

**A CASE STUDY OF A LAND REFORM PROJECT IN
KWAZULU-NATAL WITH REFERENCE TO THE NKASENI
RESTITUTION LAND CLAIM**

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Declaration

The research described in this study was carried out under the School of Public Administration and Development Management in the Faculty of Management Studies at the University of KwaZulu-Natal, under the supervision of Dr P. Pillay and co-supervised by Dr. V. Govender.

I declare that this dissertation represents my own work and has not otherwise been submitted in any form for any other Degree or Diploma at any other University. Where use has been made of the work of others it is duly acknowledged in the text.

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Abstract

The primary aim of this research was to examine the processes involved in the implementation of land reform policies in South Africa with specific reference to the Nkasseni Land Restitution Claim in the Midlands of KwaZulu-Natal. The objective was to conduct an in-depth diagnostic study with a view to understanding the nature of the challenges, and to propose interventions that could improve land reform processes and the functioning of communal projects in the country.

The hypothesis of this research was that the South African government's attempts at land reform have thus far failed to live up to expectations. Part of this research aimed to investigate this hypothesis using the Nkasseni Communal Project as a case study. A number of issues were identified as findings in this research and this report aims to present these issues. Through this study, the pillars of the land reform programme in South Africa were discussed as tenure reform, restitution and redistribution. While mention of the other land reform programmes was made, emphasis was placed mainly on the restitution policy which is the focus of this research.

In this research, the experience of land reform in Less-Developed Countries such as Brazil, Kenya, Tanzania and China, has been reviewed. A lesson learnt from developing countries is that tensions and potential conflicts can hinder the process of land reform. It was also established that land reform is time-consuming, expensive and difficult.

Some of the issues identified fall outside the mandate of the Department of Land Affairs, which recommends a clear framework for effective role-player participation with other government departments and other relevant stakeholders. A clear policy is needed on post-transfer support for land reform communal projects. This includes clarifying the specific roles, functions and powers of the different stakeholders.

This study was also able to provide some evidence that there are numerous challenges that are being experienced by communal-managed projects that have been set up within the KZN Province. A number of the challenges emanate from poorly-drafted Constitutions of the Communal Property Institution as well as poor implementation of projects. The study was

able to illustrate that land title can be transferred to the Communal Property Institutions, but that does not translate into the realization of secure individual rights of members of the institution. It was also noted that failure to address issues relating to individual rights allocation can be one of the major sources of conflict within Communal Projects. The research findings revealed that there was very little focus on empowering beneficiaries of communal projects to manage their newly-acquired resources once transfer of land had taken place.

Also noted is that there was a lack of understanding of the Trust (as an institution) by some of the Trust members. Lack of co-operative governance was raised as a key issue hindering support from other stakeholders. The study revealed that there was a lack of systems or processes of dealing with multiple interests of Trust members. There was poor representation of women within decision-making structures.

Lack of skills transfer to land reform beneficiaries is another contributing factor to the many challenges that are faced by the Communal Property Institutions. Beneficiary training and capacity building are key recommendations in the findings. From the start of the land reform programme, it was recognized that, given South Africa's Agricultural history, transferring skills to beneficiaries was to be one of the key challenges and determinants of the land reform programme's success. In the light of this study, a more integrated method of skills transfer at the community level would have many advantages, as it would help alleviate a number of the challenges currently experienced by the land reform projects.

Lastly, the study also indicated that land reform beneficiaries were rarely experienced in making independent decisions. It is clear from this research that there is no blueprint approach to land reform, as each project should be designed for the particular conditions to be effective. The important aspects of both individual and communal tenure should be properly understood when reform initiative attempts to change social relations in rural areas are undertaken. There must be flexibility in policies regarding farm size, while support must also be given to proper training and extension aimed at increasing the individual farmer's managerial ability.

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Acronyms and Abbreviations

| | |
|------------------|--|
| AFRA | Association for Rural Advancement |
| ANC | African National Congress |
| AGM | Annual General Meeting |
| CPA Act | Communal Property Association Act (Act 28 of 1996) |
| CPA | Communal Property Association |
| CPIs | Communal Property Institutions |
| CRLR | Commission on Restitution of Land Rights |
| DG | Director General of the Department of Land Affairs |
| DLA | Department of Land Affairs |
| DAEARD | Department of Agriculture, Environmental Affairs and Rural Development |
| FAO | Food and Agriculture Organization |
| HSRC | Human Science Research Council |
| IPS | Integrated Planning Service Report |
| Km | Kilometers |
| KZN | KwaZulu-Natal |
| KZNNCS | KwaZulu-Natal Nature Conservation Services |
| LAP | Land Administration Plan |
| LED | Local Economic Development |
| LEAP | Legal Entity Assessment project |
| LRAD | Land Reform for Agricultural Development Programme |
| LRC | Legal Resources Centre (an NGO) |
| LCC | Land Claims Court |
| LDC | Less Developed Countries |
| LUMS | Land Use Management System |
| IDP | Integrated Development Programme |
| INCRA | Institu Nacional de Colonizacao e Reform Agraria |
| Minister | The Minister responsible for Land Affairs |
| M & E | Monitoring and Evaluation |
| MOU | Memorandum of Understanding |

| | |
|-------------|---------------------------------------|
| NGO | Non Governmental Organization |
| PLRO | Provincial Land Reform Office |
| RAP | Resource Allocation Plan |
| RDP | Rural Development Programme |
| RLCC | Regional Land Claims Commissioner |
| SLAG | Settlement/Land and Acquisition Grant |
| SADF | South African Defence Force |
| TANU | Tanganyika African National Union |

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Chapter 1

Introduction and overview of chapters

1.1 Introduction

The Republic of South Africa has for a long time in the past experienced systematic land disposessions and forced removals which were carried out following a number of racially-discriminatory laws such as Natives Land Act (Act 27 of 1913), and the Native Trust and Land Act (Act 18 of 1936). This resulted in a history of land inequality in the country. The inequality in land ownership has long been a concern for many Black South African people.

This inequality is also said to have transpired largely because of colonial conquest and the implementation of apartheid policies. Controlling landownership served as the backbone for the apartheid system (Xulu, 1998: 64; Mkhungo, 2003: 7; Landman, 2003: 40; Chatikobo, 2004: 32; Ndlovu, 2006: 27; Thabethe, 2006: 4). The most notorious Act, the Black Land Act of 1913, placed substantial areas of South African land beneath the exclusive control of Whites, while the African people were allowed to occupy a few poor traditional areas. This was followed by the Black Trust and Land Act of 1936, which apportioned an estimated 13% of South African land to African Black people who constituted the majority (80%) of the population. The rest of the land (87%), which was mostly arable, was made available to White South African citizens only (Donaldson and Marais, 2002:11). This action resulted in overcrowding, lack of appropriate land use practices and lack of appropriate government support in the rural reserves or areas that were reserved for the Black South African people.

It further resulted in severe land degradation, which led to a reduction in overall agricultural productivity within these areas. This situation led to heightened poverty within these reserves (Donaldson and Marais, 2002:11-12). The inequality of land ownership in the country has further exacerbated racial animosity among the South African Black population and the South African White population. During the time period of the Land Act (Act 27 of 1913) to the Native Trust and Land Act (Act 18 of 1936), the reserves became the only areas which Africans could lawfully occupy, use and have access to (Kostiv, 2008: 16-17). During this period, Black

South Africans could not buy or rent land outside the boundaries of the reserves. No Africans were allowed to live on White-owned land unless they were labour tenants or full-time wage-workers for the White owners of that particular piece of land. This resulted in a spate of forced removals that saw thousands of share croppers and families being driven off the land without alternative accommodation, from the 1920s to early 1990s (Kostiv, 2008:20-23). When the ANC took over the government in 1994, there was an observable need to improve access to land in order to stimulate economic development and alleviate poverty among the African community.

The Constitution of the Republic of South Africa also required the State to take steps to promote equitable access to land (Republic of South Africa, 1996b). According to Bowyer-Bower and Stoneman (2000: 52-53), land reform is often viewed in moral and political terms as a necessary means by which land may be redistributed, for example:

- To the landless and poor to help alleviate poverty;
- As a reward for liberation loyalty;
- To help redress population-land imbalances brought about by apartheid-type regimes or unequal growth during colonial times; or
- As part of a package of agrarian reform aimed at boosting agricultural outputs.

The first post-apartheid South African government aimed to establish democratic institutions and prosperity in a non-racial society. Pension grants, housing subsidies and land reform programmes were intended to launch the process of equitable and sustainable development. Deininger (1999: 651-672) supports this when arguing that “theoretical reasons and empirical evidence suggest that land reform may provide equity and efficiency benefits”. In South Africa, land reform can help deal with various land needs in society, thereby helping to alleviate poverty.

To address the skewed land distribution, from 1994 onwards the new democratically-elected government implemented a programme of agricultural liberalization (Aliber and Mokoena, 2003:330). This was complemented by a land reform programme resting on three pillars, summarized by Kostiv (2008:35) as: Tenure Reform, Restitution and Redistribution. Legislation was passed to facilitate the above land reform programmes. Included in this legislation was the

Restitution of Land Rights Act (Act 22 of 1994), the Labour Tenants Act (Act 3 of 1996), the Communal Property Associations Act (Act 28 of 1996), the Interim Protection of Informal Land Rights Act (Act 31 of 1996), the Extension of Security of Tenure Act (Act 62 of 1997) and Communal Land Rights Act (Act 11 of 2004). Currently, two options of tenure security exist in the rural areas and these are individual freehold and communal ownership. The current South African land policy requires that local community members applying as a group for land ownership must constitute themselves into a landholding entity.

In 1996 the Communal Property Associations Act (Act 28 of 1996) was promulgated, to provide for the establishment of a Communal Property Association (CPA) or a similar entity. The Communal Property Association Act (Act 28 of 1996), establishes an accountable landholding Communal Property Association (CPA) “through which members of disadvantaged and poor communities may collectively acquire, hold, and manage property in terms of a written constitution” (DLA, 1997: 63). The establishment of the CPA or Communal Trust is in line with the thinking of the Department of Land Affairs (DLA) in which it states, “the rights belong to a group, and the group must be able, by democratic majority, to choose what form of landholding system best suits their needs”. They may choose to individualize their rights, but this decision is valid only if taken by the majority of rights holders (DLA, 1997: 65).

The Communal Property Act (Act 28 of 1996) specifies that the constitution of the CPA should set out rules and regulations, which must be developed by the members in accordance with their values and life circumstances. The main proviso is that the rules and regulations should conform to the requirements of the Communal Property Association Act (Act 28 of 1996), including the need “to ensure that group-based land-holding systems function in a transparent, accountable and democratic manner”. In addition, the rules “require that the internal rules or constitutions of Communal Property Institutions provide for equal rights for women and democratic decision-making processes.”

Finally, before registration of the Communal Property Association or Trust, “the draft Constitution of each property institution is checked by the Department of Land Affairs to make sure that it conforms to all the principles as laid down in the Communal Property Association Act” (DLA, 1997: 63). It is worth noting that the Communal Property Associations Act was designed primarily for use in restitution and redistribution projects. It is, however, also

applicable to tenure reform cases in the rural areas of the former Bantustans. Unlike other of legal entities, both the Communal Trust and the CPAs were identified as having the elements of transparency, accountability and participation, and are therefore the most widely used by the Department of Land Affairs in its land reform programmes (DLA, 2000a).

The Department of Land Affairs has the responsibility to implement the country's land reform policy. For all intents and purposes, land reform, as envisaged by the ANC-led government, is faced with many challenges in this country. One may have observed that a number of administrative political changes have taken place in South Africa, but unfortunately, have not resulted in significant changes regarding the economics of the country. The majority of Black South Africans are still poor.

Another key challenge is how to link land reform (having people with secure tenure and lasting rights in country areas) to an overall programme of rural development. Moreover, if that development is to be sustainable, what should the responsibility of the South African government be, in making sure that redistributed land is productively utilized? These are difficult questions, and will not go away by simply being ignored. A study like this will therefore go a long way in providing some answers to these questions.

1.2 The problem statement

The problem began during the apartheid era, when millions of African people were pushed into congested and impoverished reserves, homelands and townships through a process that was defined as decentralization. The land question has been a very emotive issue and it has been the cause of violent conflicts in South Africa. Over many years South Africa's economy has been concentrated in the hands of the White minority who owned and indirectly controlled most of the rural and urban land.

Kostiv (2008: 16-18) argues that the history of forced removals in South Africa indicates that there was a process of capitalist domination over labour power and control over the means of production. He further states that the development of capitalist agriculture and apartheid was characterized by a quest for fertile soils and water resources by White farmers, and this

established a process of systematic political oppression, economic exploitation and labour relocation which was mainly directed at the Black African community of this country.

Visser and Roux (1996), cited in Silinda (2007:1), argue that the process of land reform, or redistribution on a large scale, provides a valuable testing ground to examine both the limits of the law in addressing past wrongs as well as the relationship between the private and public sector. They further argue that one of the key challenges facing South Africa has been the need to design a restitution frame-work which would adequately satisfy the need for social justice while accommodating new grievances.

The new land policy sought to remedy past injustices yet equitably distributing land ownership to contribute to reducing poverty, increasing financial growth and ensuring secured tenure for all South Africans. The policy also aimed to create a method of land administration that would reinforce sustainable land use patterns and rapid land release for economic development (White Paper on Land Reform, 1997; Silinda, 2007: 1). Stated differently, the intent of land reform is to create a fairer distribution of land ownership and access, so that the imbalance in agricultural resources and land ownership by the minority White settler population may be corrected. This can be done in a variety of ways, but usually implies a fundamental change in legislation governing land ownership, access and tenure.

According to Zimmerman (2000: 1454-1460), in rural areas, land is an essential livelihood asset and the basic form of natural capital from which people produce food to ward off insecurity and contribute to the eradication of poverty. Access to land enables a family to channel its labour into productive use by farming, thereby reducing unemployment. Zimmerman (2000) further states that land reform is also aimed at promoting access to infrastructure and services to its beneficiaries.

1.3 Aims of the study

The primary aim of this study is to examine the processes involved in the implementation of the restitution policy in South Africa with specific reference to the Nkaseni Communal Project in the Midlands of KwaZulu-Natal, in the Weenen area. The researcher aims to undertake an

in-depth diagnostic study with a view to understanding the nature of challenges and will propose interventions that could improve land reform processes and the performance of Land Reform Institutions in the country.

1.4 The objectives of the study

The following specific objectives will be pursued in the research:

- (i) To provide an historical overview of land dispossession in South Africa;
- (ii) To investigate comparative cases of land reform programmes from other developing countries and from which South Africa can extrapolate lessons;
- (iii) To investigate how land restitution processes were dealt with at various levels during the processing of the Nkaseni Land Claim;
- (iv) To examine and identify the social, institutional and economic challenges that have an influence on the functionality of the Nkaseni Communal Project; and
- (v) Having identified the various issues and challenges, the study seeks to make recommendations regarding addressing some of the challenges.

1.5 The relevance of the study

The research focuses on the restored land claim for a community referred to in this report as the Nkaseni community. This community lives in an area in the Weenen Magisterial District, located within the uThukela District Municipality in the KwaZulu-Natal Province. The Weenen area is one area in KwaZulu-Natal that has in the past experienced huge forced removals.

According to Kostiv (2008:32), the forced removals in KwaZulu-Natal were carried out by the apartheid regime, and in this particular area removals gained momentum from the late 1940s

to late 1960s. Many White landowners in the Weenen area were involved in forcefully removing people from their ancestral homes and sending them to some distant reserves and townships. To implement these relocations of the African people, the Whites were supported by the South African Defence Force (SADF), which provided government trucks. Resulting from the forced removals, the lives of the people removed were altered economically, political, educational, and socially.

Such forced removals affected them on various levels. People had to leave their places of residence, thus losing their arable, grazing lands and even their livestock. People who were affected also lost most of their possessions at the time. From this background it is clear that, historically, land has been a cause of conflict and contention in the Weenen District and this was also the case in the rest of South Africa. Colonial and apartheid policies dispossessed millions of Black South Africans of their land and moved them into overcrowded and impoverished reserves, homelands and townships. Before the South African democratic elections in 1994, the South African political parties in their separate manifestos prioritized land reform programmes mainly because of the significance attached to the solution of the land problems in the country.

The aim was to enable the previously disadvantaged groups access to land ownership. One such political party which included this in their manifesto was the ANC (Aliber and Mokoena, 2003: 330). With the ANC government in power after the 1994 elections, a new land reform policy was introduced in the country.

This new policy was guided by these objectives as summarized by Yanou (2005: 4) and also cited by Ndlovu (2006: 31) as follows:

- Redressing the injustices of apartheid;
- Fostering national reconciliation and stability;
- Underpinning economic growth; and
- Improving household welfare by alleviating poverty.

To achieve the above objectives, three land reform programmes, namely, land redistribution, tenure reform and land restitution, were introduced as pillars of the new land reform policy. Ndlovu (2006: 33) summarizes the three programmes as follows:

- Land redistribution aims to broaden access to land for the dispossessed by purchasing White-owned land and by transferring state land to targeted individuals and communities.
- Redistribution is also supposed to be effected through the once-off payment of a settlement/Land Acquisition Grant of R16 000 that beneficiaries use to acquire land on the open market.
- Tenure reform, on the other hand, is designed to provide greater security of tenure to rural dwellers as a whole, to those on White-owned farms, those in the former reserves, and to the peri-urban dwellers in the squatter settlements bordering the cities.

Finally, the objective of land restitution is to compensate individuals and communities who had land expropriated because of apartheid policies, practices and legislation. The restitution programme will be further explored in detail in a later section of the research.

The grinding poverty being experienced by the mass of South Africa's Black population remains the most important social question because it exists side by side with the obvious wealth of the minority White population. The likely outcome of this situation is that, if the South African government does not implement an effective land reform programme, it may fail to raise the standard of living of many of its people, and in the long run, this could create political instability. In respect of land, this implies that meaningful reform, which is sufficiently comprehensive, must remain firmly on the South African agenda.

This research presents a record, in detail, of how processes were dealt with at different levels during land dispossession, land acquisition, compensation and resettlement of the Nkaseni people in the Weenen Area. It will also investigate the involvement and participation of the community during the various restitution processes and what impact the land reform had on the Nkaseni community.

The study therefore contributes in helping policy makers identify challenges that are faced by the restitution programme. It also investigates possible solutions and it also aims to equip policy implementers with new knowledge that could contribute towards improving policy implementation processes.

1.6 Hypotheses of the study

The hypotheses that the research will attempt to address are as follows:

- The South African government's attempts at land reform have thus far failed to live up to expectations that are held by many of the intended land reform beneficiaries;
- Land restitution can present an opportunity for the empowerment of the rural poor; and
- Current land reform policies do not deal with the many challenges that are presented by the processes of the land restitution programme.

1.7 Questions to be answered in the research

The following themes/questions will be used to direct the focus of this research. These questions will form the basis for designing and preparing of questionnaires:

- What "land reform" is as viewed from a public administration dimension?
- What are the policy challenges with regards to land reform implementation in South Africa?
- How do people qualify for restitution, or what kind of criteria are used to assess the eligibility of an individual to qualify for restitution?
- What was the level of participation and involvement of the claimants in the processing of the Nkaseni land claim?
- How transparent was the system used for the allocation of rights in the Nkaseni

Communal Project?

- How gender sensitive to women is the process of the land restitution programme with regard to allocation of land and associated resources?
- What was the level of participation and involvement of the land reform government officials and other government institutions during the processing of the Nkaseni claim?
- What was the level of support given to the Nkaseni community post transfer of the land?
- What are the challenges faced by the Nkaseni community in managing the restored land?
- How has the land reform process changed the lives of the beneficiary community?

1.8 Definition of key concepts

According to the Oxford Dictionary the term “reform” implies change through intervention or an intended improvement. According to Marcus (1996: 179), land reform refers to an initiative in which the state embarks on procedures to modify, redirect or change rights, usage and relations on land, especially in rural areas. According to Adams (1995: 1), “land reform in its simplest sense is generally accepted to mean the redistribution of property or rights in land for the benefit of the landless, tenants and farm labourers”. According to Zinyama (1999), when summarizing objectives of why many countries in the world embark on land reform programmes, countries embark on land reform programmes mainly for political, social and economic reasons (King, 1971; Hirsch, 1972; Zinyama, 1999, cited in Ranchod, 2004: 15).

According to Biswanger and Elgin (1992), land reform is a policy and legal understanding which aims to increase access to land by giving poor people ownership rights and ensuring sustainable land use. The two authors state that land reform is seen to be successful when it increases people’s income, consumption and wealth, and it is also said or seen to have failed if the income, consumption and wealth do not increase or are reduced (Biswanger and Elgin, 1992: 342-344). Land reform usually entails a redistribution of the rights of ownership or use of land away from large landowners in favour of cultivators with very limited or no land holding rights. Land reform can be implemented in various forms. It can involve the transfer of land ownership to tenants who already work the land in order to create family farms, as was the case in Japan

and Taiwan. It can also involve the hand over of land from larger estates to small farmers, as in Mexico, or the transfer of land from larger estates to rural co-operatives, as in Cuba. It can also involve the transfer of state land to co-operatives, as the case in Peru, or it can involve the appropriation of large estates for new settlements, as was done in Kenya (Biswanger and Elgin, 1992: 344).

From the argument as presented above, it can be established that land reform programmes are designed to fulfill one central objective, which is to transfer land ownership or its control directly to the people who did not have access to land. It can also be established that land reform is a programme that involves complex processes, thus a number of related terms need to be defined. Some of the terms associated with land reform processes are defined below.

1.8.1 Land Redistribution

According to Ndlovu (2006: 39), land redistribution is a form of policy instrument to capture the efficiency benefits of a family farm. It is aimed at reducing landlessness and to equalize land holding and quality. The criteria for selecting land reform beneficiaries differ from country to country. Redistributive land reform involves taking land from the wealthy members of the community and distributing it to the poor.

The objectives are to achieve a wider distribution of property and income and a more equitable distribution of power emanating from it. Ndlovu (2006) further asserts that for land reform to be implemented successfully and for it to make a contribution to the improvement of the livelihood of rural people, the land reform policies must be part of broad political, social and economic change for the country involved. For land redistribution to be successful, it depends on a high level of organization among rural people and support from local government structures, NGOs and the private sector.

1.8.2 Agrarian Reform

Agrarian reform and land reform are often used interchangeably. Agrarian reform tends to canvass changes of rural agriculture, such as provision of credits, extension services, marketing and improvement in both land tenure and agricultural organization to facilitate the productive

use of land re-allocated to them (Ranchod, 2004: 4).

1.8.3 Market–assisted land reform

Market-assisted land reform is a type of land reform that gives qualified landless people a grant or a subsidized loan to purchase land at a going price. In South Africa, the state’s role is to provide financial support to individuals and groups who are trying to buy land from commercial farmers.

1.8.4 Property rights

Barraclough (1998: 6) refers to property rights as multidimensional continuants of rights and obligations associated with land ownership and tenancies. According to this explanation, if one has a right, someone else has a commensurate duty to observe that right. Property exists at a number of levels, both within a social group like a household or community and at individual level (Barraclough, 1998; and Drimie, 2000: 25).

1.8.5 Tenure

According to Ranchod (2004: 2), tenure, which is often synonymous with property rights, can be described as being composed of a bundle of rights, many specific to doing certain things with land. According to Adams *et.al* (1999: 1), these land rights may include one or more of the following:

- (i) rights to occupy a homestead, or to use land for annual and perennial crops, to make permanent improvements, to bury the dead, and to have access for utilizing the natural resource base;
- (ii) rights to transact, give, mortgage, lease, rent and bequeath areas of exclusive use;
- (iii) rights to exclude others from the above-listed rights, at community and/or individual levels; and

- (iv) rights to enforcement of legal and administrative provisions in order to protect the right's holder.

1.8.6 The land tenure system

A land tenure system involves all types of tenure that are recognized by the national or local system of law. Land tenure systems reflect specific historical, geographic, economic, social and political conditions and are continually modified in the process of economic development (Dorner, 1972:36 cited in Drimie, 2000: 25). These systems are sometimes classified in a typology of state property, private property, common property, or open access (non property) as summarized by Bromley (1991: 31, cited in Ranchod (2004: 4) Table 1 on Page 14, gives an explanation of some of the terms related to property ownership.

From the definitions or explanations presented above of the land reform concept and associated terms, it can, in short, be argued that land reform is a process of assessing and modifying laws, regulations and customs relating to land ownership and land tenure in the country. This process involves examining the old legislations that have been used in the past to dispose of land or to prevent certain groups from not having access to land ownership. Such laws need to be reviewed; they can be amended or removed altogether and new laws or policies that will support land reform programmes need to be introduced.

In the South African situation, there were a number of motivated laws that were introduced by the apartheid government and such laws were passed to force the African Black people, Asian, Coloured and White people to live separately from one another. Such laws also prevented the groupings from being owners of land just anywhere in the country. According to such laws, certain people could only own land in the area that had been demarcated for that particular group. Land reform can also be referred to as a process in which governments endeavour, through public policies, to address the skewed land ownership in a country. It can be said that the imbalances in ownership could have been caused by a number of circumstances; likewise, the purpose for a country to have land reform programmes can be multiple.

Table 1: The four types of property regimes

| Term | Brief explanation |
|------------------|--|
| State property | Individuals have the duty to observe the use and access rules determined by the controlling/managing agency. Agencies have the rights to determine use/access rules. |
| Private property | Individuals have the right to undertake socially-accepted uses, and have a duty to refrain from socially-unacceptable uses. Others (called “non - owners”) have a duty to refrain from preventing socially- accepted uses, and have a right to accept only socially-acceptable ones. |
| Common property | The management group (the “owner”) has the right to exclude non-members, and non-members have a duty to abide by the exclusion. Individual members of the management group (the “co-owners”) have both rights and duties with respect to use rates and maintenance of thing owned. |
| Open access | There is no defined group of users or “owners” and so the benefit stream is available to anyone. Individuals have both privilege and no right with respect to the use, rates and maintenance of the asset. The asset is an “open access resource”. |

Source: Bromley, 1991: 31, cited in Ranchod 2004: 4

1.9 The sequencing of chapters

This study will be divided into six chapters.

Chapter 1 is the introductory chapter. It will demarcate the field of study and outline the research approach. It will also briefly outline the need and nature of the study. It also presents the concepts and definitions of land reform.

Chapter 2, It first present the link between Public Administration and Land reform, it then assesses the evolution of South Africa’s land reform programme and its significance to the lives of affected peoples. It presents an historical account of land dispossession in South Africa. Focus is on the introduction of the various discriminatory legislations, which were the foundation of the apartheid policies. Laws used to dispossess African, Asian and Coloured race groups are outlined. Also the government’s land reform programme, especially the land restitution programme at Nkaseni, are discussed. Finally, the location of the study area, the climatic conditions, hydrological characteristics, and background to the funding of the Nkaseni projects are discussed.

Chapter 3 presents a theoretical perspective of global and regional land reform programmes from which lessons for South Africa may be extrapolated.

Chapter 4 will present the research methodology and data sources used for the study. It outlines the limitations of the data interpretations and the difficulties experienced during data gathering.

Chapter 5 will present the findings and analysis of data.

Chapter 6 will offer the conclusion and the recommendations of the study.

1.10 Summary

This chapter has provided a background and introduction to the research study. The problem statement has been discussed and the hypothesis that contributed to the study presented. The aims and the objectives of the study have been outlined, as well as an overview of chapters.

The following section will present a review of the South African land reform programme.

Chapter 2

South Africa's Land Reform Programme

2.1 Introduction

This chapter first presents the link between Public Administration and Land Reform. It then presents a conceptual framework of land reform from both a South African and an international perspective. It offers a discussion and evaluation of the development of South Africa's land reform programme and its significance in the lives of beneficiaries.

The aim of the chapter is to clarify the nature of the land question in South Africa, the inequality in land ownership along racial lines and the power relations created over the past century. It will also present results achieved with the emergence of the new land reform programme, and highlight the history of land problems in South Africa and the associated legislation. Finally, this chapter outlines a background to the Nkaseni Area, its location and climatic characteristics. The following section presents a brief discussion of the link between Public Administration and Land Reform, as there is significant interdependence between the two.

2.2. The link between Public Administration and Land Reform

To create a deeper understanding of the subject being researched, it was imperative that the researcher first demonstrates the link between Public Administration and Land Reform. According to Venter (2001: 119), Public Administration relates to the process by which the entire state apparatus is organized, managed, administered and controlled. Stated in simple terms, public administration deals with the nature and practice of government and the public sector. This entails, among other things, the management and administration of and interaction between, public institutions and other role-players and stakeholders. It also refers to the aspects relating to organizational structuring, staffing, financing and controlling of the public sector, as well as the formulation, implementation and reviewing of government policies.

Venter (2001:119) argues that all state interventions in the country that have a bearing on the quality of life of the individual and on society as a whole, can be attributed to the actions of the public administration apparatus of the state under the political guidance and leadership of the government of the day. Defined in simple terms, public administration can be referred as the implementation of public policy as stipulated in terms of an Act of parliament. To implement is simply to carry out, accomplish, or fulfill (Theunissen, 1998: 124). But what is being implemented? A policy, yes: but more exactly, that part of a policy that we call a programme. A programme is the actionable part of the policy, just like a project. In fact, policies, programmes and projects can be arranged on a continuum in order of specificity.

First, you have a policy which must be translated into action plans (i.e. programmes); programmes can further be subdivided or disaggregated into specific projects. A policy may have many or a few programmes, just as a programme may have few or numerous projects. For instance, in the Land Reform policy field, there could be several programmes, like the Land Restitution Programme, the Land Redistribution Programme and the Land Tenure Programme. Each of these programmes could also have several projects, as it the case here with the Nkaseni Land Restitution Community Project, which is one project among many that have been executed under the Land Restitution Programme.

In contrast, if we are to define “Land Reform Programme”, in the South African perspective, it can refer to a government policy that has been developed to address the need to improve access to land in order to stimulate economic development and alleviate poverty among the African community in the country.

Policy is usually a response to a real or perceived need, and it originates from society as a whole. A policy can in turn be seen as plan of action that is aimed at achieving an outcome that is considered desirable in the light of government objectives.

Policies also provide boundaries within which government actions can take place. If we are to link the two (Public Administration and Land Reform), Public Administration can be referred as the vehicle required to implement the land reform policy of the country. For land reform to succeed in the country, a highly efficient and effective public institution needs to be operative to implement the various policy programmes that have been developed as a result of the current ‘Land Reform Policy’. In the case of South Africa, that institution entrusted with the

implementation of the 'Land Reform' policy is the Department of Land Affairs. A further discussion on the concept of "land reform" is presented in the section below.

2.3 The history of land problems in South Africa

Land is a means for socio-economic existence for all societies irrespective of their level of development. It provides a place to live and is a central factor in agrarian economies. It thus provides a means of subsistence and psychological security. Furthermore, land impacts on the economy by providing minerals and raw materials for industries, thus acting as a means of production. For some people, land provides a common identity and symbolizes their history as it provides a burial ground for ancestors. At the same time, it points the direction of their future as it will provide shelter for generations to come. Land is a basic human right. Its ownership signifies economic and political security which can be translated into the control of destiny within a political system. Those who own and control its distribution and determine its selling and rental price (Christodoulou, 1990; cited in Xulu, 1998: 57).

Historically, land ownership in South Africa was associated with political and constitutional power or authority. It is marked by a history which reflects a direct link between land ownership and political representation. Whites historically had exclusive political representation and authority, while indigenous population groups could be controlled through the chiefs in the Native Reserve system. This prevailed in most parts of the country. In small communities land ownership acquires a symbolic meaning as it may determine a position of leadership.

As in other countries, land in South Africa creates a class structure in, for example, landlord-labourer-tenant relationships. The landlord may use labourers or tenants and even their families to produce marketable consumer goods. South Africa, as in other less-developed countries, has a colonial history that has resulted in an evolving system of land ownership which has been influenced by political power structures.

The White community has for centuries enjoyed control over land in South Africa. The researcher argues that state institutions, the constitution and legislation were defined to create disparity in land possession between Blacks and Whites. Through legislation, poorly resourced

self-governing tribal states (or homelands) were established. These homelands constituted thirteen-percent of the South African land surface. Access to land for Blacks became confined to these areas, with the remaining 87 percent of the South African surface reserved for White occupancy (Bundy 1972; Marcus, 1996; Landman, 2003; Ndlovu, 2006: 27).

It is estimated that only 16 million hectares in South Africa is arable and of high agricultural potential. Through legislation, some 13 million hectares were thus allocated for White commercial farming, while only about 2.5 million hectares became available for small-scale farming within homelands. Extension services and physical infrastructure were offered to the White commercial farmers to promote productivity at the expense of the rising unemployment, poverty and landlessness within the homelands (Marcus *et al.*, 1996; Landman, 2003; Ndlovu, 2006: 26).

Disparity in land allocation and dispossession was crucial in the creation of landlessness among Blacks. Rural slums within the homelands characterized only by allocation or residential sites, reflected this landlessness. Thus, in all homelands, migrant labour for industries, mines and commercial farms became the logical alternative for many Black South Africans. Influx was controlled through the labour bureaux, and the chiefs, who became bureaucrats. Remittance from migrant labour was very low and could only sustain rural households if coupled with subsistence farming (Hendricks, 1990; Williams, 1994; Chatikobo, 2004: 32-36).

2.4 The South African land tenure system

At this point it is necessary to understand the system of land tenure prevalent in South Africa. The land tenure system here offers land rights to the individual or group. It is an important factor in an agrarian economy. These rights include outright ownership, tenancy, or interests protected by law, and often serve political, social and economic purposes. In the South African context, the land tenure continuum ranges between customary/communal and freehold systems.

2.4.1 The customary tenure system

Customary tenure in terms of Proclamation R188 of 1969 is defined as permission to occupy. This form of tenure does not imply ownership as the land belongs to everyone. Rather, it implies usufructuary rights, that is, the right to qualify for land to be used for occupation, tilling and grazing as long as one is a member of a local kingship group, tribal ward or ancestrally-related group, usually on the male line (Bell, 1990; Gyasi, 1994, cited in Xulu, 1998: 58). Land offers recognition to members of a social group. It thus symbolizes culture, social existence and personal identity within a social group.

Historically, an element of security existed in this tenure because land thus acquired could not be allocated to individuals who did not belong to the group, clan or family. Land was passed on in perpetuity within the family. It could not be sold or leased. However, transfers did occur although no payment was claimed. Land could be passed on in the form of a gift, inheritance or gratuitous loan. Cash paid out could be claimed for the house and labour for clearing the land. The amount was usually so minimal that it could not be compared to the value of the land. Recently, there has been a tendency among some chiefs to sell land for personal gain and to use it as a means of consolidating their power base (Marcus et al., 1996, cited in Xulu, 1998: 59). In accordance with communal tenure, everyone has access to land as long as he/she is a member of that social group. Thus, in principle, there should be no landless people under this system. An outsider may acquire a piece of land upon community approval. He thus assumes citizenship in the social unity. The system is governed by customary laws and regulation of distribution.

According to Ranchod (2004: 35), the tribal authority administers and allocates vacant land by virtue of the fact that it rules the tribe. The recipient of the land and the family have total control over the allocated land in terms of use and occupation rights which are normally granted for the rest of the beneficiary's life. Upon marriage, a young man, through his father, may ask the headman for land for residential purposes and for cultivation.

The King or Chief assumes administrative control and delegates a ward headman to assign the individual a residential site, tillable fields and the rights to use communal grazing land, water, clay and reeds where applicable (Xulu, 1992; Xulu, 1998, cited in Ranchod, 2004: 35-36). The amount of land allocated to an individual was, historically, enough for his present and future

needs. No-one was allowed to accumulate land beyond effective domestic utilization to prevent land speculation. Land was treated as a political and social resource and not as an economic one (Drimie, 2000: 37-38).

The average size of landholding in South Africa is relatively small. In the Barolong tribe, for instance, 7 acres per household is common. One may have additional fields, for example, through inheritance, and these range between 1.6 hectares to 4.5 hectares. Depending on how near the area is to an urban centre, the demand for land is high and newcomers may obtain only a residential site. On a cultivated plot the owner enjoys exclusive claims to the crops, but after harvest everyone in the community has access to graze cattle on the stubble. Once cultivation is resumed, land ceases to be common property (Drimie, 2000: 37).

Customary/Communal tenure is widely practiced in most homelands in South Africa as well as in other African countries. The system has frequently been blamed for the failure of agricultural production, which ignores the inelasticity of the land. According to Ranchod (2004: 35), customary land management has been seen as obstructing rural development because of the inherent insecurity of land rights. It has been seen to fail to provide incentives or any land investment and it also provides no basis for credit allocations. Emphasizing the disadvantages of communal tenure has been a way of promoting freehold tenure as a means to achieve rural development, although the landless families that should benefit cannot be overlooked.

2.4.2 The freehold tenure system

Freehold tenure is a western concept of private land ownership. With this system land is treated as a commodity and can therefore be sold or leased. For surety, owners hold title deeds which can be used to obtain credit from banking institutions. Under the freehold system, land is used as a means to define people-property relationships and can therefore be used to divide a community along class lines, such that landed and landless classes evolve. It is common in this tenure form for land sizes to vary. Land can thus be used as a political tool to subjugate the landless; hence, socio-political and economic power depends on the size of land one owns.

In South Africa, large land holdings ranging between 750 to 1200 hectares are commonly held in freehold by White farmers. The National Party came into power by drawing on the support of

these White farmers. The government was obliged to satisfy the labour needs of White farmers. This meant that the Black majority had to be subjugated to landlessness. Black Africans could enter the White farms only as tenants, sharecroppers or as wage labourers.

Other forms of tenure existed which were a variation of individual freehold and a result of government intervention. These included Quitrent and Trust tenure. The Glen Grey Act of 1896 created Quitrent tenure which allowed limited purchase of Crown land by Black farmers in the Cape and KwaZulu-Natal (Xulu, 1998, cited in Chatikobo, 2004: 33). Its corollary, Proclamation 116 of 1949, established betterment or closer settlement schemes within the Reserves for peasants.

These schemes were aimed at increasing agricultural productivity and rehabilitation of the soil. They involved the creation of settlement villages and the consolidation of grazing land to the detriment of social, economic and political organization. Farming land was issued to approved persons at a nominal rent of 36 pounds per annum. This agricultural land was tightly regulated on a one-man-one-lot principle to prevent further acquisition of land by Black farmers. The landless were to enter the labour market. The schemes consequently had undesired sociological effects on the lives of the people and could not be implemented in all homelands because of resistance from other groups of African people (Xulu, 1998: 61).

The Trust Tenure system occurred on state-owned land within the borders of homelands. Land could be acquired for lease or rent for periods ranging from 25 to 99 years. Annual rents were payable and leasehold rights were registered at the deeds office. Owners were offered loans from financial institutions.

Trust tenure was regulated by the 1936 Land Act, which is discussed in detail later in this chapter. The apartheid ideology after 1948 dictated that Blacks should be pushed in large numbers into the Reserves, although the carrying capacity had been exceeded (Surplus People Project, 1983). Some of the legislation which facilitated Black land dispossession and country-wide territorial segregation provided the context for land reform in South Africa. These were the 1913 and 1936 Land Acts, the 1950 Group Areas Act, the 1951 Prevention of Illegal Squatting and Labour Tenancy Act, and the 1959 Promotion of Self-Government Act (1989; Xulu, 1998: 64).

The section below presents a brief description of some of the legislation that government officials and landowners used in the past to evict Black people from their ancestral lands. The section also discusses the impact of the introduction of the many racially motivated pieces of legislation.

2.4.3 The perspectives of the Native Land Act (Act 27 of 1913)

The enactment of the 1913 Native Land Act (Act 27 of 1913) of marked a turning point in the history of South Africa, particularly with regard to the ownership and management of land. The 1913 Native Land Act is said to have consolidated, countrywide, the various land laws which had been in force before 1910. The 1913 Land Act was the most important and first legal mechanism that described the areas to be occupied by Blacks and Whites. It effectively divided South Africa into areas in which native Black Africans were allowed to own land, and areas where native Black Africans were prohibited from purchasing, hiring, or acquiring land in any other way or form.

In terms of the 1913 Act, about 8, 98 million hectares of land were scheduled as Native Reserves¹. As a result of this Act, Africans were no longer allowed to acquire land outside what had been scheduled as Native Reserves and Whites could not acquire land within the scheduled Native Reserve areas (Ndlovu, 2006: 26-28). The other purpose behind this Act was to preserve a limited rural subsistence base for native Black Africans outside of the urban industrial centres, which could then subsidize the migrant labour system without being able to support an economically-independent Black peasantry (Surplus People Project Report, 1983: 29). It legalized and systematized the expropriation of land from Africans.

The 1913 Land Act (Act 27 of 1913) was also introduced to prevent African peasants from competing against White farmers. For the native Black Africans living in the White-owned farms, this Act was able to determine the circumstances under which native Black Africans could live and work on White-owned farms. It stipulated the terms of African occupancy on White owned farmland outside the reserves. It achieved this by outlawing all forms of tenancy, except

¹ Native reserves here means areas that were allocated for occupation by the Black African people.

labour tenancy. Rambali (1998) argues that the Act's significance was twofold: firstly, the termination of the sharecropping system ensured the availability of labour for White farmers. Secondly, since Whites could not acquire land in the reserves, and it maintained the Act's function of subsidizing migrant labour for mining capital (Rambali, 1998; Chotikobo, 2004: 33-34).

Since the area set aside for the reserves was inadequate, the government appointed the Native Land Commission known as the Beaumont Commission. The Commission investigated and concluded in 1916 that the effect of the 1913 Land Act was two-fold:

- It laid the base for African national oppression in an era of changing colonial relations which was to have long-term consequences for the whole political economy; and
- It altered the balance of social power in the South African countryside, building a massively subsidized White-owned commercial agricultural sector on the backs of the super-exploited class of farm labourers and effectively destroying a burgeoning Black peasantry (Rambali, 1998; Chotikobo, 2004: 33).

The Commission also identified areas for 'release' to be used to expand the reserve. Bureaucratic processes, however, resulted in the areas being added on twenty years later. By this time, the reserves were already overcrowded, overstocked and eroded, and consequently, malnutrition proliferated (Rambali, 1998; Turner and Ibsen, 2000: 23).

Sol Plaatjie argues that the 1913 Native Land Act was instrumental in affecting the lives of African people in South Africa. He states that this Act formed the statutory basis for all other segregationist racist land laws such as the pass laws, the migrant labour system and influx control, and "created overnight a floating landless proletariat whose labour could be used and manipulated at will" by the White farmers (Plaatjie, 1996; Landman, 2003: 35).

2.4.3.1 Reflecting on the numbers

Even though, on paper, the Act set out to precisely demarcate land ownership, Silinda (2007:34) notes that “It would be a mistake to draw too hard a dividing line between different types of land at the turn of the century. Land alienation was part of a process of military conquest only recently completed. It proved more difficult for Whites to control land than to defeat African armies.

Private property was sometimes imposed over areas which were still occupied by African Communities” (Silinda, 2007: 34-45). Silinda (2007) also argues that “Not only did settlers usually keep Africans on their farms as tenants and workers but they required more. Throughout the first half of the twentieth century, the number of Black people on rural land owned by Whites increased rapidly.

In the 1936 census, 37% of the total African population were counted on farms, 45% in Reserves and 17% in towns.” Overall Silinda (2007) observes that “Africans actually occupied, mostly as tenants, far greater swathes of countryside than the land reserved by them or owned by them” (Silinda, 2007: 54).

The observations made by Silinda (2007) are not meant to negate the extent of the land dispossession that had taken place; rather they are an indication of the resilience of the Africans in the countryside, where despite the hardships at the time, they remained on the land and were involved in food production. The schedule to the 1913 Act focused on declared reserves. It left out extensive areas of African freehold and unsurveyed state land excluding about 1.5 million ha in this way.

Walker and Platzky (1985) note that the Beaumont Commission established in 1916 excluded about 1.5 million hectares from the schedule by ignoring land which had been bought by Africans. The Commission also overlooked the unsurveyed state land on which thousands of African people resided at the time.

Platzky and Walker (1985) further noted that the Beaumont Commission also excluded about 3.5 million ha of land that was owned by Whites but which was not occupied and farmed by

African farmers as sharecroppers or cash tenants (Platzky, L. and Walker, C. 1985; Silinda 2007: 55). Table 2, below, provides a summary of the amounts of land that had been left out of the survey by the Beaumont Commission.

Table 2: Historical statistics of land left out of the schedule

| Land Types | Hectares |
|--|-----------------|
| Scheduled Reserves | 9 601 456 |
| Mission Lands and Reserves | 462 975 |
| African Freehold Farms | 861 754 |
| Unsurveyed State Land | 810 361 |
| Unoccupied White-owned Land occupied by Africans | 3 754 433 |

(Adapted from the Beaumont Commission Report-1916, cited in Silinda, 2007: 55).

2.4.4 The perspectives of the 1936 Native Trust and Land Act (Act 18 of 1936)

The Native Trust and Land Act (Act 18 of 1936) touched the lives of all South Africans, giving added shape and content to the reserve policy and establishing new controls over Africans living on White-owned land. The system of labour tenancy was seen as a hindrance to the mechanization of farming since it prevented the consolidation of large tracks of land that were occupied by African labour tenants. It was also clear that the land allocated to Africans under the 1913 Land Act was insufficient. This contributed to the passing of the 1936 Native Trust and Land Act (Act 18 of 1936).

The Act allowed for the release of land to be incorporated into the reserves in line with the recommendations of the Beaumont Commission of 1916, and resulted in the extent of the reserves being 14 percent of the country's land surface (Ramballi, 1998: 31). The Act was also introduced to allay the fears of Whites pertaining to the permanent urban African problem, by

forcibly removing Africans to the countryside. 'Black spots' were recognized as those farms outside the reserves that were purchased by Blacks prior to 1913 and were now surrounded by White-owned farms. The Act provided for the expropriation of this land. The occupants of these 'Black spots' were forced to move into inferior land in the reserves (Rambali, 1998: 31). The Act brought no relief to the land shortage since Africans already occupied most of the reserve land. Also, the 'released' areas consisted of land that was of poor quality and located in areas of low rainfall. It further reduced the terms of African occupancy on White-owned land. The Act began the legal suppression of labour tenancy and the conversion of all Africans on White-owned farms into farm servants (Rambali, 1998: 32). There was consequently no significant change in the access to suitable land for Africans. The results of the 1936 Native Trust and Land Act were far-reaching with regard to Africans' access to land in South Africa.

2.4.4.1 Results of the Native Land Act (Act 27 of 1913) and the Native Trust and Land Act (Act 18 of 1936)

The two Acts (the 1913 Native Land Act and the 1936 Native Trust and Land Act) are said to have resulted in the institutionalization of segregation in this country. They sharpened the division between the two classes of freehold property (those included within the reserve areas and those not included) and hastened the advent of the category of Black spots, which were to be removed from the declared "White areas only". These laws formed the basis for the unequal patterns of land ownership, as well as an unequal basis for land use and access throughout the whole country, including the Weenen Area. The two Acts laid the foundation for the future consolidation of reserves into Bantustans, which resulted in the changing of the status of African farmers and landowners to that of farm labourers. These two Acts allowed for the rapid development of White farmers at the expense of the rural African population. They were important in that they determined all subsequent laws governing ownership and occupancy for all sections of the population. Following the two Acts, a number of other land policies and laws were ruthlessly implemented in order to channel Native Africans into the Native Reserves or Bantustans, and urban Indians and Coloureds into their respective ethnic townships (Rambali, 1985: 32).

In summary, both the 1913 Native Land Act and the 1936 Native Trust and Land Act contributed to the following major categories of relocation in South Africa:

- the eviction of farm workers and tenants from farms owned by Whites;
- the removal of Black spots, both African freehold and missionary properties;
- removals relating to the consolidation of the reserve areas;
- urban relocations;
- influx control and repatriation;
- the destruction of informal settlements;
- Group Areas Removals;
- removals relating to infrastructure, other development and conservation schemes;
- removals for strategic reasons; and
- removals caused by the implementation of betterment planning or betterment schemes (Surplus People Project Report, 1983: 51-52, cited in Silinda 2007:56-58).

2.4.5 The Restitution Legal Framework

According to the Restitution of Land Rights Act (Act 22 of 1994), the condition for people to claim land reform through the Restitution Act is dependent on claimants being able to prove that they were dispossessed of their ancestral land by means of a racially-motivated law or practice. In order to ascertain this, the Department of Land Affairs (through its Land Restitution Claims Commission) has to conduct what is referred to as a claim validation process, which involves meticulous research to establish the circumstances of the dispossession. For the claimants to receive an award in terms of the Restitution Act (Act 22 of 1994), evidence has to be established to confirm that the land dispossession indeed took place as a result of a racially-motivated act or racially-motivated practice. The same Restitution Act also allows that the same evidence may be contested by the current landowners who may be reluctant to sell their land.

As will be examined in the discussion below, certain types of removals, particularly internal removals within scheduled Native reserves and released areas for purposes of building a dam, or removals for the purposes of establishing a conservation area, can be more challenging to justify

in terms of the Restitution of Land Rights Act. Such cases are said to hinge on racial practice as opposed to the character of the law that was used to effect the dispossession at the time. The Restitution Act also makes provisions for such cases to be decided upon when examining the extent to which people were compensated and the manner in which the removals were effected. Through the literature review, it can also be established that many of the laws used during the evictions of people overlapped with one another; this allowed officials and landowners alike to choose whichever Act they wanted to use depending on the current situation. As Walker and Platzky pointed out, “The procedure for removing people is not spelt out in the legislation itself, but is set out in administrative regulations drawn up at a departmental and not a parliamentary level and these regulations are not readily available to the public” (Platzky and Walker, 1985, cited in Silinda, 2007: 58).

The section below presents a brief description of some of the legislation that government officials and landowners used in the past to evict Black people from their ancestral lands.

2.4.5.1 The Native (Black) Urban Areas Act (Act 21 of 1923)

The Native (Black) Urban Areas Act divided South Africa into what was known as the ‘prescribed’ (urban) and ‘non-prescribed’ (rural) areas, and strictly controlled the movement of Black males between urban and rural areas. As per the Act’s recommendations, each local authority was made responsible for the Blacks in its area and ‘Native advisory boards’ were set up to regulate the inflow of Black workers and to order the removal of ‘surplus’ Blacks (i.e. those not in employment).

2.4.5.2 Black (Native) Administration Act (Act 38 of 1927)

Section 5(1)(b) of the Black Administration Act provided that “whenever the Administrator deemed it expedient in the public interest, the minister might, without prior notice to any persons concerned, order any tribe or portion thereof, or individual Black person, to move from one place to another within the Union of South Africa.” It is asserted that this Act was used extensively and mainly to authorise forced removals of the Native Black Community in the country (Silinda, 2007: 59-61).

2.4.5.3 The Occupation of Land (Transvaal and Natal) Restrictions Act of 1943

This Act was also known as the Pegging Act and required that all new land and property transactions between Indians and Whites required the approval of the government before they could be allowed to take place.

2.4.5.4 The Natives (Urban Areas) Consolidation Act (Act 25 of 1945)

The Native (Urban Areas) Consolidation Act introduced influx control which was applicable to Black males only (Horrell, 1978: 172-173, cited in Silinda, 2007: 59). According to this Act, Native Black people who were deemed to be leading an idle life in urban areas, and people that were not in employment and who had committed certain specified offences could be removed from an urban area.

2.4.5.5 The Asiatic Land Tenure and Indian Representation Act (Act 28 of 1946)

The Asiatic Land Tenure and Indian Representation Act introduced restrictions on both Asians and Indian land ownership and residence to specific areas in KwaZulu-Natal. The two groups were allowed to reside and own property only in areas as permitted by the Act.

2.4.5.6 The Group Areas Act (Act 41 of 1950)

The Group Areas Act enforced racial segregation by creating different residential areas for different races. It led to forced removals and relocation of thousands of people living in “wrong” areas. According to Van der Walt (1990, cited in Xulu (1998: 67), the Group Areas Act declared cities, towns, national parks and wilderness areas, and most state-controlled land for White occupation. In terms of this Act, lawful occupation by a person would be determined by the

group designated to occupy the area. This meant that the occupation of land by a person of another group was a criminal offence. The Act was responsible for the mass removals of Blacks, Coloureds and Indians. Blacks were removed and confined to the Reserves where they were offered land of poorer quality and diminished size.

2.4.5.7 Prevention of Illegal Squatting Act (Act 52 of 1951)

This Act served to reinforce the implementation of the 1950 Group Areas Act, by enforcing spatial segregation and eliminating illegal squatting on private and public land. The Act removed all normal legal protection for Blacks in White rural areas and provided for large scale eviction (Claasen, 1989, cited in Xulu, 1998: 67). This Act empowered owners of private land, local authorities and government bodies to demolish buildings erected without consent of the owner of the property.

The Group Areas Act also allowed the removal of building material without prior notice to the owner of such material. The Act was to affect mostly the homeless, who were victims of mass removals and settled on privately-owned land in lieu of rent. The people subjected to further removals by administrative authorities could not challenge the authorities through judicial means. The Prevention of Illegal Squatting Act was a very harsh law. This was the most commonly-used Act to effect forced removals. This Act afforded landowners, local authorities and government officials many ways of evicting people or demolishing their houses to get them off the land.

2.4.5.8 The Black (Bantu) Authorities Act (Act 68 of 1951)

This Act allowed for the creation of traditional, tribal, regional and territorial authorities initially run by the Native Affairs Department, but with the promise of self-government in the future. The Act resulted from recommendations made by the Tomlinson Commission, which was constituted to investigate ways in which 'homelands' could be developed. In terms of the apartheid legislation, Blacks remained temporary visitors in urban areas. Once their labour became excessive, they could be banished to the Reserves or Homeland which became their political home.

The Promotion of Bantu Self-Government Act enhanced the power of the Governor-General over that of Chiefs and enabled the Governor to define and refine boundaries between tribes in order to establish Homelands. Through this Act, ethnicity became legislated into law.

This Act also facilitated mass removals of communities into newly-demarcated Homelands or Bantustans. It gave executive powers to legislative assemblies consisting of Chiefs. Chiefs became paid bureaucrats, and together with labour bureaux, they held administrative control of labour within the reserves. Those Chiefs who did not co-operate were replaced by the State (Levine and Weiner, 1994, cited in Xulu, 1998: 68).

2.4.5.9 Black Resettlement Act (Act 19 of 1954)

This Act granted powers to the government to remove Africans from any area within and next to, the magisterial district of Johannesburg. The Act established a Resettlement Board which could remove Blacks from townships. This Act authorised the Sophiatown removals and other removals in the country (<http://www.sahistory.org.za>).

2.4.5.10 The Trespass Act (Act 6 of 1959)

According to Silinda (2007: 59), this Act was used in both urban and rural contexts to “secure the removal of people from land where their presence has for one reason or another, become inconvenient to the owner or lawful occupier of the land or to the state”. It is said that the implementation of this Act was done very often in conjunction with other Acts. Silinda (2007:59), further states that “...although the Act contained no provisions which empowered the courts to order the eviction of anyone convicted of trespass, the practical effect of arrest and conviction under the Act was often enough to drive people off the land”.

2.4.5.11 The Abolition of Passes and Co-ordination of Documents Act (Act 67 of 1952)

This Act repealed earlier laws, which differed from province to province, relating to the carrying of passes by Black male workers (e.g. the Native Labour Regulation Act of 1911), and instead

required all Black persons over the age of 16 in all provinces to carry a ‘reference book’ at all times. They were required by law to produce the book when requested by any member of the police or by an administrative official. The ‘pass’ included a photograph, carried details of place of origin, employment record, tax payments, and encounters with the police. A special court system was devised to enforce the pass law: people appearing at such ‘commissioners’ courts were considered guilty until they had proven their innocence. During the 60s, 70s and 80s, around 500,000 native Blacks were arrested each year; their cases were tried and were mainly uncontested, and in the 60s, people were fined or sentenced to a short prison term. From the early 70s, the convicted were deported to Bantustans instead (<http://www.sahistory.org.za>).

2.4.5.12 The Promotion of Bantu Self-Government Act (Act 46 of 1959)

The Promotion of Bantu Self-Government Act (Act 46 of 1959) pronounced the existence of eight African ethnic groups in the country, based on their linguistic and cultural diversity. All eighty groups were assigned a Commissioner-General as an official representative of the South African government. Each Commissioner-General was instructed to develop a homeland for each group. In terms of the Act, there was provision made to effect the transfer of powers of self-government whereby each ethnic group would govern itself, independent of the White ruling party or state intervention (Silinda, 2007: 59-61).

2.4.5.13 The Bantu Homelands Citizenship Act (Act 26 of 1970)

This Act required that all South African Blacks become citizens of one of the self-governing territories. “No Black person will eventually qualify for South African nationality and the right to work or live in South Africa because they will all be aliens, and as such, will only be able to occupy the houses bequeathed to them by their fathers, in the urban areas. This was only possible by obtaining special permission from the Minister” (Silinda, 2007: 59-61).

2.4.5.14 Black Laws Amendment Act (Act 7 of 1973)

The Black Laws Amendment Act (Act 7 of 1973) was designed to speed up the planning for partial consolidation of the homelands. The Act enabled “a removal order to be served on a Bantu Community as well as on a tribe or portion thereof” and restricted right of appeal (Silinda, 2007: 61).

2.4.5.15 The Expropriation Act (Act 63 of 1975)

This is an amended Act that still exists on the statute books. The Act outlines the power of the Land Affairs Minister to expropriate property for public and certain other purposes and to take the right to use property for public purposes. Subject to the provisions of this Act, the Minister may, subject to an obligation to pay compensation, expropriate any property for public purposes or take the right to use temporarily any property for public purposes <http://www.sahistory.org.za>.

Outlining the various laws that were used as instruments to forcefully remove people from their various ancestral lands is meant to illustrate that the apartheid government formalized the landlessness of Native Black African people in this country. It is imperative that reversing the situation had to begin by addressing the history of the systematic dispossession which had to include repealing the various apartheid-based laws. Hanekom (1996) was quoted as having said that the democratically-elected government needed to create specific affirmative legislations that were to enable an environment for the land needs of the “poorest and most marginalized sectors of our society” to be addressed (Hanekom, Sunday Times, 1996, cited in IPS Report, 1996: 58).

Based on this historical land dispossession, the new democratically-elected government of 1994 was tasked with the responsibility of formulating and implementing new land reform policies that were going to be able to correct the skewed land ownership in the country. The following section briefly presents what was conceived as the objectives of land reform in South Africa.

2.5 The intended objectives of land reform in South Africa

In South Africa, as in many countries in the world, land reform has been a sensitive issue. The question of land ownership, distribution and use, still arouses strong emotions and results in heated debates. There is considerable evidence that land reform may promote equity as well as efficiency in South Africa. Land reform can also promote more equitable patterns of growth, which could shift income and power to the poor.

According to the Department of Land Affairs (1997), Van Rooyen *et al* (1998) and Palmer (2000: 23-45), the land reform programme aims to do the following;

- Effectively redress the injustices of forced removals and the historical denial of access to land;
- Ensure security of tenure for rural dwellers;
- Eliminate overcrowding and ensure the supply of residential and productive land to the poorest section of the rural population;
- Raise incomes and productivity; and
- Implement the provision of support services to new farmers.

According to Deininger (2003: 44), the case of South Africa illustrates that land reform is one of a number of ways to increase access to land and productive assets for the poor. When constitutional reforms were instituted in 1995, the White majority population represented nearly one-tenth of the total population of South Africa but owned most of the agricultural land (87%). In contrast, Native Africans, representing 77 % of the country's population of 41 million, owned about 13% of the agricultural land. The Africans also accounted for 61% of all the poor, including 31% of rural households who were landless, with no grazing rights (Krishna, 2001: 45-56).

Since 1994, with the coming to power of the democratic Government of National Unity, the Department of Land Affairs has developed an inclusive and far-reaching land reform policy and

land reform programmes, as its contribution to national reconciliation, growth and development. Land reform policy, thus, is not a technically-neutral and objective exercise, but one which involves mediating processes of political struggle over land ownership, land access and land use (Khosa, 1994: 50).

The Reconstruction and Development Programme (RDP) provided a set of guidelines and principles that gave direction to the initial process of formulating the land reform policy and programme. As from 1994, South Africa began implementing a land reform programme, which rests on three pillars: tenure reform, restitution and land redistribution (Deininger, 2003: 56). The objective of a land reform programme is to address the legacy of apartheid in relation to land distribution and to create security of tenure and certainty in relation to rights to land for all South Africans.

2.5.1 The pillars of the South African Land Reform Programme

The three pillars of the land reform programme in South Africa, as mentioned, are tenure reform, restitution and redistribution. The three programmes are briefly explained in the following section.

2.5.1.1 The Restitution programme

The purpose of the Restitution Programme is to restore land and provide other remedies to people dispossessed by racially-discriminatory legislation and practice (Palmer, 2000:19; Yanou, 2005: 37). The government's policy and procedures for land claims are based on the provision of the Constitution and the Restitution of Land Rights Act 22 of 1994. Since this research will focus more on this Act, it will be further described in detail at a later stage.

2.5.1.2 The Land Redistribution Programme

It can be said that the redistribution leg of the land reform strategy is less about actual legal change and more about the facilitation of access to land (Miller and Pope, 2000: 41-58). This interpretation needs to be compatible with the meaning of Section 25(5) of the South African Constitution of 1996, which requires the state to take reasonable legislative and other measures, within available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.

The aim of the programme of redistributive land reform is to provide the poor with land for residential and productive purposes in order to improve their livelihoods. Its scope includes the urban and rural poor, labour tenants and farm workers, as well as new entrants to agriculture. It provides opportunities for the large number of Black households who want to gain access to land but do not have specific documentation to enter the restitution programme, though they were eligible to benefit from tenure reform (Deininger and May, 2000; Deininger, 2003: 34-55).

The South African Land Redistribution Programme is carried out by way of market-based property title transfer between willing buyers and willing sellers, with government's financial support (Krishna, 2001; 30-44). Originally the programme provided a grant of up to about R16 000, the Settlement/Land Acquisition Grant or S/LAG per household being equal to the maximum subsidy under the National Housing Programme (Deininger and May, 2000 and Deininger, 2003).

The South African government set very ambitious targets for land redistribution, aiming to transfer 30% of South Africa's land (about 29,72 million hectares), to about 3 million people between 1994 and 1999. After three years of operation, by the end of 1999, only about 700 000 ha were provided to over 55 000 households (Deininger and May, 2000; Palmer, 2000: 23-34). Various pieces of new legislation are intended to play a role in the redistribution process, as for example, with the Communal Property Associations Act 28 of 1996. Under this Act, communities are required to pool their resources to negotiate, buy and jointly hold land under a formal title deed. The multi-faceted Development Facilitation Act 67 of 1995 has a major role to play in the redistribution process by introducing measures to speed up land development,

especially in the provision of the serviced land for low income housing as well as introducing the concept of ‘initial ownership’, unknown to Common Law (Miller and Pope, 2000: 32-44).

2.5.1.3 The Land Tenure Programme

This programme seeks to promote security of tenure for all South African citizens and to prevent arbitrary evictions by the state or by landowners. It further enables individuals or groups to earn the benefit of their property and enjoy recognition and protection. Like the restitution and redistribution programmes, it has its foundation in the Constitution (Meyer, 1998; Kirsten et al., 1996 and Sibanda, 2003: 33-44).

Section 25(6) of the South African Constitution (1996) guarantees that a person or community whose tenure of land is legally insecure as a result of past racially-discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure, which is legally secure, or comparable redress. Section 25(9) reinforces the obligation of government to legislate so that tenure can be legally secure for the persons referred to in Section 25 (6). The White Paper (1997) describes tenure reform as a particularly complex process. It involves interests in land and also the form these interests should take. In South Africa, tenure reform must address difficult problems created in the past.

The solution to these problems may entail new systems of land holding, land rights and forms of ownership, and therefore have far-reaching implications. Currently, the Department of Land Affairs (DLA) has some way to go to meet the demands of the country’s people without secure tenure (estimated at about 10-15 percent). The aims are to increase tenure security for about 6 million households (3,9 million in former homelands, 0,8 million permanent farm workers and 1,3 million households in informal and squatter housing in and around urban areas), according to Palmer, 2000: 33-44).

There are various Acts intended to play a role in the tenure reform process that have been introduced. Some of the Acts are briefly described below.

The Communal Property Associations Act (Act 22 of 1996) enables a group of people to acquire hold and manage property under a written constitution. According to this Act, the Communal

Property Association becomes a legal body that is appropriate for the taking of transfer of the land.

The Land Reform (Labour Tenants) Act (Act 3 of 1996) provides for the purchase of land by labour tenants and the provision of a subsidy for that purpose.

The Extension of Security of Tenure Act (Act 62 of 1997) helps people to obtain stronger rights to the land on which they are living or on land close by. It also lays down certain steps that owners and persons in charge of the land must follow before they can evict people.

The Interim Protection of Informal Land Rights Act 1996 protects people with insecure tenure pending longer-term reforms (Palmer, 2000: 33-44).

The Communal Land Rights Act (Act 11 of 2004) provides for legal secure tenure by transferring communal land, including KwaZulu-Natal Ingonyama Trust land, to communities, or by awarding comparable redress; to provide for the conduct of a land rights enquiry to determine the transition from old order rights to new order rights; to provide for the democratic administration of communal land by communities; to provide for Land Rights Boards; to provide for co-operation in performance of municipal functions on communal land; to amend or repeal certain laws, and to provide for matters incidental thereto.

There are other national land reform laws that were instituted to address the land imbalances in the country. These include the following:

- (i) The Provision of Certain Land for Settlement Act (Act 126 of 1993) was meant to facilitate the provision of government's financial assistance to people acquiring land for settlement.
- (ii) The Development Facilitation Act (Act 67 of 1995) introduced measures to speed up land development, especially the provision of serviced land for low-income housing.

The Development Facilitation Act facilitates appropriate and speedy land delivery by establishing:

- National uniform norms and standards in relation to land development;
- National legislation in parallel to provincial (inherited) laws as an alternative to more appropriate mechanisms for rapid land delivery;
- A mechanism for early registration of tenure in order to facilitate the flow of housing finance and reduce the costs of holding land; and
- A National Development and Planning Commission to investigate and make recommendations on a land development framework for the country (Department of Land Affairs White Paper, 1997: 80-81).

(iii) The Upgrading of Land Tenure Rights Act (Act 112 of 1993), provided for upgrading of various forms of tenure into ownership. It assists in identifying the rightful owner, mediating disputes, surveying and transferring land.

(iv) The Interim Protection of Informal Land Rights Bill. The Act aimed to protect people with insecure tenure from losing their rights to land while land reform is being introduced (Department of Land Affairs, 1996a: 5).

2.5.2 Financial grants to support land reform programmes

In addition to the above, the Department of Land Affairs (DLA) offers a number of financial grants to support the Land Reform Programme. The section below, briefly presents the financial grants available.

2.5.2.1 The Settlement/Land Acquisition Grant (S/LAG)

The S/LAG was aimed at making it possible for poor and disadvantaged people to buy land. The grant was initially set at R16 000 per household for the acquisition of land straight from willing sellers, (including the state), acquisition of items, enhancement of tenure rights and investments in internal infrastructure, and fencing, according to beneficiary plans (Kirsten et al., 1996 and White Paper on South African Land Policy, 1997).

2.5.2.2 Land Redistribution for Agricultural Development

Land Redistribution for Agricultural Development (LRAD) is another sub-division of the land redistribution programme designed to provide grants to previously disadvantaged groups, including Africans, Coloureds and Indians, to access land specifically for agricultural purposes. The strategic objectives of the sub-programme include: contributing to the redistribution of 30% of the country's commercial agricultural land (i.e. formerly White 'commercial farmland') over 15 years; improving nutrition and incomes of the rural poor who want to farm on any scale; de-congesting overcrowded former homeland areas and expanding opportunities for women and young people who live in rural areas (Department of Land Affairs, 2000). Under LRAD, beneficiaries can access a range of grants between R20 000 to R100 000, depending on the amount of their own contribution in kind, labour and/or cash. Beneficiaries must provide their own contribution of at least R5 000. The grant and own contribution are calculated on per individual adult basis (18 years and older). If people apply as a group, their own condition and total grant are both scaled up to the number of individuals represented in the group. The approval of the grants is based on the viability of the proposed project, which takes into account total project costs and projected profitability (Department of Land Affairs, 2001).

2.5.2.3 The Settlement Planning Grant

This grant is to assist poor communities to plan for the acquisition, use and development of land and for the mobilization of resources required to do the same. The grant enables those engaged in land reform initiatives to select and appoint Department of Land Affairs-accredited planners and other professionals from private firms and NGOs, with whom they will collaborate on a strategy for land reform. The services that can be covered by the grant include legal and

financial-planning assistance, land-use planning, infrastructure planning, land valuation, and assistance with land purchase negotiations, including the formulation of a legal entity (Department of Land Affairs White Paper, 1997:74).

2.5.2.4 The grant for acquisition of land for Municipal commonage

This grant is to enable primarily local authorities to acquire land to extend or create commonage for the purpose of establishing schemes involving the productive use of the land resources by or for the benefit of poor and disadvantaged residents. The land resources can include, for example, food gardens, arable land, grazing land, wood fuel and other veld products and eco-tourism. The ownership of such land is retained by the municipality, which can lease the land to qualifying applicants (Department of Land Affairs White Paper, 1997:73).

Since the aim of this research is to investigate the restitution programme, the next section presents perspectives on this programme and its implementation.

2.6 The Land Restitution Programme in South Africa

Parliament passed the Restitution of Land Rights Act (Act 22 of 1994) to restore or compensate people for land rights they lost because of racially-discriminatory laws since 19 June 1913. The Act provided for the establishment of an independent Commission on Restitution of Land Rights (CRLR), with regional offices to investigate and mediate claims at a Land Claims Court (LCC), and with jurisdiction to determine restitution of such rights and the compensation payable (Restitution of Land Rights Act, 1994).

The constitutional framework that governs the land restitution process in South Africa is embodied in Sections 121-123 of the South African Constitution (Visser and Roux, 1996: 94). Initially, there were five Regional Land Claims Commissions (RLCC) that were established around the country for accessibility to people who wanted to lodge restitution claims. These DLA Offices were later increased to seven. The initial cut-off date for the lodging of claims was April 1998 and was later extended to 31 December 1998.

The task of the DLA is to investigate land claims by conducting archival, deeds and other research in order to determine the status of each claim. Investigations also include determining the present land value of the land and compensation received by the claimants at the time of dispossession. Valid claims are published in the government gazette and submissions or objections to the claims are received by the in full (RLCC). The RLCC then invites all interested parties to negotiate a solution. Claims that could not be resolved by the DLA are referred for mediation and then go to the Land Claims Court, which holds hearings and then issues a court order (Rambali, 1998: 71). The Land Claim Court is a circuit court at the level of the Supreme Court with a panel of five judges. It is empowered to order the transfer of state land and the expropriation or purchase of land that had passed into private ownership. If privately-owned land was expropriated, the state is obliged to compensate the current landowners at market value. The history of the property's acquisition, its current market value, its current use and interests of the parties involved, however, have to be taken into consideration when determining the value of compensation required.

The Land Claims Court can also upgrade the rights held by people at the time of dispossession. Appeals against the LCC's decision are referred to the Constitutional Court (Restitution of Land Rights Act 22 of 1994). The Land Claims Court route has since been criticized as being too legalistic and complex. This made the processing of claims very slow and it proved difficult to get claims to the Land Claims Court. The judicial approach therefore was replaced by the implementation of an administrative approach to the settlement of claims, as outlined in Section 42D of the Restitution of Land Rights Act (Act 22 of 1994). Section 42D of the Act provides powers to the Minister to settle claims without referring them to court, if such claims meet the requirements of the Act, and the interested parties have reached an agreement on how the claim can be settled in a sustainable manner (Restitution of Land Rights Act, 1994).

The Restitution of Land Rights Act stipulates that restitution can take the following form:

- restoration of the land from which the claimants were dispossessed;
- provision of alternative land;

- alternative relief including a package containing a combination of the above, sharing of the land, or special budgetary assistance such as services and infrastructure development where claimants presently live;
- payment of compensation; or
- priority access to state resources in the allocation and development of housing (White Paper in South African Land Policy, 1997:56).

In other words, the form restitution takes depends on the circumstances of each claim.

Alternative compensation applies if it is no longer feasible to restore the actual land. The DLA White Paper stipulates that landowners, whose land is expropriated for the purposes of restoring land to successful claimants, will be compensated in a just and equitable manner (DLA White Paper, 1997: xi).

According to Section 2(i) of Act 22 of 1994 (cited in DLA White Paper, 1997: 54 and in <http://www.saflii.org/za/cases/ZALCC/2003/11.html>), a restitution claim qualifies to be investigated by the Commission on Restitution of Land Rights if it complies with the following criteria:

- (i) he or she is a person dispossessed of a right in land after 19 June 1913 as a result of past racially-discriminatory laws or practices;
- (ii) it is a deceased estate dispossessed of a right to land after 19 June 1913 as a result of past racially-discriminatory laws or practices;
- (iii) he or she is the direct descendant of a person referred to in paragraph (i) has died without lodging a claim and has no ascendant who is a direct descendant of a person referred to in paragraph (i); and has lodged a claim for the restitution of a right to land;
- (iv) it is a community or part of a community dispossessed of a right of land after 19 June 1913 as a result of past racially-discriminatory laws or practices; and the claim for such restitution was lodged not later than 31 December 1998; or
- (v) persons who were dispossessed as a result of threats of state action under racial land laws

may also qualify.

The Restitution Act further stipulates that if a person has a claim he or she is encouraged to look for other people with the same claim and form a group with them. The bigger the group, the stronger its negotiating position will be. Forming a group speeds up the claim by increasing its priority, providing more information, strengthening the negotiating position, and improving chances of getting RDP development funds in the future. The group must define who they are and what they want to achieve. It must select representatives to speak and negotiate on its behalf. Once a group has been formed, it can also consider approaching land owners to try and negotiate a private settlement (Department of Land Affairs 1996a:15).

According to the Restitution of Land Rights Act, individuals, communities or their descendants do not qualify for restitution if they lost their rights because of racially-discriminatory legislation before 19 June 1913, and when it is established that a just and equitable compensation was paid to those affected during the said removals. People who lost land before 1913 can approach the Department of Land Affairs for help in getting land through the Land Redistribution Programme.

Those who lost land because of the actions of private individuals must approach a lawyer to seek redress. If they cannot afford a lawyer, they must contact the Legal Aid Board through their local Magistrate Court (according to Section 121-123 of the Land Restitution Act). It is not possible to claim for restitution of other proprietary interests (business goodwill and lost profit), for example, non-proprietary claims (founded upon pain and suffering) is not possible to claim for.

The constitutional settlement therefore falls some way short of a comprehensive attempt to undo all the injustices of the past. With the cut-off date of 31 December 1998, a number of claims were lodged with the DLA or its Regional Land Claim Commissions. The number of claims recorded as having been lodged in each province are reflected on Table 3, on page 46.

Table 3: Historical records of lodged restitution claims in South Africa

| REGION | NUMBER OF CLAIMS LODGED |
|------------------------------|--------------------------------|
| KwaZulu-Natal | 14 808 |
| Western Cape | 11 938 |
| Eastern Cape | 9 292 |
| Gauteng and North-West | 15 843 |
| Free State and Northern Cape | 4 715 |
| Mpumalanga | 6 473 |
| Northern Province | 5 809 |
| TOTAL | 68 878 |

Adapted from the Commission on Restitution of Land Rights, Annual Report (2000–2001:11).

Of the statistics given in Table 3 above, the claims that have been resolved are given as follows:

Of the national statistics shown above, it is reported that as of March 2000, about 3 916 claims had been settled in all provinces combined. During March 2001, the total number of settled claims rose to about 12 094 (Commission on Restitution of Land Rights: Annual Report, 2000–2001).

During the 2002 to 2003 financial year, the Minister of Agriculture and Land Affairs reported that more than 36 488 claims had been settled, benefiting approximately 22 760 households (Commission on Restitution of Land Rights: Annual Report, 2002–2003).

According to the report by the former Chief Land Claims Commissioner, Mr. Tozi Gwanya, the number of settled claims increased to approximately 59 345 during the 2004 to 2005 financial year, and the number of beneficiaries increased to 869 506. The total number of hectares restored since the inception of the Commission is said to be over 887 093 hectares (Commission on Restitution of Land Rights: Annual Report, 2004–2005).

The figures in Table 3 show a high level of success with regard to the implementation of the restitution programme from the time it was set up, in spite of the challenges faced. This indicates success with regard to resolving land claims lodged with the DLA, but the question

is whether the envisaged broad objectives of land reform are being met or not. This is precisely what this research aims to investigate.

The history of the South African Government's commitment to the Restitution programme is shown by the financial budgets as follows:

In financial terms, the amount of R14 051 000 (fourteen million and fifty one thousand rands) was allocated to the Commission for the 1996/1997 Financial Year under the vote of the Department of Land Affairs (Commission on Restitution of Land Rights: Annual Report, 1997: 17).

During the 2004 to 2005 financial year, the total budget allocation amounted to R9 million; however, the actual expenditure of the commission increased to approximately R1.18 billion, and this included both capital and recurrent expenditure. During the 2004 to 2005 financial year, the Belgian government made available approximately R49 million (six million Euros) to assist the commission during the investigating stages, especially for verification of land claims (Commission on Restitution of Land Rights: Annual Report, 2004–2005: 4). The commitment of funds shows a high level of support by the South African Government for the redistribution of land to poor communities through the restitution programme.

The national context for the restitution of land rights is a political one, which demands the delivery to be accelerated so that those who are intended to benefit from the process do indeed benefit. The South African Government requires that the land reform process be conducted in a way that does not dampen the economy; instead, it should contribute towards economic stability and growth for the benefit of all citizens of the country. It demands that land reform must happen in a way that underpins economic growth, improves household welfare and contributes to the alleviation of poverty. All of this needs to take place within a legal framework, as provided by the Restitution of Land Rights Act (Act 22 of 1994). The CRLR has been given the task of investigating claims from the time of lodgement, negotiation and implementation.

The initial stage of lodgement of claims was completed in December 1998. The second stage involves preliminary research. At this stage, initial contact is made with the claimants to assess the status of the claim and how the removals occurred, who was involved and why they were removed. The claim is investigated by the Regional Land Claims Commissioner (RLCC) to

verify whether or not it meets the minimum criteria as set out in the Restitution of Land Rights Act (Act 22 of 1994).

When all the relevant information has been obtained, a claim that meets the criteria is accepted in terms of the Restitution of Land Rights Act. As prescribed by the Act, the DLA publishes Notices in terms of Section 11(1) of the Act, stating that a land claim has been instituted. Notices are published in the Government Gazette and all interested parties are informed about the claim and are also given sixty (60) days to comment or provide further information concerning the claimed land. The DLA sends a copy of the gazette notice to all the interested parties through registered mail.

Steps are taken to obtain further information regarding the status of the claimed land and how much it would cost the state to purchase the land. After the expiry of the sixty days and if all parties have been satisfied with the validity of the claim, an independent service provider is appointed to conduct valuations of the claimed land. The value of the land is therefore used as part of the monetary value of the claim that the state commits to pay to all affected parties. The service providers also investigate and package development options relating to the farms under claim. In other words, they contact the claimants to align the community's needs with the potential land use. It is at this stage that the claimant communities and other state departments, such as the Department of Agriculture, KwaZulu-Natal Nature Conservation Services (KZNCS), and District and Local Municipalities are invited to comment on the development plan for the claimed land.

The fourth stage involves making a submission to the Minister of Land Affairs for ratification of the monetary value of the claim, in accordance with the outcome of the price negotiations between the DLA and the landowners, and endorsement of the proposed land use plan. The negotiations and subsequent transactions are conducted on the basis of there being a willing-buyer and willing-seller. A legal entity in the form of either a Community Trust or a Communal Property Association is formed and registered to keep and administer the land on behalf of the community group involved. The government policy around land ownership is that there should be a democratically-elected structure to enable self-constituted groups of people to have a choice about how they wish to obtain, keep and administer the land.

The final stage is that of implementation. A detailed land use plan is conducted and all development grants are released. Sale and agency agreements are concluded with the relevant parties. Further funding is sought from relevant financial institutions to support the envisaged development. The approach for the finalization of restitution claims prescribes that a participatory method should be employed. This means that claimants are encouraged to participate in all decisions taken in the finalization of their claim.

The following section will present the locality and characteristics of Nkasseni area, which are central to this specific research.

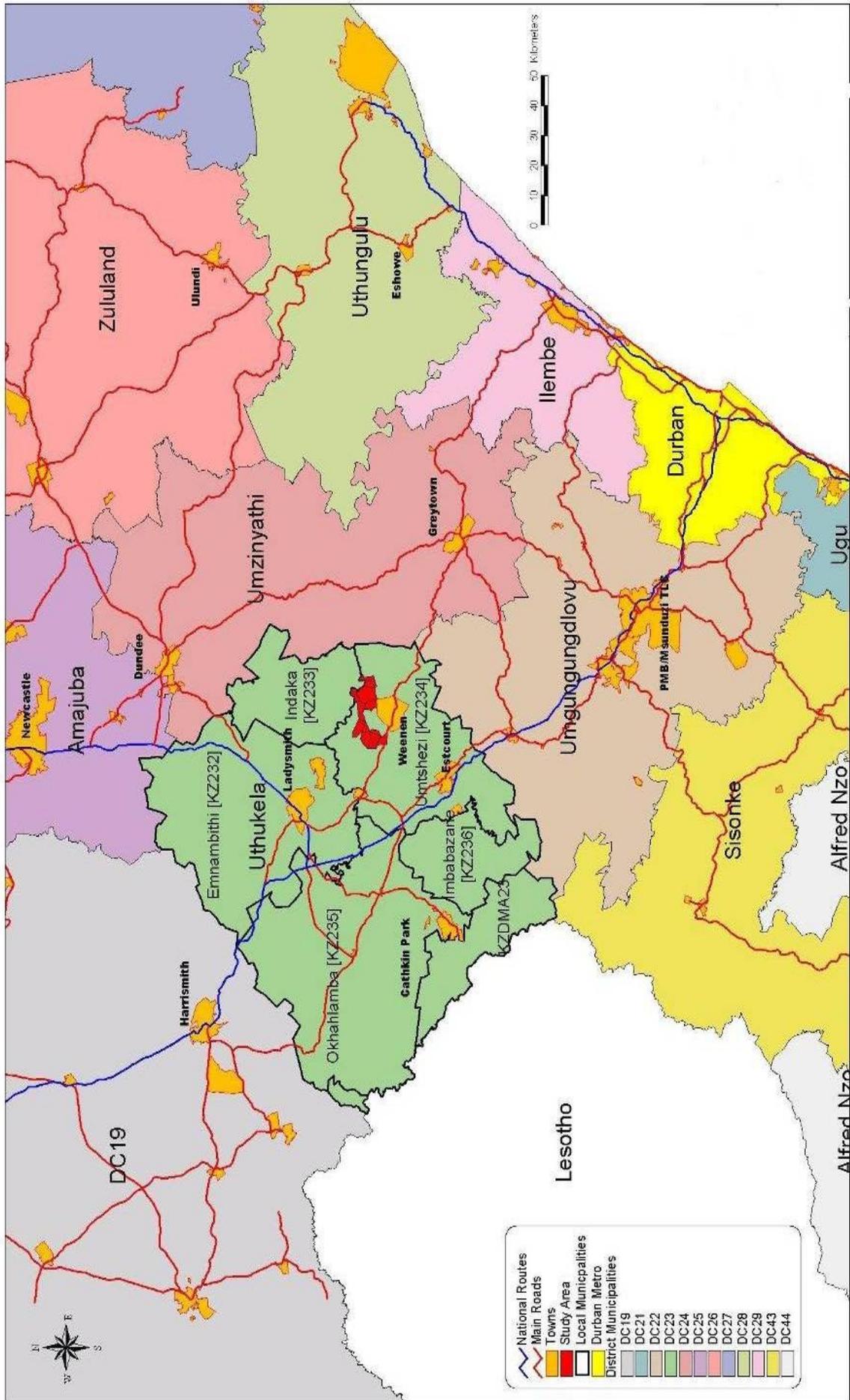
2.7 Location of the study area

The research study focused on the Nkasseni project which comprised of a number of farms that were restored to the Nkasseni community. The farms belonging to the Nkasseni community are situated approximately 5km from Weenen, a town 38km East of Estcourt, and approximately 55km south-east of Ladysmith in the Uthukela District within the uMtshezi Local Municipalities in the KwaZulu-Natal Midlands.

The location map is presented in Figure 1, on page 50. The most significant economic sector found within this area is agriculture. The area has limited services and is primarily oriented towards servicing local agriculture and the local population consumption needs. According to the Section 42-D2 report compiled by the Department of Land Affairs, the total land area belonging to the Nkasseni community is approximately 11 457 ha. The restored land includes portions of the farms known by these names: Bushmans River Mouth 1280, Middel Plaats 1281, Kaffirs Kraal 1309, Osaka 12977, Kaisha 14719, Yatton 7647, Uitkyk 2156, Thornhill 7612, Krommellen Boog 4305, Varkenshoek 1321, Zand Spruit 1367, Portion 3 of Middleplaats 916, Remainder of Portion 1 of Bufels Hoek 1931 and Remainder of Portion 2 of Bufels Hoek 1931 (Section 42D Report, 2004: 3). Figure 2, on page 51; depicts the various farms that make up the Nkasseni Communal Project. It also indicates the various wards or Izigodi, as they were originally called before the forced removals took place. These are highlighted in different colours on the map and can be identified by using the Map Legend.

² Section 42 is a synonymy for a memorandum request for land purchase approval that has to be sent to the Minister for Land Affairs as per the requirements of the Restitution Act 22 of 1994, Section 42 (d).

Figure 1: Map of Kwazulu-Natal showing location of the study area in relation to KwaZulu-Natal District Municipalities, adapted from DLA Report, 2000.



2.7.1 Topography

The area's topography is characterized predominantly by flat to gently-rolling terrain. It is estimated that approximately 90% of the land has a slope of between 0 and 5 degrees. Areas of slope greater than 20 degrees are located at the south-eastern corner of the farms; however, none of the areas within the project area has a slope greater than 60 degrees (Isineke Land Development Report, 2001: 5).

2.7.2 Climatic characteristics

The area's average annual precipitation is between 600 to 800 mm. The rainfall period is short and poorly-distributed, with 90% of the rain being received between October and March every year. Rainfall peaks occur frequently in January before declining rapidly through February and ending in March (Isineke Land Development Report, 2001: 5).

2.7.3 Vegetation characteristics

The area's vegetation consists of a variety of trees and shrubs. Generally, the vegetation of the entire area may be classified as mixed bushveld or thornveld dominated by *Acacia Karoo*, *Acacia nilotica*, and *Acacia tortiliis*. It appears that owing to overgrazing, some areas of the land, especially around the northern parts of Krommellen Boog Farm, are predominately bare. Grass is frequently found as the main ground cover beneath the trees and shrubs (Isineke Land Development Report, 2001: 5).

2.7.4 Fauna

Wild animals are predominantly found on the farms that have been used for wild game. The game found on these farms includes kudus, elephants, giraffes, zebras and buck. It is not known if other wild animals are present; however, some of the respondents interviewed indicated that animals belonging to the cat family appear to live in some parts of the Nkaseni Communal Trust area (Isineke Land Development Report, 2001: 5).

2.7.5 Soil characteristics

Most of the area has soils are of the Estcourt type but these soils are shallow; underlying the soils are shale and sandstone, which make them highly erosive. The sub-base characteristic of these soils makes some areas difficult to cultivate. The difficulty of cultivating land is compounded by the fact that a significant portion of the area has numerous rocky outcrops. The soils along the Umsuluzi River, however, are deeper and richer, and are the most suitable for agricultural purposes, (Isineke Land Development Report, 2001: 6).

2.7.6 Hydrological characteristics

Owing to the relatively flat character of the terrain, three main rivers or drainage lines occur in the area: the Bloukrans River, Bushmans River and the Tugela River. These three rivers cut along the various farms of the Nkaseni Project serving as the main source of water for the various needs and uses of the farms. There are a few strategically-placed dams within these farms which serve as water reservoirs. Some of the farms have a water furrow which serves to transport water around a particular farm, while other farms are equipped with underground piping.

2.7.7 Services and facilities

The area is in close proximity to two small towns. The two towns neighbouring this area are Estcourt, situated approximately 38km from the southern most boundary, and Ladysmith, situated approximately 55km from the most northern boundary. Social and economic facilities within the boundaries of the area are limited but the area has ready access to these facilities from the neighbouring towns.

The area is connected to commercial centres and other areas by a good road network. The N3, which connects Johannesburg and Durban, lies approximately 35km from the area. This major road is connected to the area by means of the R103 running along the western boundary. There is also another road network, the R74 (a dirt road) which passes through at the north-eastern

section of the area. Thus, the area is well-connected to the regional commercial and economic centres.

2.7.8 Land acquisition

The acquisition of the Nkaseni land was funded through the Land Restitution Programme of the Department of Land Affairs. The beneficiaries had lodged a land claim for the various farms (as mentioned in Section 5.2 above) through the Restitution Programme process and their claim was successfully resolved. The claimed farms were purchased by the Department of Land Affairs from their White owners and were then given back to the claimants. For the registration of the Land, the beneficiaries were required to constitute themselves into a legal institution of their choice. The Nkaseni community constituted themselves into a Communal Property Institution presently known as the Nkaseni Trust. Interviews with beneficiaries of the Trust took place in June 2008.

2.8 Summary

In this chapter, the history of land problems in South Africa was presented. The historical background of land dispossession in South Africa and the impact that resulted from the introduction of the segregational legislation was detailed.

The chapter provided a perspective as to why it was necessary to implement a land reform policy in South Africa. One of the reasons given is that land reform can advance more equitable patterns of development and can positively alter income and power for the rural poor. The three pillars of the land reform programme in South Africa were noted: tenure reform, restitution and redistribution. While mention of the other land reform programmes was made, emphasis was placed more on the restitution policy, as this is the focus of this research.

To conclude, the chapter presented the description and location of the study area. The topography and climatic conditions of the area were described, as well as the vegetation characteristics, fauna, soil characteristics, hydrological characteristics, and areas servicing the area.

The following chapter explores some of the reasons why other countries have initiated land reform programmes. It presents a substantial discussion about the international experience of land reform, with a focus on other developing countries.

Chapter 3

Land Reform: Global and Regional Perspective

3.1 Introduction

This chapter presents the theoretical perspective of international and regional land reform programmes from which lessons for South Africa may be extrapolated. The chapter explores the experiences and lessons acquired by other countries (mainly from developing countries) in the process of implementing their land reform programmes. It must be pointed out that these countries were randomly chosen in order to share some objective understanding of the subject.

3.2 The purpose of Land Reform in other countries

There are various reasons why other countries have initiated land reform programmes. Some countries embark on land reform programmes in order to augment productivity and lessen poverty, while other countries use land reform as a means of quickening social reform and allaying political pressure from peasant organizations. In essence, land reform is introduced to deal with various needs in a society.

Land redistribution has occurred in many developing countries as part of land reform. It is mainly utilized as a policy instrument to capture the efficiency benefits of family farming, decrease urban food prices and reduce poverty. In Ethiopia, the aims of land redistribution were to reduce landlessness and to equalize land holding and land quality. Those with larger fields had part of their land taken away and given to others who did not have land or had smaller fields (Benin and Pender, 2002: 24).

The situation in Zimbabwe was slightly different as different objectives have changed over the years. In the early 1980s, in the first period, land redistribution in Zimbabwe was officially targeted to be used for the resettlement of people who had been displaced by war, the landless, the poor, the unemployed and the destitute (Moyo, 2000: 14-15). In the second period, from

1996, land redistribution now focused on the landless and the poor and very few war veterans were considered for resettlement (Bowyer-Bower and Stoneman, 2000: 44). In early 2000, redistribution of land was concentrated on commercial farms that were distributed to small and medium-scale farmers. This was done to intensify land use as well as to enlarge the scope for enhancing rural incomes (Quan, 2000: 34). Stoneman (2000: 49-53) captures the objectives of land reform in Zimbabwe as follows:

- to promote equitable distribution of land in the country, and to improve efficiency of agriculture;
- to reduce poverty and uplift the standard of living of all Zimbabweans; and
- lastly, to achieve national peace and stability by having equitable land redistribution.

The Zimbabwean case is unique in that due to budget constraints, the country has used what is referred as racial land reforms. Many of those eligible to receive land were found to be President Mugabe's political associates and supporters (Moyo, 1995; Krishna, 2001: 44).

In Ivory Coast and Niger, the main aim of land reform was to upgrade economic growth, agricultural development. It was used as incentives to people to develop land (Toulmin and Quan, 2000: 23).

According to Ranchod (2004: 16), in Thailand land reform was introduced for the following objectives:

- to convert tenant and landless farmers into owner operators;
- to bestow the ownership of land on squatter-farmers through legislation and land distribution;
- to enhance agricultural production and augment delivery systems of supporting services, so as to make better the living standards of the farmers; and
- to reduce social and economic inequalities among the Thai population.

In Uganda, land reform was introduced in order to promote agricultural growth and to alleviate poverty (Palmer, 2000: 23).

In Mexico, land reform was intended as reparation for the dispossession of native Mexicans in the 19th century. Land was expropriated from large private land holders, without compensation, and redistributed at no cost to communal holding groups called *ejidos* (Soberon-Ferrer and Whittington, 1993, cited in Ranchod, 2004: 19-20). To be eligible to receive land in Mexico, the communities had to have at least twenty households in their group. A farmer, to be eligible to receive land as part of the community, had to be a Mexican citizen by birth, be able to personally work the land and be either male over the age of sixteen or a male or female who was head of a household (Seberon-Ferrer and Whittington, 1993, cited in Ranchod, 2004: 19).

In the case of Kenya, land reform was aimed at reducing over-population in the rural reserves and it also aimed to resolve the problem of chaotic tenure arrangements that arose from large squatter settlements in the Kenyan White Highlands. The land reform process entailed the redistribution of land to the landless, the unemployed and squatters (Xulu, 1998: 18-19).

In South Africa, the main objectives of land reform programmes are aimed to provide the availability of land for residential and productive purposes to the poor. It aims to improve the livelihoods of the poor, the landless and women in need. In South African, land redistribution priority is given to the economically-marginalized, as well as projects that can be implemented quickly and effectively. Land Reform in South Africa is meant to target farm workers and labour tenants (Department of Land Affairs, 1997: 9-11).

Both Walker (2002: 39) and Yanou (2005: 5) have summarized objectives of land reform in South Africa as follows:

- it is to redress the injustices of apartheid;
- to foster national reconciliation and stability;
- to underpin economic growth and to improve household welfare; and

- to alleviate poverty.

From these cases, it can be observed that land reform programmes have been introduced in each country with its own specific goals. What can also be established is that it seems that the motives behind the plans are aligned with three broad reasons why countries embark on land reform programmes. The researcher concurs with the argument raised by Ranchod (2004:15), that the motives for land reform emanate from political, social and economic demands.

Ranchod (2004) further states that political motives are usually underpinned by government statements on land reform. Political parties or governments use such statements to lure support from the poor, landless and labour tenants. Governments also use land reforms to disempower people that it feels present a threat to the ruling government. The social equity motive is usually linked to the political motive as has been seen with the past and present governments: they promise to give land to landless people in return for political support. The economic motive is said to emanate from the premise that land reform will result in greater agricultural production, increased marketable surplus for domestic consumption and the export market. It is also hoped that land reform results in increased rural household incomes.

The question of whether these countries have achieved their various objectives was not fully investigated by the researcher as it falls outside the scope of this study. The researcher here wanted to increase the appreciation of the subject and to illustrate that this is a world phenomenon with which a number of countries are grappling. Other countries initiated land reform programmes some years ago and can provide lessons for South Africa. In all these countries, land reform is being implemented through a number of programmes. Some of the programmes of note are land redistribution, land tenure and land restitution.

Since 1994, South Africa has embarked on a number of land reform programmes for various land needs. The programmes introduced include restitution which is aimed at addressing the restitution of land to victims of apartheid through forced removals, redistribution of land to the landless and the introduction of tenure reforms to address the current land needs. To achieve these goals, there is a need to investigate the experiences of other developing countries to consider how their land reform programmes and development policies have been formulated.

The successes and failures of other countries could provide insight into land reform in South Africa. It could also help address questions such as which land is redistributed, who should redistribute the land (government or market forces), valuation and compensation issues, and who the beneficiaries of a land reform programme should be.

Other questions include the following: How should the ownership of the land be handled? What institutional arrangements should be put in place to help with the implementation of the various programmes? What institutional arrangements have contributed to the success or failures of other land reform initiatives in other countries? Some lessons are presented in the following section and are taken from the experience of developing countries.

3.3 The experience of land reform in developing countries

Historically, South Africa, like Kenya, Tanzania and other Developing Countries in Africa, shared similar experiences of racial segregation and inequality in land ownership. In these countries, large-scale farming ventures for White farmers resulted from the alienation of land from indigenous groups (Van Zyl, 1996: 12).

In South Africa, land ownership for White farmers was protected by the state through legislation. In addition, the production on these White-owned farms was enhanced by the provision of state subsidies, access to markets and various support programmes. The same support was not provided to the indigenous farmers who were residing within Reserves or Homelands. The reserves often lacked support, resources and the required infrastructure (Xulu, 1998: 12).

According to Xulu (1998: 12), Kenya and Tanzania have long achieved independence and their land reform programmes have been in place for a decade or more. The author argues that South Africa, in order to succeed in its land reform programmes, needs to extrapolate lessons from the experiences of other less-developed countries such as the two mentioned above. The purpose of this chapter is to analyze the land reform process that has taken place in four developing countries, namely, Brazil, Kenya, Tanzania and China.

Although the four countries are diverse, they share a common heritage of inequality in land access prior to the reform process. The nature of the land problems in each country before the democratization process, the actual land reform process that was implemented, and a critique of the various reform processes will be discussed in this chapter. The types of land reforms experienced in each country will provide important lessons for South Africa. This includes prospects for improving institutions used in the delivery of land reform programmes and the dimension of involvement of interest groups, governments, foreign aid and the possible costs borne by the beneficiaries.

The redressing of unequal racial land distribution in order to achieve socio-economic development is the characteristic of most post-colonial countries. Landlessness and rural poverty in South Africa calls for an alternative form of land allocation aimed at rural development and the improvement of the wellbeing of the rural people (Xulu, 1998: 13). In the midst of its many forms, land reform may involve the provision of secured tenure rights to the individual farmer, transfer of land ownership away from small classes of powerful land owners to tenants who actually till the land, and lastly, the appropriation of land estates for establishing small new settlement farms” (Todara, 1992: 496, cited in Xulu, 1998: 13).

Land reform has an impact on changes within society and serves as a means through which various governments bring about modifications in land relations. It is accompanied by wider institutional reforms. These run parallel with land redistribution through land expropriation, land tenure adjustment, regulation or rents and wages for farm workers and an overhaul of the agricultural economy through agricultural education and wider market reforms (Ashcroft, 1988; Marcus, 1996: 32, cited in Xulu, 1998: 14).

Restructuring of land ownership need not necessarily entail the redistribution of small, family-sized farms, but a mixture of these, and it should include large-scale enterprises. Incentives for market production in these farms may be brought about by the provision of infrastructure, agricultural research and extension services. A land reform programme should bring about rural development and provide off-farm activities for the rural poor as well as education and health facilities. Rawski (1995: 45) argues that land reforms need not be directed towards perfection of agricultural production, but could be used to identify shortcomings and remove binding constraints to effect agricultural restructuring. It was noted that land reform in most developing

countries is characterized by efforts aimed at the redistribution of land. From these countries, three broad categories relating to land redistribution can be identified. These range from conservative to liberal and radical approaches. The conservative approach involves land redistribution through market forces with limited government involvement. This approach has less impact on social organization and agrarian power relations. In opposition to this approach is the radical approach that involves radical compulsory government acquisition of agricultural land without paying compensation to the land owners, and land is then comprehensively redistributed to the beneficiaries of agrarian reform. Some limited successes of this method have been noted by various researchers. It appears that this method relies mostly on donor funding and when the donor countries withdraw, this type of land reform fails.

The third method, which is the liberal approach, involves a combination of market principles and government involvement in land acquisition for redistribution (Putzel, 1992, Hungwe, 1996: 45; Xulu, 1998: 14; Ndlovu, 2006: 39). Land reform thus often involves the transfer of individual land rights from the relatively few affluent members of society, including organizations which own huge plantations, or even the state, to the poor landless majority. The latter may include farm workers, tenants and marginalized farmers. The success of a land reform programme in any country depends on providing new farms with inputs like credit, seed, fertilizers and irrigation facilities so that the farms are able to remain in production. Food production is crucial in any society and the inclusion of the rural poor in this task enables land reform to play a significant socio-economic and developmental role (Lieten, 1996, cited in Xulu, 1998: 15 and in Ndlovu, 2006: 39).

3.3.1 The history of land reform in Kenya

Kenya, as a post-colonial country, shares a similar history with other former colonies in Africa which experienced unequal racial land division, pressure in the Reserves, a population that doubles every 15 years, and a high rate of unemployment (Berman, 1990, cited in Xulu, 1998: 15).

3.3.1.1 Land problems in Kenya before its independence

Kenya was first colonized by the Portuguese, then the Arabs, and later the British, towards the end of the nineteenth century. The major impact of this colonization process was land dispossession on the Kenyan East Coast. According to Kabeberi (1996), cited in Xulu (1998:15), of the three colonizers, the British managed to dominate the whole of Kenya through conquest and treaties. Upon colonization, the Kenyan land regulations allowed only the White community to be granted certificates of occupation. During the British rule, the “terra nullus” principle was applied in Kenya.

In terms of this principle, the Crown of England aimed at alienating lands in the protectorates. When once that had been achieved in English jurisprudence, the focus turned to the question of seller ownership *vis-à-vis* ‘native rights’. All unoccupied land was declared state land in terms of the Crown Land Ordinance of 1902. This included forest reserve, national parks, open water, townships and urban centres as well as alienated and un-alienated government land (Ominde, 1984; Christodoulou, 1990; cited in Leach, 1996: 32). The best agro-ecological zones in the Highlands, previously occupied by the Kikuyu people, were declared White farm lands through political intervention. Large land parcels within this area were sold to White farmers at a low price without showing consideration for the Kikuyu, who owned it communally. Scarcity and inviolability of freehold tenure had been established, although much of the land was not used to its full capacity (Urban Foundation, 1993; Xulu, 1998: 15). The Kikuyu tribe was relocated to the Reserves where customary tenure existed. Alternatively, they entered the labour market as tenants for access to land and grazing rights in lieu of 180 days of work per year, which soon increased to 240 days per year due to the widespread shortage of land (Christodoulou, 1990, cited in Xulu, 1998: 15). The Reserves were already predominantly occupied by the *Kipsigiis* tribe and other smaller tribes. Land shortages within the Reserves later became acute with the increase in population (Leach, 1996, cited in Xulu, 1998: 16).

According to Williams, 1994 (cited in Xulu, 1998: 16), the Native Reserves made up 22% of the Kenyan land surface and carried 86% of the entire African population. The rest of the land was declared suitable for White occupation. Farms within these Reserves were generally small and production was for family subsistence only. Furthermore, the Reserves were deprived of infrastructure. They were characterized by overstocking and over-cropping. This situation

contributed to poor soil quality and soil erosion. Farmers in these areas were prevented from growing cash crops like coffee and cotton. In contrast to this situation, production in large White commercial farms was subsidized by the government through a system of monopolies, like favourable railway tariffs and protective custom duties (Williams, 1994, cited in Xulu, 1998: 16).

Subdivision of land within the Reserves and the lack of alternative access to land resulted in increased landlessness. It was estimated that 50 percent of the Kikuyu people were landless by 1953. As a result of this situation, many became squatters or labour tenants on European farms and plantations. Others became wage or residential labourers on extensive White farms with grazing and cultivation privileges in lieu of work for specified periods. They were referred to as squatters and fared much better than their counterparts in the Reserves (Williams, 1994, cited in Xulu, 1998: 16)..

This situation was not to persist for long because of the growth of European commercial farming. State intervention through legislation turned squatters into farm labourers. These farm labourers, however, were not allowed to keep much livestock. It was feared that their livestock were carriers of tick-borne diseases that would contaminate settler stock and would also cause soil erosion. Uneven development between the Kenyans and the White farming community was thus created (Sorrenson, 1967; Kiamba, 1989; Kabeberi, 1996, cited in Xulu, 1998: 17).

According to Kabeberi (1996), political domination and landlessness gave birth to a secret organization, the Kenya African Union. It was formed by Kikuyu traders, skilled artisans, prominent local people and the educated. The movement aimed at the mobilization of the masses to protest against unfair labour practices for squatters. This organization was later called the Kenya Land and Freedom Army, or the Mau Mau, which was later to spread throughout Kenya. The Mau Mau waged war against the British for decades, forcing the British-influenced government to gradually abandon a racially-structured socio-economic and political policy. Before independence could be attained in 1963, however, Kenyan moderates started constitutional negotiations with the colonial government. This was done while the majority of freedom fighters were still in detention and others on battle fields.

3.3.1.2 The history of the land reform process in Kenya

According to Kabeberi (1996), cited in Xulu (1998: 17), at the time of independence, 12 December 1963, three categories of land tenure systems existed in Kenya. These were government-owned land, freehold land and trust land occupied under customary laws. As in all former colonies, communal tenure had been preserved within the Reserves and was later blamed for low agricultural productivity. Freehold tenure, at first confined to areas occupied by Whites, was upheld as a means for success in agricultural production (Xulu, 1998: 18).

The Kenyan land reform programme was characterized by attempts to redistribute land and wealth in favour of Kenyans, without loss of productivity. This was achieved through the maintenance of a large farming sector and the same level of input, but with different crops and a mix of production factors such as more labour per unit of land. Land hunger for the Kenyans had to be satisfied through land resettlement programmes and for which beneficiaries had to pay. This, it was anticipated, would also effect a change in agriculture, not only creating African land ownership, but in some places substituting large scale farming with small scale farming (Hazelwood, 1985; Urban Foundation, 1993, cited in Xulu, 1998: 18).

The Kenyan land reform process entailed the redistribution of land to the landless, the unemployed and the squatters. The most agriculturally-productive Kenyan White Highlands were declared non-racial. Abandoned or mismanaged farms within the area were purchased by government for subdivision. Funds were made available by the World Bank, the Commonwealth Development Bank, the United Kingdom, Germany and the United State of America.

Small holdings averaging 12,6 hectares per household were created and large European farms became available to those who could raise money (Marcus, 1994; Leach, 1996; Williams, 1996; Van Zyl *et al.*, 1996, cited in Xulu, 1998: 18). African farmers eligible for loans were able to purchase the smallholdings or form co-operative farms for ranching on poor soil. This landed smallholdings class, or the “yeoman farmer”, as they were popularly known within the high-quality European farming land, produced high-value cash crops such as tea and coffee. The quality of the ranch determined its price. Wealthier stock farmers were able to accumulate the best ranching lands, while drier areas became occupied by the poorer stock farmers (Leach,

1996; Xulu, 1998: 18). Land redistribution was directed at the creation of African commercial farmers. This included the concentration of services and credit facilities for them. These objectives were, however, not easy to achieve. Extension services or overall development could not be effected because of lack of pre-planning. Resettlement occurred spontaneously (Xulu, 1998: 19). The land reform process was also aimed at communal tenure reforms. Commissions were set up to look into the land issue within the Reserves. The Swynnerton Commission of 1954 had a profound effect on land within the Reserves. This plan proposed the transformation of agriculture within African areas by introducing individual tenure and the cultivation of profitable export crops. It advocated the introduction of strategies aimed at the concentration of land resources in the hands of the fewer efficient producers. Individual tenure was seen as a means to provide security and increase productivity by providing farmers with collateral to secure funds (Xulu, 1998: 19).

This meant that as early as 1956 customary land rights were to be replaced by the registration of titles which would perpetuate private land ownership. The registration of title resulted in the creation of a landless class within the Reserves. A landless class was created through the consolidation of plots under 1.22 hectares and subsequent registration under one owner. The customary law of subdividing a plot for the sons was no longer legal. The displaced, landless peasants became part of the rural or urban labour force. An exception was made in semi-arid and arid areas where group ranching with management committees was introduced.

The Swynnerton Plan facilitated the emergence of an African élite which was to form a stable and conservative middle class. The aim through this class was to strengthen and protect the interest of the Europeans. It would ensure protection from expropriation by the new Kenyan government (Leach, 1996, cited in Xulu, 1998: 19). The proposals of the Swynnerton Plan were adopted by the post-colonial Kenyan government. Mackenzie (1990), cited in Xulu (1998: 19), argues that since the adoption of individual tenure could not forestall other land rights, the existence of customary tenure has remained the dominant form of tenure in Kenya and has persisted even in areas where individual ownership has been declared by the government.

3.3.1.3 A critique of land reform in Kenya

According to Marcus (1996), cited in Xulu (1998), land reform in Kenya did not benefit the landless as was anticipated. Europeans, whose farms were on prime land, were less anxious to sell than those who owned marginal land. Their land rights were further protected by the constitution, which enhanced existing property relations and left less scope for the redistribution of land. Thus land ownership remained concentrated in the hands of a few individuals or the state. This was made possible by post-colonial legislation, which provided for the prompt payment of compensation for expropriated farms or land based on one hundred and fifteen percent (115%) of market value. In Kenya only those who could raise capital were eligible to buy land.

The constitution also provided the landed with access to the High Court to defend the legality of government land acquisition. The new settlers were charged for the farms they occupied, and this meant that land was out of reach for the poor. The land reform process brought a significant shift from communal tenure (suitable for subsistence farming), to individual tenure. Land redistribution targeted for the landless poor remained a Utopian ideal (Leach, 1996, cited in Xulu, 1998: 20).

Most of the landless poor were still unemployed and could not enter the land markets. Only about 1, 5 million acres of land were transferred from White farmers to African farmers, who represented an emerging class of politicians and civil servants. This created a government with a moderate interest in property rights. The removal of White land ownership served to promote the elevation of the African landed gentry. Thus, redistribution of large farm land represented fairly reduced land reform measures and achieved little by way of addressing the dualism in landholding inherited from the colonial past (Sorrenson, 1967, cited in Xulu 1998: 20).

The introduction of scientific farming and the creation of the Agricultural Development Corporation favoured the middle class and wealthier people. The creation of co-operatives was less successful because of the inefficiency of management and lack of enthusiasm of members belonging to these co-operatives as compared to those who worked their individual plots. Thus, group farms could not be a substitute for large scale farming. Mckenzie (1990), cited in Xulu (1998), argues that the subdivision of farms should have been incorporated into land use

planning, where group farming was practiced, for the Kenyan land reform to achieve greater success. The envisaged success of the resettlement schemes was also thwarted by the inability of the government to provide essential services to emerging farmers. There was also some disjointed co-operation between the Department of Agriculture and Department of Land Settlement; this, coupled with inexperienced bureaucrats, impacted negatively on resettlement and in turn contributed to the inability of farmers in the new settlement schemes to reach their envisaged target incomes (Xulu, 1998: 21).

Land reform in Kenya created a non-racial landed class through the treatment of land as a commodity. There was a significant shift from communal tenure to individual freehold tenure, which led to social and economic instability by increasing the number of landless people. The landless continued to squat on farms and depended on the benevolence of the new owners or they faced eviction. Differences in opinion continue to arise over state land formerly known as Crown Lands. Most of this public land has been privatized without public consultation. In some instances, this privatization has a negative impact on land use. Erosion has been common, as for instance where forest land has been converted into agricultural land. Trends in land redistribution through privatization have favoured the rich individuals or groups and those who have government connections, while dispossession and forcible eviction through land consolidation continue through government legislation (Kabeberi, 1996, cited in Xulu, 1998: 21).

3.3.2 The history of land reform in Tanzania

Tanzania is on the east coast of Africa. It consists of the mainland, formerly the Republic of Tanganyika, and two smaller islands, Pemba and Zanzibar. All three became the Republic of Tanzania in 1964 under President Julius Nyerere (Xulu, 1998: 21).

3.3.2.1 Land problems in Tanzania before independence

Tanzania was first colonized by the Germans in the 1880s. As in all other colonies, the indigenous tribes were marginalized and confined to areas where they would not be able to grow any cash crops. After the First World War, Tanzania was colonized by the British in

1916. Tanzanians were further marginalized through state legislation such as the Land Ordinance of 1923. As a result of this Ordinance, all land occupied and unoccupied was declared public land. The British tried to draw more land into the non customary sector so that a transition could be made from customary to individual tenure. Africans were encouraged to apply for grants or rights of occupation ranging between five and nine years, hence, at independence, three categories of land right existed in Tanzania: 0,35 percent was leasehold and freehold, 1, 65 percent was occupied on granted right of occupation, and 92 percent remained occupied under customary tenure (Xulu, 1998: 22).

3.3.2.2 The history of the land reform process in Tanzania

After independence in 1961, the Tanganyika African National Union (TANU) called government for a reappraisal of land, and its role in agricultural development. It expressed concern about the ills of private land ownership in the country. The freehold system had become undesirable and had to be discarded. Titles granted by the British, therefore, were abolished and were converted to leasehold in July 1963, when all land was brought under state control.

Specific areas were set aside to allow for the property rights of Whites to continue (Xulu, 1998: 22). The 1965 Land Acquisition Ordinance reinforced government control of land. In terms of this Act, the government could acquire undeveloped land for public purposes. In April 1970, most of the leaseholds were converted to rights of occupancy (Xulu, 1998: 22). The post-independence government of Tanzania embraced a socialism that was adapted to local conditions. Greater emphasis was placed on rural development and self-reliance. This was to be achieved through the redistribution of rural land in the non-customary sector. Land was allocated to the unemployed and all landless people, irrespective of their nationality. This was mainly done for the objective of achieving racial integration (Xulu, 1998: 22). Rural development was centred on living and working together, through cooperative production in villages planned by the government.

These villages were established on virgin land in various parts of the country. Individuals were granted right of occupancy within the villages. Mechanized equipment was provided by the government. In these villages, extended families worked together. They bought seeds and tools, which they shared. Crops were raised for domestic consumption and export. Peasant production,

marketing and retail distribution were under the control of government. Material and social benefits were shared by all within the village. Ideally, these villages were linked through mutual co-operation to the national level (Xulu, 1998: 23). The villages served as centres for the mobilization of new agricultural production ideas among rural people.

The above were diffusion centres for technological and organizational innovation, as well as diversification from traditional ways of crop production. This form of rural development became known as *Ujaama*. The concept *Ujaama*, coined by President Julius Nyerere, was interpreted as traditional kinship communalism. It merged communal and collective production which was state-controlled.

Village settlements were affected mostly in the sparsely populated areas with established subsistence farming (Xulu, 1998: 23). Densely populated districts, where crop production was more developed and where individual rights were more entrenched, were the least affected by this process. The move towards village settlements was designed to help with the consolidation of smallholdings, the efficient provision of services and, ultimately, to increase production.

Each village initiated communal activities in an embryonic form. This was given more meaning in the Arusha Declaration of February 1967, which supported the large-scale creation of villages and the nationalization of large farms, many of which had been capitalist enterprises. Many farms were turned into state farms or given to *Ujaama* villages, to neutralize the powers of the petty capitalists on the economy (Xulu, 1998: 23).

Since 1973 the emphasis has shifted from the creation of *Ujaama* villages with communal production, to mass “villagisation” based on block farming. Peasants were expected to cultivate individual holdings using an overall block of land allocated to the village and this had to be worked communally. By 1978, the whole of rural Tanzania was living in more than eight thousand villages. Although villages were intended to be self-governing socio-economic units, they existed and operated within the context of the national economic and political system, and were geared towards socialist development.

In areas where the inhabitants were predominantly engaged in herding or animal husbandry, pastoral villages were established. For those involved in fishing, a number of fishing villages

were created (Xulu, 1998: 24). The newly-settled villages differed from earlier patterns in that instead of the practice of shifting cultivation in isolated holdings, each family engaged in settled agriculture on relatively equal-sized plots which formed a farm block. Villages have since shown an ability to provide a suitable framework for the mobilization of surplus labour, especially during the slack seasons and for the construction of a wide range of social and economic infrastructure. This also facilitated the organization of non-farming enterprises which were communally owned (Xulu, 1998: 24).

According to Xulu (1998), the redistribution of land in Tanzania resulted in village settlements and the restructuring of labour. The requirement for all able-bodied people to work the land resulted in the achievement of the following:

- eliminating landlessness among the rural population;
- encouraging each person to produce enough food for subsistence;
- a decline in large individual landholding labour; and
- an increase in work discipline among peasants on both individual and common farms.

It is reported that the excessive state control in marketing peasant produce resulted in lower prices while production costs increased. As a result, Tanzania was faced with food shortages and had mounting foreign debt. The government had lost its ability to control rural development. By 1982, people were allowed to move from core to satellite villages. The 1993 land reforms allowed for a re-opening of private lease and large-scale farming, as well as tenure security (Xulu, 1998: 24).

3.3.2.3. A critique of land reform in Tanzania

Ujaama villages bore a subtle resemblance to traditional production units and people who used to live in scattered settlements were provided with the opportunity to be located nearer to social services or fields. In some villages, farmers co-operated in the early stages of villagisation in order to achieve economics of sale. As soon as it was possible to divide land or individual holdings, they did so. It was evident that families worked harder on their allocated plots and

devoted less time to the communal farm. Food production was consequently very low on the communal farms. The creation of *Ujaama* villages was aimed at finding ways to increase agricultural production. It was envisaged that grain surplus would feed cities and earn foreign exchange to maintain the state.

Food shortages experienced between 1973 and 1975, however, indicated that the peasant model of production could not support socialist state ideals, as food became scarce during drought. Peasants themselves did not support *Ujaama* villages fully. Fears and misconstrued ideas on loss of land, and the fact that land ownership was not a dominant aspect in *Ujaama* villages, were aggravated by lack of managerial skills within the villages. All this had a negative effect on the process. Lack of efficient personnel within the government itself frustrated this land reform measure and invariably led to the adoption of a *laissez faire* attitude.

The overall impact of this was decreased agricultural production. Xulu (1998:25) argues that the cause for the failure of *Ujaama* could have been the preoccupation of the officials with party policies instead of government policies. Farming ventures within these villages were supported by funds from the World Bank, International Monetary Fund, China and Canada. It is reported that production in the *Ujaama* villages collapsed when such donor funds were removed. Foreign investment had supported the implementation of agricultural development projects but these did not produce the expected results; they simply increased dependence on the donor countries. Village settlements were expected to remove this dependence and foster self-reliance by increasing domestic production. The failure of these settlements could also be attributed to excessive government intervention at the expense of individual initiatives (Xulu, 1998: 26).

There were regulations to enforce the growing of crops for export and for domestic consumption. Production on communal farms remained far below that of private farms in spite of the mechanical equipment provided by the government. Settlers had little or no experience in the use of farm machinery. The villagers were also unwilling or unable to support the costs of over-mechanized and over-administered schemes. When equipment became faulty, villagers abandoned it (Xulu, 1998). The ownership of land never became a dominant aspect of life within the *Ujaama* villages. Compulsory villagisation was the strongest blow to peasant autonomy and involved the movement of as many as 5 million Tanzanians (Xulu, 1998).

3.3.3 The history of land reform in China

China is located in the mid-latitudes. Its southern and eastern parts face the Pacific Ocean. As a result, one third of the country in the south is mild and humid and highly-populated as opposed to the western part, one third of which is hilly, mountainous and dry.

3.3.3.1 The nature of land problems before restructuring

Historically, between 1920 and 1940, rural China was characterized by landlords who owned two thirds of the best land that could be found in that country. Some did not farm the land, but rented it out. As an alternative to food security, landless peasants entered share-cropping arrangements with the landlords. In terms of these contracts, the landlords were entitled to sixty percent (60%) of the crop and in return provided the tenant with loans, draft animals and farming tools. A fixed rent, based on the average maximum yield per unit of land in a given year was determined by the landlord to allow the tenant a right to land. Landless tenants suffered most in times of drought and were often reduced to begging. When in debt those who owned small pieces of land either paid with grain for family consumption or sold land to the landlord very cheaply (Xulu,1998:38).

3.3.3.2 The history of the land reform process in China

The land reform programme in China came after a protest against exploitation by landlords was highlighted by the Communist Party government around 1940. Although the land reform was socialist in nature, the government programme was often criticized as unsystematic because of the lack of a coherent plan, and there was also continuous experimentation (Rawski, 1995, cited in Xulu, 1998: 38). The land reform process was accompanied by rent reduction and expropriation of land from landowners without compensation. The expropriated land was redistributed to the landless.

The reform programmes did not have formalized policies but regional governments using task committees developed policies to suit local conditions. Under the new reform policies, land could not be bought or sold or inherited or bequeathed by the peasants (Xulu, 1998: 39).

There was no legal market for land. The peasants had a right only to use the land for unspecified periods. Socialist ideals were implemented through an equitable distribution of all forms of wealth, including farm assets. There was also an establishment of rudimentary co-operatives, something which was done through mutual aid teams. Three to six families voluntarily worked together on one another's land and sometimes shared draft animals and tools to increase food production. Out of these mutual aid teams, co-operatives gradually emerged which assumed joint management of land. In time, corresponding to their size, the co-operatives assumed control of political and administrative affairs of the countryside. The number of households in each co-operative ranged from 20 to 50 households. Within these co-operatives, there was joint ownership and control of land use patterns, cropping as well as distribution of profit and losses after the sale of the harvest. Individuals within the co-operatives were remunerated according to the performance of the whole co-operative. Each household could retain a family plot for subsistence farming, but was not allowed to produce a surplus from it. The government fixed prices for agricultural products (Croll, 1987; Bramall 1993; Van Zyl et al., 1996, cited in Xulu, 1998: 39).

Larger fields within the co-operatives made ploughing easier and the application of new techniques possible. Some of the land was also used for the establishment of new enterprises to raise the net incomes of the unit as a whole, and to improve infrastructure and rural housing. The poorer peasants were supposed to gain by this association while rich peasants were promised an option to withdraw from these co-operatives at a later stage. Exclusion of the latter group was motivated by a fear that co-operatives could be hijacked by middle and upper class interests, resulting in a class struggle between the groups. Besides co-operatives, the communist government in China established state farms. These were large landholdings on land reclaimed along the Coast, comprising virgin and wastelands. They served as means for the resettlement of people and provided training in farming skills and the use of machinery, which could be passed on to the communes (Xulu, 1998: 40).

The need for increased agricultural production prompted the communist government to convert co-operatives into advanced producer co-operatives. The number of participating households was increased, ranging between 100 and 200 and individual title to land was removed. Each co-operative was supposed to finance its own operation. Individual farmers were given compensation for the capital they had contributed to the co-operative (Xulu, 1998:40).

In 1958, 25 to 30 advanced co-operatives were amalgamated into regimented communes, each with an average of 5 000 households, depending on the land available for production. Groups of peasants could go anywhere and work under quasi-military discipline to achieve set targets in agricultural production. The production team of each advanced co-operative was responsible for decision-making with regard to land use, crop production, harvest, distribution of grain and the income of its members. Great emphasis was placed on self-reliance within each commune through good leadership, organization and mass motivation. The issue of hand-outs to poor communes was discouraged (Xulu, 1998: 40). Communes were marked by greater technical organization, credit and marketing facilities as well as specialization in the division of labour. This resulted in increased production. Within the commune, there was also a production brigade responsible for the purchase and maintenance of farm tractors, primary education, basic health and public security.

Communes were self-financed and responsible for the establishment and maintenance of their productive infrastructure facilities, which were constructed during slack seasons. These were labour intensive and included the construction of dams, irrigation schemes, wells, land reclamation, roads, market facilities and civic amenities (Xulu, 1998: 40). Land reform introduced after 1978 was aimed at shifting the focus of agricultural production from communes to individual peasant households because of the belief that communes had removed an incentive for increased agricultural production among peasants. This resulted in the dismantling of communes in favour of family farms averaging 0,5 hectares and scattered over nine plots throughout the village (Van Zyl *et al.*, 1996, cited in Xulu, 1998: 40).

Decollectivisation was aimed at increasing farm labour productivity. Excess labour could be freed and used elsewhere in the rural industries that had evolved. Through this process a significant rise in agricultural production was achieved in rural areas. According to Bramall (1993), cited in Xulu (1998: 41), agricultural production in rural China rose by 4,4 percent per annum between 1980 and 1989, when compared with other less-developed countries like India and Brazil, where it had grown at an estimated average rate of 2,7 percent compared to the same period.

Another objective of the re-introduction of a family production unit was aimed at producing grains needed for family subsistence. A mixed economy evolved when collectively owned orchards, fisheries and poultry were contracted out to individual households to control their own production. Technology, capital, raw materials, transport and storage facilities, as well as marketing guidance, remained the task of former collective units or their successors, so that the peasant household agricultural production venture succeeded (Xulu, 1998: 41). Labour within the family unit became diversified as a microcosm of the collective. Each family unit became responsible for decisions regarding sowing, harvesting and disposal of agricultural products through local grain bureaux or markets as well as securing its own grain. Pursuit of non-agricultural activities such as handicrafts and the undertaking of work for large urban factories by the family unit in the rural areas were encouraged by government.

In some cases firms relocated on to land previously contracted to a family unit, giving workers of the displaced family preferential access to employment. In other cases, a rental per annum was paid in perpetuity to the family unit that had lost land. The intention was to create agriculture-industry linkages (Xulu, 1998: 42). The privatization of land, however, remained blocked and landownership remained vested in the communes. Peasant families could only get a land contract of up to 15 years, with a right to transfer after compensation. These reforms guaranteed everyone access to land. Land hoarding was prevented by placing restrictions on the amount of land available for peasants. Large landowners with 12-acre farms formed the top 10 percent in China. These were, however, less valuable landholdings located mostly on bordering provinces where the land quality was low. If the land was flat it was not supplied with irrigation. The land area allocated to peasants was split into different parcels separated from one another.

As a result of these reforms, landlessness in China was minimal. The landless accounted for only 3,8 percent of the rural population. Higher income activities such as rural industries provided an alternative to farming (Xulu, 1998: 42). The success of the 1987 land reforms in China could be attributed to the decentralized nature of their economic administration. This was the task of the lower government tier. The adoption of these reforms was left to the discretion of each province. Provinces that took the lead became models which could be emulated elsewhere (Xulu, 1998:42).

3.3.3.3 A critique of land reform in China

Land access in China has been characterized by a progression from family farms to communes and a return to family farms again. One of the tenets of the Chinese Communist Party government was an egalitarian redistribution of means of production, including land. This could, however, not be guaranteed by the introduction of communes. While the government continued to claim that land and other means of production were collectively owned in a commune, this was fictitious because the Party, State or Local Government had control over the land management and the distribution of proceeds. This factor has been cited as one of the causes of stagnation of agricultural growth. It may have lessened the incentive to invest in land improvements among farmers who were not owners. Although communes were supposedly equal, the amount and quality of labour as well as land and its variables, namely, soil fertility, availability of water for irrigation and proximity to suburban areas or towns, could not be equalized.

Inequalities in production between the communes could not be avoided (Xulu, 1998: 43). Xulu (1998) argues that farms that were too large could not function as economic units. A critical point could be reached on a large farm where yields levelled off while inputs increased. He maintains that family-sized farms had gained economies of scale when they organized themselves into smaller co-operatives to purchase supplies or sell their produce. He also cautions against scattered family plots which ignored the time wasted by labour movement. The problem of fragmentation became less relevant when plots were consolidated. The relevance of smaller collectives in China had highlighted the need to effect mechanization.

The 1978 reforms represented a significant shift from agricultural production as a task of the commune to becoming that of a family unit. Individual plots had existed alongside communes and it was reasonable for members to be concentrated on privately-owned land, which enforced compulsory work and the contribution of shares to the commune. The introduction of family units, it was anticipated, could free labour power so that it could be used elsewhere, according to Bramall (1993), cited in Xulu (1998: 43). Costs of inputs within a family farm were lowered by the removal of the supervision of labour. Former communes were charged with the task of providing support services for these smaller production units. Although the family unit made greater demands on household labour, peasant households had greater autonomy in agricultural

production and in determining how the surplus was to be disposed of. The land reforms in China also offered other options available for the peasant households, besides farming. They could sub-contract their share of agricultural land to other peasants for cash or grain, while they pursued commercial activities, including the processing of agricultural produce. In some regions this resulted in peasant household members becoming part-time farmers.

The issue of land ownership, or at least security in its access, remains a decisive factor in agricultural production. Full privatization remains blocked in China. Peasant households have fifteen-year contracts with collectives. The State or Party exercises control over the management of the assets which belong to the collectives (Xulu, 1998: 44). Rosenbaum (1992), cited in Xulu (1998) argues that the maintenance of this status placed a limit on land reform. Uncertainty over land ownership raises fears among peasants. This adds to the reluctance of peasants to invest in land or to embrace measures to consolidate land, which in some sectors is perceived as re-collectivization.

3.3.4 The market-assisted approach to land reform

Market-assisted land reform as a way of implementing land reform without coercion, has emerged in recent years as an alternative to more traditional land reform. This approach is currently executed, notably in Kenya, Brazil, Colombia, South Africa and the Philippines. In these countries, different terms are used to refer to market-assisted land reform: market-friendly or negotiated land reform, land market reform, civil society demand-driven land reform and market-mediated land reform measures (Banerjee, 2000, cited in Krishna, 2001: 23-34). Under market-assisted land reform, the state gives qualified landless people a grant or a subsidized loan to purchase land at going prices. It is like fully-compensated land reforms (Banerjee, 2000: 34).

In South Africa, negotiated land reform has been embraced in the context of the national reconstruction programme, in an environment in which productive small-scale agriculture was eradicated almost a century ago. The programme displays many similarities to an urban settlement project and more effort is required to establish the decentralized infrastructure that is necessary to implement land reform, in order to be able to provide support services

such as marketing and technical assistance and to enhance beneficiaries' entrepreneurial capacity (Deininger, 1999; Bowyer-Bower and Stoneman, 2000; Krishna 2001: 12-23).

In South Africa, as in Brazil, the role of the state under market-assisted land reform is limited to providing financial support to individuals and to groups trying to buy land from commercial farmers on the well-known willing-buyer, willing-seller basis. The potential land reform beneficiaries are estimated at nearly one million landless workers, 200 000 labour tenants and as many as 7-8 million Blacks in the reserves (Deininger, 1999; Bowyer-Bower and Stoneman, 2000; Krishna, 2001: 34-36).

One of the problems of market-assisted land reform, as noted by Bowyer-Bower and Stoneman (2000), in South Africa, is that it is a legacy from the past. It ignores all that has gone wrong before and, in addition, it does not consider the current reality; the power on the ground still resides very much with the White commercial farmers (organized agriculture) who are in a position to dictate terms and price to the would-be buyers, and whose lack of enthusiasm for redistribution is well-documented.

The market-assisted approach is demand driven rather than supply-driven, which means that areas and production systems are matched with beneficiaries' capacity and plans; and that they must show ability to make good use of public funds. The potential beneficiaries decide whether they want to go through the various bureaucratic processes needed before they get the land. Beneficiaries are obliged to come up with a productive project before approval of the purchase grant, a plan on how to develop the land, and identification of such things as marketing channels (Banerjee, 2000: 23).

According to Reyes (2004: 23-24), negotiated land reform performs better than the expropriated and administrative types because it is co-operative rather than confrontational. It encourages beneficiary initiative and participation. It utilizes capacity of local government and non-governmental organizations (NGOs). It builds on markets rather than work against them.

3.3.4.1 The history of land reform in Brazil

Over the past decade, a programme of negotiated land reform has been in progress in Brazil. It was driven by individual states' initiatives. The purpose was to establish cheaper, more responsive policy alternatives to centralized land reform in an environment where the issue of land reform was high on the political agenda and where potential beneficiaries have an idea of what to do with the land (Deininger, 1999: 22-24). A 1999 Food and Agriculture Organization (FAO) study in Brazil estimated the number of families who were potential candidates for land reform at 2.5 million.

A land reform institute Instituto Nacional de colonizacaoe Reform Agraria (INCRA) was formed in 1969. It distributed 10 million hectares of land to 200,000 families and colonized about 14 million ha for about 75,000 beneficiary families since then (Deininger 1999: 22-25). Through this programme in Brazil, land is selected by community groups on a willing-seller willing-buyer basis. Landlords are paid cash. The role of government is to make sure that there are no problems with the land titles, and that the price agreed between community groups and landlords is within acceptable boundaries.

The Brazilian government also provides technical assistance to the new farmers when requested by the stakeholders (Deininger 1999: 25-28). This programme comprises of two main schemes. One involves the transfer to rural workers of property titles of land purchased by the government. The other provides credit services to land reform beneficiaries. The programme is monitored and evaluated by a government national committee. This programme's track record suggests that the landlords sell only their low-quality land and that the current complex administrative and legal procedures are very slow and costly (Krishna, 2001: 34-44).

The challenges faced by this programme in Brazil are noted by Krishna (2001) as follows:

- high land concentration on a few individuals;
- high landlessness in the rural areas (about 39 percent of the total rural population);
- high incidence of rural poverty (about 73 percent of the total rural population); and skewed income distribution, in which the share of the richest 20 percent of households is over 30 times that of the poorest 20 percent.

3.3.4.2 A critique of the market-assisted land reform approach

In Brazil, market-assisted programmes are considered as a manoeuvre to seek revenge by the government. Landed interests and financial institutions tend to weaken the organized popular demands for radical land reform in the country (Krishna, 2001: 34-44). Generally-speaking, market-assisted land reform measures have lost political momentum in many developing countries during the past two decades. This was in part due to economic difficulties, as for example, debt burden, budget deficit and reduced public spending resulting from structural adjustment programmes (Krishna, 2001: 34-44).

In the first 10-15 years after independence in 1963, the planner in Kenya was occupied with the settlement of Africans on high agricultural-potential land which was far distant from the Africans Reserves. This programme covered 1,25 million acres and absorbed a large portion of government's staff and money available for agricultural development. On land formerly occupied by White settlers, which constituted one million acres, 34 000 African families were settled in 135 new settlements. United Kingdom and other donors contributed with additional finance for this programme (Krishna, 2001: 34-44). Observed studies show that in Kenya's Nyanza province, for example, only three percent of all land owned in 1990 was purchased on the open market by large farmers and government officials, while the remaining land was inherited. Small farmers, landless workers and poor peasants lacked collateral (in the form of land) when seeking loans from both commercial banks and agricultural co-operatives for the purchase of land in the open market.

In one study it is shown that Kenya's individualization of customary tenure on grounds of economic efficiency resulted in landlessness and loss of food security, especially by women (Krishna, 2001). High prices imposed by violent coercion from landlords and narcotic dealers made this programme's success very limited. The refusal of willing buyers to purchase land in any locality and the cumbersome bureaucracy also contributed to this limited success. According to one study, most land buyers were urban; transaction costs were prohibitive for small peasant farmers and transfer of property rights through the existing market mechanisms failed to shift to poor peasants (Deininger, 1999, cited in Krishna, 2001: 34-44).

3.4 Lessons that can be drawn from developing countries

Historically, South Africa, like Kenya, Tanzania and other developing-countries in Africa, had similar experiences of racial segregation and inequality in land ownership. In these countries, large-scale farming ventures for White farmers came as a result of the alienation of land from indigenous groups (Van Zyl et al., 1996, cited in Xulu, 1998: 47). Land ownership by White farmers was protected by the state through legislation. Production on White-owned farms was enhanced by the provision of state subsidies, access to markets and support programmes. Indigenous farmers within the Reserve were denied such support and were also denied the required infrastructure (Williams, 1996, cited in Xulu, 1998: 45).

Kenya and Tanzania have long achieved independence and their land reform programmes have been in place for a decade or more. The demand for land, however, remains high in all sectors of the community in these countries. Kenya has not achieved satisfactory land redistribution for various reasons. One of these reasons is that the landless poor expected more than what the Kenyan government could deliver within the short period of time that was available to implement the programme (Hungwe, 1996, cited in Xulu, 1998: 45).

In Kenya, authentic land reforms were delayed by the adherence to land markets as a redistribution mechanism. Kenyan land redistribution was further obstructed by concerns about disturbing food security through radical land restructuring (Matlhape and Munz, 1989; Moll *et al.*, 1991, cited in Xulu, 1998: 45). This means that government could not meet the expectations of the prospective recipients. The success of land redistribution measures in the developing countries depends much on the credibility of the institution used in the delivery of the land reform, the size of land redistributed and the tenure security offered (Xulu, 1998: 45). Socialist China and Tanzania adopted the measure of public ownership as a means of production. In both countries, a more egalitarian form of land redistribution was achieved through collective land ownership in varying forms of co-operatives.

The flaw in the land reform process of these countries was excessive government control and government intervention in the administration of the co-operatives. This eroded popular participation in decision-making in directing the course of development. In both Tanzania and China, a measure of success was achieved in eliminating rural landlessness and unemployment.

In Tanzania, the unwillingness of peasants to support overcapitalized schemes highlights the importance of the perceptions of the recipients of land reform. Tenure insecurity among peasants in both countries bred a reluctance to invest capital in the improvement of land, which in turn contributed to decreased agricultural production, hence some degree of failure of the schemes (Xulu, 1998: 46). In Kenya, the government was involved in land restructuring. Land could not be nationalized because of agreements reached between emerging democratic governments and former colonialists prior to independence. The land market was adopted as a means of land redistribution.

The Kenyan government acted as a facilitator of the land reform process. Beneficiaries had to pay for land and as a result, private land ownership was entrenched. Public lands, including more within the Reserves, were also privatized (Leach, 1999; Xulu, 1998: 46). It can be said that in Kenya, the land reform process did not benefit the target group which was the landless poor. Instead, a landed class was created within the ranks of the civil servants, politicians and rich individuals, as well as already-established farmers who required additional land (Marcus, 1996, cited in Xulu, 1998: 46).

Internationally, conflicting arguments on the adoption of socialist or capitalist forms of land ownership have been raised. Proponents of the capitalist model claim that collective land ownership removes efficient investment incentives and further discourages the subsistence-oriented agricultural population from exploiting local resources through specialization.

The efficiency of co-operatives in China in food production, however, offers evidence to the contrary (Putterman, 1995: 43). Conventional wisdom maintains that the privatization of land rights is essential for increased agricultural productivity. This, however, cannot be guaranteed if costs incurred in acquisition are considered. Land administration costs such as boundary surveys, fences, issuing of title deeds and maintenance of records further increases the cost of land, allowing only a few to gain access to it. In most former colonies, private tenure was characterized by the infusion of capital and subsidies to ensure the success of agricultural productivity. It can be argued that communal tenure provides individual access to land to members of a social group at no cost; however, the colonial government policy of pushing indigenous groups in large numbers into marginal land without provision of capital provides a rationale for the inability of these areas to improve their agricultural production.

The assumption that communal tenure does not offer individuals an opportunity to enhance their productivity cannot be supported. In both property regimes, productivity can be raised by changes in agricultural policies that aim at increasing economic incentives for beneficiaries and reducing institutional constraints on land redistribution (Moor and Nieuwoudt, 1996, cited in Xulu, 1998: 47).

According to Deininger (1999: 38), negotiated land reform necessitates that beneficiaries undertake extensive initiatives and perform tasks such as group formation, selection of a viable land management model, adaptation of general model to fit the condition of a specific farm, arrangement for credit to finance the land and capital requirement that is not covered by the purchase grant, formulation of a strategy to establish needed on-farm infrastructure and, eventually, the beneficiary has to deal with the challenges and risks associated with sustaining an economically-viable farm enterprise.

Land reform through negotiation is likely to succeed if measures are taken to make the market for land sales and rental more transparent and flexible. Highly-productive projects must be a core element of market-assisted land reform. Effective co-ordination of the various entities involved in this process can be achieved through demand-driven and decentralized implementation. The long-term success of land reform is likely to depend on securing the various private sectors' involvement in the implementation and the ability to utilize the land reform grant to attract private investment (Deininger, 1999: 34-46).

3.5 The failure of land reform in developing countries

The failure of land reform programmes in most developing-countries is attributed to the adoption of government-controlled models. Community involvement at local government level in the formulation of policies as well as the creation of an appropriate institution for delivery and implementation is essential for land reform to succeed. The inability of the land reform process to effect restructuring of land ownership in some former colonies has been ascribed to the direct import of land reforms from other countries which did not suit local conditions. The introduction of the *Ujaama* concept in Tanzania illustrates that the conversion of communal tenure to private land ownership cannot necessarily guarantee success in improving the status

quo. The implementation of land reform needs to be gradually initiated and must suit regional differences. In order to enhance the feasibility of land reform measures, it is thus essential for institutions responsible for effecting land restructuring to ascertain and give consideration to socio-economic forces, and popular perceptions and attitudes to policies (Marcus, 1996, cited in Xulu, 1998: 48).

The failure to redistribute land in most developing countries has also been affected by the inexperience of personnel in the new governments. In most countries, this has led to the use of officials of the previous government implementing decisions which they may not necessarily support. In the majority of developing countries, the rich have been known to stall the redistributive measures of land reform. They retain their influence on the government through their control of agricultural production. Rich farmers are often organized and vocal, and their ability to afford legal advice assists them in finding loopholes in the new constitution so that they retain the pre-independence imbalance in land ownership even under the new dispensation.

A radical restructuring of land ownership in most post-colonial developing countries is also hampered by tenure security, which remains essential for effective agricultural production. Post-colonial independence constitutions in Kenya have advocated the protection of human rights, including property rights. In a way this entrenched the existing land rights of large property owners who had gained land at the expense of the indigenous people. Conditions under which land could be expropriated were laid down. The protection of property rights was an attempt to ensure that land rights did not become a source of discord in future. This has, however, not been the case in Kenya and Tanzania, where land ownership still remains a source of contention.

Land reform policies adopted in developing countries have also been made more difficult by the existing economic and political forces. In Kenya, large farms remained intact so as not to disturb existing food production. This had a negative impact on the redistribution of land (Marcus, 1996, cited in Xulu, 1998: 48).

In China and Tanzania, the ideology of large-scale farming assumed the ideology of co-operatives and *Ujaama* with land ownership vested in the members. Land became available to all as villages and co-operatives functioned as single production unit. In both countries a significant improvement in access to land and utilization of labour increased farming

productivity only for a while. The effective functioning of large-scale farming ventures in the countries mentioned above required massive infusion of capital and thus entailed increased government spending, despite limited resources.

The infusion of capital into these types of schemes is often based on the argument that large-scale economic entities are better managed, and hence allow for the introduction of new methods of production, specialisation in labour, and the use of sophisticated machinery and chemical fertilizers, which are products of industrialization. On the contrary, this actually displaces surplus labour and further enhances landlessness. Increased agricultural production within these large-scale ventures, and their contribution to international trade through exports, were perceived to be central in the economic development of these developing countries.

The *Ujaama* in Tanzania and co-operatives in China, with their labour intensive measures, achieved considerable success in agricultural production during the earlier stages, though production remained lower when compared to family-sized farms. This was because the peasants devoted less effort to collective farms than they did to individual holdings. The collapse of the *Ujaama* ideology and Chinese co-operatives highlights the failure of a top-down approach (Xulu, 1998: 49). Evidently the maintenance of large landholding to ensure food production post-independence era, does not necessarily guarantee effective land usage or economies of scale.

Williams (1994) cited in Xulu (1998: 49) argues that in most cases land becomes the object of speculation or a means to secure political power. In order to combat this in developing countries, land is made available through the subdivision of large farms into family-sized farms. Moll *et al.* (1991) cited in Xulu (1998: 49), argue that land is used effectively within the small holdings although decline in output can be experienced. Small-holding farmers, however, are also able to adapt to changes and are capable of delivering their agricultural produce to the market cheaply. Labour and land in smallholdings are used intensively which raises output per hectare, especially where skilled tenants or farm labourers take over the land. This is attainable if accompanied by state inputs, which include provision of technical and extension service, access to finance and routes to markets. Success in the provision of these inputs remains an ideal as massive funding is essential. Most developing countries' governments cannot afford this (Van Zyl *et al.*, 1996, cited in Xulu, 1998: 49).

Successful agricultural production, however, cannot be guaranteed where large marginal farms are substituted by informal sub-division into smallholdings as a land reform measure. Putterman (1995) cautions against inefficient fragmentation which in China resulted in farming becoming a part-time occupation of women and the elderly through the adoption of the family-farm model (Putterman, 1995; Xulu, 1998: 50).

The type of institution used to carry out proposals of the land reform process in China may have had an influence on the success or failure of their land reform programme. In China, although a close relationship between collectivization and mechanization existed, these only became an ideal after institutional change. The family unity and kinship patterns played a significant role in the implementation of land reform policies at various stages. This had an effect on the success of Chinese communes. The removal of collectives in rural China after the 1978 reforms depended on the family as a unit of agricultural production as well as the lowest tier of government in the form of local communes (Rawski, 1995, cited in Xulu, 1998: 50).

China and Tanzania's land schemes were characterized by the adoption of the collective form of land use and sharing of profits. Theoretically, production relations were controlled by members of the group. Elected representatives, however, often assumed the position of employers and reduced members to the status of employees (Christodoulou, 1990; Xulu, 1998: 50).

The majority of developing countries lack financial resources to fulfil their land reform obligations, especially where the land markets are used as a redistributive mechanism. Access to capital in most cases has involved borrowing from the developed countries, especially the former colonizers. The user of capital from developed countries invariably enhances retention of the status quo by promoting private land ownership, intensive cultivation and mechanization as practiced in the donor country (Bromely, 1991: 22-34). Levine and Weiner (1994) cited in Xulu (1998: 51), are of the opinion that the involvement of the donor countries has a disciplining effect on the new power block. They assert that the donor countries aim at maintaining agricultural export in a European-controlled international agricultural system. In Kenya these interests were maintained by fear of capital drain. In the post-independence period, the Foreign Capital Investment Protection Act reassured foreign owners of private capital safety from nationalization. The government was thus prevented from expropriating foreign-owned land and could not effectively redistribute the much-needed land. A review of the above cases, as

illustrated, further indicates the following reasons as some of the causes for failure of achieving the various envisaged objectives:

- The absence of a fully-funded plan to undertake the investment needed to convert the large farm into an enterprise for small-farmer cultivation and the lack of funds to carry beneficiaries through to the first harvest (Deininger, 1999: 34-45);
- The failure to bring in additional resources to provide for simple tasks like maintaining of pastures, fencing, construction of basic infrastructure etc., during the start-up phase of the projects to ensure the availability of productive assets and the required technical assistance;
- Land reform beneficiaries are not familiar with making independent entrepreneurial decisions; and
- Difficulties in obtaining training and technical assistance by land reform beneficiaries also contributes to the failure of land reform programmes (Deininger, 1999: 22-46).

Other obstacles to the participation in the land redistribution are that participating households must have abundant free household labour, time and considerable farming skills or experience. They must be willing to bear the risks of farming in areas unknown to them and to pay potentially high up-front costs out of their own pockets (Zimmerman, 2000: 33-56).

3.6 Summary

In this chapter, the experience of land reform in developing countries has been reviewed. Land reform is implemented to redistribute property or land rights to benefit the landless and agricultural labourers. Distribution of land equitably, improving efficiency of agriculture and reducing poverty are some of the objectives of land reform.

Land reform in Kenya, Tanzania, China and Brazil was adopted as a mechanism to improve the quality of life of the rural poor by transforming the agrarian sector. Land reform programmes in these countries have attempted to restructure land ownership through redistribution. They targeted the landless, the unemployed, farm tenants, share croppers and farm labourers. This was expected to provide the beneficiaries with a subsistence base, by creating employment

opportunities within or outside the agricultural industry, thereby achieving rural development.

In Kenya and Tanzania, racial inequality in land ownership was a colonial legacy. Land reform in Kenya was part of a transition to democracy. It was supposed to bring political and socio-economic amelioration. Egalitarian distribution of land, however, remains an ideal long after these countries have gained independence. Both countries have opted for a combination of market forces and a government-intervention approach to land reform.

The market-based land reform has, however, left them with insurmountable debt owed to donor countries or the International Monetary Fund. Moreover, the disparities in land ownership which occurred before independence, still remain in both countries. It is also noted that the governments in both countries have managed, with some limitations, to remove racial land ownership, although less land has been distributed to the target group. In Kenya, British grants were used to pay off the White farmers. The beneficiaries of land reform had to buy back this land. Eventually, politicians gained access to land because they could raise the needed capital (Alexander, 1991; Urban Foundation, 1993; Marcus, 1996, cited in Xulu, 1998: 53).

In both Tanzania and China, the land reform process signaled the egalitarian distribution of land. In Tanzania, land redistribution became a possibility after the nationalization of large commercial farms. In China, the success of equitable land distribution is attributed to the expropriation of land from large land owners without compensation. In both China and Tanzania large-scale farming was maintained through various forms of co-operatives characterized by communal production. The organization of co-operatives allowed greater government control. This made access to credit, infrastructure, marketing facilities and inputs easier. It was further noted that in both countries, co-operatives were plagued by problems of stagnation in agricultural productivity, lack of tenure security, and the removal of peasant incentives which led to the disintegration of reforms.

In China, co-operatives reverted to family-sized farms, while in Tanzania the 1993 land reforms indicated a move towards leasehold and large scale commercial farming. It is also noted that the introduction of individual economic incentives incite a highly-dynamic response; for example, in China the introduction of such mechanisms under the household responsibility system in 1978, gave farming families usufruct rights over cultivated land. At the same time, the organizational system of the People's Communes, which had proved to be low in efficiency,

were abolished. The results of the reform have been impressive. After 30 years of stagnation, growth in agricultural output in the first half of the 1980s accelerated to a rate several times that of the previous long-term average. Most of the growth was credited to the strong incentives given by the reforms to individual farmers coupled with the partial liberalization of the produce market.

Other lessons learnt from the developing countries is that tensions and potential conflicts can hinder the process of land reform. Land redistribution is time-consuming, expensive and difficult. Market-assisted land reform in Brazil had several goals. One of them was to establish viable productive projects that were to make available full-time employment of a family's labour right through the year. The land was selected and was purchased by community groups on a willing-seller willing-buyer basis.

Challenges to or criticism of a market-assisted approach are that in some countries it is said to tighten the hold of powerful landowners and commercial enterprises. The approach is considered as a vindictive maneuver by the government, financial institutions and donor agencies.

Lessons from market-assisted land reform are that the beneficiaries are required to take control, initiate and perform tasks such as group formation, selection of a viable farm model and adaptation of a general model to the condition of a specific farm. Land reform can succeed if measures are taken to make the market for land sales and rentals more transparent and fluid. The creation of overstretched bureaucracies and conflicting, lengthy and costly land acquisition are some of the weaknesses of a market-assisted land reform approach. Land reform beneficiaries are rarely experienced in making independent decisions. Difficulties in obtaining training and technical assistance by land reform beneficiaries also contributed to the failure of land reform.

It must be noted, however, that the political and social issues also play quite a significant role. It is clear from this chapter that there is no blueprint approach to land reform, as each instrument should be designed for particular conditions to be effective. The important aspects of both individual and communal tenure should be properly understood when reform initiatives attempt to change social relations in rural areas.

There must be flexibility in policies regarding farm size and structure of agriculture, while support must also be given to proper training and extension aimed at increasing the individual farmer's managerial ability. Sound institutional arrangements are based on strong economic fundamentals. They should be accompanied by other best practices such as provision for female representation in the beneficiaries' legal entity, and a general transfer of basic literacy, life and technical skills, followed by continuous mentoring in financial, administrative and managerial skills so that beneficiaries' representatives can perform their duties as office bearers, participate meaningfully in policy decisions and ultimately establish their own enterprises (Knight *et al.*, 2003: 247-254).

The next chapter presents a discussion of the research methodology that has been used during the collection of data for this research.

Chapter 4

Research Methodology

4.1 Introduction

This chapter outlines the procedures, approach and methodology used in collecting both primary and secondary data for this research. The research sample comprised of the land reform beneficiaries belonging to the Nkaseni Communal Project and other stakeholders that have played a significant role in the Nkaseni project. It is important to note that the researcher has a good working knowledge of the study area. He has worked in the past with the stakeholders at this project as a land reform Project Officer.

Prior to undertaking the study, the researcher had already identified the key informants. These informants were made aware of the research to be undertaken in their area and the aim and the objectives of the study were clearly explained so that there would be no confusion. Different methods and techniques were used during the collection of data and each of the methods is briefly discussed in the next section for its importance and relevance to the study.

4.2 Methodology and approach

The researcher has focused on a qualitative approach, though quantitative approach is used as well. Using both qualitative and quantitative methods was essential, given the need to verify and understand the perspectives of the respondents, and to quantify the magnitude of the impact of issues or challenges as reported by the Nkaseni community. The complementary benefit of the combination of the two research methods is supported by a number of research experts.

The best research is said to be the one that combines the features of both qualitative and quantitative methods. It can be stated that both methodologies are now considered equally important and the choice as to which methodology is more important is decided upon by the strategy in question. In order to understand the subject at hand, a literature review was

conducted, followed by the development and piloting of research instruments. The instruments were refined based on the pilots and then applied in the field to collect the required data.

The basic sequence that was used is as follows:

- Reviewing literature;
- Designing of interview questions;
- Selection of participants for the research;
- Piloting the instruments;
- Refining the instruments;
- Reviewing the Trustee's constitution, land-use plan, business plans, registers and record of minutes;
- Conducting the research interviews;
- Reviewing Department of Land Affairs procedures;
- Analyzing data; and
- Preparing the research report.

4.3 The collection of data

Data for this study was collected using two methods, namely the qualitative case study and structured interviews.

4.3.1 The qualitative case study method

Various documents, both published and unpublished books, papers and research reports were used as secondary data sources in the study. Other source documents used include literature pertaining to community development, community conservation, forced removals and land reform in South Africa and other parts of the world. Various books, government reports,

land-reform-associated legislation and policy documents, Internet sites, and journal articles on regional and international land reform experiences were also reviewed. A key task was to survey all relevant literature, which includes articles, theses and books on the subject. The information collected was analyzed and formed both the conceptual framework for the study as well as the findings for this research.

Data were also collected from agendas, records of meetings (minutes), memoranda and written reports of events. In this study, the documents contributed to the work of the researcher as he could ascertain the history of land acquisition of this community, its dispossession under apartheid and the process of restitution that was followed thereafter. References have been made throughout the study to acknowledge and cite the different sources of data.

4.3.2 The structured interview process

A structured interview method was used to gather primary data. The study was conducted within the uMtshezi Local Municipality and the focus was on the Nkaseni Communal Project. The sample size was rationalized to conform to the time and financial cost constraints imposed by the survey. The term “structured” simply implies that the content of the interview, in terms of the questions and their sequence, was predetermined. This method offers the opportunity for a more systemic collection of data.

A number of strategically-placed individuals who were involved with the Nkaseni land claim, many of them based within the Umtshezi Local Municipality in KwaZulu-Natal, were interviewed with the purpose of recording, transcribing and systematically analyzing their responses. Much of the information was collected from both the beneficiaries of the project and also from the KZN Department of Land Affairs officials, who were the primary target for this research. Participation was voluntary and respondents were assured of confidentiality. The respondents were clearly informed about the purpose of the research.

Twenty (20) structured one-on-one interviews were conducted by the researcher. The interviews were held with the following people:

- 1) Two officials from the KZN Department of Land Affairs (referred in the report as DLA Officials).
- 2) Chairperson of the Nkaseni Management Committee.
- 3) Four Nkaseni Trustees (Members of the Management Committee of the Trust).
- 4) Seven beneficiaries of the Nkaseni Community (non-executive members).
- 5) One Councillor from Umtshezi Local Municipality.
- 6) The Traditional Local Chief.
- 7) One official from the Umtshezi Local Municipality.
- 8) Two former White land-owners from whom land was purchased.
- 9) One official from the KZN Department of Agriculture, Environmental Affairs and Rural Development.

Structured questions were used during the interview sessions. The researcher had developed a concise list of critical questions focusing mainly on issues relating to the research topic, which were used during each interview. Having the structured questions was necessary to ensure that the limited interview time was used mainly to cover the various elements related to the study.

All interviews were tape recorded, and at the same time notes were taken to help give guidance and to ensure that the interviewer elicited comparable information from different interviewees so that he could identify common and differing views expressed by them. With structured interviews, the interviewer could adapt the formulation and terminology to suit the background and educational level of the respondents, and to ask for elaboration when given incomplete answers.

During the interview, the researcher asked questions from the formulated list of questions and the respondent gave answers orally. The researcher recorded the given response using a tape recorder; in addition, some notes were taken during the interview. All the interviews were held in the *isiZulu* language because all the respondents were Zulu speaking people.

A combination of closed and open-ended questions was used during the formulation of the questions. Having both types of questions helps when one needs to change the pace of the interview and it also helps the interviewers to establish rapport. Having this mix of questions also allows the interviewers to probe as many times as is deemed necessary to clarify issues. Probing can improve the accuracy of questioning, especially when questions are about multifaceted issues: understanding the basic terms of these issues may pose difficulties for the respondents. This type of interview is preferred as it feels more like an informal conversation, allowing the participants to freely express themselves, and the researcher to interject only to probe or clarify.

This approach is, therefore, more appropriate as it represents the voices of the participants. It is also advantageous as it allows the researcher to develop further questions during the interview when necessary, while allowing the participants to expand on the topic as they wish. Attempts were made to secure documentary evidence where possible to support verbal information.

4.4 Voluntary participation

The data collection method in this study ensured that participation was voluntary, by informing the participants about the nature of the research and its objectives. Participants in any research must be given the freedom to choose to participate or not. During the process of consultation with participants, the researcher ensured that the participants were not led to believe that they were forced to participate in the study.

The main objective of the consultation was to gain access to the interviewees and to conduct a selection of the people to be invited to participate in the study. It was explained to the beneficiaries that not all of them could be accommodated, and that only a specific number was required for the purposes of this study because of time constraints.

4.5 Informed consent as a dialogue

The researcher gained initial access to the respondents through the Chairperson of the Nkaseni Trust as a matter of protocol. After gaining initial access, the researcher then engaged with each of the targeted participants. The aim of this dialogue was to explain in detail to the potential participants what the study was about. The potential participants also had an opportunity to ask questions in order to clarify information before committing themselves to the inquiry. Once potential participants indicated their willingness to participate in the study, they were issued with a consent form in which the requirements were explained in *isiZulu*. All respondents signed and indicated their willingness to participate in the study.

4.6 Confidentiality and anonymity

The code of ethics insists on safeguarding people's identities. Confidentiality is achieved when the researcher does not publicly link sensitive information to certain respondents. Confidentiality therefore, is important ethically and methodologically. Anonymity applies when the researcher cannot identify a given response with a given respondent. Having recorded the interview, respondents cannot be anonymous as an interviewer collects the information from an identifiable respondent. Anonymity, therefore, was not applicable to this study. The data was however; treated with the highest degree of confidentiality and the respondents' right to remain anonymous in the course of reporting the findings was observed.

The participants interviewed have not been identified in this study. It is also important to note that there were no obvious conflicts of interests that were identified regarding this research. It is hoped that with these ethical measures in place, participants felt comfortable about sharing their experiences and perspective openly and without fear.

4.7 Sampling method used for the study

For the objectives of this study, a purposive or judgmental sampling of the group was conducted. All the people that were selected for this research had, or were working with, the Nkaseni Community Trust in different roles. The fundamental characteristic of sampling is to select the subjects that represent the population, and the findings resulting from engaging the subset are generalized to the larger population. The other reason for choosing this non-probability type of sampling is that it is cheaper, quicker and quite adequate for a group of people who share similar experiences.

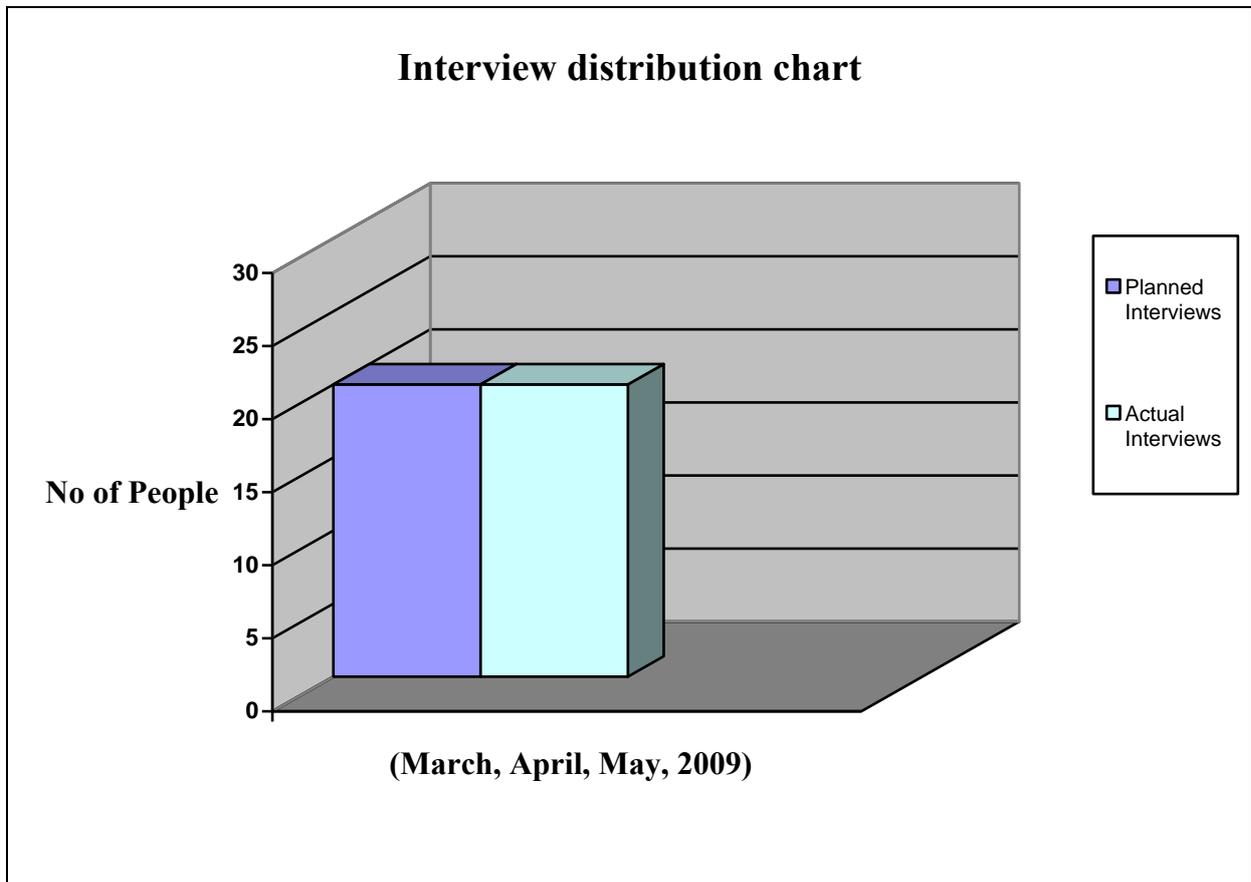
4.8 The sample size

In total, the field research information was collected from twenty respondents. As originally planned, a total of twenty face-to-face individual structured interviews were held. This means that there was a 100% response rate in terms of the planned interviews. The response rate is presented in Table 4, below, and Figure 3 on page 99, shows a bar-chart illustration of the research interviews statistics.

Table 4: Interview distribution table

| Survey method used | Total number planned | Completed |
|---------------------------|-----------------------------|------------------|
| Structured interviews | 20 | 20 |

Figure 3: Interview distribution bar-chart.



Looking at Figure 3, above, the research structured interviews were conducted for a period of three months between March, April and May, in 2009. According to the distribution Chart 20 people were targeted for the interviews and all twenty were interviewed, indicating a success rate of 100%.

4.9 Development of criteria

The nature of this study is diagnostic and as such it does not concentrate on a few simple monitoring criteria, but rather provides for more in-depth data gathering and probing. The intention was to understand processes that had taken place, and also to understand whether or not the Nkaseni Communal Trust was functioning as a land-holding instrument, and if not, to investigate the challenges being encountered. For the purposes of this study, the criteria used were based on the key policy documents on land reform which are: the South African White

Paper on Land Reform Policy (Department of Land Affairs White Paper, 1997: V), the Land Restitution Policy, the Communal Property Act (Act 28 of 1996) and various other land reform documents.

The land policy, as indicated in the South African White Paper, specifies the following five factors that should be achieved through land reform:

- to correct the injustices of racially-based land dispossession that has taken place in the past;
- to address the need for a more fair distribution of land ownership in South Africa;
- for land reform to be used as a vehicle to reduce poverty and contribute to economic growth, especially within the rural areas;
- to provide security of tenure for all South Africans, regardless of the colour of their skin; and
- to provide a system of land administration, which will support sustainable land-use patterns and provide land released for development.

It is not the objective of this study to review the extent of the land reform programme's success in terms of the rate of land transferred, hence the first two points will not be analyzed comprehensively in this research. This research rather focuses on understanding the processes that are involved in land restitution, and examines and identifies the social, institutional, economic and environmental issues that have an impact on the functionality of the Nkaseni Community Trust.

Having identified the gaps and challenges, the study seeks to make recommendations regarding how the identified challenges are addressed. In order to investigate the land reform activities that were involved in the Nkaseni Project, reference was made to the various reports that have been filed regarding the Nkaseni Project. Primary data were gathered from the respondents during the research interviews that were held as part of this research. Taking into account that Land Restitution is a government policy itself, the researcher has also made reference to policy implementation principles in public administration. The gaps that have been identified during the application of this policy within the Nkaseni Project were investigated.

The researcher has also made reference to the Communal Property Act (Act 28 of 1996) in order to investigate issues emanating from the application, or lack of application and other facets of this Act. This is the overarching Act on which the Communal Property Institutions are founded within the land reform programme. Brief reference was made to Section 9 of the Communal Property Act (Act 28 of 1996), which clearly spells out the following five (6) constitutional principles that must be applied to Communal Property Institutions:

- A fair and inclusive decision-making process;
- Equity of membership;
- A democratic process;
- Fair access to property;
- Accountability; and
- Transparency.

Taking the above into account, four overarching principles have been identified against which to investigate the success of the Nkaseni Communal Project:

- Section 9 principles of the Trust Act (equity, fairness, transparency and democracy);
- Security of rights and tenure;
- Sustainability; and
- Compliance to legislation and constitutions.

Given the four overarching principles above, the researcher has developed a number of questions within each principle against which it is possible to test the extent to which the Nkaseni Communal Trust is meeting the principles. The questions were used during the research interviews held with the respondents. The questions have been attached as **Annexures 1 to 7** respectively.

4.10 How data analysis was conducted

Given the size of the sample set, and the fact that it was not random, extensive statistical analysis was not possible. A case study approach and simple descriptive analysis was therefore used. All questionnaire data were captured electronically into a Microsoft Access database from where a simple descriptive analysis was conducted. The relational nature of the database allows for linkage between different data sources, including the literature and primary data gathered through the research interviews.

4.11 How the Nkaseni Project was chosen for the study

The Nkaseni Project was deliberately chosen for the study rather than using a random process. This was done with a full understanding that it would reduce widespread statistical extrapolation of results. This decision was taken on the basis that it would be more productive to study a project where there were clearly good and bad features that would help maximize the potential for learning.

4.12 How the field research was conducted

The researcher was responsible for all the research interviews conducted. After the researcher had been given permission to conduct the research, the general programme followed was to hold interviews firstly with the Land Reform officials who also serve as gatekeepers of this project. Attached, as **Appendix 8**, is a copy of the permission letter from the RLCC.

The second step was to hold interviews with the Chairman of the Nkaseni Trust, which was followed by interviews held with the other members of the Management Committee (Executive Members of the Trust).

Following the interviews with the Executive Members, were interviews with the beneficiaries or non-executive members of the Trust. This step was then followed by interviews with the officials from, firstly, the Department of Agriculture, and, secondly, officials from the local Municipality.

The next set of interviews were held with the two former White land-owners from whom some of the Nkaseni farms were purchased. These interviews were then followed by interviews held with the Umtshezi Local Councillor and, lastly, with the Inkosi of the Area. Interviews held with the Nkaseni beneficiaries were conducted at the respondents' homes. The researcher travelled to each of the respondent's homes, which was relatively easy as most of the respondents resided near one other.

Interviews with the Department of Land Affairs officials were held at the offices of the Department of Land Affairs. Interviews with both the officials from the Department of Agriculture and the Umtshezi Municipality were held in their various offices. Interviews with the local Councillor and the local Chief were held at their respective homes.

4.13 Limitations of data interpretation

A purposeful method of sample selection was adopted simply so that the focus would be on a project where the greatest level of learning could result. A consequence of this is that results can not be statistically extrapolated for all land reform projects within the KwaZulu-Natal Province.

The interviews were held with people who were actively involved in the Nkaseni Project. It was not possible to track down individuals who had abandoned the project completely and therefore this sample has a bias towards those more actively involved, and hence with probably a more favourable attitude to the project.

4.14 Difficulties encountered in conducting the field research

The researcher undertook many steps and procedures to ensure that the interview process was stress-free. Contrary to what many researchers experience, gaining access was not as problematic for the researcher. Perhaps this was influenced by the fact that the Chairperson of the Trust and some members of the Trust were known to the researcher and the fact that all of them were willing to participate in the interview process. Moreover, all indicated an interest and willingness to address matters affecting the status and progress of the project. Despite all the precautionary measures taken, there were still one or two challenges encountered during the data collection.

The first challenge related to the time factor. At times the researcher spent time chatting between the interviews, something that was not anticipated. This was mainly because the hospitality of rural people is not time-bound. After each individual interview, the researcher engaged with the participants, as is customary in a rural community.

The other challenge, also related to time, was that all the written records of the Nkaseni Project were not readily available in one place. There were some records of minutes that could not be located, as respondents did not know where those records were last stored or housed. A considerable amount of time was spent trying to locate the outstanding documents and many could not be found. The records were required to finalize the analysis of the study. Due to time constraints, the study was then limited to investigating only a sample of the project records made available at the time.

Other than the above-mentioned issues, overall the participants were very supportive and very helpful to the researcher in making themselves available for the interviews, and keeping to the agreed days and scheduled times.

4.15 Summary

This chapter has described the research methods that were used for the study. The sampling technique that was used has been discussed and the methods used to collect data have been presented. Difficulties encountered during data collection have also been discussed and, lastly, the limitations of the study outlined.

The next chapter presents the findings and analysis of the study.

Chapter 5

Findings and Analysis of the Study

5.1 Introduction

The previous chapter dealt with the methods that were utilized in carrying out this research. This chapter will present the findings of the research. As indicated earlier, two methods were used to gather data for this research and thus the research results will be divided between the two methods. Firstly, the report presents results gathered through the use of the case study method, where a number of filed reports and records of minutes, relevant to the Nkaseni project, were used to collect secondary data.

The findings will first cover the historical background of forced removals in the Weenen³ Area and the various types of legislation used at the time in support of such activities. The history of Nkaseni land dispossession contributes to providing information with regard to the historical overview of land dispossession in South Africa, as Weenen is part of South Africa, and what actually happened in Weenen, also happened in many parts of the country. Furthermore, the processes that were followed during the processing of the Nkaseni land claim and how these various processes were handled for this restitution project will give an empirical picture and general impression of how the land restitution policy is being implemented in South Africa.

The second part of the findings will concentrate more on the identified challenges of the Nkaseni community, focusing mainly on challenges experienced after the land had been transferred back to the beneficiaries. It is envisaged that, having presented the findings, both from the documentary evidence and from the field research, the objectives of the study will be met. The section below presents the findings of the research.

³ Weenen is the historical name given to the Magisterial District of the area and Nkaseni refers to one of the wards falling within the Weenen Magisterial District.

5.2 The history of forced removals within the Weenen District

The history of forced removals within the Weenen District has been well documented by the Surplus People Project (SPP), which conducted a number of field research projects in the 1980s, and thus this serves as the main source of the detailed history of the area. This section of the research, therefore, relies heavily on the SPP's investigation in order to provide Weenen's historical background.

The SPP was established in February 1980 by a group of academics and community workers in response to the widespread political concern surrounding large-scale forced removals in rural South Africa. The major concern of the SPP was that the thousands of rural South Africans removed from rural areas would not find jobs in urban settings. The SPP could not pay high salaries to its researchers, but it could rely on great support from churches, relevant departments and institutes in the English-speaking Universities. The participation in the SPP gave some young academics an opportunity to conduct serious field work, while non-academics could better understand the theoretical background to the situation which "they had observed for years" (Kostiv, 2008: 55).

The Weenen area is one area in Kwazulu-Natal that in the past experienced ambitious forced removals. The forced removals in Weenen were carried out by the apartheid government. Many White landowners in the Weenen area were involved in forcefully removing people from their ancestral homes to some distant reserves. In many instances, SADF Government trucks were used to transport people from their ancestral lands to the relocation sites.

The removals of these people is said to have caused many undesirable changes to the lives of the people removed. The people removed had to leave their ancestral place of residence, thus losing their arable, grazing lands and their livestock. People who were affected also lost most of their possessions at the time. Much of the land use from where people were removed was then changed by the White landowners from that of residential and subsistence farming to commercial farming (Nkaseni Section 42D Report, 2004).

According to the SPP Report, historically, land in the Weenen area was generally used by White farmers to house and provide some agricultural (subsistence) land for their labour tenants who in return provided six months of labour per year working on the commercial farms belonging to their landlords. Problems began back in the 1920s and 1930s when tenants on farms started experiencing problems as more and more restrictions were introduced and forced on them. The restrictions changed the manner in which the tenants were to live on farms. The problems intensified during the 1950s and 1960s as labour tenancy came under increased attack. During this period the State, supported by the South African Agricultural Union, first sought to control and limit labour tenancy around the country. The government then sought to eliminate labour tenancy on South African farms (Surplus People Project, 1983; Silinda, 2007: 46).

According to the SPP Report Volume 4, reasons for the evictions of people from the farms were also linked to a reported increase in capitalization and mechanization of White agriculture during this time. This encouraged farmers to reduce their formerly-large labour force and to rely on a small nucleus of permanent workers, supplemented by seasonal or casual labour at peak labour periods.

Another reason given is that, during this time, a number of farms which were previously separate farms, were then joined into single big management blocks, which meant that the combined labour force had to be streamlined and reduced. A further reason is that many farmers wanted to extend the area under cultivation or grazing on their farms and to do this they had to limit the amount of land set aside for their workers' own agricultural use (Surplus People Project, 1983: 45; Silinda, 2007: 46).

The SPP Report states that in 1956, the State amended the 1936 Native Trust and Land Act in order to tighten control on labour tenancy. The new legislation placed requirements for the registration of all labour tenant contracts. It further established the Native Labour Tenant Control Boards to administer the implementation of this legislation. The amended Act further prohibited farmers from taking on any more purely rent-paying tenants or squatters after 31 August 1956.

It is further reported that in 1959, the Nationalist Government appointed an Inter-Departmental Committee of Inquiry which was to investigate the labour tenant system in the country. The Committee's report in 1961 recommended that the labour tenancy system be abolished, and phased out over a seven-year period (Surplus People Project, 1983: 45; Silinda, 2007: 46).

This meant that all labourers who could remain on farms had to be full-time registered workers, and those that could not be employed had to leave the “White Area” farms and relocate to Bantustans or areas reserved for Black people. This heralded a major change from the six-month contract system that many of the African people were used to, and many, it is reported, were opposed to it. The six-month type contracts had allowed African people to be able to go and work their own farms and also go and work in urban areas to augment their incomes for the six-month period that they were free.

In terms of the new regulations, farm labourers that did not want to accept full-time service but chose to remain on the farms were to be regarded as unlawful squatters and many of them were forcefully removed when an Act supported by two laws, namely the Prevention of Illegal Squatting Act (Act 52 of 1951) and the Native Trust and Land Act (Act 18 of 1936), legalized their removal.

In the subsequent years the Weenen area was further affected by the 1964 amendment to the 1936 Development Trust and Land Act. This amendment was to empower the Minister of Bantu Administration to have the power to, abolish either entirely or to limit, the system of labour tenancy in any one district of the country, by proclamation. Using these powers, but acting only on the instigation of local farmers and in consultation with the provincial Agricultural Unions and supported by the Minister, the Nationalist Government steadily declared district by district to be non-labour-tenant areas.

The Weenen area was also affected by these amendments as it was one of the districts where labour tenancy was to be abolished and a number of labour tenants had to be dismissed from the farms, including the Nkaseni Farms. It is reported that in Weenen, the bulk of tenants had passively resisted the eviction and had to be forced out by burning their huts, bulldozing their housing structures and even arresting and prosecuting them. It is reported that they would refuse to get into the trucks arranged by the government and would go into hiding.

Following the refusal of some of the tenants to leave the prohibited areas, as per the eviction notices, authorities at the time reacted by impounding stock belonging to the tenants. Even the tenants that had obeyed instructions to leave the farms were not allowed to take their cattle with them. Reports are that a number of White farmers from different areas of KwaZulu-Natal

flocked to the forced sales at Weenen and bought up thousands of head of cattle and goats, often at very much lower prices than their actual value (Surplus People Project, 1983; Silinda 2007: 47; Kostiv, 2008: 58).

Due to a number of reported cases of tenants refusing to leave the farms, as ordered by the then Nationalist Government, the entire Weenen District was proclaimed as a non-labour-tenant district by a Government Notice (No. 2255 dated 6 December 1968). The abolition of the labour system was to take effect from the 01 January 1969 (RLCC⁴ Research Report, 2001: 2).

There were various official reasons given for the abolition of the labour tenant system in the Weenen District. Some were reported as follows:

- The irrigation farmers in the urban areas of Weenen were precluded from using the system;
- The farmers who had labour tenants on their farms had failed to register their labour tenants in accordance with the Native Trust and Land Act, 1936 (Act No 18 of 1936); and
- The owners of the fourteen farms that were subject to this claim were absentee owners and were farming in the surrounding districts.

There was pressure from the Weenen Farmers' Association on the Department of Bantu Administration and Development, not so much because of any particular concern for the conservation of soil, but to prevent their erstwhile labour tenants from deserting their services and flocking to the labour intensive farms in the Weenen district belonging to farmers from other districts, and who were not similarly forbidden from making use of the labour system (Nkaseni Land Claim Research Report, 2001; Silinda, 2007: 47).

The proclamation abolishing labour tenancy in the area came into practical effect in July 1969 when tenants came to the end of their normal six-month labour commitment. The tenants were then faced with the choice of either remaining in full-time employment on the farm or leaving the farms and seeking residence in the freehold reserves (Sihlumbe, Ntokozweni, Tugela Estate, Mhlumayo, Msinga etc.) and Black townships such as Ezakheni and Wembezi. If they chose to leave the farms for the townships, then their cattle and sheep had to be sold because of

⁴ RLCC here refers to the Restitution Land Claim Commission's case study report that was presented in 2003 to the KwZulu-Natal Land Claims Commissioner for validation of the Nkaseni Land Restitution Claim.

regulations that governed the townships. If they chose to remain on the farms and remained in full-time service, they were working for minimal wages that farmers paid at their own discretion (Nkaseni Land Claim Research Report, 2001; Silinda, 2007: 47).

5.3 The Nkaseni land claim process

Following the announcement by the Department of Land Affairs that the victims of forced removal could claim restitution of their ancestral land as per the Restitution Land Claim Act (Act 22 of 1994), four claims were lodged with the RLCC⁵.

As per the RLCC records, the four claims were lodged by the following people:

- (a) Mr. C. M. Ngubane lodged a claim on 14 November 1997 on behalf of claimants or any people who were removed from the Nkaseni and Mahlabathini Wards⁶.
- (b) Mr. W. Miya lodged a claim on 14 July 1998 on behalf of the claimants removed from the Ekucasheni and Stendal Mission areas. With the death of Mr. Miya in 1999 the community nominated Mr. Samson Lembethe to represent them as the chairman of the former Stadal Mission and Ekucasheni group.
- (c) Mr. G. Mkhonza lodged a claim on 4 December 1998 on behalf of the claimants who were removed from the Majola and Ezintabeni Wards.
- (d) Mr. M. Mncube lodged a claim on 22 December 1998 on behalf of the claimants removed from the Madondo Ward.

These claims were lodged on behalf of the Nkaseni community that was forcefully removed from the claimed land collectively known as the Nkaseni Project. The area claimed collectively totalled 11 457 hectares of land. Before the land was joined into commercial farms it used to consist of six identifiable wards (Izigondi), namely Nkaseni, Madondo, Mahlabathini, Ekucasheni, Majola, and Ezintabeni. The Community representatives from the six wards agreed

⁵ RLCC here refers to the Regional Land Claim Commission, a Department of Land Affairs directorate that process and facilitate restitution land reform projects.

⁶ Wards here refer to the historical identifiable Izigodi, or areas in which the different clan grouping previously lived separate from one another.

to form a single legal entity in the name of the Nkaseni Community Trust, which they hold. They now manage the land on behalf of the entire Nkaseni beneficiary community. The Nkaseni beneficiaries had all lived in the area being claimed for the members of the AbaThembu Tribe (Interviews with DLA Officials, March 2009).

The DLA investigated the land claim and established that it met the criteria of the Restitution Act. In compliance with Section 11 (1) of the Restitution Act, the RLCC published the following Notices: Government Notice No. 2385 of 2001, Government Notice No. 902 of 2002, Government Notice No. 903 of 2002, and Government Notice No. 1907 of 2002. These various Notices were published to notify interested parties that a land claim had been instituted against the various farms that formed what is now referred as the Nkaseni Project.

The Nkaseni community had lodged the land claim because they were forcefully removed from their ancestral lands. They also argued that the reason for lodging the claim was that during the time of removals the community lost everything in their possession. Their houses were burned down. Those who opted to remain on the farms were forced to sell their stock at the very lowest prices. Those who refused to sell had their stock impounded and were not compensated. Many of them were forced to leave the farms and were loaded into the Government trucks leaving their stock, chickens and other valuable belongings behind (Interview with Trustees, 2 May 2009).

During the forced removals, many of the members of the Nkaseni community had relocated to the nearby Sahlumbe and Ntokozweni Location, while others were transported to Waihoek and Ezakheni Townships. The Nkaseni Community members stated that during the relocations some of the community members were provided with tents for a short period so that they were able to rebuild their houses on relocation sites. Reports are that the tents were confiscated even before the community could finish rebuilding their houses (Interview with Nkaseni Beneficiaries, 2 May 2009).

Conditions at the relocation sites are reported to have been unsuitable for human occupation. Facilities were rudimentary and there was no protected water supply. A further disadvantage was that people were not allowed to keep stock since they were regarded as temporary residents on these sites. This was captured in the SPP Report and it was also confirmed by the respondents during the research interviews (Interviews with Nkaseni beneficiaries, 2 May 2009).

The claimants' understanding of the land rights lost is that they had lost their ancestral ownership to the claimed land. They argued that they owned the land long before farmers arrived in the area. It was only when the land was taken away from them, without their consent, that they remained on the land as labour tenants since they had nowhere to go. According to the Nkaseni people, the White people came to the area to rob them of their rights. They were living freely on the land, ploughing and grazing their cattle and goats without restrictions until the White man came to occupy their lands (Interview with Nkaseni Beneficiaries, 2 May 2009).

5.3.1 Challenges prior to settlement

The objective of the land restitution programme is to have persons or communities dispossessed of property after 19 June 1913, as a result of past racially discriminatory laws and practices, restored to such property or at least receive just and equitable redress (Land Restitution Act 22 of 1994). It is critical that this programme or projects are undertaken in a manner that will result in the sustainable development of the communities involved. This calls for a holistic approach to planning, and local economic development (LED) planning is a critical component. Local Economic Development involves identifying and using local resources to create opportunities for economic growth and employment.

This essentially means that LED strategies encourage community leaders and its members to explore local resources and power in promoting the economic development rather than looking outside their communities for solutions. It is therefore an empowering approach to adopt in any land restitution project as a means of ensuring its sustainability. Local stakeholders, such as state departments, business, labour and civil organizations, obviously need to corroborate in order to enhance LED.

Recognizing the need for LED in the area, the DLA proposed a development package in which the claimants and the current landowners could work together as shareholders on some of the farms where there were some vibrant existing businesses. This they had envisaged would ensure that business continued to run undisturbed, while claimants could enjoy the benefits of being the new landowners. A history of poor relations between "Whites" and the claimant community in the area presented itself as one of the many challenges that could hinder the realizations of the policy objectives of land reform in this case. In the Nkaseni case the claimant committee

expressed reservations with regard to their relations with the White landowners. They argued that ever since the removals they had never had peace with the landowners, especially because part of the land that was in dispute was adjacent to the area of their present residence (Sahlumbe).

On the one hand, reports were extremely negative. One of the members of the Trustees (interviewed on May 2009) commented: *“I am not a friend to a White man and will never be because of the way they treated us on our forefathers’ land. They burnt all our belongings in broad daylight and never compensated us for that”*. On the other hand, however, it is reported that the landowners were prepared to negotiate with the beneficiaries on the land sale and how the land could be further developed in line with the current proposed land uses. In terms of adhering to the restitution process, the landowners were not opposed to the claims lodged against their farms (Interview with former White land owners, 22 March 2009).

When asked about the reasons for the slowness of the restitution process that led to the delay of the Nkaseni claim, one DLA Official (interviewed on 20 March 2009) mentioned a few.

Firstly, the interview held with the DLA officials in March 2009 indicated the following: that the claimants’ attitudes and perceptions of the landowners had contributed to the delay in the processing of the claim in the sense that it was difficult for the DLA officials to conduct negotiations with the two parties (the former landowners and the claimants), until an extensive facilitation process was carried out.

Secondly, the restitution process was launched without proper planning by the State especially with regard to the necessary infrastructure and the required resources necessary for processing of land claims. The KZN RLCC lacked the necessary resources and capacity to function efficiently. According to the DLA officials, the initial lack of resources and capacity seriously inhibited the functioning of the KwaZulu-Natal Land Claims Commission.

Thirdly, the impatience and frustration of claimants with the slow rate of progress led to some instances of land invasions during May 2000. Claimants did not understand that the injustices of the past could not be rectified overnight. The community that lived adjacent to the Nkaseni farms, in the Tugela Estate, started to cut fences erected by the landowners with the aim of fetching wood, grazing their cattle and accessing water from the stream running inside the farm.

This led to an antagonistic situation between the landowners and the claimant community, even though there was no clear indication that the perpetrators were actually the claimants or not. The impatience and unlawful actions by the Nkaseni community members actually delayed the restitution process because the Department of Land Affairs had to firstly facilitate peace between the two parties.

Fourthly, other factors that contributed to the delays were that the Nkaseni people have a high level of illiteracy. The lack of relevant skills and education amongst the members of the Nkaseni committee made it difficult for them to understand restitution processes and the community viewed business ideas as a White man's strategy to prevent them from using the land for grazing their cattle and goats. The time taken by the Department of Land Affairs to facilitate the understanding of the community had an impact on the time frame for settlement of the claim.

5.3.2 The Restitution options workshop

The DLA Officials conducted a number of options workshops with the community to establish the form of compensation that could be favoured by the Nkaseni community. Options available included financial compensation, alternative land (these options are mainly applicable where the claimed land is not restorable), and land restoration.

The Nkaseni community is reported to have chosen the land-restoration option because they felt it represented wealth for the generations to come rather than financial compensation that would get used within days from the date of payment. They also alluded to the fact that financial compensation could cause divisions and conflict among family members who did not agree on how such money was supposed to be used once received from government (Interview with Nkaseni Trustees, 5 May 2009).

A further interview held with the Nkaseni Trustees in 6 May 2009 revolved around the question of whether all the community members wanted a land restoration award as an option or not. Some members of the Trust who were interviewed mentioned that not all the members wanted land restoration as the final form of restitution; there were a few who wanted financial restitution, but the choice of land restoration was a majority choice and thus no other choice was considered.

5.3.3 The sale agreement

As prescribed in the Constitution of the Republic of South Africa of 1996, the Restitution Land Claims Commission is to determine the amount of compensation to be paid for the land claimed. Section 25(3) of the constitution provides that the amount set aside for compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interest of those affected, and having regard to all relevant circumstances, including:

the current use of the property;

the history of acquisition and use of the property;

the market value of the property; and

the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property (The Constitution of the Republic of South Africa, 1996:11-12).

In compliance with the South African Constitution, the DLA appointed a Professional Valuer to ascertain the value of the claimed properties. The DLA used the value of the properties, as determined by the Professional Valuer, to negotiate the purchase price of the farms. Several negotiation meetings were held between the Restitution Land Claim Commission and the landowners during 2002. Preliminary agreements were reached between the parties pending final approval by the Minister of Land Affairs as prescribed in Section 42D of the Restitution of Land Rights Act.

The Restitution Land Claim Commission sent a Section 42D memorandum to the Minister of Land Affairs for approval of the negotiations framework and value of the farms as per the negotiations outcome. The Minister approved the memorandum during 2004.

Following the approval, the DLA prepared and signed sale agreements with the affected landowners, marking the settlement of the Nkaseni land claim. The farms, as claimed by the Nkaseni Community, have all been purchased from the former “White-owners” and have been transferred and are registered in the name of the Nkaseni Community Trust.

5.3.4 The establishment of the Communal Trust

Before a community can be awarded a land restoration award, they are required to constitute themselves into some form of a legal entity on which the land ownership can be registered. The legal entity can be in a form that the community chooses, and the only proviso is that it should have the characteristics of the elements as given by the Communal Property Act (Act 28 of 1996).

The Common Property Institutions (CPIs) were created in South Africa soon after 1994 to enable self-constituted groups of people a choice about how they wished to acquire, hold and manage communal land. They were to provide rural people with an alternative to individual, tribal administration and other legal group ownership options. Both the Community Trust and Communal Property Associations are created through the CPA Act (Act 28 of 1996) and focus on the local constitution, making it the instrument for the formation of the group and for realizing individual and collective self-determination (Cousins and Hornby, 2001: 9).

The interview with DLA officials in March 2009 indicated that the Department of Land Affairs conducted several workshops with the Nkaseni claimant community in order to establish a Legal Entity that would hold and manage the land on behalf of the claimant community. The Nkaseni community chose to constitute themselves into a Community Trust as their choice of a Legal Entity because it was flexible and did not force the claimants to depend on the Department of Land Affairs for amendments and dispute resolution; they could also consult the Master of the Supreme Court directly, when necessary.

With the Communal Property Associations (CPA), however, the community has, for instance, to refer all matters of dispute to the DLA's Director General. Another outcome of the workshops was the election of fifteen members who serve as Trustees or as a management committee. The Trust was registered as Nkaseni Community Trust. The Trust is responsible for the general management of all the restored farms and the establishment of any business enterprise for development on behalf of the beneficiary community.

5.3.5 The land-use planning process

With regard to the land-use planning process, the interview held with the DLA officials in March 2009 indicated that the Department of Land Affairs's policy is that claimants who choose land restoration as a full and final restitution option must be assisted in developing a comprehensive land-use plan and business plan that will be used as an instrument for the development of the restored land.

The overall approach of the state should be consultative; that is, it includes all the views and needs of the community, and should be developmental in nature. Parallel to the land-use planning process, the DLA has to conduct the name verification process. Here the DLA conducts workshops with the community with the aim of ascertaining the actual name and number of beneficiaries of a specific land claim.

The DLA officials reported that in the Nkaseni claim the elders of the community were consulted and relevant documentation that related to the number of families who lived in the farms at the time of removals was consulted. Approximately 1000 families were verified and accepted by the DLA as beneficiaries of the Nkaseni Project. Based on the number of beneficiaries, the state made available a Settlement Planning Grant amounting to approximately R1,5 million to assist with the detailed planning of the land restored (Interviews held with Department of Land Affairs officials, 21 March 2009).

A Professional Service Provider was appointed by the DLA to assist with the detailed planning of the land. During 2003 ESP Consulting (Pty) Ltd consultants were appointed as the service provider to do the land-use planning for this project. The scope of work for the service provider included, amongst other things, that they consult with the claimant committee and the community regarding the community's vision for developing the restored land. They were also to consult with the former landowners and all relevant government departments and other agencies. In addition, they were instructed to investigate land uses and development options. Their report was finally presented to the DLA office during February 2004.

A copy of the ESP Consulting Report (2004) was made available to the researcher during the field study. The researcher made the following analysis from the report:

- There was extensive consultation with the Nkaseni community;
- There was extensive participation from the community working together with the Service Provider;
- There was an exchange of information between the parties;
- The service provider consulted with other government organizations including KZN NCS, the Department of Agriculture, the Department of Housing and the Umtshezi Local Municipality;
- In the report, ESP Consulting explained the method adopted (a participatory and consultative approach) in order to foster buy-in from the community;
- During these consultations, information regarding the community perceptions and constraints was defined;
- The consultation meetings also provided a forum where the Nkaseni community expressed their individual and collective vision for the development of the area;
- The DLA, through the service provider, communicated with the community with a view to forming a strategic partnership with former landowners of the Citrus Business (Sun Valley Estate);
- At the community meetings, both the committee and the community were briefed regarding progress of their land claim, and open discussions about pertinent concerns were undertaken;
- During the interviews with the DLA officials, they mentioned that information relating to the socio-economic situation of the Nkaseni community was gathered at one of these meetings; and

- Interviews were conducted with the individual former White landowners to assess current land use and future development, as well as to collect information regarding returns to the different enterprises being implemented on the restored land.
- During the interviews with DLA officials in March 2009, they further stated that the consultation process outlined above was meant to get the Nkaseni community involved in the planning and implementation of a sustainable settlement plan that would accommodate their needs.

The ESP Consulting Report (2004) revealed a number of options that integrated the needs of the Nkaseni community with business principles as part of the sustainable land-use plan. The proposed land-use plan highlighted the following positive initiatives and developments:

5.3.5.1 Human settlement and grazing lands

During the various engagements between the Department of Land Affairs, ESP Consulting (Pty) Ltd and the Nkaseni community, it became apparent that the community was looking for land to address their day-to-day needs regarding housing settlement and land for grazing of their stock.

According to the ESP report, there would be residential areas allocated to each individual house-hold. There would be specific areas as per the six wards within the restored area, which would be re-zoned for housing development, to be facilitated by the Department of Housing and the uMtshezi Local Municipality. There would also be a number of hectares of re-zoned land that would be set aside for communal grazing.

5.3.5.2 Commercial Farming

The community indicated the intention and commitment to continue with the current business ventures that existed on some of the restored farms. The existing businesses were recorded as game farming, citrus and farming of vegetable and cash crops. Approximately 450 ha of the restored land was under commercial citrus farming. The current land use included prime arable land that was under intensive irrigation (centre-pivots). The main enterprise included growing

potatoes, butternut, squash and maize. There was a fully-integrated potato washing, drying, grading, sorting and packing unit housed in an extensive pack house on one of the farms. The land-use plan also indicated that there was going to be a need to further develop a detailed individual enterprise business plan and to investigate related marketing strategies.

5.3.5.3 Involvement of the Private Sector

The DLA held several negotiations with the Directors of Sun Valley Estate, with regard to the citrus business and a partnership contract between the Nkaseni Community and this company was entered into on August 2005. This agreement meant that the Nkaseni Trust would buy shares from the existing citrus company owned by Sun Valley (Proprietary) Ltd. It also meant that the operating company (Sun Valley) would lease the land under citrus plantation and certain portions of the land for business purposes, including housing and buildings for the use of the citrus business.

The DLA Officials also reported that in November 2005, a lease agreement was concluded with one former landowner for the use of 60 hectares of land used for growing potatoes and for the use of the potato pack house.

The following section presents the findings of information gathered through the use of interview questionnaires.

5.3.6 Findings emanating from the interviews held with respondents

(a) The Trustees of the Nkaseni project were asked about the proposed land-use plan options outlined on the land-use plan, and whether it catered for their needs or not. The respondents stated that the Department of Land Affairs had taken a step further than just bringing back the land: it had also given them an opportunity to become small-scale farmers and there was potential to participate in commercial business. They stated that they were happy about the options but would like to get back to the land first so that they could be assured of their dream of getting their land back; thereafter other plans could be implemented.

(b) In an interview conducted with the Chairperson of the Nkaseni Community Trust, he was asked whether the DLA had consulted with them before the business partnership was formalized with the former White landowners. The Chairperson of the Trust confirmed that there was extensive consultation and facilitation by the DLA so that the community could understand the importance of the strategic partnership in the citrus business. The community saw this as an opportunity for the community to participate in business and further develop their land. They therefore agreed to the challenge of a partnership even though they had little knowledge of the citrus business.

(c) When the Trustee members were asked about the challenges they had experienced as a result of going into business-partnership arrangements with the former White land-owners, they reported that they encountered many problems with the members of the Trust (beneficiaries).

The respondents presented some of the challenges they had to deal with as Trustee Members. These challenges were reported as follows by the Trustee Members:

- The claimant Trustees continuously questioned the activities conducted by members of the Sun Valley Company on the citrus farm. They felt that there were many restrictions imposed on them that limited the community from fully accessing the land and resources of the farm.
- The community demanded additional land for their subsistence crop production, and preferably on land that had been reserved for the expansion of the citrus business.
- The claimants questioned the slow pace in allocating them sites for the building of their homesteads: focus seemed to be placed on the citrus business and as a result some of the claimants had more than once invaded the land set aside for the citrus business. They said it was now partly theirs and some had constructed shack structures not far from the citrus plantation. This situation posed a threat to the operation of the citrus business.
- Another issue they cited as a problem was the slow pace in which the Umtshezi Local Municipality and Department of Housing responded to their core needs for housing, water and electricity infrastructure. They expressed their disappointment at the lack of such support, and

noted that all the focus seemed to be channelled towards the commercial business ventures only (Interview with Nkaseni Trustees, May 2009).

(d) During interviews with two of the former White landowners, when asked about their involvement in the business partnership with the Nkaseni Trust and what were the main challenges they had experienced since being involved in the partnership, both land owners mentioned similar problems as mentioned by the Trustees above. The landowners also reported that these issues had not yet been fully addressed and continued to present a huge threat to the continued relationship and business partnership between themselves and the Nkaseni Community (Interviews held with two former White land-owners, 20 March 2009).

(e) When the beneficiaries were asked what they saw as the cause of the many problems they had with their future business partners, they mentioned that the lack of understanding of the contractual agreements of the business partnership was the main cause of many of the misunderstandings and problems. They saw this as a critical point, and felt that this agreement should be understood by the broader community. They reported that some members of the community did not understand why the current landowners were still using the facilities on the farm.

They argued that the Department of Land Affairs had not communicated details of the agreements fully to them or explained how this was to affect their lives during the implementation of the project. The interview conducted with the Nkaseni Trustee members indicated that the Restitution Land Claim Commission could have spent more time explaining the content of the agreements and any legal consequences that may arise if either party was in breach of such an agreement (Interviews held with the Nkaseni Beneficiaries, 5 May 2009).

(f) When the DLA officials were asked if they had consulted other stakeholders, including government departments, for support of the project, they mentioned that they had communicated with a number of stakeholders, including the Department of Housing in the Region, the Department of Agriculture, the KwaZulu-Natal Nature Conservation Services, the local municipality and a few private companies, with a view to getting them to cooperate.

They highlighted that the uMtshezi Local Municipality had committed themselves to Participating and assisting in the development of the farms for the success of the projects.

For instance, the project had been included in the 2007/8 Integrated Development Programme (IDP) and the Municipality had committed itself to lobbying for funds that would assist in the development of the area. It is to be noted, however, that the local municipality has not yet delivered in terms of those promises.

(g) During the interviews conducted with the DLA officials, they reported that the Department of Housing had not made any financial commitment as yet, but the project had been earmarked for funding in future. Senior officials from the Housing Department had confirmed their willingness to participate and prioritise the project, according to a DLA official (Interviews held with Department of Land Affairs officials, 20 March 2009).

The DLA officials reported that KwaZulu-Natal Nature Conservation Services (KZN NCS) had promised to offer all the necessary support for the project with regard to conservation projects as this proposal was fully supported by the community. Furthermore, KZN NCS had undertaken to offer the necessary training on farm and game management, game guards and general conservation knowledge. This initiative was in line with the KwaZulu-Natal Nature Conservation Services policy to support emerging community-driven projects, especially with regards to conservation (Interviews held with Department of Land Affairs officials, 20 March 2009).

The DLA official also mentioned that the Department of Agriculture was also consulted and actively participated in the development of the land-use plan for the Nkaseni Project but it had not yet made any financial contribution to the project. The official from the Department of Land Affairs said the role and support of the relevant stakeholders for the successful implementation of the Nkaseni Project was important. He stressed that without the help of other departments, the implementation of land reform projects would not be sustainable. It is indicative from the interviews that all the stakeholders have an integral and fundamental responsibility in the execution of the land reform projects (Interviews held with Department of Land Affairs officials, 20 March 2009).

(h) The Nkaseni beneficiaries were asked how they viewed the Department of Land Affairs' support after the land had been transferred to them. Unanimously, Nkaseni beneficiaries and members of the Management Committee who were interviewed, reported to have received

huge support from DLA through its RLCC office, during the phase of the claim process. Support received included some assistance with drafting of Trust Constitutions, reviewing and facilitating the adoption of the Trust's Constitution, Community Workshops and Land-Use Workshops. Lastly, the Department of Land Affairs helped with the establishment and registration of the Communal Trust.

Trustees and beneficiaries also indicated during the interviews that they had also received on-the-job training on citrus farming which was provided for twenty members of the community. Some start-up funds were provided by the DLA to be used in the development of some of the business plans for the different enterprises and a part of it was used to finance some of the current citrus farming. The post transfer⁷ role of the DLA, however, was reported to be very poor. The respondents felt that since they were issued with the ownership of the land, the DLA was not doing enough to support them. The respondents felt that the Nkaseni Project had failed to fulfill many of their goals due to lack of support from the DLA, post transfer of the land (Interviews held with the Nkaseni Beneficiaries, 3 May 2009).

(i) There seemed to be a lack of support from the local municipality. When the official from the local municipality was asked why the municipality was not providing the requested support to the Nkaseni Communal Project, the response was that the DLA was not fostering a culture of good communication for stakeholders to get involved in, when giving support to Land Reform Projects. There was a general feeling that the Department of Land Affairs did not involve other stakeholders early enough in the land reform process in order for them to plan and budget for their role in supporting Communal Projects.

Another reason cited during the interviews was that the Municipality was usually not involved in the Communal Property Institution's registration process and thus they did not know when these Communal Property Institutions were formed and, consequently, could not plan for the support they were required to provide. Lack of funds was also mentioned by the uMtshezi official as one of the reasons the uMtshezi Local Municipality could not support the Nkaseni Project (cited during interviews with an official from the Umtshezi Local Municipality, 6 May 2009).

⁷ Post-transfer phase refers to the period once land has been transferred to the ownership of the CPIs.

(j) When questioning an official from the Department of Agriculture, Environmental Affairs and Rural Development (DAEARD) about why the Department of Agriculture, Environmental Affairs and Rural Development failed to give the required support to the Nkaseni Project, the DAEARD official concurred with the official from the local municipality; they felt that the DLA was slow in communicating during the planning phase of the various projects. This made it difficult for the DLA to efficiently process land reform projects which ultimately had to be handed over to the Department of Agriculture, Environmental Affairs and Rural Development (Interviews held with official from the KZN DAEARD, April 2009). It appeared that there was a lack of resources within the DAEARD and they were not always able to give support to land reform projects.

(k) When the officials from the Department of Land Affairs were asked what their view was with regard to the provision of support to the Nkaseni Community Trust, post transfer of the land, DLA officials stated that the main focus of the DLA was awarding of land and that was where most of the resources (manpower and time) were concentrated.

The general feeling was that the DLA staff was involved and responsible for too many projects and hence could not focus on the details of a particular project. Some DLA officials had difficulty in ensuring the participation of other key state departments such as the Department of Agriculture, Environmental Affairs and Rural Development, which made the following assertion: *“We invite them to meetings but they either do not come or send junior officials who do not have the mandates to take decisions, even though we have explicitly stated the level of officials that are required at such meetings in the invite”* (cited during interviews held with Department of Land Affairs officials, 20 March 2009).

(l) When the members of the Nkaseni Community Trust (Trustees) were asked whether they had received any financial support after the land had been transferred to them, they reported that they had received some developmental grants from the Department of Land Affairs, but the grants were too small to undertake any significant developments. They further reported that they had not received any financial support post land transfer, despite promises made by both the KZN DAEARD and the Local Municipality. The respondents also raised two issues, namely, a lack of access to markets and a lack of access to credit (Interviews held with the Nkaseni

Management Committee, 01 May 2009). In these areas the DAEARD could help play a role. Without financial support and markets farming was not sustainable.

(m) When the members of the Nkaseni Management Committee were asked if they had received any support from other stakeholders, the response was that they had received minimal support from various other stakeholders (Interview held with Nkaseni Management Committee, 01 May 2009).

(n) In establishing the capacity and training skills requirements of the Nkaseni Community, the Trustees were asked if they had a training plan available that would benefit their members. The Trustees mentioned that the project did not have such a plan. They further stated that currently only twenty Nkaseni beneficiaries had received training related to the citrus business, with support received from the former land-owners. Emanating from this research, the most prevalent and urgent post-settlement support requirements of the Nkaseni community related to skills development, training and technical assistance.

The Trustees interviewed reported that their lack of skills coupled with the lack of training, was a reason for the failure to attain some of the developmental goals and their inability to do things for themselves. Table 5, on page 128, is a summary of support received from a few stakeholders as reported by the respondents.

Table 5: Stakeholders' support to the Nkaseni Trust

| Stakeholder/Private sector providing assistance | Type of assistance received |
|--|---|
| Sun Valley Citrus Company (Private Company) | Provided on-the-job training (Citrus Farming) for some of the Trust members and commercial business support; the company entered into business partnership with the Nkaseni Community Trust for the growing and marketing of the citrus fruits. |
| KZN NCS | Provided Visioning and Planning support for game farming. |
| DAEARD | Conducted feasibility studies of vegetable and cattle farming. |
| Councillor for the area | Helped with dispute resolution among trustee members and the larger community. |
| McNally CC (Private company owned by one of the former landowners) | Provided mentorship and on-the-job training for six beneficiary members on commercial vegetable farming for three of the Nkaseni beneficiaries. |
| Umtshezi Local Municipality | Supply of domestic water with water tanker. |
| Provincial Land Reform Office | Provided capacity-building on running of CPI committee, livestock farming and agricultural management. |
| Chief of the Area | Helped with dispute resolution among trustee members and the larger community and mediated when disputes arose among the beneficiaries of the Nkaseni Project. |

(o) When Nkaseni Trustees were asked if they had any individual beneficial plans available, all the respondents stated that the project did not have any such plans. They stated that none of them knew what each family would get from the returns or profit made from the existing businesses (Interviews held with the Nkaseni Beneficiaries, 5 May 2009).

(p) When the Ward Councillor was asked what he perceived as the main challenges facing the Nkaseni project, the Councillor raised concerns about the lack of clarity among the Nkaseni community as to who was supposed to benefit from the project. Some of the Nkaseni beneficiaries reported that they had been precluded from benefits accrued so far. The local Councillor also raised concerns about the beneficiaries not knowing where they should be reporting their concerns about the project: a number of them went to report such matters to the Chief, while others reported their concerns to him (Interviews held with the Ward Councillor of the area, 10 May 2009).

The Ward Councillor mentioned that both the Chief of the area and he himself had the responsibility to maintain peace in the area under their jurisdiction, but had no control over issues pertaining to the day-to-day running of the Nkaseni Communal Project. He said this caused a dilemma because as leaders they could not chase people away when they came to them, but at the same time there was not much they could do for these people except to raise the issue with the leaders of the Nkaseni Trust and the DLA officials involved (Interviews held with the Ward Councillor of the area, 10 May 2009).

The Ward Councillor also mentioned that he had been consulted by the DLA about the Nkaseni Project and he had a good understanding of the land reform programme. This was not the only project he was involved with in his area. He also mentioned that he understood his role as having to facilitate communication between the various stakeholders involved in the project and to support the various developmental goals of the project (Interviews held with the ward Councillor of the area, 10 May 2009).

(q) The interview with the Chief of the Nkaseni Area concerned his role and the challenges faced by the community. When the Chief was asked what the issues were, he said the main challenge facing the Nkaseni Project were similar concerns to those mentioned by the Ward Councillor. He stated that members of the Nkaseni Project came to report matters pertaining to the project, and these could only be dealt with by the Management Committee of the project. The Chief understood his role with regard to the project and saw himself as an overall overseer for peace among people of his community. His key responsibility and performance function included the role of a mediator when the community had problems, and this also pertained to the Nkaseni Project (Interviews held with the local Chief of the area, 11 May 2009).

What can be deduced from this statement is that there was a lack of understanding of the project's institutional arrangements (*vis-à-vis* the former traditional local structures) by some beneficiary members of the Nkaseni Project. More education and training programmes for the beneficiaries with regard to the management issues of the project, were needed. Furthermore, with regard to raising issues and concerns, an observation was made that there was a need for a proper process to be established.

(r) When the beneficiaries were asked if there was consensus or whether they shared similar interests regarding what their land should be used for, the respondents reported that because of the many years of living apart (as a result of the forced removal) their ideas about what should happen to the land differed. Groups in the Trust had developed different interests, while within the groups there were also individual interests (Interviews held with the Nkaseni Beneficiaries, 6 May 2009).

(s) The researcher questioned the respondents on the allocation of individual and communal rights and the process that was followed. All respondents reported that there were no individual rights allocated in this project; however, they reported that they had communal rights. The communal rights they had included grazing, collection of fire wood, harvesting of soil, and the hunting of game in restored land (Interviews held with the Nkaseni Beneficiaries, 6 May 2009).

(t) On the question of fairness, the respondents cited one example of 20 people who had already benefited from the training offered by former landowners; they said these were people selected by the Management Committee because they happened to be friends or relatives of some of the Management Committee members. They reported that there was no method in place that had been agreed upon as to how they would go about allocating benefits or rights to individuals, thus there seemed to be inconsistencies and unfair practices with regard to the allocating of benefits or rights to individuals. They also mentioned that they felt that the Management Committee (Trustees) made decisions unilaterally, without consulting the whole membership first. In terms of how these communal rights were allocated to the members, they mentioned that there was a beneficiary list for all households or families involved in this project. Each household was represented by the head of the family. In most cases, the name registered for each household was that of the husband or any male person in the family (Interviews held with the Nkaseni Beneficiaries, 6 May 2009).

(u) The DLA officials were asked whether they had conducted any monitoring and evaluation processes for this project and whether they had a monitoring and evaluation plan in place. They responded that they did not have a monitoring and evaluation plan. They had never conducted any monitoring and evaluation of this project. They also stated that whenever the DLA conducted monitoring and evaluation exercises for a project, they were done through a private service provider (Interviews held with Department of Land Affairs officials, 20 March 2009).

5.3.7 Analysis of the study's findings

The following analysis highlights some useful factors that impacted on the functioning of the Nkaseni Communal Project:

5.3.7.1 Non-allocation of resources within the Trust

The question of “Who gets what?” is a key ingredient for a successful and functional Trust and this is accomplished by attaining critical levels of clarity, consistency, predictability, and fairness in the process by which the Trust resources are allocated. The allocation of resources, be it and or implements, and derived benefits such as profits or services by members of the community, are central to land reform and often to individual well-being. Since the purpose of land reform is to provide tangible benefits to the beneficiaries, fair resource allocation and the distribution of benefits is central to the Land Reform programme and its success.

The next question sought to elicit whether or not the Communal Trust had gone through the process of resource allocation. Is the process working in practice and if not, why is it not working? An analysis of the Nkaseni Community Trust's Constitution indicates that the concept and issue of the allocation of resources was grossly ignored when the Trust's Constitution was drafted.

The beneficiaries also confirmed that there was no individual resource allocation for this project, and there was also no plan in place relating to allocation in the future. Some had already received benefits, but respondents felt this was done unfairly and not transparently.

It was also noted that a combination of dynamic factors that shaped the Trust's functionality would determine the prosperity of individuals and groups who would ultimately benefit from the Trust. In this case, it would seem that the most influential people within the Trust received the most benefits compared to the ordinary members of the Trust. This is what was mentioned during the interviews held with Nkaseni beneficiaries.

5.3.7.2 Absence of rights allocation

There is a need for the allocation of substantive rights to members of the Nkaseni Community Trust. For land reform to work it is not just land that must be redistributed: individual beneficiaries need to have defined and secured rights that give them access to the communal resources. The findings of this study confirm that the Nkaseni Community Trust's Constitution gave little guidance on how rights determination and allocation should occur, and the outcome of this at grassroots level is that rights allocation is not occurring, and when it does, it takes place through un-procedural and unfair mechanisms.

There is no register for any rights available within the Nkaseni Community Trust. The current situation leads to uncertainty, insecurity of tenure, problems of equity and self-help as the more powerful have been able to dominate land use to the exclusion of the marginalized members of the community. The outcome of this is a limited impact of land reform on beneficiaries' livelihoods. Where membership is vested in households, substantive rights are allocated to the head of the household, providing other household members, including women and junior men, with no independent land rights.

5.3.7.3 Unmet expectations within the Trust

In most instances, potential beneficiaries of land reform think and hope that their livelihoods will be radically changed for the better once they are awarded land ownership. The beneficiaries' expectations range from attainment of employment resulting in an income, a constant inflow of institutional funds through dividends, the ability to do both subsistence farming and commercial farming, and so on. In contrast, the beneficiaries are confronted by the absence of the required skills, lack of funds and other enabling resources.

When the Nkaseni members were asked whether their expectations had been met with regard to resource benefits, they reported that among other things, they had anticipated new housing developments on the land, which had not yet happened. They reported that this led to some of their members invading part of the land that was reserved for the citrus business, where they constructed their own wattle and daub houses. This example suggests that the expected benefits were often exaggerated. Communities are either highly ambitious or they do not consider possible institutional limitations, and for this reason the expected benefits do not materialize. This may result in tension, infighting and a host of associated challenges.

Research findings here also concur with the observation made by Bradstock (2005) in his study of land reform. In his analysis of land reform projects, the author found that farms were transferred without the essential infrastructure being established to enable proper land usage. Bradstock (2005) also established that, in some instances, the little available infrastructure was vandalized by the very same beneficiaries who wanted to use the communal resources for their own immediate individual needs.

5.3.7.4 Lack of strategies to deal with multiple interests

It was the finding of this study that the Nkaseni leadership structure was not sufficiently well equipped to deal with multiple interests and diverse actors within their membership. During interviews the DLA officials indicated that the beneficiaries of the Nkaseni community comprised of people of diverse educational backgrounds, careers and interests. Former teachers, former nurses, informal traders, former miners, those interested in crop cultivation, those wishing to graze their livestock and others made up the group. Failure to address classes within communities has adverse effects on resource management outcomes.

The challenge here was the conflicting expectations and aspirations which could lead to a breakdown of the Communal Management structure. Multiple interests in communal projects have led to inequitable access to resources and have a high potential for conflict. They also determine who usually influences who, and how diverse groups are likely to participate in a project. The failure to address different interests has the potential for causing difficulties in land administration as well as in the allocation of land rights.

5.3.7.5 The consolidation of land claims

DLA officials rendered some facets of the Nkaseni land claim very complicated. It was established that the Nkaseni claim was lodged separately by four different people representing four different wards (Izigodi). Although the four wards all fall under the traditional leadership of the AbaThembu Tribe, who have one Chief, it would seem that consolidating the four different claims into one big claim (the Nkaseni claim), was one of the mistakes that was committed by the DLA office. Most land reform experts advocate that the smaller the land claim, the higher the chances of it being a success. They also predict that the bigger the claim or group, the lower the chances of that particular project succeeding. The case studies from less-developed countries illustrated in Chapter 3, present some evidence of experiences and lessons from which South Africa can learn, with regard to small-group reform versus big-group farming.

From the case studies presented, which involve China, Kenya, Tanzania and Brazil, the most successful ones recorded from these countries were ones where the beneficiary farmers worked as individuals on small farms, or where a smaller group of beneficiaries was involved. With small farms or individual farms, there was more commitment from beneficiaries and fewer problems experienced in the smaller groups compared to the bigger groups.

Again, with the case studies from the less-developed countries, it was noted that the challenge of different interests in communal projects contributed to the failure of many land reform projects. All four countries were faced with this problem and they initially lacked systems to deal with it. Also noted was that this problem was more significant in bigger communal groups than it was in smaller groups.

5.3.7.6 Lack of appropriate land administration capacity

The land reform programmes in China, Brazil and some of the African countries enabled tenants to become the owners of the land they had cultivated in the past. The reforms in Brazil were partly successful mainly because of the continued use of the already established physical infrastructure, which included good road networks, irrigation facilities, institutional infrastructure, existing input supply, credit and the marketing infrastructure. The availability of trained human resource served as an additional advantage to the success of these reforms.

Likewise, it was noted that the Nkaseni claim involved a number of highly commercialized farms that were restored to the community.

A number of efforts were undertaken by the Department of Land Affairs to put systems in place in order to make sure that the farms continued to remain in production even after they had been registered in the name of the Community Trust. A land-use plan catering for the different business enterprises was developed and a number of critical stakeholders that were supposed to play a role in supporting the project were consulted. It is unfortunate that all the efforts to bring in the required stakeholders has not yielded any significant rewards as yet because the commitments and promises that were made during the planning stage have not been honoured.

To make sure land restitution succeeds and restituted land is used productively, land restitution needs to be enhanced with other state-funded programmes; the involvement of the private sector should also be promoted. Vital is the access to working capital and a conducive policy environment. The communities benefiting from land restitution need to be able to gain access to output markets as well as being able to get access to credit facilities (Dininger, 2003: xi).

5.3.7.7 Lack of gender equality within the Trust

One of the broad objectives of land reform includes the establishment of secure tenure for the millions of South Africans living under insecure tenure such as farm workers, labour tenants and squatters. The distribution and access to land is aimed at equally benefiting all the rural disadvantaged people, including women in particular (cited in Department of Land Affairs, 1998: 2).

During the interviews, it was the finding of this study that membership was vested in what is called a household or a family. When the rights were registered to a household, it was noted that the name of the representative from the household was that of the male figure, husband, son or brother in the family. It was only when the household was headed by a female that one found the name registered was that of a woman. This situation leaves women with hardly any rights and very vulnerable, not only during divorce or separation, but even during marriage. Traditionally, young women, when they get married, leave their parental home to go and live at the husband's parental home. She is likely to lose her rights to land, especially if she does not have individual

title deeds for the land. The case study of China as presented in Chapter 3, offers some lessons with regard to how to handle the issue of equality and the rights of women to land. In China, land was distributed to families on a per capita basis, and the individual's rights within the family were not clearly defined, due at least, partially, to cultural norms, which do not emphasize individual ownership rights.

In China, distribution of land to the household often means that the male head of a household has greater actual right to the land than his wife, or daughter, even though the law does not discriminate against women. Even the land contracts that were issued in China were issued in the name of the head of the household. This situation in essence means that women generally have no rights to land through their status either as daughters or as wives, and even where a woman is not married, if she has a son or brother, the land is registered in the name of the son or brother. This is exactly what was noted at the Nkaseni Project. Land rights were registered in the name of the husband or a male figure in the household.

The way the Communal Trust defines members' rights and how these rights are protected legally and in practice, is important. Commitment to gender equity by the Land Reform policy constitution grew out of the recognition that rural women have been systematically marginalized from access to and control over land, as a result of past land and labour policies based on race, and customary law combined with patriarchal structures of authority. Customary law gives women secondary rights and land reform structures are intended to improve women's rights of access to land. Unfortunately, this study found a disjuncture between what is said in formal policy documents and the implementation of gender policies.

5.3.7.8 Lack of women representation in decision-making structures

During interviews held with the Chair-person of the Nkaseni Management Committee in May 2009, it was established that women representation in the Nkaseni Leadership structure was at 20%. One would have expected that with women being the majority of rural dwellers, they would be in charge of the Trust, but that was not the case, as most of the influential positions within the Trust were occupied by men. Of the 15 trustees, it was found that in total there were only three women within the 15-member Management Committee. One woman served as a

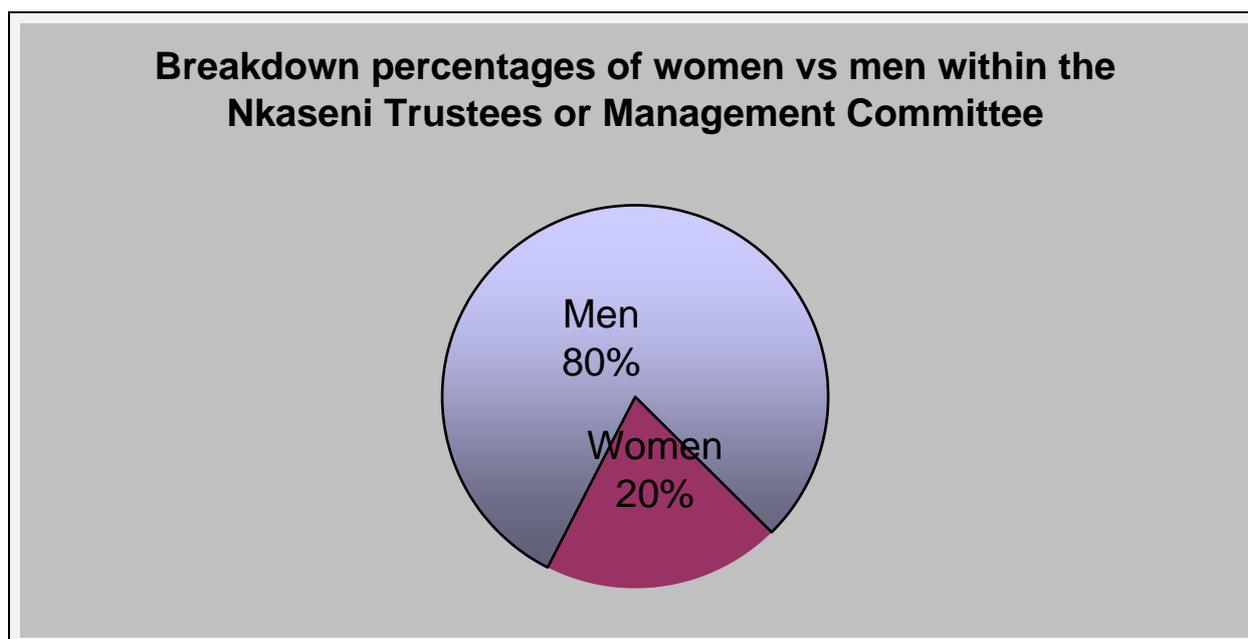
secretary and the other two were just additional members within the Committee. Table 6, below, reflects the representation of women in leadership positions within the Nkaseni Management Committee.

Table 6: Information regarding the roles women play within the Nkaseni Management Committee

| Information regarding women representation within the Nkaseni Management Committees | |
|--|---------|
| Name of Trust | Nkaseni |
| Number of members in the Trust | 15 |
| Number of women in the Trust | 3 |
| Percentage women | 20% |
| Is Chairman a woman? | No |
| Is Deputy Chair a woman? | No |
| Is Treasurer a woman? | No |
| Is Secretary a woman? | Yes |
| Women with assigned role (secretary) | 1 |

As mentioned earlier, Table 6, above is a breakdown summary of the number of woman representation within the Nkaseni Management Committee. From the table it can be noted that the Nkaseni Management Committee is made of 15 members and of those fifteen members, only three members are females. Of the three, only one woman was assigned to a position in the Management Committee, and is that of being the Trust’s Secretary and the remaining two females were just ordinary members of the Committee. On the flipside, it can be deduced that many of the influential roles within the Management Committee are assigned to males.

Figure 4: Female vs Male representation within the Nkaseni Management Committee



Just like the Table in page 137, Figure 4, above present a comparison percentage breakdown of women members of the Management Committee versus male members. The sky-blue shaded area represents the percentage of Men, while the purple shaded area represents women members within the Nkaseni Management Committee.

The findings did not ascertain the causal links for the low gender promotion in the Nkaseni Trust, but theoretical review on the subject revealed that there were serious tensions between the government's intent about gender equality on the one hand, and its unwillingness to alienate the neo-traditionalist structures of rural areas on the other. These are the major obstacles to the promotion of gender equity in communal rural projects generally. According to Walker (2005:128-129), part of the challenge lies in the way in which responsibility for gender policy has been administered within the Department of Land Affairs. Walker (2005) argues that the DLA has failed to implement the gender policy as outlined in the DLA White Paper. The author argues that without strong and sustained empowerment action enforced by performance measures, the policy's intent of greater gender equality through land reform is likely to remain stronger at policy level with no implementation.

The issue of gender equity in the Communal Property Institution is a complex one, as one of the challenges is how one affirms and promotes the rights of individual women and establishes power relations when the rights of ownership are vested in an entity called the household or family. In reality, vesting substantive rights⁸ and procedural rights⁹ in a family is likely to undermine women's rights and could retard the possibility of promoting gender equity. Also noted, is one of the difficulties with collapsing the issue of family interest into the rights vested in a family: the family must then be constituted as a legal entity with perpetual succession. Such a construct could cause endless problems when it comes to the rights such as succession (through sale, bequest or donation). It could also cause endless problems when it comes to the need to take legal action against a rights holder for not fulfilling obligations like paying rates and taxes, service charges, maintenance etc. The difficulty is how obligations to maintain or pay rates, are enforced within a household or family.

5.3.7.9 Lack of effective strategies for skills transfer

The case studies from the four less-developed countries placed emphasis on the importance of having capacity transferred to the beneficiaries of the project as one of the key ingredients to determine the failure or success of land reform projects. What was observed in these countries was the absence of knowledgeable land reform officials: this caused delays and contributed to the failure of a number of projects.

It was evident from the research that where communities had relied too much on government support without the transfer of skills to beneficiaries, and when the government did not support the projects, the projects collapsed. South Africa can learn from these countries and should implement the strategies that help speed up the transfer of skills to the beneficiaries of projects. Monitoring and evaluation can be one method of transferring vital skills to the land reform beneficiaries. Clear policy is needed on post-transfer support for restitution projects with regard to the transfer of skills.

⁸ Substantive right is the description of the content and nature of the right, such as the types of approved access and use of different types of land, etc.

⁹ Procedural rights describes how the rights holder may participate in the processes of upholding rights, e.g. the right to speak at meetings, vote, get elected, obtain recourse, etc.

One of the major challenges for the Nkaseni Project is the lack of adequate infrastructure, which is coupled with the absence of appropriate extension support and training to respond to the needs of beneficiaries. In the case of the Nkaseni Project, there were a number of partnerships that the Department of Land Affairs facilitated to keep the farms under production and to help facilitate the transfer of skills. One was the business partnerships formed between the Sun Valley Company and the Nkaseni Community Trust. Approximately twenty community members benefited through training from the business partnership, but this was not adequate if one considers that the project involved more than one thousand beneficiaries.

Also identified, is evidence of pressure on the Department of Land Affairs to transfer land to African Black Communities: this means they did not have enough time to work with the beneficiaries. This was the case with the Nkaseni community. This community was not empowered to a level where they could do things for themselves. They depended on the Department of Land Affairs officials to do things for them. Ever since the DLA officials pulled out of the project post land transfer, the project has not achieved any significant progress.

5.3.7.10 Lack of monitoring and evaluation of projects

It was noted that the Department of Land Affairs provided support in the establishment phase of the Nkaseni Community Trust, but provided minimal or no support to the Trust in the post-transfer phase.¹⁰ Also noted is that there has been no monitoring and evaluation conducted on the Nkaseni Trust since it was formed. It seems that the Department of Land Affairs focuses on awarding land rather than securing land tenure, which is an incremental process.

Also noted is that the Community Trust leaves very little room for the Department of Land Affairs to intervene should the Trust experience problems. This in turn reduces accountability of the Trustees to the Department of Land Affairs as well as to the rest of the members of the Nkaseni Community (beneficiaries). The research established that there was insufficient staff

¹⁰ Post-transfer phase refers to the period once land has been transferred to the ownership of the CPIs.

capacity within the Department of Land Affairs to put in place the required facilitation during and after the establishment of Communal Property Institutions.

5.3.7.11 Land Reform projects lack financial support

It was noted from the research interviews that the Nkaseni Community lacked financial support since the land was transferred to the Community Trust. This was experienced despite promises and undertakings that had been made by different stakeholders such as the KwaZulu-Natal Department of Agriculture, uMtshezi Municipality and so on. The respondents also cited the lack of access to credit facilities as one of the problems they experienced. It needs to be noted that without financial support, farming cannot be sustainable.

5.3.7.12 Lack of efficient communication strategies

With the Nkaseni case it was noted that the DLA officials held a number of meetings where the claimants' community was kept updated on the progress of their claim up until the point where the claimed land had all been transferred and registered in the name of the Nkaseni Community Trust. There were, however, complaints from some members of the beneficiary community that they were not aware of some decisions taken by their Management Committee. This was an indication that the current communication procedures might have had shortfalls as some members were not aware of the decisions taken with regard to managing the communal resources.

5.4 Summary

This chapter presented the interview findings from data gathered during the research. The research findings indicate that there seems to be very little focus on empowering communities to manage their newly-acquired resources once the land has been transferred to the communities. In this chapter, the researcher presented qualitative information on the history of forced removals within the Weenen District to which the beneficiaries of this project were subjected. Also discussed was the legislation that was used at the time to support the forced removals, with a detailed recollection of how the forced removals affected the Nkaseni Community.

The researcher outlined the route that was followed by all stakeholders involved when the restitution policy was implemented during the processing of the Nkaseni land claim. The various challenges that the Nkaseni Community experienced pre- and post-land transfers have also been discussed in this chapter. What is noted is a lack of understanding of the Trust as an institution by the rest of the Trust members, as some members still report project issues to the Councillor of the area, whereas others report project issues to the Chief of the area. These are issues that are supposed to be dealt with by the Management Committee of the Trust. The researcher found that there was a fragmented, uncoordinated and disjointed effort regarding support from the Department of Land Affairs, the Department of Agriculture, Environmental Affairs and Rural Development, Municipalities and other stakeholders, which this made it difficult for the Nkaseni Trust to function efficiently.

Lack of co-operative governance was also raised as a key issue hindering support from other government stakeholders. Lack of institutional and production training, lack of skills transfer, lack of access to agricultural markets and lack of financial support were all cited as the major areas in which the Nkaseni Trust required support. The nature and causes of challenges related to the functioning of the Trust can be further attributed to ambiguity in terms of membership and participation in Trust affairs, lack of systems dealing with multiple interests within the Trust members, and lack of gender representation within the Trust.

The following chapter presents the study's conclusion and key recommendations.

Chapter 6

Conclusion and Recommendations

6.1 Introduction

This chapter presents the conclusion and key recommendations of the research. It focuses on satisfying the aims and objectives of the study. Before the recommendations of the study are presented, an evaluation of the study's objectives (i.e. whether they have been met or not) is made.

6.2 The objectives of the study reviewed

Objective 1: To provide the historical overview of land dispossession in South Africa.

Chapter Two of this research report provided a conceptual framework of land reform. It presented a review of South Africa's land reform programme, and assessed the evolution of South Africa's land reform programme and their significance to the lives of those affected. It provided a historical account of land dispossession in South Africa, with a focus on the effects of the different discriminatory pieces of legislation, which were the foundation of the apartheid policies. Finally, the government's land reform programme, especially the land restitution programme was discussed in this section of the research.

Objective 2: To investigate comparative cases of land reform programmes from other developing countries.

Chapter Three of this research presented some brief comparative cases of land reform from other developing countries and, subsequently, a number of conclusions that can be deduced from these experiences.

Objective 3: To investigate how land restitution processes were dealt with at various levels during the processing of the Nkaseni Land Claim.

Chapter Five presented the empirical details of how the various processes were handled in processing the Nkaseni land restitution claim. It was noted that there were several challenges along the way, some of which the stakeholders, working together, were able to overcome. It can be noted that this was a huge claim as it involved more than 1000 beneficiaries, with a total of 11 457 hectares. Such a big project has involved complex and unresolved issues. A few of the positives and negatives that were noted have been presented in this section.

Objective 4: To examine and identify the social, institutional and economic challenges that have an impact on the functionality of the Nkaseni Community.

Chapter Five presented the findings of the research which gave a detailed report of how the processes were handled in the implementation of the restitution policy and the challenges that were encountered in the process. It also provided the findings with regard to the social, institutional and economic challenges that have an impact on the functioning of the Nkaseni Project.

Objective 5: Having identified the various issues and challenges, the study seeks to make recommendations regarding addressing some of the challenges.

Chapter Six thus presents the recommendations of the study.

The following section presents the study's conclusion and key recommendations with regard to the identified challenges.

6.3 Conclusion

If one considers the fifteen-year period since South Africa introduced its land reform programme, it must be stated that this is too short a timeframe in which to measure success or failure of land reform, especially regarding land restitution. From an international comparative perspective, it must be recognized that South African land reform is in its initial stages. Looking at the experience of other countries, it can be deduced that land reform is seldom accomplished very easily. It continues to emerge on the political agendas of many countries as a result of the widespread landlessness and insecurity in certain populations, and where access to the land and other productive assets is still marked by historical legacies of inequality.

Considering the political rivalries and contradictions that the Department of Land Affairs has had to negotiate in the fairly short period of its existence, and its limited administrative capacity to implement the land reform policy, it is unrealistic to expect a dramatic “reconstruction” of South Africa’s rural landscape.

In terms of identifying and defining the rights to the land, balancing interests between the various stakeholders and the facilitation of negotiation and consensus-seeking, it would be unkind to describe the reform process as a total failure (Drimie, 2000: 240). After all, “any process of rural institutional and social transformation has to proceed carefully, mindful of the brittle nature of social networks and the enormous damage that has been brought on people’s lives by decades of underdevelopment and abuse” (Walker, 1994: 349).

The reality is that land reform in South Africa is not merely about re-allocating land from one group of people to another. It is far bigger than that. It involves changing power structures and socio-economic relations. It is also about ensuring a better livelihood for the previously-disadvantaged rural poor. The primary aim of this study was to examine the processes involved in the implementation of the restitution policy in South Africa with specific reference to the Nkaseni Communal Project in the Midlands of KwaZulu-Natal. This research involved synthesizing the land reform programme in South Africa in terms of its legal policy origins, arrangements and the implementation thereof, with its focus on the land restitution programme. Due regard was given to the lessons and experiences from four less-developed countries.

The research has also indicated that much of this country's skewed current land ownership has its origins in discriminatory policies rather than in market forces. This has long provided a justification for adopting policies aimed at land reform. The past performance of such policies present mixed results. Land reforms have been very successful in Asia (China) and positive impacts have been reported from some African countries such as Kenya and Tanzania in the early phases of their post independence land reforms. At the same time, land reforms in Latin America (Brazil), other Asian countries, and more recently, South Africa, failed to live up to their objectives and remain incomplete in many respects. A key reason for such limited impact was that reforms were often guided by short-term political objectives, or that implementation responded more to planners' conceptions than to the needs of beneficiaries, and this often limits the reforms' sustainability and their impact on poverty.

From international experience, it was also noted that the introduction of a rational system of individual economic incentives in land reform projects is critical. The introduction of individual economic incentives can generate a highly dynamic response. In 1978, China introduced such mechanisms under the household responsibility system, which gave farming families much-needed resources to keep their lands under production. At the same time, the organizational system of the People's Communes, which had proved to be inefficient, were abolished. Resulting from such reforms was an accelerated growth of agricultural production. Much of the increase was credited to the strong incentives given by the Chinese governments' land reforms programmes to individual farmers coupled with the partial liberalization of the produce market. In Kenya, the impact of land reform was minimal. As much as racial land ownership was removed, only a few land classes of minority Blacks benefited, due to lack of financial support for their land reform projects.

Through the nationalization of land in both China and Tanzania more egalitarian land redistribution was released. The creation of co-operatives in China and creation of Ujaama village in Tanzania, enabled them to address the issue of landlessness and unemployment to some significant extent, but these programmes also had short-comings when it came to the issue of tenure security. A number of beneficiaries of their land reform did not enjoy tenure security. Both schemes are reported to have collapsed when there was no support from the government. The programmes could not sustain themselves due to a number of reasons which could boil down to the failure of transferring the essential capacity and skills to the beneficiaries.

In South Africa, like the four less-developed countries used for comparative lessons, land ownership was skewed and unequal. In South Africa various racially-motivated laws were used to forcibly remove people from their ancestral lands into Bantustans or Reserves, which were small and had no farming ground. This led to many of the Black African people being landless and poor.

With the new democratically-elected government taking over from 1994, came the introduction of numerous policies, legislation and land reform programmes in order to address land availability and ownership in the country. One of the programmes introduced is the Land Restitution Programme, which is the focus of this research. The research has been able to illustrate processes involved with this programme.

The study was also able to present challenges that are faced by this programme both pre-and post-land transfers. Part of this research's main objective was to investigate the social, economic and institutional challenges that have an impact on the functioning of the Nkaseni Community Trust.

Some of key issues that were identified through the study include the following:

In the South African context, the key consequence of apartheid was the dispossession of rights and, in particular, the right to land. The dispossession led to the creation of enormous poverty and insecurity among the Black African people. All the participants cited the forced removals from their ancestral grounds, and from the farms they had occupied, as major events that altered their lives economically and socially. It affected them on various levels: they had to leave their place of residence, thus losing their arable and grazing land, and at the same time, their livestock. Relocation sites are reported to have been very poor with no facilities and no land to practice any subsistence farming. This left this community poor, landless, homeless and there was a breakdown of their social structural network, as families were moved to various relocation sites, where they had to live with new people, and at times, new tribes.

With the acquisition of the Nkaseni Farms, the community is happy to have had the ownership of the land returned to them although they are yet to see any significant monetary returns from the

project. The farms are still to be provided with the services that are needed to support human occupation such as surveying, demarcating and allocation of individual housing sites, water, electricity and so on. From this it is clear that the South African land restitution has to be done in a way that secures people a future through how they can presently access and use land secured to address the issues of poverty and economic development.

This study was also able to provide some evidence that there are a number of challenges that are being experienced by the Communal Projects in the country, as was evident with the Nkaseni Project.

Also emanating from this study is that the transfer of title to Communal Property Institutions (CPIs), as it stands at the moment, will only return a real right to the legal entities and not to the actual individual beneficiaries living on and using the land. Transfer of title is a change of right in ownership which is registered with the Department of Land Affairs's deeds office. The Nkaseni Community Trust is the legal 'person' created in order to own the land and hold it on behalf of the group. The Nkaseni broader beneficiaries will only get land tenure rights if those rights are properly defined within the Trustee's Constitution or within the Title Deed of the legal entity. For personal rights to be effective, land-tenure rights and the Trustee's Constitution must be clear about who has what right to which land, how the rights are created, used and defended, and what records are being kept, and who keeps them updated and accurate.

The findings of this study also indicated that the Nkaseni Project has failed to define and allocate clear individual usage rights, responsibilities, powers and procedures for its members. Moreover, transparency and accountability was reported to be below the standard required.

Also noted during the study is that communities are gendered, with specific gender needs and interests. Gender, however, is not the only factor that characterizes communities, nor are gender interests the only interests. It needs to be noted that there are various diverse interests even within gender categories. If land reform aims at attaining gender equality, as stated in the Department of Land Affairs White Paper (1997), then there has to be an acknowledgement of the gendered nature of communities and, subsequently, the existence of gendered needs within the communities.

It was noted that the Nkaseni Committee lacked systems to cater for the different needs of its members. In highlighting the complexity of interests in land use, this research report does not attempt to argue that group ownership of land is not viable; however, it argues that with the right group, and in particular, with the right management system, which is founded on democratic principles and effective and full participation of all members of the group, it could be viable. There is clearly a need for all members of the Nkaseni Trust to fully and effectively participate in the community management and decision-making structures. Full participation of all members of the Trust will ensure that all interests of its members are represented.

Lack of skills transfer to land reform beneficiaries is another contributing factor to the many challenges that are faced by the Nkaseni Trust. From the start of the land reform programme, it was clear that given South Africa's agricultural history, transferring skills to beneficiaries was to be one of the key challenges and determinants of the restitution programme's success. Based on this study, a more integrated method of skills transfer at the community level would have had many advantages, as it would have helped alleviate a number of the challenges currently experienced by the Nkaseni Trust. All of the above evidence suggests that there is plenty of scope for an increased role for Department of Land Affairs, other government departments, NGOs, the private sector and the beneficiaries themselves, for the Nkaseni Project to attain its objectives.

The results of this research have also been important in demonstrating the potential role of the Communal Property Institutions in improving land tenure for the rural poor, however, to improve performance of such institutions will require that the Department of Land Affairs provide increased support to the Communal Property Institutions even post-transfer of the land and up until these institutions are able to sustain themselves. Without these interventions it will be impossible for the Department of Land Affairs to implement a restitution programme that is adapted to specific needs on the ground and that can, at the same time, advance at sufficient speed to make a real impact on the future of rural South Africa.

The case of the Nkaseni Project demonstrates that there is considerable potential, but also that in order to make full use of this potential, a number of obstacles and challenges need attention. Being aware of the nature of the challenges faced by the Nkaseni Community Trust is probably

the starting point that will help to ensure that land reform implementation, particularly restitution, will contribute to advancing both equity and efficiency within the rural community.

The findings of this research concur with the major hypothesis as it was mentioned earlier, in Section One of this research report. The South African government's attempts at land Restitution have thus far failed to live up to expectations that are held by many rural poor communities. It was established within the Nkaseni Project that the beneficiaries had very high expectations when being awarded the ownership of the land, but unfortunately the project has not yet yielded any significant returns as expected by the community.

Also noted is the claimants' lament over the prolonged process that the Nkaseni claim took to be finalized. One of the positive outcomes of the process, however, is that the officials from the Department of Land Affairs working on the claim kept open communication channels with the claimants, something that helped to reduce the frustrations among the claimant community. It can be stated that having been given ownership of the land since 2003, the community anticipates some meaningful investments taking place in this project. This long delay has left some of the farms without commercial farming activities. This delay was not only a result of the role of the claimant community but also the government. Also emerging from this research is that there is limited capacity within the Department of Land Affairs itself to help provide all the necessary support to land reform projects. However, it can be said that a land restitution programme does indeed present opportunities for the empowerment of the rural poor. This has been evident with the Nkaseni community, who are now owners of a total of 11 450 hectares of land.

Lastly, the study was able to demonstrate that the current land reform policies do not address all the challenges that are experienced in communal projects in the country, and further research studies would help facilitate both development and improvement of such policies.

6.4 Recommendations of the study

The primary aim of this study was to examine the processes involved in the implementation of the land restitution policy in South Africa with specific reference to the Nkasseni Communal Project in the Midlands of KwaZulu-Natal. Part of the aim was to undertake an in-depth diagnostic study with a view to understanding the nature of challenges, and to propose interventions that could improve both the land reform processes and the functioning of Communal Projects in the country.

The following section presents recommendations that could address some of the challenges as identified in the research.

- It is recommended that the South African government amends the Land Reform policy's regulations to require a more rigorous planning process prior to the transfer of land, by amending the project cycle of the land restitution programme and making sure it includes establishing a land administration plan and drawing up of a resource allocation plan.
- It is further recommended that the Department of Land Affairs officials ensures that Communal Property Institutions Committees issue the beneficiaries with a written document describing the physical boundaries of the land and the attributes of the right's allocation where rights relate to a specific piece of land. Where rights relate to communal land, such as for grazing, the Department of Land Affairs should ensure that members have written agreements defining their rights and obligations to use the communal resource. Where possible this should include a user-pay's principles, where the users of the commons will be responsible for the costs of maintaining the commons. The Department of Land Affairs should develop the necessary templates to be used for such documents (Del Grande, 2003: 29).
- The Department of Land Affairs needs to conduct a monitoring and evaluation assessment in order to ensure that the rights and duties of anyone in terms of the restitution projects do not discriminate against any group or person, especially women. For land reform to realize these objectives, it is recommended that the use of individual rather than household membership

when forming Communal Property Institutions be promoted. The Department of Land Affairs needs to investigate the option of registering land to individual title, given to individual members of the household. The registering of individual membership is recommended, unless there are very compelling reasons to have household membership.

- Where membership to the trust is registered on name of the household, protection is needed to ensure women's rights are maintained if the household should be split due to divorce or other factors. Any process pertaining to inheritance, as it applies to a household, needs to be clarified. There should be education provided for policy makers, local customary leaders, and men in general regarding the economic value of women having secured rights to land, in order to gain support for successfully implementing an individual titling programme. Women will need to have access to some form of dispute resolution that would be sensitive to their rights, if their tentative rights are impeded. Overcoming gender bias requires an understanding of customary law and traditions and of what is possible and what is not.
- It is also recommended that the Department of Land Affairs should develop best practice guidelines and draft formats for common aspects of land administration (e.g. how to develop rules, go about land rights allocation and a format for a register of land rights). It should train Department of Land Affairs practitioners and Communal Project Management Committees in land administration and management processes (Del Grande, 2003: 29).
- It is recommended that the Department of Land Affairs should promote the use of Community Property Associations as land holding institutions among the rural communities. This is because Section 11 of the Communal Property Act (Act 28 of 1996), which governs the establishment of Communal Property Associations, has a clause that gives powers to the Department of Land Affairs's Director General to intervene when problems are identified within a particular Community Property Association.
- Emanating from literature review, it is advisable that even when a claim has been lodged by a bigger community, where possible the land should be divided into smaller farms as well as the community being divided into smaller groups. It is also recommended that the Department of Land Affairs should help communities to subdivide farms to make it possible for smaller groups to access land. The Department of Land Affairs should consider the option of

subdividing the farms and establishing a number of smaller Communal Property Institutions. In situations where a few farms are involved, the Department of Land Affairs should consider subdividing the benefiting group into smaller communities with common interests linked to a specific farm. Otherwise, the Department of Land Affairs should help the Nkaseni Trust to develop sets of rules that have the capacity to accommodate diverse interests within the group.

- It is further recommended that an effort should be made to establish smaller Communal Property Institutions, and common interests held by the members of the different groupings within the claimant community should be identified. When smaller Communal Property Institutions are established the likelihood is that members with the same interests will have less conflict over interests.

- It is recommended that the Department of Land Affairs should promote the spirit of co-operative governance, and should look at introducing the signing of contracts with other government organizations instead of using the memorandum of understanding (MOUs). Signed contracts have the potential to exact accountability with regard to commitments made, unlike the MOUs currently being used.

- It is recommended that the Department of Land Affairs, where possible, should facilitate partnerships between land reform beneficiaries and organizations or companies that can help to provide support for the management of the existing project resources.

- It is recommended that the South African Government should allocate sufficient staff and resources to the Department of Land Affairs for it to render support on an on-going basis to Communal Property Institutions in order to meet the establishments and post-establishment obligations, including assistance in the administration of rights, and for the administration of the monitoring and evaluation processes.

- It is recommended that the Department of Land Affairs should put in place an annual monitoring and evaluation system to monitor all Communal Property Institutions. The Department of Land Affairs ought to develop a set of criteria and procedures to annually monitor and evaluate Communal Property Institutions' functions, including requiring,

obtaining and scrutinizing reports from annual general meetings (AGMs) and financial statements of such organizations. The Department of Land Affairs should conduct annual monitoring on all communal Property Institutions and evaluate results to prioritise interventions. The Department of Land Affairs should ensure that Communal Property Institutions' structures are operating efficiently and identify those that need urgent intervention. This requires both quarterly reporting from the Communal Property Institutions as well as quarterly visits to the Communal Property Institutions by the local Department of Land Affairs officials.

- It is recommended that the Department of Land Affairs should develop standard forms to be used by Communal Property Institutions for annual reporting. This will make the evaluation process of the Communal Property Institutions easier and quicker. The standard forms must have a simple format that will not unduly burden Communal Property Institutions, but will provide quick pointers to problem areas. The Department of Land Affairs staff should assist Communal Property Institutions to fill in the forms. Both committee members and ordinary members should be targeted for the collection of the necessary information. Having the monitoring and evaluation systems in place will help the Department of Land Affairs to be able to identify the various challenges that the communal projects are confronted with and they can then help formulate a programme of interventions.

- The monitoring and evaluation exercise would also benefit the beneficiaries in understanding better the challenges they are confronted with so that they are in a better position to establish what support is needed. The monitoring and evaluation would also help build capacity for both the Department of Land Affairs' officials and the members of community project, especially those people involved in conducting monitoring and evaluation exercises. In view of this research, a more integrated method of skills transfer at the community level would have had many advantages, as it would have helped alleviate a number of the challenges currently being experienced by the Nkaseni community. The findings indicate that there is a need for a more co-ordinated and multi-level approach from the Department of Land Affairs, other government departments, NGOs, the private sector and the beneficiaries themselves, to improve management of the resources.

- It is recommended that the Department of Land Affairs should support the Nkaseni Project with the necessary funds required for them to implement their business plans. The Department of Land Affairs should look at extending its budgets to include some business start-up finance. Also, efforts should be made to link the land reform projects with potential markets that can purchase the community's products once produced.

- Lastly, it is recommended that a further study be undertaken to investigate the current gaps in the communication strategy currently being used by the Trustees of the Nkaseni Community Project, and how this can be improved.

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APPENDIX: 1

| | |
|--|--|
| INTERVIEW QUESTIONNAIRE | |
| A case study of a land reform project in KwaZulu-Natal with reference to the Nkaseni Restitution Land Claim. | |
| Questions used during interviews with the beneficiaries of the Nkaseni Project | |
| Interview Location | |
| Date | |
| Time | |

1. Why did you choose land restoration when you had an option of getting monetary restoration?
2. Were all members of the project in favour of getting land as a reward instead of money? If not, what happened to those that had a different choice?
3. List three things from which you expect to benefit as the new owners of the land.
4. To what extent was the community involved during the development of the land-use plan?
5. In your opinion, does the current land-use plan cater for the needs of the wider beneficiary members?
6. Are the existing customary traditions and practices accommodated in the land-use plan?
7. How does the community feel about the business partnership that the Trust has entered into with the former White landowners, given that there was “a bad history” between the two parties due to the forced removals?
8. In your opinion, what are the challenges or problems that have resulted from this business partnership? Please explain your answer.
9. What do you think are the causes of such problems?
10. Has the project received any support from other stakeholders besides the DLA? If the answer is yes, please list the name of the organization and the type of support received from that organization.
11. Does the project have a beneficiary plan or an agreed procedure in place for the allocation of benefits once accrued?

12. Would you say that there is accountability and transparency within your Trust? Please give reasons for your answer.
13. Do the individual members of the Trust have clearly-defined and secure substantive rights to resources?
14. Please list the type of resources on which individual members of the Trust have registered allocated rights?
15. Does your Trust have a clear process and procedures for the transferring of rights to a new member of the Trust?
16. Is there a register of rights? Yes/No.
17. Does your Trust have a monitoring and evaluation procedure in place? Yes/No.
18. In your opinion, is the Trust managed in accordance with its constitution? Please explain your answer.
19. Do members of your Trust have a common vision of the goals they have set themselves to achieve with regard to this project? Yes/No.
20. Please list three things that you think are the cause of members losing focus of the common vision of the committee?
21. In your opinion, can you explain how the community was involved in the drafting of the Project's Constitution?
22. In your opinion, what was the level of women's participation during the drafting of the Project's Constitution?
23. What is your view with regard to the representation of women within the current Management Committee of the project?
24. What is being done to promote gender equality within the Nkaseni Trust?
25. Has your Trust achieved any of its short-term objectives it has set itself to achieve? Yes/No.
26. If not, please list four factors that you think are the challenges that make it difficult for the Trust to achieve its goals.
27. Do you understand the roles and responsibilities of the Trust Executive members? Please explain your answer.
28. Has any resource allocation been done for all the members of the project?
29. In your opinion, was a fair process used to allocate individual rights to members? Please explain your answer.
30. What are the problems that relate to allocation or non-allocation of Trust resources?

31. Does the Trust committee have a procedure in place to communicate with its entire membership?
32. What skills or training do the committee members require in order for them to manage their resources efficiently and effectively? List four that you think are the most important.
33. What has the Department of Land Affairs done to capacitate your Committee to be able to make independent and informed decisions?
34. Do you think the Trust is well-managed or poorly-managed? Please give reasons for your answer.
35. Is the procedure being applied or used according to the defined terms?
36. Do you get any post transfer support from the Department of Land Affairs, Municipality, Department of Agriculture or any other stakeholder?
37. Please list the kind of support your committee has benefited from since you have become the new owners of the land.
38. Can you say that the type of support being offered to your committee is sufficient? Please explain your answer.

APPENDIX: 2

| INTERVIEW QUESTIONNAIRE | |
|--|--|
| A case study of a land reform project in KwaZulu-Natal with reference to the Nkaseni Restitution Land Claim. | |
| Questions used during interviews with the officials from the Department of Land Affairs. | |
| Interview Location | |
| Date | |
| Time | |

1. In your opinion, why did it take the DLA more than 8 years to resolve the Nkaseni land claim? Please explain.
2. What would you say were the challenges experienced by the DLA during the processing of the Nkaseni Land claim?
3. Do you know how those challenges were resolved?
4. What process was followed when developing the Nkaseni land-use plan?
5. To what extent was the community involved during the development of the land-use plan?
6. Has your Department consulted with other government departments and other relevant stakeholders for the provision of support and resources needed by the Nkaseni community?
7. Was the local Municipality consulted about the Nkaseni Project needs?
8. Has the Department of Land Affairs provided any support to the Nkaseni Project post land transfers? Please explain your answer.
9. Has the Department of Land Affairs conducted any monitoring and evaluation of the Nkaseni Project? Please explain your answer.
10. What is your view with regard to the representation of women within the management structure of the Nkaseni Project?
11. In your opinion, what would you say are the major challenges that affect the Nkaseni Communal Project?
12. In your opinion, what skills and knowledge are required by the Nkaseni Management Committee for it to function effectively and efficiently?
13. What role did the Department of Land Affairs play in the establishment of the Nkaseni Communal Trust?
14. Is there any other information you wish to tell me about the Nkaseni Communal Project?

APPENDIX: 3

| INTERVIEW QUESTIONNAIRE | |
|--|--|
| A case study of a land reform project in KwaZulu-Natal with reference to the Nkaseni Restitution Land Claim. | |
| Questions used during interviews with the local Councillor of the area. | |
| Interview Location | |
| Date | |
| Time | |

1. In your understanding, what is the role of the Councillor with regard to the Nkaseni Community Project?
2. As a Councillor of the area, in your view, what do you see as the main problems affecting the Nkaseni Communal project? Please explain.
3. In your opinion, what do you think needs to be done to resolve the problems you have mentioned above?

APPENDIX: 4

| INTERVIEW QUESTIONNAIRE | |
|--|--|
| A case study of a land reform project in KwaZulu-Natal with reference to the Nkaseni Restitution Land Claim. | |
| Questions used during interviews with the Chief of the area. | |
| Interview Location | |
| Date | |
| Time | |

1. As the Chief of this area, what role do you play with regard to the Nkaseni Communal Project?
2. In your opinion, what do you see as the main problems affecting the Nkaseni Communal Project?
3. In your opinion, what do you think needs to be done to resolve the problems you have mentioned above?

APPENDIX: 5

| INTERVIEW QUESTIONNAIRE | |
|--|--|
| A case study of a land reform project in KwaZulu-Natal with reference to the Nkaseni Restitution Land Claim. | |
| Questions used during interviews with the officials from the local Municipality. | |
| Interview Location | |
| Date | |
| Time | |

1. In your understanding, what is the role of the local Municipality with regard to the Nkaseni Community Project?
2. As one of the officials from the Municipality, in your view, what do you see as the main problems affecting the Nkaseni Project? Please explain.
3. In your opinion, what do you think needs to be done to resolve the problems you have mentioned above?
4. In your opinion, how can such problems be avoided in future?
5. In your opinion, what would you say are the reasons for the failure of the local Municipality to play its role with regard to supporting the Nkaseni Communal Project?

APPENDIX: 6

| INTERVIEW QUESTIONNAIRE | |
|--|--|
| A case study of a land reform project in KwaZulu-Natal with reference to the Nkaseni Restitution Land Claim. | |
| Questions used during interviews with the officials from the Department of Agriculture, Environmental Affairs and Rural Development. | |
| Interview Location | |
| Date | |
| Time | |

1. In your understanding, what is the role of the Department of Agriculture with regard to the Nkaseni Community Project?
2. What support is your department giving to the Nkaseni Communal Project?
3. In your opinion do you think the support your department provides to this project is sufficient or not? Please explain your answer.
4. If your department is not providing the required support for the project, in your opinion, what would you say are the reasons that have caused the Department of Agriculture's failure to play its role with regard to supporting the Nkaseni Communal Project?
5. In your view, what do you see as the main problems affecting the Nkaseni Project? Please explain.
6. In your opinion, what do you think needs to be done to resolve the problems you have mentioned above?
7. In your opinion how can such problems be avoided in future?

APPENDIX: 7

| INTERVIEW QUESTIONNAIRE | |
|--|--|
| A case study of a land reform project in KwaZulu-Natal with reference to the Nkaseni Restitution Land Claim. | |
| Questions used during interviews with the former landowners. | |
| Interview Location | |
| Date | |
| Time | |

1. In your opinion, what role can former land-owners play with regard to land reform development projects in the country?
2. In your opinion, what do you think needs to happen for land-owners to be able to play the role/s you have mentioned above?
3. What support is your company providing to the Nkaseni Communal Project?
4. In your opinion, do you think the support your company provides for this project is sufficient or not? Please explain your answer.
5. What challenges has your company experienced as a result of having a working partnership with the Nkaseni community?
6. In your opinion, what is the relationship like between you and the Nkaseni Community? Please explain.
7. As a person that is exposed to the Nkaseni community, in your view, what do you see as the main problems affecting the Nkaseni Project? Please explain.
8. In your opinion, what do you think needs to be done to resolve the problems you have mentioned above?

APPENDIX: 8



COMMISSION ON RESTITUTION OF LAND RIGHTS
IKHOMISHANA YOKUBUYISELA
KWAMALUNGELO OMHLABA
KHOMISHINI E MABAPI LE PUSETSO YA
DITSHWANELO TSA MAFATSHE
KOMMISSIE OP HERSTEL VAN GRONDREGTE

Office of the Regional Land Claims Commissioner: KwaZulu – Natal
Private Bag X 9120, PIETERMARITZBURG, 3200, 200 Church Street,
Tel: (033) 355 8400 Fax (033) 342 3409

Our Ref: W Silaule

22 October 2008

Mr. MA Dlamini
Flat 1, The Towers
60 College Road
Pietermaritzburg
By Hand Delivery

Dear Mr. Dlamini,

**APPROVAL IN RESPECT OF REQUEST TO CONDUCT RESEARCH: NKASENI
RESTITUTION LAND CLAIM**

We refer to your letter dated 2 September 2008, seeking permission to conduct research in to land reform and the nature of reparation in South African with specific reference to the restitution claim of the Nkaseeni Community.

This letter serves to indicate that approval is hereby granted to proceed with research in respect of the study indicated in your letter under reply, to the extent that the research relates to the Nkaseeni Community Land Restitution Claim. The onus rests on you to negotiate appropriate and relevant time schedules with the Nkaseeni Community, or any other relevant stakeholder/s and to obtain the goodwill and co-operation of the Community or stakeholder/s.

When approaching the Nkaseeni Community or any other stakeholder, you may present them with a copy of this letter together with your letter dated 2 September 2008 addressed to the Commission, or any other document that outlines the purpose of the research and the anticipated outcomes of such research. We point out that personal information may not be used without their written consent of the person / organization consulted.

We wish you well in this important undertaking. We will appreciate it if you could provide us with a copy of your research finding / copy of your thesis for internal purposes only.

Yours faithfully,

W SILAULE
DIRECTOR: OPERATIONAL MANAGEMENT (ACT)
For REGIONAL LAND CLAIMS COMMISSIONER:
KWAZULU-NATAL

Putting land rights in the right hands