participation also evokes a wide variety of methodological practices and objectives. This is necessary, arguably, given the diverse cultural, political and socio-economic settings in which it is employed (Martin, 1995). For example, participation in land reform planning processes is encouraged in order to ensure that initiatives respond to the root causes poverty, and basic needs, rather than addressing merely the symptoms of poverty. The international literature stresses that participation is pursued as both means and ends (Healey, 1992). As an end, it is the fulfilment of a basic human need to be part of the processes that shape one's life. It is sought to move away from dependency to self-reliance. As a means, participation can attain other political, social and economic objectives. It can promote sustainability and replication, reduce project costs, and take advantage of local practices and technologies that are suited for the environment or local human capacities

In South Africa and particularly KwaZulu-Natal, guidance and justification for participatory development can be found in many laws and policy documents (Nene, 1997). Among other objectives of local government, Section 152 of the 1996 Constitution specifies the promotion of social and economic development and the involvement of communities and community organisations in matters of local government. Chapter seven of the White Paper on the National Reconstruction and Development Programme states that "structured consultation processes at all spheres of government will be introduced to ensure participation in policy making and planning, as well as project implementation". Similarly, Section 10 G of the Local Government Transition Act of 1996 directs municipalities to annually report to and receive comments from communities regarding development plans.

The Development Facilitation Act of 1995 emphasises community organisation and development forums as vehicles for community participation. Furthermore, the Provincial Planning and Development Act of 1998 of KwaZulu Natal calls for the establishment of community development structures to facilitate public involvement in planning and development. Lastly, while cautioning municipalities to find the right balance between effective delivery and participation, the 1998 National White Paper on Local Government stresses that such government is uniquely placed to promote active participation of citizens in budgeting, planning and implementation of development.

What are the implications of these goals for land reform planning? These policy documents demonstrate that the nature of land reform planning by which the process is executed is essential to embedding it in understandings and institutions. A planning process carried out by presumably neutral experts who work outside and apart from the political and bureaucratic processes through which policy gets made, does not become embedded in the institutions or the local understandings. It will become what Innes (1998) called " intellectual capital " or shared

knowledge, only if there is plenty of talk about the meaning of the information, its accuracy and its implication. Planning does not influence unless it is characterised by a socially constructed and shared understanding created in a web of communicative and interactive process involving the policy makers and the beneficiaries.

Which sphere of government is better located to make land reform planning to be understood as communicative action? Discussions with many researchers and officials for the DLA, are now fully realising that the local government structure is better placed, to develop a matching concept of rationality that can provide an ethical and legitimate stance for planners whilst ensuring that land reform projects are socially meaningful, appropriate for the local context and practically worthwhile. This premise, therefore makes it necessary to ask whether South Africa's existing planning policy strengthens or weakness efforts to decentralise decision making to the local sphere of government.

3.2 Developmental Local Government: Prospects for Integrating Land Reform?

The launch of the White Paper on Local Government in Cape Town in March 1998 marks an important stage in the transformation of local government in South Africa. The inequities of apartheid local government have been well documented, as have the development backlogs created by years of localised racial division (Paycroft, 1998). Section 153 of the Constitution explains the developmental duties of municipalities, requiring each municipality to structure and manage its administration and its budgeting and planning process to give priority to the basic needs of the community (Constitution , 1996). The White Paper further defines the concept of developmental local government by identifying four interrelated aspects: maximising economic growth and social development; integrating and coordinating the development activities of other role-players; more importantly, democratising development by facilitating and encouraging the fullest possible participation by citizens; and leading and learning, giving councils a key role in building social and capital and encouraging local solutions to local problems (Ministry of Provincial Affairs and Constitutional Development, 1998).

This is a remarkable departure from the more traditional approach to governance as it identifies a central role for integrated development planning. Integrated development planning seeks to position municipalities at the centre of a complex matrix of organisations operating within the council's area of jurisdiction, where they will take responsibility for managing both horizontal and vertical dimensions of integration. The horizontal integration places responsibilities to developmental council to facilitate and co-ordinate service delivery, poverty alleviation strategies and local economic development.

Although local governments are expected to manage its budget and planning process, what is happening within the implementation of land reform reflects the persistence of traditional

approach of seeking to impose a hierarchy of tiers, with national government playing the most important role, and local government frequently operating merely as the local delivery arm of the central government. Budgeting of various projects impacting on the development needs of the municipalities is done without any consultation with those municipalities nor allowing any benefit of changing the financial allocation as and when is required. The whole process is still and will remain (so long as a narrow interpretation of land matters as an exclusive national competence persists) planned, budgeted and implemented by DLA provincial offices without any meaningful participation by other spheres of government.

Indeed, the developmental council, through vertical integration, plays a pre-eminent role in determining how the other spheres of government will operate within the municipality's area. The developmental council is therefore a far more proactive and significant development agent than the previous types of municipal government experienced in South Africa. The Constitution has deliberately opted for a more autonomous form of local government with distinct power and functions which makes to paint a gloomy picture about integrated land reform planning process. The continued existence of DLA's traditional approach fails to portray the intention of moving away from the centralised driven approach and thus imposed a hostile environment towards the land reform projects particularly at the provincial and local governments .

4.   SYNOPTIC UNDERSTANDING OF DEVELOPMENT PLANNING WITHIN LAND REFORM PROCESS IN KWAZULU-NATAL

In an effort to secure maximum return from the limited development resources at its disposal, the provincial government in KwaZulu-Natal has sought alternative techniques to ensure that development resources are managed efficiently, wasteful duplication of effort is minimised, and the three spheres of government work in concert. A coherent policy environment was seen as an important prerequisite for effective development programmes such as land reform. This policy environment, involving interrelated, and mutually reinforcing sectoral, spatial and institutional dimensions, was presented in a comprehensive report known as the Provincial Growth and Development Strategy (PG&DS)

4.1   Provincial Growth and Development Strategy
The Province has already compiled its Provincial Development Plan, that is, the Provincial Growth and Development Strategy (PG&DS). The Strategy set out the vision, principles and seven programmes which highlight what should be done to achieve economic growth, development and redistribution of resources in KwaZulu-Natal for the next twenty-five years (Robinson, 1998). The collective objective of the PG&DS is to secure high levels of economic growth whilst simultaneously ensuring that the quality of life for all the inhabitants of the Province is systematically improved. This overarching objective is to be achieved through the co-ordinated

implementation of seven interrelated programmes.

Although land reform and its implementation is technically a national programme, this Province identified this objective as one of the critical elements of Programme four: "Addressing the Needs of the Poor". This programme selected land reform as the key for reducing poverty and assisting in promoting the transfer and use of assets to the poor people and through the provision of social welfare. Since the Province has included land reform in their provincial plan, it therefore compels the institutional instruments of the administration to forge links with all the institutions involved in the implementation of land reform.

4.2   Formulation of an Appropriate Spatial Framework

Programme Six of the PG&DS is the Provincial Spatial Growth and Development Framework (PSG&DF) which sets out where growth, development and redistribution could and should take place. It sets out the overall spatial distribution of development to respond to the spatial implications and synergy arising from the development strategy and other policies and to set frameworks and co-ordinate planning. The PSG&DF outlines clear spatial parameters for development in the Province's rural areas. These include a hierarchy of service delivery centres, the development of small towns in conjunction with their hinterlands, a focus on minor development corridors, and spill- over benefits from major growth corridors due to economic links and oscillating migrating patterns.

Strategies to realise opportunities for rural areas include the successful implementation of land reform programmes in this Province. A principle which was identified as the cornerstone of this strategy was the creation of areas where rationalisation of public investment can be sustained in focused spatial development, while providing basic services as a fundamental right (Robinson, 1998). It was suggested in the PSG&DF that locational decisions (of land reform projects) should be based on an analysis of the spatial development issues facing people who are applying for assistance (demand-side), and of the current spatial aspects of service delivery (supply-side) effects). The PSG&DF was drafted in a manner that can respond to demand and supply-side issues by taking decisions to locate public sector investments in a particular manner (Robinson and McCarthy, 1998). Land reform projects are not using this opportunity and the only thing driving the location of projects is where the 'willing seller' has agreed to sell the property. The spatial implications and objectives of providing an investment framework for a better integrated spatial structure that would enable beneficiaries to have better access to services, and provide and promote the realisation of economic potential, are severely compromised. The resultant situation is that the government fails to create a framework for further investment and reduce the imbalances in the provision of infrastructure and services in a co-ordinated manner.

4.3 White Paper on Integrated Rural Development

Programme Four of the PG&DS: 'Addressing the needs of the poor' influenced the Provincial Cabinet to initiate the drafting of the White Paper on Integrated Rural Development. The policy builds upon and complements the PG&DS by identifying policy instruments and specific strategies through which the economic and social development of rural areas in the Province might be realised. The vision for rural development which underpins the policy proposals has a number of elements, such as, resolution of existing contradictions between civil and customary power through identifying complementary roles for civil and customary systems of governance, and integrated provision of services and development resources (Vaughan and McIntosh, 1998).

For the first time in South Africa and KwaZulu-Natal in particular, this policy document realised the need for complementing roles for civil and customary systems for the benefit of effective delivery of local services. This viewpoint is now alluded to by many scholars such as Cousin's (1998) when he proposed a systematic integration of formal and informal institutions. What is required though are strategies of building and empowering rural local governments. This critical pre-condition can be developed only if provincial and national government departments shift away from the present practice of delivering services (for example, land reform) directly to rural areas without involving the very 'natural' localised structures. Vaughan and McIntosh (1998) proposed that government departments should use the local structures and build their capacity as the managers and co-ordinators of the services delivery and development activities.

Another complementary pre-requisite for an effective and targeted land reform programme was identified as a decentralised and rationalised delivery system. The empowered local structures were seen as vehicles for providing a spectrum of opportunities for a range of beneficiaries. This will require the pro-active structuring of programmes and projects for which demand can be anticipated rather than the present reactive approach. This approach was therefore championed in the White Paper as the foundation for addressing institutional, social, economic and environmental aspects that would contribute to sustainable development of rural areas in this Province. This implies that the national departments such as Department of Land Affairs should develop land reform strategies which mesh with the PG&DS as well as locational decisions as outlined in the PSG&DF.

5. IMPLEMENTATION OF DEVELOPMENT PLANNING IN KWAZULU-NATAL

Following the introduction of the interim Constitution, Act No.22 of 1993, a new statutory environment emerged which included *inter alia* a change in the scales of planning to more appropriately reflect planning at the provincial, regional, metropolitan and local level. It is within this context that planning organisations find themselves, with all Municipalities (in this Province, this includes Regional Councils) needing to meet the requirements as prescribed by the plethora of development planning legislation applicable to KwaZulu-Natal, as well as other non-statutory requirements which the Province has adopted. In trying to clarify the confusion that was caused

by disjointed nature of planning legislative requirements, this Province pulled together all planning requirements in a single planning mechanism under the KwaZulu-Natal Planning and Development Act 1998 (Act No.5 of 1998).

5.1 PROVINCIAL PLANNING AND DEVELOPMENT ACT (PDA)

The PDA brought about clarity to the planning arena. Its intention was to establish one piece of planning legislation which would be applicable throughout the Province and to dovetail the implementation of the Act with the implementation of the Development Facilitation Act (Act No. 67 of 1995) (DFA). The concept of a planning hierarchy (Provincial, Regional, Metropolitan and Local development) is introduced where all plans will be awarded statutory status. The notion of "one Municipality, one Plan" is promoted, in order to achieve integrated, co-ordinated and sustainable development (Haselau, 1998). The PDA regulations (highlighting the product and process of development planning) after they have been adopted by the provincial Cabinet, will require all Municipalities to prepare **Development Plans** (Chapter IV) as statutory documents for the relevant local authority. The level of each detail to which each of the components are investigated would need to be established by the Municipality concerned.

The entire Act is based upon principles that are fully influenced by the principles of the DFA. Other crucial components of any Development Plan include the need for Municipalities to address the land use management and control element of development planning, as well as monitoring and review of the entire process. This statutory planning requirement binds all development agents, including the organs of the state to implement development initiatives within the framework of the agreed and accepted Development Plan. For example, land reform is deemed to be a national responsibility of the Department of Land Affairs, this Act binds the department to apply to the relevant authority for the implementation of that project. The authorities would be expected to use the development plan as the guiding decision tool and follow all procedures that are applicable to other development agents. This principle of binding even the state forces the DLA to implement land reform in KwaZulu-Natal within the parameters of the Development plan of that region. This approach serves a vital role in the process of integration of government functions and assists in reaching a common approach to the regional problems, compromises, trade-offs, co-ordination and joint investments.

5.1.1 Aggregation and disaggregation

It is increasingly recognised that in situations where enormous challenges are faced, as with South Africa's reconstruction, the principle of disaggregation - breaking down very large problems into handleable bites, is fundamental. In this regard, the statutory development plans serve as one appropriate point at which national and provincial policies and strategies are given substance. The regions are able to place the national programmes within its ability and resources, and implement those projects that are within their programmed action. The reverse applies in a process of

aggregation. Needs and priorities identified on the ground are a primary input into the allocation of resources by higher levels of government. The regions are therefore playing an important role in technically integrating inputs from various stakeholders in the region in such a way that these inputs are mutually supportive and consistent. In this manner, development plans are an important tool for locally driven process in drawing up and monitoring provincial and national programmes.

The implementation of land reform through this process of binding all organs of the state is going to be most influential in changing the contemporary approaches of the DLA. The Municipalities with their statutory powers will be able to back their decisions. However, it should be mentioned that the principles of DFA as they apply also in this Act, stipulates that the development plan is not seeking to be comprehensive or pretending to make decisions about everything. Rather it should seek to identify and implement a framework for the minimum possible set of strong priority programmes necessary to generate a rich and more equitable spread of opportunities for further investments. Clearly, this means that development (such as land reform) is not a condition that can be imposed exclusively from either above or below. It must be a process that facilitates the involvement of all people (and particularly disadvantaged groups) in the decision-making mechanisms that have impact on their lives. The outcome of this participative process should be a plan which offers innovative choices and the freedom to make these choices. After all, this is what the authors of the definition of development planning envisaged. The whole emphasis was and is on proactive planning where a development plan defines the preconditions for opportunities around which people exercise their choices. The placing of this iterative and integrative process of planning in a legislative framework is done by this Act.

5.1.2 Converging Point of Vertical and Horizontal Integration

This development plan acts as a point of integration of government activity, which takes two forms: vertical and horizontal integration. The vertical integration of activities of different spheres of government involves integration of line departments that have broadly similar or complementary functions. This Act has given Municipalities statutory powers to demand and force all line function departments to budget or implement their activities after they have taken into consideration all the activities required to sustain that particular project. The Department of Land Affairs will be technically forced to liaise with the region concerned before budgetary allocation of that specific project is considered. Gone are the times when DLA would plan the project and only start to involve the Municipality after budget allocations have been done and specific location already agreed upon. The Horizontal integration is also equally important for the integrating of activities of various line departments at the same level. This involves various sectoral activities of different line departments that are required to complement the project. The DLA planning approach expects the Municipalities to foot the bill for the provision of infrastructure without providing any financial assistance. This kind of 'unfunded mandate' would be able to be detected at an early stage of the process because the Act compels government

departments to work within the Municipalities and only initiate those projects that have been approved.

CONCLUSION

This discussion of the implementation of development planning in KwaZulu-Natal has shown that the statutory development plans provided in the PDA, are not about producing 'blue prints' or standardized , comprehensive plans. Nor is it fundamentally about solving problems, although problems are obviously addressed; an approach based largely on problem solving can only result in perpetuating a reactive style of planning. It is conspicuous that the PDA forces all spheres of government to engage in partnerships in the planning process- from issue identification and direction setting through to implementation. This implies that land reform in KwaZulu-Natal would have to be planned and implemented within the prioritised needs of that particular Municipality. Locational decisions will no longer only be influenced by the agreement between the 'willing seller' and the 'willing buyer' concept. Locational decisions will be taken by the responsible authority after it has used the development plan as a decision making tool in influencing its decisions. It is therefore apparent that DLA should start to work with the provincial and local spheres of this Province so that its approach can be accommodated in the preparation of these plans. By implication, the process must be as inclusive and participatory as possible and it needs to be informed and guided by the responsible authorities as they are the legal statutory bodies for their areas of jurisdiction.

CHAPTER SIX

OBSTACLES TO IMPLEMENTATION OF LAND REFORM IN KWAZULU-NATAL: ILLUSTRATIVE CASE STUDIES

The developing world, Sub-Saharan Africa in particular, is not short of ideas, but it is deficient in the ability to implement these ideas (author).

1.   INTRODUCTION

The discussion in this chapter is based on earlier assessments in this dissertation which demonstrated that while a fundamental break from the past is crucial, it is clear that this cannot be done by ignoring the past and devoting too much energy to the construction of grand visions of desired futures. Hall (1998) in her assessment of land reform implementation in many African countries, discovered that efforts to redistribute rural land to the landless, have tended to both reinforce existing forms of inequality, and given rise to new dimensions of inequality within beneficiary communities. The gap between vision and reality is a regular and patterned trend in rural development and land reform programmes. Whether defined as the problem of getting work done, or securing compliance with other spheres of governments, Post (1997) mentioned that the extent of the disjuncture between aim and effect cannot be explained merely as a shortfall from projected targets but must be understood as a failure of the policy itself.

The specific focus in this chapter is on institutional constraints negatively affecting the implementation of land reform in KwaZulu-Natal. The term 'implementation problem' is preferred in referring to any land policy with a proven record, no matter how much has been achieved. On one level, it refers to the missing link (Morah, 1996) or the myriad of generic factors that act to constrain the optimal achievement of land policy goals. On another, it refers to the objective reality of a land reform programme in terms of both the constitutional constraints and of budgetary cuts experienced by provincial and local governments. However, where does policy end and implementation and its concomitant problems begin? This debate is not important for this exercise, so long as whatever view is preferred is sufficiently broad to recognise and address all the contending perspectives. That is why the process is going to be treated as encompassing everything that follows between policy formation and final outcome.

This does not mean that attempts to separate policy from implementation are wholly irrelevant, because viewing implementation as a series of logical steps from intention to action also provides a useful heuristic device through which to identify issues and questions about what is going on. The point to be made, as captured by Hill (1981) is that 'it is unrealistic to expect the two phenomena to be clearly distinguished'. The one clear indication is that, in practice, policy is not made exclusively by legislators, and administrators, in carrying out directives handed down by

politicians, they do not carry out the directives as specified. Administrators make policy at all levels of organisational hierarchy, not just people at the top.

This chapter attempts to categorise the scholarship of implementation, by raising current implementation problems which can be used as a base for constitutional principles and also recognising the importance of locally driven land reform implementation programmes. The main objective of this analysis is to provide a comprehensive outline of development impediments with particular reference to KwaZulu-Natal. A brief background for each illustrative case study is provided. This is followed by specific obstacles and reference to specific examples.

2.   BRIEF BACKGROUND OF ILLUSTRATIVE CASE STUDIES

The Minister of Land Affairs has been entrusted by the President with the national land portfolio and has been assigned numerous land related legislative measures for his administration. He, together with his Department of Land Affairs is entrusted with setting national land policy, embodying it in legislation, establishing land programmes, and implementing and funding them (DLA, 1996). Two serious problems have emerged with this constitutional provision. The first of these is a systematic tendency to bypass local service providers and government agencies in the implementation of land reform projects. Although such approaches can facilitate fast track development, they have also served to obviate inter-sectoral cooperation, local planning and local co-ordination of development activities. This has resulted in the ad hoc provision of facilities like community halls, clinics, roads and settlements with less than adequate provision for ongoing maintenance. This approach has on many occasions alienated local government bodies and traditional authorities as well as other line function departments responsible for the provision of 'after care' services.

The fact that a national department has been directly attempting implementation of land redistribution projects at the local level, it is not the sole explanation why many land reform projects in KwaZulu-Natal have found it difficult to secure the active support of the related departments. The reason is, partly, that some of the provincial departments and local authorities (especially Regional Councils) have not viewed the land reform process as contributing towards fulfilling their own agenda. As a result, most land reform projects are still viewed as the exclusive responsibility and preserve of the Department of Land Affairs.

2.1 NGOTSHE ACCORD: LOUWSBERG DISTRICT: ZULULAND REG. COUNCIL

The Ngotshe Accord (Map 2) is a classical example of policy inconsistency and the overall lack of an appropriate legal framework. The officials of the Department of Land Affairs used their administrative decisions and discretions to substitute for legal procedures. There are five tribal authorities involved in this accord: Buthelezi B; Zulu; Ntshangase; Zondo and Buthelezi J. These projects were the continuation of land reform initiatives which occurred before the new political dispensation. These tribal authorities approached the Department of Land Affairs as landless Amakhosi. Initial discussions were handled without reference to any legislation and officials found themselves processing these projects using either restitution or redistribution legislations. These pieces of legislation are based on fundamentally different criteria and these differences were not made clear to the beneficiary groups. This policy vacuum has resulted in a number of project management problems and they have virtually come to a dead end.

2.1.1 KHAMBI ZULU
The land was identified for settlement as a consequence of the Ngotshe Accord. The Trust was drawn up in the name of the 'Khambi Zulu Tribe' of which Nkosi Zulu was made the founder. Disputes between Nkosi Zulu (as an individual) and the Department have subsequently emerged around the question of traditional versus individual ownership and the rights of individual land holders within the Trust. Nkosi Zulu is disputing the need for pegging the site for individual ownership. He is also not accepting the notion that all members of the Trust are equal. The project has subsequently been suspended pending the outcome of the mediation process between the Department and Nkosi Zulu.

2.1.2 BUTHELEZI T AND BUTHELEZI J
These projects also stem from the Ngotshe Accord. Two major problems have been experienced in the process and have seriously delayed progress to the extent that the financial roll-overs that have been made for the last four years are threatened to be called off. The first problem relates to unsuitable geographical location of the settlements given the enormous costs of servicing the sites. Added to the fact that it features a cliff-face and a fairly inaccessible high-lying area, it was not the land the beneficiaries believed they would be getting with the result that some of them are unwilling to move in. There are also disputes amongst the beneficiaries as to who their legitimate traditional leader should be. These problems have impaired the planning process and the formulation of an appropriate trust document

2.1.3 NTSHANGASE
This project is one of those cases that are being reported throughout the country where areas acquired through the land reform process have been handed over to developers and private interests in deals which seem to have no legal basis and which do not take the interests or rights

of beneficiaries into account. The Department bought a farm for the Ntshangase tribe and allowed the Inkosi to occupy the farm house before formal settlement was initiated. The Inkosi has been struggling to complete the list of beneficiaries and a number of allegations around corruption have been levelled against the Inkosi. Coupled to this problem have been differences as to who the rightful Inkosi is, there being a number of contenders for the title. The officials using their own discretion, and outside the existing legislation, involved His Majesty the King in an attempt to resolve the impasse. Instead of the King solving the issue, he claimed the farm (without any law backing his claim) by recommending that it be used to extend his tribal authority's boundaries, that is, Usuthu Tribal Authority. This project is accordingly on hold until a formal restitution claim is lodged by the King in the Land Claims Commission and an alternative farm is secured for the Ntshangase tribe.
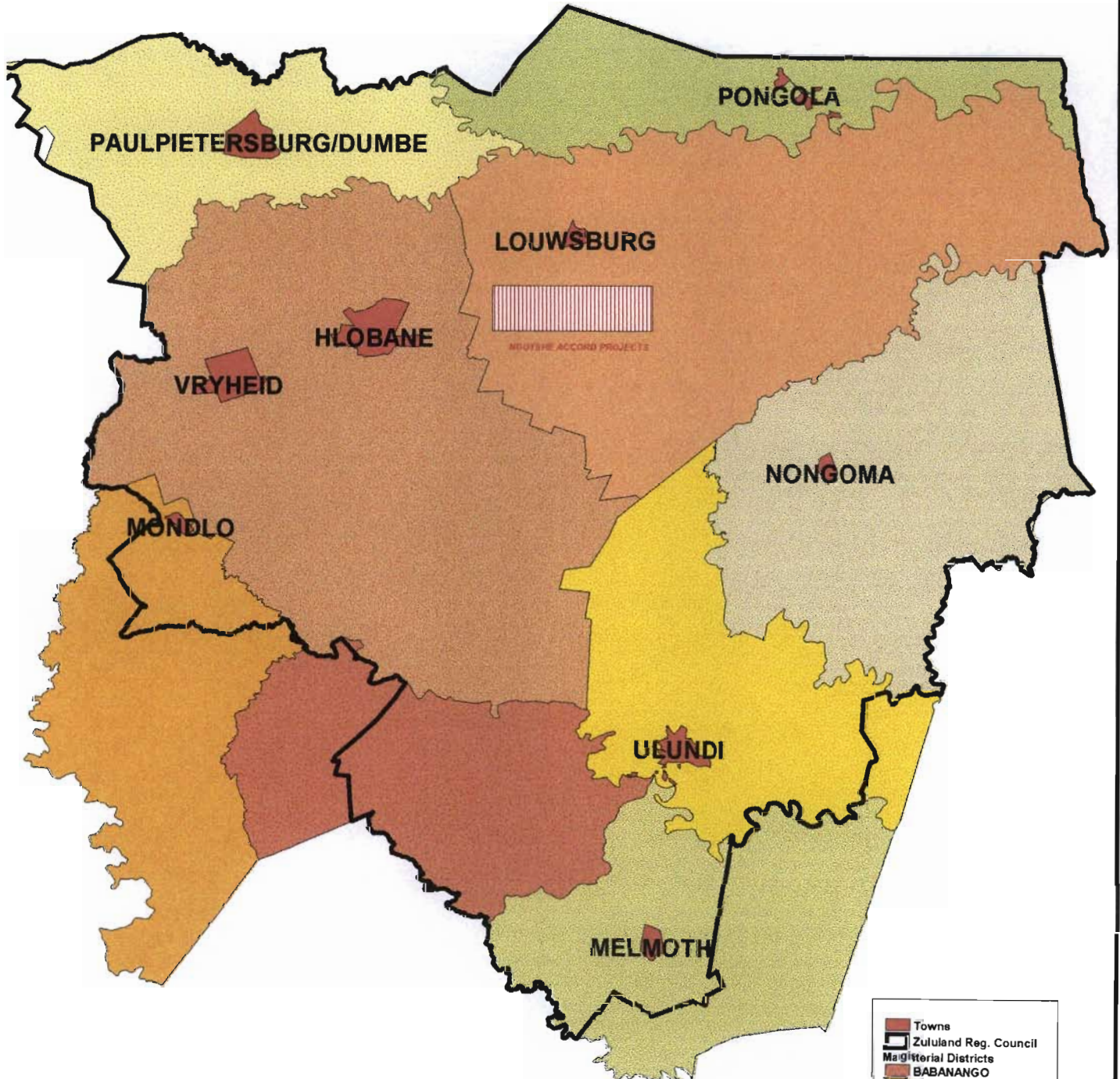
2.1.4 ZONDO

The project was precipitated by some 70 Zondo families invading the Sapeko Estate land in the Vryheid District. The company together with Inkosi Zondo drew up a contract which was bound him to include the 70 families on the list of beneficiaries. The Inkosi has since reneged on this agreement. He not only excluded the 70 families but also promised land to 900 other families, only 200 of whom have actually settled on the land, the effect being the alienation of the original 70 families (who now refuse to move off the Sapeko Land). This case directly contributes to a perception that many traditional leaders believe that they own their communities, that they can make decisions on their behalf, and that they can legitimately sell off the land. In the absence of land related legislation recognising the traditional authorities in the land reform processes, administrators did not take any action to clarify ownership of traditional authority land as well as Trust land acquired through land reforms. This legal limbo creates the potential for an inconsistent and incoherent administrative discretion that is subject to challenge or collapse, as is happening in this project. The initial intended beneficiaries are not benefiting and are becoming a problem to the local farmer as they are not moving off the farm. The Inkosi Zondo, together with the 'new' beneficiaries, are able to get away with it by continuing to occupy the designated farm.

2.2 KHUMALO : UTRECHT DISTRICT, UMZINYATHI REG. COUNCIL

Nkosi Khumalo (Map 3) was identified as one of nine landless Amakhosi by the previous government. The project was subsequently placed under the management of the Pilot Land Reform Steering Committee. Many of the project's initial difficulties stemmed from a lack of planning. The planning team experienced difficulty in achieving effective communication channels with the Committee although working sessions appear to have paved the way for more open communication. This was illustrated when beneficiaries objected to the layout that had been agreed to by the committee, necessitating substantial revision to the layout. A 'betterment' type layout of the settlement has been accepted in principle. The time taken for planning has seen community optimism turn to desperation, as the claim that essential support services are not

Zululand Regional Council

PONGOLA

PAULPIETERSBURG/DUMBE

LOUWSBURG

NGOTSHE ACCORD PROJECTS

HLOBANE

VRYHEID

NONGOMA

MONDLO

ULUNDI

MELMOTH

Legend

- Towns
- Zululand Reg. Council

Magisterial Districts
- BABANANGO
- MAHLABATINI
- MTONJANENI
- NGOTSHE
- NONGOMA
- NQUTU
- PAUL PIETERSBURG
- SIMDLANGENTSHA
- VRYHEID

Produced by GIS Section, Dept. of Local Govt. & Housing
Filename: Zululand.apr
Date: 16/12/1998
Tel. Number: (0358) 874 2661

10 0 10 20 30 40 Kilometres

MAP 2
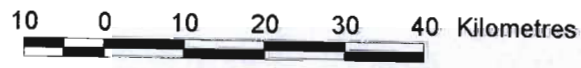
discussed and there are no indications that they would be forthcoming either from the Department of Land Affairs or from Umzinyathi Regional Council.

2.3 KWAXAMU MEDIATION CASE PROJECT: VRYHEID DISTRICT: ZULULAND REGIONAL COUNCIL

This is one of the projects that did not follow the normal conventional approach as embodied in land redistribution procedures. The Department of Land Affairs in Pretoria was pressurised by a report which came out in the New York Times in the United States of America stating that about 13 families were evicted and were living next to the road between Vryheid and Louwsburg. The evictors acted strictly according to existing laws regarding the issuing of eviction notices. Their argument was rights-based and they were prepared to defend it even in the Constitutional Court. The involved foreign investor was arguing a case of surety of investment - being surety of property.

A mediated agreement was agreed upon between the representatives of the land owners and the tenants. This agreement was expected to be implemented within strict time-frames. People living on the side of the road needed to move as soon as possible (someone had already been killed in an accident). The official from the Department of Land Affairs in Pretoria obtained permission from the then owner of the farm, to allow these people to move onto the farm before the sale had gone through. The community decided that the new settlement should be located in the area close to the tar road because of its proximity to the shop, electric power lines, etc. Unfortunately, the Department did not mark out sites for them, and questions of the size of the plots was left entirely to the community to decide. As a result, people settled themselves in a sparsely, uneconomical manner for providing services, and even settled in areas that were not initially agreed upon.

This project was centrally driven from Pretoria and even the provincial office of the Department of Land Affairs only got involved after the settlement had taken place. The national Department appointed mediators and prepared quick socio-economic surveys without the slightest reference to the provincial administration nor to the *de facto* local authority which is the Zululand Regional Council. The problems that have emanated from this project varies from poverty trap settlement to issues of NIMBY (Not In My Backyard) syndrome from the neighbouring farms. The beneficiaries are no longer seeing the officials of the Department of Land Affairs because the designation was completed and the Regional Council is expected to provide after-care services. These communities are now demanding essential services from the Zululand Regional Council. The Council in turn, put forward the issues of budgetary constraints whilst the poverty conditions become exacerbated.

uMzinyathi Regional Council

N

UTRECHT

NEWCASTLE

KHUMALO PRESIDENTIAL PROJECT

DANNHAUSER

HATTINGSPRUIT
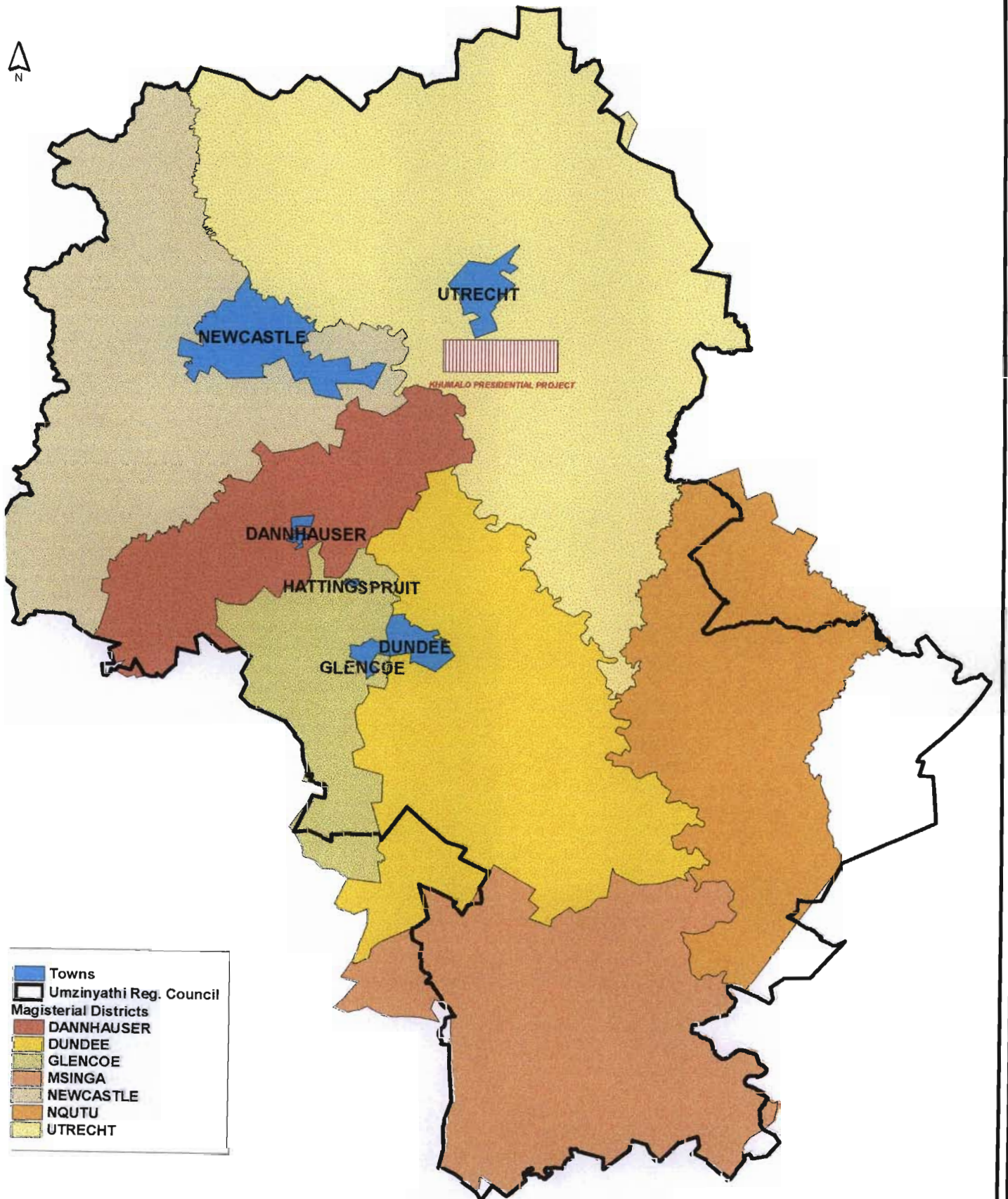
DUNDEE

GLENCOE

Towns
Umzinyathi Reg. Council
Magisterial Districts
DANNHAUSER
DUNDEE
GLENCOE
MSINGA
NEWCASTLE
NQUTU
UTRECHT

Produced by GIS Section, Dept. of Local Govt. & Housing
Filename Mzinyathi.apr
Date 15-12-1999
Tel Num. nr .(0358) 874-2681

10   0   10   20   30   Kilometres

MAP 3

3. DISTINCT OBSTACLES TO OPTIMAL LAND REFORM IMPLEMENTATION

The performance of land reform in KwaZulu-Natal has been slower and of lower quality than was intended and this section outlines a range of institutional and technical failings which need to be addressed. Building the necessary co-operation between DLA and the provincial and local spheres is still in its infancy. Only limited progress has been made thus far. Land reform in KwaZulu-Natal has slowed down to unacceptable rates of delivery because DLA and the beneficiaries have to go it almost alone.

3.1 Control and Accountability in the Bureaucracy

The issue of control in a bureaucracy is perhaps the oldest and most prevalent explanation for the implementation problem. Whether defined as 'the problem of getting work done and securing compliance with the government system (Wilensky, 1967) or the process by which managers 'ensure that rules are obeyed and orders followed' (Etzioni, 1964), most policy researchers contend that the core implementation problem is essentially that of control and accountability in the bureaucracy. This seemingly recalcitrant behaviour of bureaucrats not carrying out instructions from the higher authorities, originates from the leakage of authority inside the bureaucracy. Leakage occurs because implementing officials have no precise legal framework, and each uses his/her discretion in translating policies from above into actions undertaken lower in the hierarchy.

The Ngotshe Accord projects showed rampant bureaucrats that were operating in an environment characterised by, on the one hand, administrative weakness of traditional authorities caused by the fact that they had minimal support in the past. On the other hand, these traditional authorities remained socially and politically important bodies in the processing of the applications and subsequent implementation. These projects were therefore handled by administrators that did not have a clear legislation to apply and the chaotic set of beneficiaries (particularly the traditional authorities) which played a key role in initiating and shaping land reform projects.

These enormous discretionary powers that were practised by the administrators were not applied within the framework of existing legislations. Hence, decisions were not consistent and powerful traditional authorities used the imminent vacuum to secure positions of domination. Land redistribution as it was used in these projects is not meant for securing land for landless Amakhosi. In this instance, redistribution was used as a substitute for restitution. The traditional leaders viewed the process as returning the land of their forefathers, and that is why they disputed the notion of individual ownership as enshrined in the redistribution programme. The involvement of His Majesty the King in the disputes occurred outside of the legislative framework of the programme. Disputes are expected to be resolved by independent mediators which are expected to follow the mediating procedures as stipulated in the Act. The beneficiary status of all involved in the process is equal and for the officials to treat the Inkosi as a higher authority gave the wrong impression and created all the problems that have led to these projects to either be kept on hold

or experiencing snails progress.

It should be recognised that the Redistribution Programme is a poor substitute for full restitution. Resentment has arisen within the group which cannot understand why everyone in the community is not being compensated. These projects were administratively treated as compensating the Inkosi, and equal important beneficiaries were treated as subjects which was contrary to the conditions that were laid down by the Act. What emerged from interactions with the beneficiaries of these projects, excluding the traditional leader, was that the legislative provisions of the Redistribution Programme was not spelt out from the initial stages of the projects. The officials found themselves with these projects that were initiated by the old dispensation in a form of restitution. Having no legislation to use to proceed the already started projects, they then used their discretion in manipulating the provisions of the Redistribution Programme to suit the current needs.

3.2   Discrepancy Between Macro and Micro Implementation

The macro and micro-implementation distinction is premised on the argument that macro-implementation occurs in a 'loosely coupled' setting and involves a multitude of policies whose primary concern is how to execute the policy so as to cause local implementing structures to behave in the desired way. Micro-implementation is viewed as occurring in a 'less loosely coupled' environment, involving, mainly attempts to implement to suit local conditions and administrative practices with minimal disruption (Morah, 1996). This argument, when placed within the implementation of land reform in KwaZulu-Natal, resembles a substantive irrationality from the Ministry of Land Affairs in implementing their programmes in a manner that does not allow flexibility and adaptation to local determinants. DLA policies do not fit the local needs and operating procedures. The current laws are too foreign in addressing the problems associated with former KwaZulu areas. The current laws are not addressing the needs of traditional authorities whilst the majority of land reform projects involve traditional authorities. Officials from the department found themselves using the right means to achieve the wrong ends.

The important missing key elements in these projects were clear national guidelines and procedures of maximising consistency in decision making processes. Flexibility in policy implementation is viewed as part of a deliberate policy-wide accommodation and conflict resolution technique. The officials were not working with the local authorities that were better equipped to understand the conflicting dynamics of these projects. The Regional Councils include representatives of traditional authorities and have standing committees that are dealing with all issues related to traditional authority and customs. Officials were supposed to introduce their projects at that level, explaining the provisions of the Act and how these projects were going to be implemented. In this approach, all problems emanating from the projects are able to be tabled at the legitimately elected body and a decision taken would then be binding even to those

traditional authorities. A councillor from Zululand Regional Council, when interviewed about land reform problems, mentioned that these problems are as a result of the loose structures that DLA established in those communities without the 'blessing' of the accountable and responsible authority.

The KwaXamu project continues to be a nightmare for the Department of Land Affairs. The Zululand Regional Council is not providing any financial support to the project. Potable water, sanitation and roads are the key shortages. One respondent from the community contends that the land that has been acquired is only suitable for residential purposes. He says, economically viable farms were left deliberately so that they should not slide towards rural slums. The community's anger has been fuelled by the Department of Land Affair's refusal to commit itself to refunding the money that the community is prepared to use from its own development fund to set up an interim infrastructure. The officials are at pains to explain its limited role and why the provision of essential services is not their responsibility but that of local government. In the end, officials of the Department of Land Affairs have been labelled as 'sell outs' because they settled people in an area that was not economically sustainable where they are locked in a 'poverty trap'.

3.3   Implications of Constitutional Provisions

The provisions of the Constitution severely affect the manner in which DLA enters into partnership with provincial governments and local government bodies. The constitutional debates feature very strongly in the discussions of agency agreements that DLA is currently negotiating with various Regional Councils. The relations between spheres of government affect implementation because each sphere is independent of the others within its assigned jurisdiction. It is noted from the interactions that DLA could only hope to impose programme priorities by buying compliance through offering incentives in the form of financial aid. However, DLA neither commands an unlimited supply of incentives nor allows to budget for activities that are not within its constitutional obligation (MTEF). What is happening is that local government bodies perceive DLA incentives as constituting a constant source of distortion of local priorities and interests. For example, the forum for CEO's of Regional Council resolved that they would not accept any 'unfunded mandate' and some went further by asking DLA to fund an appointment of an official that would be responsible for the implementation of land reform.

Particular problems also arise out of the fact that this has been a centrally driven programme which has had difficulty securing the commitment of Provincial and Local Governments agencies and which has resulted in the Department of Land Affairs having to bear sole responsibility with its limited capacity. The lack of support from other departments can be explained by the fact that many provincial and national government community-based programmes are also centrally driven and provide services directly to communities without the involvement of local authorities. These different agencies have established a variety of sectoral forums which compete with each other,

with traditional authorities and with local government for power and resources. The Province of KwaZulu-Natal through its White Paper on Integrated Rural Development committed itself to rationalizing the present system of service delivery.

3.4   Clarity of Goals and Communication

In what is possibly the authentic attempt to conceptualise the implementation process as a distinct phenomenon of the policy process, Hall (1998) suggested that ambiguity or contradiction in policy goals, misunderstanding and uncertainties, is held by many researchers to be a significant part of implementation problems. Without the guidance of lucid programme goals, DLA officials have floundered in handling the KwaXamu project. They did not ask relevant and insightful questions about the programme. A firm of researchers was appointed to complete socio-economic surveys in three days. The terms of reference left consultants with inadequate guidance, not only unaware of what behaviour is expected of them, but most likely to fill in the gap using their own discretion, which has been proved to be at odds with the original intentions.

The unquestionable reality about the implementation process is that, what ever implementation difficulties it may cause, modification of the original policy goals is inevitable, if not always desirable. Of course, the apparent shortcoming of this acceptance is that those who eventually come to make policies are neither authorised to do so nor accountable for them. What is important though, is that, this inevitable change should occur in a supportive environment, not just a neutral one, so that responsible implementing agents would be held accountable. An official from DLA defended their direct communication with local communities, by saying that, they are trying to avoid difficulties that can arise from having too many actors of different vertical and horizontal levels in the process and the resulting blurring of lines of authority. In this view, the major explanation for the implementation problem is failure on the part of implementing officials to overcome their natural resistance to change and to develop enthusiasm and widespread acceptance for the dynamics affecting institutional development.

3.5   Rational Comprehensive Approach

The Redistribution Programme is implemented through a process that can be easily classified as an outdated rational planning paradigm. The chronological five steps starts from the identification of the beneficiaries and the establishment of a Trust or Communal Property Association (CPA), development priorities must be determined followed by land use visioning and the identification of land. Pre-planning then ensues, involving more detailed conceptual planning which is followed by preparation of business plan. Designation is only supposed to take place when there is proven institutional capacity to manage the project, and the beneficiaries are fully briefed, informed, and prepared to take over the land and the responsibility for sustained development thereon. What is missing in this linear equation is a clearly defined role and responsibility for the Municipality. The exclusive interactions between the beneficiaries and DLA has been the main cause of planning

problems in the Khumalo Tribal Authority project. The DLA's approach assumed that local people are a means to an end and are capable to make far reaching decisions without referring to anyone outside the process.

The land reform as implemented in this Province, has tended to generate projects reflecting serious policy vacuum in terms of involving the community structures in decision making. The location of projects has often been determined by the historical land and kinship links of beneficiary groups, and by political consideration. This empirical observation shows the need for DLA to work within the legitimately elected structures to blend their planning process. This requirement is particularly discouraging in projects that are required to deliver in a short space of time. However, with the diverse needs of beneficiaries and current weak local institutions for checks and balances, the truth is that public participation in decision making can be side-stepped without any serious consequences for the legitimacy of the responsible politicians. Therefore, the participation process ultimately amounts to no more than a nuisance to immediate policy action in which both the beneficiaries and elected councillors have a common stake, not delaying for such ever recurring and structural reasons such as group wrangling. This situation is more desperate for local representatives, whose ultimate worth and legitimacy with the people is not judged by the quality of the participation process, but rather by the concrete benefits conferred and how expeditiously those benefits were achieved.

This suggestion is not advocating that DLA should manipulate the process by involving local representatives but the intention is to emphasise that the process that is driven by the legitimate local leaders that stand a chance of achieving results quicker than anticipated. Obviously, implementation is not conducted in a vacuum, and not to recognise this, would inevitably mean inability to explain, for instance, why a particular project was successful in one setting but not in another. Hence, the postulation here that useful planning process must have a 'buy in' of the political environment of that Municipality's area or milieu in which the land reform project is pursued.

CONCLUSION

The discussion in this chapter centred around the anomaly posed by a centrally-driven land reform programme which has made it difficult for DLA to secure the commitment of Provincial and Local Governments agencies. However, it was also established that a national department has been attempting directly to implement land redistribution projects at the local level but it is not the sole explanation for why it has been difficult to secure the active support of other departments. Other reasons related to line function departments failing to conceptualize how land reform will improve their ministry's mandates.

The illustrative examples highlighted that policy principles and practices of the Land Redistribution Programme in KwaZulu-Natal, which , along with a generalised policy criterion for accepting projects has resulted in projects often being located in inappropriate locations. The chief mechanism used by DLA in accepting applications (application-based) has considerably contributed in encouraging applicants from large groups to identify land in isolated places. It was stressed in the discussion that future applications must be evaluated within context of financial support and commitment of the relevant Municipality.

It was argued that, apart from capacity having been undermined by fragmented and centralized systems of service in the Province, it has also been compromised by the long time it has taken for effective systems of local government to be instituted within the rural areas. This delay was partly due to controversies in the Province about the role of traditional leaders in relation to local government.

What became patently obvious from the illustrative examples of land reform projects is that the capacity of communities to organise and develop micro-level institutions for the management of land reform projects is extremely limited. Communities have been very dependent on the Department of Land Affairs officials within the Province and their consultants, who have not been able to adequately deal with the demand. However, the problem is not simply that the policy framework has not yet succeeded in making the most of available capacity within local government and provincial departments. This is because government has never had a truly effective presence within the former KwaZulu areas and traditional authorities have historically been encouraged, or at least relied on, to fulfill basic administration and governance functions.

This chapter reinforced the view that traditional authorities have exerted considerable dominance in the projects investigated in spite of their very limited administrative and financial capacity. It also emerged from the case studies that the very weak administrative and financial position of traditional authorities also militates against their carrying processes through to a conclusion and renders them vulnerable to corruption. The implication of this view is that DLA is compelled to reach concessions with relevant Municipalities so that traditional leader's problems can be handled by responsible authorities and allow a legitimately local structures to own the process of implementing land reform in KwaZulu-Natal.

CHAPTER SEVEN

POLICY CONSIDERATIONS FOR IMPROVING INSTITUTIONAL MECHANISMS FOR IMPLEMENTING LAND REFORM
<u>CONCLUSION</u>

This dissertation has argued that it is vital that the relationship between and within all spheres of government departments in relation to the implementation of land reform be clearly spelt out. The argument of developing a matching understanding of the central issues involved in effective implementation of land reform in KwaZulu Natal was based on making institutional development a central concern of unresponsive and uncoordinated land reform processes. Particular problems arise because the land reform process has been a centrally driven programme which has had difficulty in securing the commitment of provincial and local government departments. This has resulted in the Department of Land Affairs having to bear almost sole responsibility for land reform with its very limited resources. What compounded the problem is that other national as well as provincial departments are still centrally driven and supply services directly to local communities without making reference to other departments, and in some instances, to respective local authorities. The resultant situation has been that different competing sectoral provision of services have mushroomed which became a rich source for poor budgetary coordination and entrenching unnecessary bureaucratic cleavages between departments involved in the delivery of land reform process.

It has been shown that since the inception of the new Constitution, the implementation of land reform is intimately related to budgetary portfolio functions of Department of Land Affairs. This Department which has failed to network with those spheres of government departments that are assigned with service delivery budgetary portfolio functions. It also became clear from the discussion that it is necessary to understand the state, the market and civil organisations as historically constructed institutions whose relation to one another changes over time. The didactic analysis of the historical development of land reform in South Africa reflects policy emphasis that have been redirected from market to state, back to market and to civil organisations which came with the introduction of the new political dispensation. This refocussing is in part an outcome of the development failures of each institution. However, none of these institutions are capable of stimulating development on its own.

In short, there is no 'one best way' to achieve effective implementation of land reform because the capacity and willingness of authorities to act are largely determined by the balance of power (Constitution) within and beyond the institutions concerned. However, this dissertation did not purport to provide a panacea of the problems of integrated land reform process, instead, it articulated those problem areas and developed a matching understanding of policy-making and

administrative framework that severely impacts on the land reform process. Hence, the following policy considerations serve as a contribution to further research of effective implementation of land reform in South Africa.

1. RECONCILING FRAGMENTATION OF RESPONSIBILITY FOR FINANCING PLANNING AND IMPLEMENTATION

In KwaZulu-Natal, the co-ordination of Medium Term Expenditure Framework (MTEF) principles and elements of Provincial Growth and Development Strategy (PGDS) have viewed development planning as consisting of a process that starts with information gathering and ending with budget. The process is divided into strategic and operational components. Business planning is also viewed as a process, commencing with an analysis of the external environment and ending with the formulation of budgets. This process is also divided into strategic and operational elements. What is not happening though, is effective interaction with national departments such as DLA, so that specific sector budgetary needs can be accommodated. The Province has ideally finalised its budget for the next three years (1999 - 2001) without each department budgeting for any support services that might be required for settlements emanating from land reform process. The implications are that the current land reform projects are unlikely to receive any financial support from the provincial departments.

The only option available for DLA is to negotiate with local authorities and reach an agreement with each local authority that they should make provisions in their budgets for post transfer support. Indications are that funds can be made available from the Inter-Governmental Grant (IGG). This is an enormous task for both DLA and municipalities because they are both expected to clearly define the needs of the land reform projects, explore linkages between the processes, and prepare projections for the requirements of each project. This scenario calls for more interaction and transparent processes between DLA and Municipalities. The existing projects can be regarded as failures because they are characterised by sole budget coming from DLA and without any networking with other government departments to provide financial support for post-transfer needs. Perhaps the new requirements of the MTEF and its emphasis on translating development strategies into budgets would be used by DLA to bargain for more co-operation with Municipalities.

For future project applications, it is consequently important not only to ask questions whether the land needs of the beneficiaries are likely to be addressed, but also to ascertain the financial support and commitment of the Municipality for these projects. In this regard, DLA must ensure that a formal resolution has been taken by the Regional Council in accepting the project. The Regional Council should make it clear that the project is in line with the land use needs as prepared in the regional development plan and particularly at the sub-regional level. Lastly, it must be ascertain

that post-transfer support is budgeted for and will satisfy the future needs of the beneficiaries.

2. INTEGRATING LAND REFORM PROGRAMME WITH DEVELOPMENT PLANNING PROCESS

The assessment of illustrative case studies of land reform in KwaZulu-Natal showed a typical catalogue of amorphous constraints that impinge upon effective implementation, placing the policies beyond the reach of systematic empirical scrutiny and, thus, clearly demonstrating the potential danger of such pursuits. The current approach not only reflects something about the implementation problems itself, but points to the need to develop more integrated development planning that simplify the conceptual mess and can apply in actual research situations. For example, DLA should cooperate with the Province in developing a Provincial land reform strategy as a way of identifying different land reform constituencies within the Province and of developing appropriate projects for addressing their needs. This approach would provide the base within which interests and commitments of different service providers might be secured.

This view is in line with the recommendations of the White Paper on Integrated Rural Development where it is stressed that DLA's participation in the preparation of the Development Plans would assist DLA to identify and provide land reform constituencies within the Province and develop appropriate criteria and projects for addressing their needs. The inclusion of land reform in the Development Plan would mean that Regional Councils are part of the process and development would be done in a more coordinated manner.

In this regard, the following questions are relevant in aligning the land reform programmes with regional planning process: Has the Regional Council agreed to support the application ? Does the application conform with sub-regional and regional planning already completed by the Regional Council? Is the Regional Council prepared to budget for the future needs of the applicant?

Similarly, the criteria for determining whether to proceed with a project and to set pre-conditions for taking a project further is crucial. These criteria relate to the role of DLA in assessing applications before being tabled to the executive committee of the relevant responsible authority. Typical questions to probe are the following: Have jurisdictional boundaries been clearly defined? What type of land use will result? Are there historical boundary disputes? Is it possible to identify what the actual nature of the land need is? Does the legal entity suit the type of projects?

3. CONCEPTUALISING MICRO-POLITICAL ISSUES IMPACTING ON INSTITUTIONAL DIMENSIONS OF LAND REFORM DEVELOPMENT

The discussion in chapter six argued that traditional authorities have been able to exert dominance with land reform projects because traditional authorities have managed to provide critical land resources for the rural poor which have not been readily available through the state or through other sources. What is clearly noticeable is the policy vacuum that has been created by excluding traditional authorities role in all land reform programmes. The current legislation did not make provision for the role of traditional leaders and implementing agencies found themselves using their inconsistent discretion. The case studies have demonstrated that the nature of the land reform process by which the projects are produced is essential in understanding the institutions involved. Hence, the need for conceptualising land reform process is crucial in representing a socially constructed and shared understanding created in the community.

The effective involvement of relevant authorities as stipulated in the PDA was further concretised by the complex nature of problems related to traditional authorities. The authorities such as Regional Council (represented by traditional leaders) are better positioned to handle conflicts that are negatively affecting the land reform projects. There have been cases where conflict has arisen from those loyal to the traditional authority and those who do not see themselves as belonging to it. DLA officials have struggled in mediating these conflicts without the involvement of either the relevant provincial department or the Regional Council.

4. CREATION OF INTERACTIVE LEARNING ENVIRONMENT

It is essential that the academy learn how information functions in the practice of implementing land reform projects, both for normative purposes - to define practices that are ethical and effective, and for analytical purposes - to understand and explain how and why plans and policies are made (Innes, 1998). The DLA monthly reports (Land *Info*) on land reform projects made reference to the fact that many planners involved in the process are learning by doing and they often have little relevant preparation from their professional education. This is an enormous challenge that is facing all those that are involved in the implementation of land reform projects. That is why the discussion on chapter five honed a concept of communicative rationality as the instrumental use of shared knowledge that is essential to produce desired outcomes. This implies that, as the web of communication involves all the participants, the participants became more interested in it, the terms of discourse within and outside the agency begin to be challenged, questioned and changed. This imminent need is crucial in this dispensation where communities have woken up to express their discontent and alienation against a system which has failed to live up to their aspirations.

The proposed communicative rationality concept questions the conventional interpretation of the of the word 'empowerment'. This concept is loaded with meaning and associations. It was deduced from the land policy that empowerment is sometimes used as individual psychological construct synonymous with self-esteem, self-actualization or self-reliance. However, to be empowered is more than being confident. At a minimum, it also implies the knowledge, skills and resources to accomplish some objective (in this instance, a more viable self sustaining land reform project). What this implies is that government departments should initiate land reform projects that would first empower the officials to understand influential community dynamics whilst at the same time creating conditions in which communities/individuals can acquire the requisite skills, knowledge and resources. The ends of empowerment should therefore be measured against its impact to individuals rather than in collective terms. This plasticity of the concept will make it useful to locate empowerment at the centre of equation where communicative rationality benefits both the authorities and the communities.

5.   DECENTRALISED ONE STOP LAND REFORM IMPLEMENTATION

The extensive discussion on chapter four centred around the notion that the new political dispensation and its Constitution created a fundamentally new legal and institutional environment within which delivery of land services must take place. The Constitution located land matters and legislative powers regarding land matters as a competence of National Government and political accountability for land affairs was assigned to the Minister of Land Affairs. Implicit in this constitutional provision was that the department would embark on a programme of policy and legislative reform that would be unambiguous and naturally coincide with society's needs and preferences. However, the immense practical problems experienced on the ground showed the policy failures and practical experiences (as illustrated on chapter six) that have brought these assumptions under critical review.

It was strongly suggested in chapter five that the only sustainable land reform delivery system is a one stop land reform process to be established at the local sphere of government. In making this suggestion, it was emphasised that this must not be construed as negating the role of National Department of Land Affairs in carrying out key land functions. This suggestion is based on the discussions from chapter four, five and six where it was conspicuous that policy realisation and implementation is more dependent on the bureaucracies within implementing institutions and the social and political interests among which these institutions are working, rather than on policies sanctioned and formulated at a national level. The local sphere of government was therefore identified as better located to introduce an ongoing planned intervention that would be socially constructed through a negotiated process and not simply the execution of an already specified plan of action with foregone concluded outcomes.

This policy proposal is in line with a contemporary approach in which local governments, with active participation of the constituencies, take initiative and responsibility for the actions conducive to their sustainable capacity development. The practical implementation problems as outlined in chapter six concretised the notion of linking land reform with reliable accountability mechanisms (politicians and administrators) that have sufficient local mandate, powers and resources to play an adequate role in bridging the gap between traditional and government institutions. This would entail the state promoting procedural rather than substantive and precise legislation. Such an approach would facilitate flexibility and diversity in the institutional formation, which would accommodate provision of formal rule enforcement procedures to back those which may prove inefficient at lower levels; but without imposing rigid and prescriptive legislation.

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