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Land Reform in South Africa: dismantling the historical
legacy of the racially skewed land dispensation.

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Declaration

I, Siyabonga Innocent Dlamini, declare that, the work contained in this dissertation except where otherwise indicated is my original work. It has not been submitted for any degree or examination at any other university.

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Date:

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Abstract:

In some parts of the African continent, colonialist left a long time ago but the legacy they left exist to this day. In one way or the other they ensured that their legacy lives on even beyond independence of the African people. This is the case also in Southern Africa and particularly in South Africa. The legacy of white settlers who came into the country in the early colonial days is still evident in the characteristics of the contemporary South African society. The racially skewed distribution of land started centuries ago and up until today, such disproportionate in land distribution has not been corrected. At the end of apartheid, the newly elected democratic government placed on top of its agenda the issue of addressing the land question. Land reform programme was drawn and deadlines for achieving certain goals were set. But since then, land reform has been slow and fallen short of its targets. Main contributors to the slow progress of land reform were the policies and mechanism with which the government seeks to implement the programme and achieve its objectives. There has been a plethora of laws enacted with the aim of improving the implementation of the land reform programme in South Africa, but progress has remained slow. Many questions and concerns have been raised as to whether land reform is necessary or not in a democratic South Africa. This thesis argues that land reform is indeed necessary if South Africa is interested in rectifying the injustices and the inequalities of past land distribution. The thesis also argues that a properly implemented land reform would not only bring justice but it will also help in the reduction of poverty which is rife in the South African society and particularly the rural poor. But both the latter and the former will be realizable if the society is aware and have a full understanding of the ever developing laws which guides land reform programme and the acquisition of land in general.

CHAPTER ONE: Introduction

The issue of land question has always been a problem in the developing regions of the world, and Africa is no exception. For many years, African people have been trying to win back their land which was unfortunately forcefully taken away from them by the colonizers. The same applies for South Africa, the colonizers and later the apartheid government took the land from the natives without their will. Hence much of the struggle against apartheid in South Africa was on self-determination and the quest to reclaim the land that was dispossessed from the natives. Segregation and oppression has been the order of the day in the South African society for almost three centuries until the attainment of democracy in the year 1994. These three centuries of white minority rule over the majority of the natives has been largely branded by policies of dispossession and exclusion.

The 1994 democratic breakthrough brought hope to the hopeless and marked a turning point in South Africa's politics. A new nation was born and so a need for new policies came to being. An outcry for the redress of previous injustices was all over the country and the newly elected government had a responsibility to respond to that. As a transitional justice measure, and in response to land question in the country, South Africa's government opted for land reform programme. From 1994, the land reform programme or the government has made some ambitious targets which until to date have not been met. This thesis therefore seeks to look at the developments which have taken place with regards to land reform as well as its desirability since its initiation by the country's first democratic government.

This thesis is divided into five chapters. Chapter One gives an introduction to the present study. This chapter will provide the background and the outline of the research problem as well as the

significance of the study. Objectives of the study as well as the definition of the key concepts will also form part of Chapter One. Chapter Two will deal with theoretical considerations and literature review. This chapter will extensively engage *transitional justice theory* which is the bedrock of the present study. The reviewing of literature relevant to the study will also be included in this chapter. Chapter Three unpacks the South African land reform programme. This chapter discusses the three arms which defines the South African land reform programme. These are (1) redistribution of land, (2) restitution of land, and (3) land tenure reform. Chapter Four discusses the prospects and the challenges of land reform in South Africa. This chapter will assess the impact of land reform on the rural poor and also its impact on South Africa's agricultural sector. Lastly, this chapter will look at the effectiveness of the mechanisms used for the implementation of the land reform programme as well as the conditions necessary for effective implementation of such a programme. The last chapter of this thesis is Chapter Five, and this chapter will provide the summary of findings and the conclusion of the study.

BACKGROUND

Colonialism and 1800s

Many parts of the African continent, for the past two decades, have been branded by debates about the purpose and the direction which land reform should take. These debates have largely taken place in the Southern part of the continent. This, one may argue, is informed by the extent to which land dispossession has taken place in the settler colonies. Access to land continue to be characterized by inequities and it is argued by many scholars that such inequities resulted from colonialism as well as the racists policies and legislation implemented for centuries in the continent (Weideman, 2004).

In South Africa, both the 1913 and the 1936 Land Acts are seen as notorious among the legislations which facilitated dispossession and displacement of black people in general and Africans in particular. The magnitude of land dispossession of the indigenous people in South Africa, by both British and Dutch settlers, has been greater than any dispossession which took place elsewhere in Africa. These dispossessions, Weideman (2004) argues that they have persisted for an exceptionally long time. In the 1650s, the European settlement began in the Cape of Good Hope and proceeded eastwards and northwards over a period of three hundred years (Weideman, 2004).

The first formal act of forced relocation in South Africa took place in 1658 when Jan van Riebeeck told the Khoi communities that they have to move from the west side of the Salt and Liesbeek rivers. From this point onwards, military conquest as well as colonial settlement became the model or form which the dispossession took. But Weideman (2004) argue that trickery and legislation always played a part in the dispossession process (Weideman, 2004). The illustration of this is the forceful annexation of the Eastern Cape which happened in the 1800s. The legislation during this era was largely used as a method of dispossession. In mid 1800s, the white agricultural sector grew, and parallel to it was the growth in the need for African labour. As a result, a tax policy was designed and this policy aimed at forcing Africans into wage labour through heavily taxing all independent African tenants on farmland. The introduction of this policy took place in 1860 (Weideman, 2004). Following this was the 1884 Native Location Act in the Cape Colony as well as the 1887 Squatter Laws in the Transvaal. In Free State, the occupation and ownership of land was prohibited in 1891. And Indians were also not allowed to cross provincial boundaries (Weideman, 2004: 9).

As a means to increase the supply of and control over African labour, the Glen Grey Act was introduced in the Cape and this happened in 1894. In terms of this Act, people from the “reserves” were expected to provide labour. Weideman (2004) thus argue that this was a way to lay a foundation of separate development as well as the apartheid policies which later followed (2004: 9). In 1904, Masters and Servants Ordinance were introduced. Under this ordinance, black tenants were denied legal protection and thus defined as servants instead of wage labourers. The legal basis for the method of forced removal and eviction of labour tenants and farm workers which took place and continued for almost a century was established through the Masters and Servants Ordinance (Weideman, 2004).

The Union and the 1913 Land Act

New vigorous and focused government policies to impede on the growth of African peasantry were piloted in when the Union of South Africa was formed in 1910. In 1913, a Land Act (the Land Act 27 of 1913) was introduced and it came to operation in June 1913. This Land Act aimed at preventing the buying of land by Africans outside the reserves that were scheduled for them. This Act therefore made the reserves the only places in which the Africans could be legal occupants (Weideman, 2004).

Boulle and Julyan (1987) argue that the Natives Land Act of 1913 primarily aimed at segregating and suppressing African people. In their view, the Act aimed at ensuring permanent division or separation of African and white people in the country. This was, on the other hand, going to ensure the availability of African labour to white farmers and mines (Boulle and Julyan, 1987). The black and white people were further segregated by the system of “influx control” which its

intention was to keep blacks out of the urban areas. It thus functioned as a tool of controlling the distribution of labor for mining and agriculture (Boulle and Julyan, 1987).

Other people like Greenberg (2003) argue that the enactment of both the 1913 and later the 1936 Land Acts sanctified the colonial conquest in Africa. These and other related laws, Greenberg argues, they had a huge impact on the structure of agriculture in South Africa and had different effects on the livelihoods of the indigenous people. Greenberg further argued that these laws worked to eliminate black farmers from competing with their white counterparts. In this way, white farmers had time to consolidate the control they had over land without necessarily having to worry about competition from black farmers (Greenberg, 2003). These laws also helped in consolidating migrant labour in that they forced the black population living in rural areas to migrate to white-owned farms, mines and industrial areas for employment (Greenberg, 2003).

Under the 1913 Natives Land Act, white settlers in South Africa took over 90 percent of the country's total land and confined the indigenous people to reserves in the marginal portions of land (Ntsebeza and Hall, 2007). Ntsebeza and Hall argue that it was this process which forced a large number of people in the rural areas to leave for the urban areas as well as farms in the quest for work (2007:3). African people, in accordance with the 1913 Natives Land Act, were forbidden to buy or own land outside the 7 percent of the country's land which was reserved for their occupation and use (Ntsebeza and Hall, 2007). It was through the 1913 Land Act that sharecropping and squatting was outlawed. This Act effectively dispossessed millions of South Africans and instantly reduced the access of Africans to land. This includes the dispossession and the reduction of the land which was owned and occupied by Africans at the time of the enactment of this Act (Weideman, 2004).

The “native reserves” were not peculiar to South Africa, and as was the case in other parts of the continent, the aim was to generate a “steady flow of cheap labour to settler farms and mines” (Weideman, 2004: 9-10). The Land Apportionment Act of 1930 in Zimbabwe apportioned the country into European and native reserves. In 1969, the Land Tenure Act replaced the Land Apportionment Act, and at this time, the size of the European farms was about hundred times the size of African Holdings in Zimbabwe’s Tribal Trust Land (which were the reserves). Kenya, like South Africa and Zimbabwe also had African “reserves”. These “reserves” were created in 1926. The only thing that was peculiar to South Africa is the fact that the natives or the Africans were only given about 7% of the total land area (Weideman, 2004: 9-10).

1936 Native Trust and Land Act

The Pact government came to being in 1924, and it aimed at eliminating independent access of Africans to land. It also aimed at creating a single system of black administration throughout the country. Hertzog, who was the Minister of Native Affairs at the time, introduced the Black Administration Act 38 of 1927. This Act was among the principal methods of forceful removals. Section 5(1)(b) of the Act contained the power to forcefully remove African communities. It was Minister Hertzog administration which introduced the 1936 Native Trust and Land Act. This Act stipulated that the reserves be expanded from about 7.3% to almost 13% (Weideman, 2004). In accordance with this Act, the South African Native Trust was created and it was aimed at acquiring and administering that land. In Lapping’s (1986) analysis, this Act prohibited natives from buying and/or owning any land which fell outside the native reserves, hence limiting their options within the parameters of the reserves (Lapping, 1986).

These and many other laws that the government of the time implemented shaped the society that presently exist in South Africa. Through these laws, white people in South Africa became enfranchised as South African citizens and black people were disenfranchised as non-citizens or as subjects. The majority in the country, which is the black people, were branded by exclusion and their cultural affiliations while the white people were shaped by the experience of political inclusion (MacDonald, 2005). As a result of this arrangement, white people became successful since the state also protected them from competing in the market and organized “exploitation of blacks” and prohibited blacks from entering free markets (MacDonald, 2005: 4).

Jordan (in Turok, 2010: 38) outlines four characteristics which he argues were what informed the segregation system in South Africa. Firstly, he argues that there was an unequivocal monopolization of political power and the control of state institutions by white people. The second characteristic was the monopolization of economic power which was done through land dispossession and the control over who should participate in the market. Jordan argues that the third characteristic of the system was labour coercion. The latter refers to the fact that the black people were forced to avail their labour power cheaply (Jordan, 2010). The fourth point which is made by Jordan is that the system was also characterized by a plethora of laws which were put in place to deny black people rights which people in other parts of the world would otherwise take lightly. In their struggle, Africans have always fought for self-determination and they wanted to deracialize the franchise, and also break the economic and political monopoly of white people over the country’s institutions. In addition, self-determination meant the dismantling of the system of forced labour and monopoly economic power as well as the elimination of authoritarian government (Jordan, 2010).

There were many social institutions and forces that worked hand-in-hand in the development of and to sustain the apartheid system in South Africa. Technological advances of white people gave them an opportunity to “construct and dominate a coercive economic and political system” (Boulle and Julyan, 1987: 127). Boulle and Julyan argue that even though there are instances of disagreements as to the significance of these forces, but working together they have produced a system of intense suppression, economic exploitation, residential and educational segregation and social differentiation which continue to characterize the social order in South Africa (Boulle and Julyan, 1987).

This reality therefore requires action to be taken in order to remedy the situation and it also provides sound reasons for land reform. Faced with the challenge of massive landless people, the democratic government in South Africa, right after its inauguration, had a responsibility to address the land question. And its adoption of land reform as a measure to address the injustices of the past was welcomed in different ways. Some, the black majority, were happy about this move and others who are largely white farmers were very disturbed by this. It is believed that a correctly implemented land reform programme will be able to contribute to increased growth and poverty reduction, efficiency and equity (Kirsten, 1999). As a result of this belief, almost all those who believe in equity would be in support of the programme.

Objectives of the study

The objective of this study is to assess the impact of land reform programme in South Africa since it was adopted by the country’s first democratically elected government. The initial aim is to explore the implementation of land reform programme in light of the ever developing legal framework as well as the impact that such legal developments have on the implementation of

land reform in South Africa. The study also aims at understanding how capacity building or lack thereof to beneficiaries has impeded on the rapid and successful implementation of land reform.

The study will therefore assess the success, challenges and prospects of land reform in South Africa. It is also going to look at the conditions necessary for effective implementation of land reform. The study will, in the end, explore the possible levels of success in an instance where everyone taking part in land reform programme understands their role, rights and responsibilities. These assessments will be conducted against the targets which the South African government has set for itself since the first attempt of implementing land reform. Finally, the study aims at identifying and interrogating the possible solutions to problems which are said to have resulted from land dispossession and whether land reform, as has been implemented by the South African government, can be the solution to the country's land question as well as socio-economic inequalities.

Research methodology and methods:

In executing and attaining the goals of this study, a qualitative research approach will be utilized. When using the qualitative research method, the researcher strive to get an understanding of human behavior as well as what informs such a behavior (Creswell, 2003). This type of study seeks to explore the nature of a problem without necessarily quantifying or oversimplifying it. The main objective here becomes the description of variation in a phenomenon, attitude or situation (Creswell, 2008).

Glesne (1999) in her description of qualitative inquiry argue that it is, in most cases, an umbrella concept used to codify different types of interpretivist research. She further describes this

technique of conducting a research as one that is supported by interpretivist paradigm. This paradigm paints a picture of a world in which reality is socially constructed, ever changing and complex (Glesne, 1999). The ontological belief of this school of thought is that participants' in particular social settings create or construct social realities. In the qualitative inquiry, the researchers look for different perspectives, and they do not attempt to reduce multiple interpretations to a single norm (Glesne, 1999).

Denzin (1988) offers a certain understanding of theory which is based on interpretation of social interactions. In this view, a theory is seen as a “description that goes beyond the mere or bare reporting of an act, but describes and probes the intentions, motives, meanings, contexts, situations and circumstances of action” (Denzin, 1988: 39). In support of this, Glesne (1999) argue that providing the understanding of lived experiences rather than generalization is the goal of theorizing.

For the above reasons, qualitative method is suitable for conducting the present study. This study will make use of both primary and secondary sources. Secondary sources will be used largely to get an insight of where the problems of land come from and how it has been dealt with over the years. Basically, the secondary sources will assist in giving a historical account of the land question in Southern Africa in general and particularly in South Africa. And the primary sources will provide a more recent perspective and developments on attempts to address the land question in South Africa.

1.4 Definition of key concepts

Apartheid was a system of racial segregation in which the rights of the majority of the people which were black were suppressed and undermined by the National Party government which held state power from 1948 to 1994; **Segregation** is the separation of humans into racial groups; **Race** is a group of people related by common descent or heredity; **Socio-economic inequality** refers to the unequal standards of living amongst or between certain groups of people; **African** refers to the natives; **Blacks** refers to Indians, coloreds, and Natives/Africans.

CHAPTER TWO: Theoretical considerations and literature review

Examination of Transitional Justice Theory

The end of Cold War and the demise of apartheid as well as other discriminating regimes marked a new beginning in the world politics. At the end of the oppressive regimes, a need to reinstall peoples' confidence in government arose. This era was also characterized by the immediate need for redress of the past injustices. South Africa's case is not peculiar to most of other states which were run by 'apartheid-like' governments. At the demise of apartheid, South Africa had to find a way of breaking through from the authoritarian regime to a democratic dispensation. As a result, some form of 'transitional justice' had to be employed.

Democratic transitional justice, as Jon Elster sees it, is "as old as democracy itself" (Elster, 2004: 3). Both in 411 B.C. and in 404-403 B.C. in the Athens, a democracy was overthrown by an oligarchy. In those years, the Athenians also saw the defeat of oligarchs which was followed by the restoration of democracy. In each of these cases, the process of returning to democracy was coupled with retributive measures against oligarchs. The Athenians, in 403 B.C., took steps toward restoring the property which was forcefully taken by the oligarchic regime (Elster, 2004). The two Athenian episodes of transitional justice closely followed each other. But seemingly there was some learning which occurred after the first episode which shaped the occurrence of the second one. At the collapse of the first oligarchic regime, the pre-oligarchic democracy was restored; and 'it carried out harsh retribution and enacted new laws to deter future oligarchs from trying to take power' (Elster, 2004: 3). What this leadership did not do was to deal directly with the root causes of the 'oligarchic coup'. The reaction of the democrats who returned to power in 403 was different to that of 411. These democrats enacted changes in the constitution which

worked toward ensuring that the features which brought democracy into disrepute were eliminated (Elster, 2004).

There are some standard definitions of transitional justice, and these identify its context as “transitions from authoritarian regimes to rights-respecting rule of law regimes” (Nalepa, 2012: 316). The core institutions of transitional justice are seen to be the truth commissions and criminal tribunals, and its broadest aspirations are the establishment of historical truth, the achievement of retributive justice for human rights abuses, and the ultimate aspiration is the establishment of peace and/or reconciliation among the citizens of the new governance. Truth commissions are commonly identified with the aspiration to truth, while on the other hand; criminal tribunals and reconciliation are identified with the aim to obtain retributive justice and accountability (Nalepa, 2012).

Transitional justice is a set of both non-judicial and judicial measures which are implemented to redress the legacies of massive human rights abuses. These measures may include, amongst other things, truth commissions, reparation programmes, criminal prosecutions, and many other institutional reforms (Teitel, 2002). This form of justice is ordinarily enacted at a point of political transition from repression to the stability of the society, and as such, it finds resonance from the society’s desire to repair a fractured justice system, build a democratic system of governance as well as a desire to build social trust (Titel, 2002).

Posner (2003) sees the *transitional justice theory* as a subfield at the intersection of jurisprudence, political theory and comparative politics which is rapidly growing. Posner

contends that *transitional justice* includes, as its tools, purging, apologies, truth commissions, trials and reparations (Posner, 2003). Transitions differs from one country to another, hence the difference in the requirements of transitional justice applied or applicable to different countries (Posner, 2003). In a case where the previous regime was extremely repressive – like in Nazi Germany, the Soviet Union and South Africa – the demands for justice will be much stronger. And in an instance where the old regime yield power willingly without the provocation of a violent revolution – like in Poland and Hungary – the people who takes power after that may feel obliged to treat perpetrators with some level of clemency (Posner, 2003).

Transitional justice, as a field of enquiry and practice, is concerned with a number of both judicial and non-judicial approaches to dealing with the history of human rights violations which largely occurs under authoritarian regime. The approaches used in transitional justice involves a ‘set of related principles and processes centered around the role of law and law-making in constituting transition toward a range of goals and ends’ (Lundy and McGovern, 2008: 267). Within these goals and ends, the restoration of the rule of law; judicial retribution which is designed to counter a culture of impunity; compensation and to restoration of the dignity of victims; social and political reconciliation; reform institutions; nation building and the reconstitution of the past based on a shared narrative are amongst the aims and objects of transitional justice (Lundy and McGovern, 2008).

The goals of transitional justice are ordinarily expected to be complimentary, but they often collide with each other and the various means used to achieve them may prioritize one over the other. Lundy and McGovern (2008) argue that the critical question which needs exploration is

‘how to avoid the potential problem of denying or limiting real engagement and agency with such mechanisms to a population that has been subject to years of violent conflict’ (2008: 268). Jon Elster argue that the transitional justice is as old as democracy itself, but the modern conceptualization of transitional justice emanates from the efforts to put the international law at the center of inter-state relations after the Second World War (Lundy and McGovern, 2008). As has been argued by Ruti Teitel, the transitional justice after war was marked by what he refers to as ‘exceptional and international’ approach. This became more evident when key international treaties such as the Universal Declaration of Human Rights (1948), the Genocide Convention (1948), and the Geneva Convention (1949) were proliferated. However, transitional justice moved from the exception to the norm to become a paradigm of the rule of law after the Cold War. It was driven by political transitions of nation building, globalization and the growing importance of which is given to strategies of conflict resolution (Lundy and McGovern, 2008).

Eventually, the crucial test for transitional justice should be whether its institutions are able to create a foundation for people in societies which were deeply torn apart by violence to live peacefully in one environment. This, argues Nalepa, is not in any way a denial of the fact that truth and justice are intrinsic goods; “nor does the achievement of a measure of truth and justice always contribute positively to the goal of peace and reconciliation (Nalepa, 2012: 317). At the same time, some transitional mechanisms may make a contribution towards reconciliation through the promotion of truth, while others may do so through the promotion of accountability and justice (Nalepa, 2012).

The South African society has been, for many decades, characterized by inequalities which resulted from both colonialism and later apartheid. Unequal distribution of land ownership along racial lines is not a new phenomenon in Southern Africa and for South Africa in particular. When South Africa attained her democracy in 1994, land reform became a necessary project to undertake in order to address the injustices created by the skewed distribution of land (Kirsten, 1999).

While in agreement with the implementation of land reform as a transitional justice measure, Cousins (1997) holds that at the center of the programme stands a bulk of laws defining the rights towards land and resources. His greater concern thus becomes a question of putting legally defined rights to resources into practice (Cousins, 1997). According to Cousins, there are very slim chances of a more interventionist and expanded role of government in land reform. Consequently, “the efficacy of the right-based laws and programmes” which is currently being passed and implemented is what the rural population will have to depend on (Cousins, 1997).

For the rural South Africans to successfully make claims for natural resources and land, they will have to use the new legal frameworks in place. Land reform would therefore have to make provisions for the implementation of the new right-based laws for it to be successful (Cousins, 1997). On the same token, Deininger (1998) holds that for successful implementation of the land reform programme, there ought to be a strong support system to the beneficiaries. He further argues that the poor would fail to get out of poverty, and this would not be resulting from their inability to produce but because of the scarcity of information regarding the options they can explore to make their projects successful and of benefit to them (Deininger, 1998)

Examination of literature on land reform

In all the Southern African countries which experienced land dispossession by Europeans, repossessing such land by Africans remains at the center of both national and agrarian objective. Procurement of land for the purposes of restitution and redistribution has been prioritized by many governments engaging in the process of land reform. To a large extent, this has been done at the expense of tenure reform as it has been given a second place. Land tenure reform in the communal areas has been left behind and the redistribution of formerly white owned farms has been made a priority. What has become a dominant imperative is the repossession of land, hence the post-settlement planning and support is given insufficient attention (Adams, Sibanda and Turner, 1999). As a result of that, the land rights as well as the livelihoods of the incoming settlers have in most cases remained insecure.

This study departs from a premise that properly implemented land reform programme may, in a long run, address the issues of inequality and poverty which is argued to have resulted from land dispossession and apartheid's racially skewed distributional order. Therefore addressing the land question in South Africa has always been in both political and policy makers agenda since the country's transition to democracy in 1994.

Land and land reform have, for a very long time, remained in the margin of political debates in the African region. But much of the 1980s and 1990s saw a comeback of this issue on the policy agenda to an unprecedented extent since the "liberation struggles of the 1960s and early 1970s" (Lahiff, 2003). South African and to certain extent Namibian political parties and landless people in these countries have found resonance in the events in Zimbabwe with regards to addressing the land question. It may be argued that the latter is informed by the persistence of severe racial

inequalities in land holding (Lahiff, 2003). Lahiff (2003) thus argues that the question which should be asked is whether the Zimbabwean case is an exceptional one or an indication of tensions all over the region, and whether the growth in political significance of land in the region “is a product of changes in the regional or global economy, or a culmination of long running processes at a local level” (Lahiff, 2003).

Even though there are conditions driving the quest for addressing the land question, there is a plethora of themes which can be identified as common or which provide a common context across the region for the politics of land (Lahiff, 2003). Among other themes which may be identified is the colonial history which is shared by countries of the region and with it is the impoverishment of the rural people and dispossession which shapes both the discourses around the value of land use and patterns of land holding (Lahiff, 2003).

The skewed land ownership distribution along racial lines is a well-known phenomenon in Southern Africa. This is also true, particularly for South Africa where the racial policies of apartheid determined who owned which land and where. The agricultural policies which were aimed at “food self-sufficiency” created a structure of agriculture dominated by mechanized farms which are owned by a small number of individuals and/or companies (Kirsten, 1999). Resulting from this history of distortion is the ownership of eighty percent (80%) of the country’s agricultural land by few individuals (Kirsten, 1999).

Kirsten argues that this reality therefore provide reasons sufficient to call for land reform. In addition, Kirsten argues that if land reform is implemented correctly, it can contribute to

increased equity and efficiency, and in increased growth and poverty reduction (Kirsten, 1999). In 1994, the South African government adopted a Land Reform Programme which was aimed at redistributing 30% of the country's agricultural land within a period of five years. But until this date that target has not been reached (Kirsten, 1999).

There is both empirical evidence and theoretical reasons which suggest that land reform has the ability to provide equity and efficiency benefits (Deininger, 1999). There is body of research which shows the existence of a “robustly negative relationship between farm size and productivity” (Deininger, 1999). Deininger argues that the latter is informed by the costs of supervision which is associated with employing hired labour. This will then imply that the redistribution of land from large farms to small farms has a potential to increase productivity (Binswanger et al, 1995).

In addition, benefits as insurance to smooth consumption inter-temporally is provided by land ownership. And improved access to credit market is associated with that (Deininger, 1999). A higher aggregate growth could therefore be attained through enabling the poor to undertake indivisible productive investments or even preventing them from depleting their asset base. Cross-country regressions, on aggregate, confirm the “poverty-reducing and growth enhancing impact of a better distribution of productive assets” (Deininger, 1999).

Despite the point which is articulated in the latter paragraph, the actual experience with land reform has in more than a single case failed to meet the expectations. Hence the issue of land remains an issue which is highly debated in many countries. Zimbabwe, Malawi, Brazil, El Salvador and Colombia are some of the countries which are spending sizeable amount of time and resources for the purpose of addressing the land question (Deininger, 1999). For success, a

mechanism desired is one that would be able to create and provide efficiency and equity enhancing redistribution of assets which in return would be able to bring increase in the overall investment at a cost that is as good as other kinds of government interventions (Deininger, 1999).

South Africa's land reform programme is founded on three pillars: "(1) market-assisted redistribution programme; (2) restitution to the people who were dispossessed by racially discriminatory legislation or practice; and (3) tenure reform programme aimed at creating tenure security within a variety of tenure systems" (Cousins, 1997). Both the tenure reform and restitution results from the enactment of new legislations which creates the basis for claims to resources and land, hence they are 'right-based' (Cousins, 1997).

Beyond the formulation of policies and the injection of funds in the implementation of such policies, successful implementation of land reform would require more. Proper and extensive education of prospective beneficiaries on their rights and responsibilities can contribute in the effective implementation of the land reform programme and would also serve as a basis for meaningful beneficiation. A lot has been done in the exploration of land reform but few studies have focused on whether the beneficiaries understand the aims and objectives of land reform and what is expected of them. There is also little, if any, efforts in the direction of not only assessing the progress of land reform but also how both the public and the private sector can contribute to the success of the land reform in this country.

CHAPTER THREE: Land reform in South Africa

South African land reform programme has been characterized by some sectors of the society as an ambitious initiative. Although land reform is widely criticized for being extremely slow, it still constitutes one of the major policy programmes of the African National Congress (ANC) government which are aimed at restructuring the agricultural sector, and to transfer access to and land ownership from white people to Africans. This policy programme also aims at redressing the injustices of the colonial and apartheid dispossession, and also at transforming both economic and social relations in the countryside (Hall, 2007).

The disproportionate distribution of land in South Africa is well known. And even after nineteen years into democracy, the legacy of the past distributive regimes is still evident. The then Minister of Land Affairs, two years into democracy, Derek Hanekom, had this to say about the issue of land in South Africa:

In South Africa, as in many countries in the world, land has always been a sensitive issue. Questions of land ownership, distribution and use still arouse strong emotions and result in heated debate. Our history of conquest and dispossession, of forced removals and racially skewed distribution of land resources has left a complex and difficult legacy.

“Derek Hanekom, 1996”

Dealing with difficulties contained in the transition from one form of governance to another are not an easy task. It is even more difficult when the society is moving from a dictatorship or authoritarian regime to a democratic regime. When the ANC government took power in 1994, it had a responsibility to respond to the cries of the majority of people in the country, and their

quest for access to land. At the same time, it also had to honor the arrangements it had made with the apartheid regime during the preparations for transition. After taking power, the government had to reconstruct and develop the South African society. Since there was an outcry about land use and land ownership in the country, the government had to come up with a land policy that will respond to the needs of the majority of the people. Land reform is a volatile and challenging process even in the most stable countries (Huggins and Ochieng, 2005). For South Africa to head down that road, it was not going to be easier.

The South African land policy, for the purposes of reconstruction and development, it had to effectively deal with the following factors:

- *'The injustices of racially based land dispossession;*
- *The inequitable distribution of land ownership;*
- *The need for security of tenure for all;*
- *The need for sustainable use of land;*
- *The need for rapid release of land for development;*
- *The need to record and register all rights in property; and*
- *The need to administer public land in an effective manner'.*

(Department of Land Affairs, 1996: i)

The latter therefore made the government's land reform policy to be four fold: firstly, it had to redress the injustices of apartheid. Secondly, it had to foster stability as well as national reconciliation. Thirdly, the land reform programme had to underpin economic growth. Lastly, it had to improve household welfare and eradicate poverty (Department of Land Affairs, 1996).

The land reform of the South African government has three focus areas or principal components:

redistribution of land to the disadvantaged; restitution of land rights to the victims of forced removals and tenure reform which is aimed at encouraging security of tenure for all people in a variety of tenure systems (Kirsten, 1996) (Cousins, 1997). In a long run, the success of these three focus points/elements of the land reform programme does not rely only on access to land. As Department of Land Affairs stated in its Green Paper on South African land policy in 1996, there is also a need for provision of 'support services', 'infrastructural and development programmes' in order to improve the quality of life (Department of Land Affairs, 1996: 1). This therefore means that beyond putting in place policy frameworks, there is also a strong need for other support services such as infrastructure and education or capacitation programmes which should be aimed at assisting the beneficiaries of the programme.

The government of South Africa acknowledges the fact that for a successful implementation of land reform policy, there is a need for cooperative partnerships between the private sector, non-governmental organizations (NGOs) as well as the state. In the view of the South African government, there was a need to come up with a land policy and/land reform programme that will contribute to stability, reconciliation, growth and development in a manner that is both equitable and sustainable (Department of Land Affairs, 1996). South Africa's land reform programme aims at contributing to economic development through giving an opportunity to engage in productive land use to households and also to increase employment opportunities by encouraging greater investment (Department of Land Affairs, 1996).

Land reform programme in South Africa is founded on a number of principles. These principles include the quest for social justice. It is argued that land is a basic human need; hence there is a dire need for addressing the widespread landlessness which resulted from both the decades of dispossession and apartheid. The programme is aimed at prioritizing the poor people who are in

“need of land to contribute to income and food security”. It is therefore argued that this requires the identification of groups in need of land, particularly those who are/were marginalized. This is inclusive of evicted and existing labour tenants, women and farm workers who are landless. The state was and is to assist those groups or communities who cannot enter the land market on their own. So, the financing of the programme had to focus on ensuring access to those with little equity (Department of Land Affairs, 1996: 5).

The government’s reliance on the “willing seller-willing buyer” was seen by a number of contributors in the land reform literature as a model that will reduce the political opposition to the implementation of land reform. Binswanger (1996), Kirsten and Van Zyl (1999) are among those who believe that the willing seller-willing buyer model of land reform will increase “its political sustainability” (Kirsten and Van Zyl, 1999: 328). According to Kirsten and Van Zyl, market assisted reform of land as well as expropriation with compensation at a market value seem to have a number of advantages: “(a) a more poorly organized coalition of beneficiaries may be able to win at the legislative stage; (b) the annual budget process for funding the grants can rely on a broader and more focused coalition of supporters; and (c) market prices can be influenced by policies which eliminates the privilege of the large scale sector” (Kirsten and Van Zyl, 1999: 328).

At the point when Kirsten and Van Zyl wrote their paper titled “Approaches and Progress with Land Reform in South Africa”, one may argue that they had truly hoped that the willing-seller willing buyer approach to land reform will bear the anticipated outcomes. But as things stand at this point, that approach seems to have failed. This conclusion is drawn from one’s observation of the failure of the willing-seller willing-buyer approach to reach the government’s targets of redistributing about 30% of land after five years of implementing the policy. The willing-seller

willing-buyer approach to land reform as being identified by Ruth Hall (2007) in Ntsebeza and Hall, has the inherent limitations which are demonstrated with particular reference to “grant based land purchases” (Ntsebeza and Hall, 2007: 87). Ruth further argues that the failure of the South African government to proactively intervene in markets has hampered reform. The argument here is based on the fact that even where land reform has taken place, the structure of holdings in agriculture has been left in most part intact. And it is because of this reason, among others, that Ruth believes the current approach offers very few options for the applicants who are poorer (Ntsebeza and Hall, 2007).

Redistribution of land

Land redistribution is one part of the government’s land reform programme, together with restitution and tenure reform. All these three aspects of land reform find expression from section 25 (5) of the Constitution of the Republic of South Africa. The constitution in section 25 (5) states that:

The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis (The Constitution of the Republic of South Africa, 1996).

Access to land is among the socio-economic rights which are enshrined in the Bill of Rights, however, there is no writing which suggests or state that everyone has a right to own land (Jacobs, Lahiff and Hall, 2003). Although there is no direct right to access of land in any of the international human rights instruments, there are fundamental rights from which the right of access to land can be derived. Article 17 of the Universal Declaration of Human Rights prescribe

that everyone has a right to own property and that such a right should not be arbitrarily encroached by any one (General Assembly Resolution 217A, 1948). One can also argue that the right to land can also be inferred from the right to food and the right to housing.

Without land, the majority of rural inhabitants would not be able to provide shelter or even feed themselves and their families. Therefore, the value which land possess is not only for market crops and food, but it is also for other non-commodity resources which it provides to the poor people. Grazing, firewood, building and craft materials and medical herbs are among the resources which land offer to the rural population (Walker, 2003). This should offer an enough and a clear signal of the need to access to land. Land therefore should not only be viewed through the lenses of conducting a business but also viewed as something that is important for the general lives of the people.

Lahiff and Rugege (2002) argue that the state may choose to expropriate or purchase privately owned land for redistribution, redistribute state land, make subsidies available to people who want to purchase land and also facilitate access to credit in terms which will favour the people as part of meeting its obligations. Section 25 of the Constitution, subsections (1), (2), (3), and (4) protects property against arbitrary action by the state and puts emphasis on the importance of legality in the dealings between the owners of property and the state. However, the Constitution also makes it clear that property rights are not inalienable or absolute. Therefore the state may expropriate property in terms of law of general application “for a public purpose or in the public interest”. This expropriation should however be subjected to a just and equitable compensation (Constitution of the Republic of South Africa, 1996). Land reform is clearly stated in the Constitution of South Africa as a public interest.

The 1997 *White Paper on South African Land Policy* specify the objectives and the approach which the redistribution of land should take. The White Paper reads as follows:

'The purpose of the land redistribution programme is to provide the poor with access to land for residential and productive uses, in order to improve their income and quality of life. The programme aims to assist the poor, labour tenants, farm workers, women, as well as emergent farmers. Redistributive land reform will be largely based on willing-buyer willing-seller arrangements. Government will assist in the purchase of land, but will in general not be the buyer or owner. Rather, it will make land acquisition grants available and will support and finance the required planning process. In many cases, communities are expected to pool their resources to negotiate, buy and jointly hold land under a formal title deed. Opportunities are also offered for individuals to access the grant for land acquisition' (Department of Land Affairs, 1997b:38).

The other legal basis from which redistribution of land finds expression is the Provision of Certain Land for Settlement Act 136 of 1993. This Act was later amended in 1998 and is now titled the Provision of Land and Assistance Act of 1993. With the initial Act, the granting of subsidy and / or advance was allowed to any person. But the 1998 amendment made specific the categories of persons that could be assisted. The amendment made mention of "persons who have no land or who have limited access to land, and who wish to gain access to land or to additional land". Provisions were also made for those who want or may wish to upgrade their land tenure or people who have been "dispossessed of their right in land but do not have a right to restitution under the Restitution of Land Rights Act 22 of 1994" (Jacobs, Lahiff and Hall, 2003: 3-4).

The main aim of land redistribution is therefore to offer the poor people access to land for either residential or productive uses, or both in an attempt to improve their livelihoods. The land redistribution programme aims at giving assistance to the poor, farm workers, labour tenants, women as well as emerging farmers. This form of distributive programme, as was anticipated by government, relied on the willing-seller willing-buyer approach. The government's role was/is to assist in the purchase of land, but will not be the owner or the buyer. Rather its role will be to make available the land acquisition grants and to support planning (Department of Land Affairs, 1996) and (Jacobs, Lahiff and Hall, 2003).

The primary purpose of land redistribution programme was to breach the gap between 87 per cent of land which is dominantly owned by white commercial farming and the 13 per cent in the former 'Bantustans'/ 'homelands'. According to Ruth Hall, redistribution of land was aimed at reducing congestion in the communal areas and also to diversify the structure of ownership of commercial farmland (Ntsebeza and Hall, 2007). The first ten years of land reform saw most of land transfers that took place through redistribution programme, with just less than a third of the total being contributed by restitution. By 2004, the total number of land redistributed under redistribution and tenure reform was almost about 1.9 million hectares (Ntsebeza and Hall, 2007). Beside the programme being slow in achieving the goals set for it, the land redistribution policy has changed its character. It has therefore changed what it was initially supposed to achieve as well as who should benefit from it (Ntsebeza and Hall, 2007).

When it started in 1995, land redistribution started as a pilot programme which aimed at benefitting the poor households. It is only the households which earned below R1500 a month which were eligible to apply for the state grants for them to buy land and have some capital. The qualifying households were then awarded a grant amounting to R16 000. The majority of

projects under this programme involved groups coming together to buy farms which were formerly owned by white farmers for commercial agricultural purposes (Ntsebeza and Hall, 2007) and (Jacobs, Lahiff and Hall, 2003). There are also fewer instances where farm workers used their grants to purchase shares in already existing farming enterprises. The government also made available a separate grant for the acquisition of municipal commonage for the municipalities wanting to provide for communal land which is to be used by those who are inhabitants of smaller towns in the rural areas (Jacobs, Lahiff and Hall, 2003).

After the general elections of 1999, the Minister of Agriculture and Land Affairs announced that there will be a review of the land reform policy and its programmes. This included a moratorium on new redistribution projects. In the year subsequent to that announcement, the Minister issued a policy statement pertaining to the new strategic directions on land issues. In this policy statement, the Minister made mention of some of the problems that the Department of Land Affairs face in the implementation of land reform. The statement also outlined, in general, the policy directions which would be followed, and the redistribution policy was given a particular attention (Jacobs, Lahiff and Hall, 2003). In 2001, the government launched a new policy on Land Redistribution for Agricultural Development (LRAD). This policy aimed at “establishing a class of African commercial farmers, and since then has emerged as primary means by which people are able to acquire land” (Ntsebeza and Hall, 2007: 90).

The previous redistribution programme was means tested as it required a household to be earning below a certain income for them to be eligible for the grant. However, the LRAD is unlike its predecessor. It is not means tested and it “offers grants on a sliding scale from R20 000 to R100 000. This grant depends on the level of loan or cash the applicants are able to bring forward (Ntsebeza and Hall, 2007: 90). This meant that what determines the grant one gets is his/her

ability to contribute. As a result of this, the poor people had to compete with others to access limited resources. The LRAD projects and grants differed both between and within provinces. At national level, many projects remained at the bottom of the scale because applicants could not or have failed to commit financial resources. But in other provinces, for example in KwaZulu-Natal, the LRAD projects are grouped towards the ‘top of the sliding scale, involving substantial capital contributions from applicants themselves as well as loan finance’ (Ntsebeza and Hall, 2007: 91).

The land redistribution in South Africa is facing a challenge of achieving greater equity in land ownership and improving the lives of the rural poor people. The means of discretionary grants provided by the Department of Land Affairs for the purchase of land in an open market still largely affect the redistribution of land. Lahiff (2008) argues that there is a potentially worrying trend, and that is the purchase of land by state without necessarily identifying the intended owners of that particular land. In his view, this may change the policy direction from one which is demand driven to one which is supply driven. As a result of this, prospective beneficiaries will not be directly involved in the decision making processes or even in “the post-purchase planning for the land”, and this will broaden the possibility of a statist approach in which the project implementation and beneficiary selection will, to a large extent, lie with the state (Lahiff, 2008:3).

It was pointed out, both in the *Mid-term Review* (Department of Land Affairs, 1997a) and in the *Review of the Land Reform Pilot Programme* (Department of Land Affairs, 1999), that the support after transferring the land is important for the overall success of land redistribution programme. But still, it has not been taken into cognizance by almost all key actors in the programme. The support services or complimentary development support which are specified in

the White Paper include assistance with sustainable and productive use of land, farm credit, agricultural inputs as well as access to markets for farm outputs and infrastructure support (Department of Land Affairs, 1997a). At the present moment, there are no institutions which specifically deal with the provision of post-settlement support to beneficiaries of land redistribution, and there is very little which has been done in attempting to fund the provision of such assistance (Lahiff, 2008).

Restitution of Land

'The goal of the restitution policy is restore land and provide other restitutionary remedies to the people dispossessed by racially discriminatory legislation and practice, in such a way as to provide support to the vital process of reconciliation, reconstruction and development....'(Department of Land Affairs, 1996).

As a result of forced removals which were conducted in support of racial segregation principles, a lot of suffering and difficulties were caused in South Africa, and particularly to the African population. Therefore the land issues that the country is currently faced with cannot be addressed without addressing the historical injustices of dispossession and forced removals. Among all the wrongs which were committed before and during apartheid, the Constitution only provides or requires that there should be remedies for land dispossession. Both the Interim and the current Constitution provides a framework for the restitution of land rights through the enactment of law by Parliament. This Act, the constitution states, should provide redress for people who suffered from acts of dispossession of land which took place after 1913. In response to this, the parliament enacted the *Restitution of Land Rights Act, 1994*, which then created the Commission on Restitution of Land Rights and the Land Claims Court (Department of Land Affairs, 1997:

20). As it stands, it is only the people whose land was dispossessed after the enactment of the 1913 Native Land Act who are eligible to apply for restitution. This means that the only restitution claim which qualifies for investigation is the one which occurred after 19 June, 1913 for "...the object of, a racially discriminatory law or was not paid and equitable compensation if expropriated and under the Expropriation Act" (Kirsten and Van Zyl, 1999) see also (Kirsten, Van Rooyen and Ngqangweni, 1996: 218).

Many rural people suffered dispossession in different forms of policies, these includes the "clearance of black spots and poorly situated areas, betterment schemes, cancellation of provisions in title deeds and acquisition of land by the former South African Development Trust" (Department of Land Affairs, 1997: 20). de Wet (1997) argues that the restitution component of the land reform programme is the "most high profile and politically charged" (de Wet, 1997: 357). The *Restitution of Land Rights Act* aims at providing remedy for people who were expelled from the areas which were tagged "black spots", and these places were often inhabited by Africans who either had free hold or other form of rights to land, and these areas later became "white South Africa" (de Wet, 1997: 357). The *Restitution of Land Rights Act* also speak to addressing the issue of people who were moved as a result of the Group Areas Act, which, amongst other things, prescribed that members of different racial groups should not live together or in one area. In instances where it is possible, the state will return the original inhabitants to their place of origin; where such is not possible, the will provide "a just and equitable compensation" (de Wet, 1997: 357).

The restitution of land rights in South Africa brings a balance between restoring land rights to the dispossessed and the concerns about agricultural production and stability in the political spectrum. The restitution programme has not only been a mechanism to restore land rights of

those who were moved from “black spots” into homelands; it also encompasses a broader range of claimants. Among these are those removed from urban areas, former labour tenants who lived in commercial farms as well as those who lost livelihoods and land during the betterment planning in the homelands (Hall in Ntsebeza and Hall, 2007: 92). Gradually, land restitution has become a bureaucratically mediated process of bringing back the dispossessed land to people. This segment of land reform is seen as a success since most of the claims made under it have been settled. However, it is worth noting that most of this has been done through the payment of cash settlements to claimants from urban areas. The potentially conflictual claims, costly and intractable are those in the rural areas and they are yet to be addressed. Ntsebeza and Hall (2007) argue that these raise some fundamental questions about “(i) how the rights of claimants and current landowners will be addressed; (ii) financing the acquisition of land; and (iii) appropriate models of agriculture for resource-poor claimants”.

December 1998 was the deadline for submissions of claims under the restitution programme, and a total of 63 455 claims had been received and most of them were claims made by urban individual households to residential land. The claims made in the rural areas by entire communities to large area of land “including prime commercial farmland” were close to 20 000 (Hall, 2004). The processes of collecting evidence in support of claims made proved to be problematic and took very long. By 1997, there was only one claim that was processed; and by 1999, it became clear that the programme was having problems because it had only resolved 41 claims out of 63 455 claims. As a response to the slow progress of processing the claims, the state adopted an administrative route rather than the court process that was initially used in addressing the issue of claims. This saw a dramatic increase in the settlement of claims between 2001 and 2002. The number of claims settled in one year were nearly 18 000. This was

paralleled by the drop in the number of households per claim (dropped from 432 in 1998 to 2 in 2002) and also the drop in the number of hectares restored (dropped from 5 185 in 1998 to 8 in 2002). This is therefore an indication that most of the claims settled in the past few years were individual household claims in the urban areas, and that those claims have been settled through cash settlements (Hall, 2004). In terms of the rural claims, there are very few which have been settled. By March 2003, the rural land reserved for transfer was in respect of only 185 claims out of 36 488. Once more, this is an indication that there are still many claims which remains unresolved (Hall, 2004).

According to the Commission on Restitution of Land Rights (CRLR), there was about 800 000 hectares of land which were reserved for restoration by March 2004, but there has only been a small portion of that land which has been settled by claimants or which has been transferred (CRLR, 2004). A view on where this has taken place and on what quality of land has been restored shows that both the restitution and the redistribution programmes have provided black people with access to relatively low value land, and there is hope that some inroads will be made into the profitable high value sectors of agriculture which are owned by white people. There is above half of all the land reserved for restoration and over half of all the land which had been redistributed by 2002, was in the semi-arid areas in the Northern Cape. But after that, there has been a change in the pattern as some large claims have been settled in the Mpumalanga province (CRLR, 2004).

Most of the claims urban claims have been settled and the focus of restitution is turning to the rural claims. The programme will undoubtedly face challenges in instances where it will have to deal with the unwillingness of current owners to sell. In cases where the negotiated sales are not possible (this is the form of sale the state has relied on to date), the state has offered cash to

claimants. But this is very unlikely to happen with the rural claims as many of the rural people have been consistent in that they want to be restored back to the land from which they were forcefully removed. Because of the slow finalization of their claims, some claimants have even resorted to illegally occupying the land in question to show how much they want such land (Steyn, 2002). It remains unknown how the state will deal with the manifesting contradictions between the claims the black communities are making to land, and the property rights of the people who currently own the land in question. It also remain unclear when or in what circumstances will the state employ more interventionist strategies such as expropriation to improve the speed at which the implementation of the programme is moving.

Land Tenure Reform

'The goal of government's land tenure reform is to extend security of tenure to all South Africans under diverse forms of tenure...tenure reform, by clarifying and strengthening the rights of individuals, families, and groups to the land they occupy, will constitute a grant of real land rights to the rural and urban poor...'(Department of Land Affairs, 1996).

Adams et al (1999) describes land tenure reform as “planned change in the terms and conditions on which land is held, used and transacted” (1999: 9). The basic goal of tenure reform is to strengthen the rights of people to land and as a result, providing them with tenure security. Tenure reform can be viewed as means of avoiding “suffering and social instability” which was instigated by arbitrary or landlessness, and unfair evictions. Adams, Sibanda and Turner (1999) holds that tenure reform in Southern Africa needs to address a range of problems emanating from settler colonization as well as dispossession. They argue that communal areas were deliberately

created to ensure the furtherance of colonial policies, which among others include 'separate development'. Further to that, they hold that these areas were created so they can provide cheap migratory labour. In their view, in the proposed reforms of customary systems, the livelihoods that continue to be 'spatially fragmented' needs to be accommodated (Adams, Sibanda and Turner, 1999).

Both in South Africa and in Namibia, what makes the attempts to dismantle the apartheid map complicated and difficult is the unstructured and complex nature of the legislations which governs communal areas, much of which is not yet repealed. There is a relation between property rights regarding communal and private land problem. Adams, Sibanda and Turner (1999) argue that "...the dual racially-based system of land rights introduced by colonial regimes continues to prevail in southern Africa. Laws involving arbitrary racial distinctions have been repealed, but land in the former reserves continues to be registered in the name of the State". Converting submissive statutory rights into real and secure rights to property would not happen easily. The rights, which are overlapping as well as disputes over boundaries, needs to be resolved first in order to confirm land rights. Land tenure reform will therefore have to deal with the overcrowding in the communal areas as well as rights which are overlapping and exploitation cases by traditional leaders. Resources for establishing and/ or rejuvenating land administration have to be secured from increasingly constrained government budgets (Adams, Sibanda and Turner, 1999).

The tenure insecurity which is prevalent in South Africa resulted from the legacy of state racially discriminatory policies which prevented black people from establishing independent and clear land rights. Africans, under apartheid, were not allowed to own land in the urban areas, towns as well as rural settlements outside the homelands or 'Bantustans'. In the homelands, no individual

had land rights, instead, the land was held communally owing to customary law. Land under this condition was administered by traditional leaders and held in trusts on behalf of the entire community (Department of Land Affairs, 1996). The prescriptions of the pre-colonial customary law allowed land holders, who qualified, within the communal tenure system, to enjoy more secured tenure rights to land for home, grazing livestock on community commonages, and to plots for crop farming. Communal tenure did not allow for the alienation of land rights, more especially through sale to persons who are coming from outside the local community. The traditional authorities had powers over the land they administered, but such powers were limited to the allocation of land rights and disputes mediation (Department of Land Affairs, 1996).

The pre-colonial communal rights which provided “secure access” to land for many black South Africans however eroded at the dawn of both colonialism and apartheid. This was as a result of both the post-colonial and apartheid policies and laws. These laws and policies created commotions between and within communities. These movements of people from one place to another resulted from the forced removals/ relocations of millions of people into homelands, and this caused austere overcrowding. Stable communities and the land holders which existed were forced to accommodate a huge number of new people who came to reside in their areas. In more than a single instance, this created competition and overlap of tenure systems on the same land (Department of Land Affairs, 1996).

The African people in South Africa hold land in numerous tenure dispensations, and most of them have tenure that is not secured. They either hold land as labour tenants, squatters, renters or in the new versions of communal tenure that is in existence in South Africa. Through the land tenure reform, the South African government seeks to give both the rural and the urban poor real rights. So, the government has come up with a right based approach to land tenure which

involves the upgrading of the current “de facto relationships to land, to formal legal rights to land” (de Wet, 1997: 357). But providing people with security of tenure which is legally protected, and the recognition of different forms of tenure which exist, remains amongst the biggest challenges land tenure reform is facing. The Parliament in 1996 approved the Land Reform (Labour Tenants) Act as well as the Communal Property Associations Bill. Both these legislations were an initiative of the Department of Land Affairs which was aimed at protecting “existing informal rights” and giving allowance to the application of alternative tenure reforms (Kirsten and Van Zyl, 1999: 332).

The unequal distribution of both power and wealth between black and white people together with the restrictions imposed on black people with regard to land ownership has undoubtedly contributed to the creation of different forms of tenancy. Tenants were forced to provide labour to farm owners under the labour tenancy. This was done in exchange to tenants being given a right to occupy and use a certain portion of the farm land. The people who live in farms continue to be subjected to exploitation and at times forced removals because there is no clear contract or piece of law which guides their relationship with the property owners (Department of Land Affairs, 1996). Although, in certain instances, there are inherent deficiencies in the current forms of tenancy, they continuously having both social and economic value because they provide an opportunity to access shelter as well as land for production for the landless and the poor. At the moment, many of the relations between the tenants and land owners are not governed by any ‘contractual or regulatory’ framework. In the Green Paper (1996), the Department of Land Affairs argued that clarity regarding the rights and obligations of both parties to the tenancy arrangements will benefit both the tenants and the landowners, and that it shall be pursued.

There are continuing debates on the role of tribal and traditional authorities under the democratic dispensation. These authorities and traditional tenure system has been able to provide a huge number of people with access to land. Nevertheless, given the new socio-political system, there is a need to take popular experience as well as feelings towards the 'traditional authority system' into cognizance. The attitudes of people towards traditional leaders and tribal authorities differs both socially and geographically amongst societies. In many parts of the country, these forms of leadership have lost legitimacy. This loss of legitimacy emanated from varying factors ranging from the authorities failure to provide elementary services to abuse of power (Department of Land Affairs, 1996). On the same token, support and tolerance for traditional authorities continues even in conditions of antagonistic experience. This is evident in North West, Free State, KwaZulu-Natal, Eastern Cape as well as Mpumalanga.

In theory, the Department of Land Affairs seems to be committed to working towards ensuring better life for all people. What remains as a question is whether such commitment can be translated into practice and be felt by the people on the ground. As it stands, there seems to be less done in practical terms. The paragraph below shows the commitment that the government, through the Department of Land Affairs made. However, the people in the rural areas or tribal authorities remain subjects of Chiefs and Kings.

'Within the context of all the differing viewpoints, government is obliged to ensure that all people enjoy the same levels of access to due process of law, equality and all other fundamental human rights enshrined in the Constitution; and will restructure tribal land administrations to the extent necessary to ensure that all aspects of it comply with these standards...' (Department of Land Affairs, 1996).

Land tenure reform is, in many cases, a very uncertain undertaking and complex. There is also difficulty in predicting the economic as well as other benefits which flows from it. As a result, Adams, Sibanda and Turner (1999) argue that it is difficult to justify its administrative costs. These authors further argue that land tenure reform invariably threatens the vested interests of land owners and ‘commercial farmers; ‘traditional leaders or other structures in the communal areas’. Yet, not doing anything to respond to the issue of tenure rights maybe too high a cost. For the locals, tenure reform may make more sense than participating in some government settlements which are too far from their reality. Nevertheless, strategies of dealing with tenure insecurity in communal areas should be viewed as a substitute for land redistribution. Instead, they should be viewed as complimentary measures through which tenure reform can be connected to both the ‘acquisition and settlement of neighboring private land’ (Adams, Sibanda and Turner, 1999).

The South African Constitution states, in section 25 (6), 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 to comparable redress” (The Constitution of the Republic of South Africa, 1996). Tenure reform can thus be seen as one way of re-instilling rights to the people and giving them ownership of the land they live in or the land they once lived in or worked. Since the Constitution allows for tenure reform, there is no need for government to hesitate in addressing the needs of the people in this regard.

CHAPTER FOUR: Prospects and Challenges

The impact of land reform on the rural population

Land reform programme mean different things to different people. Both the economic and the social standing of an individual and/ or the society play a crucial role in defining the reception or the rejection of the programme. Land reform may be accepted by people of different social and economic standings, but for different reasons. It is more likely that a person who is well off economically would accept land reform because he or she has a business mind, but for many poor people, land reform is just about getting land either for residence or small scale farming.

The government in the post-apartheid South Africa has engaged in a land reform programme in an attempt to respond to racially driven land dispossessions which took place both in the colonial as well as in the apartheid era. This programme has proven to be ‘extraordinarily complex and difficult’ and many people have perceived it as an expensive failure (Cousins, 2009: 321). As a result of the difference in the magnitude of impact which land reform has made to the people of South Africa, land reform remains a contested terrain. The rural poor have gained or benefited very little from land reform. This conclusion is drawn from the number of claims which were made and those which were settled. The majority of the rural poor could not even make claims, either because of lack of knowledge as to what should be done, illiteracy or absence of the required documentation; for example: Identity Documents, death certificates...and any other documentation which could be used to validate the claims (Twala and Selesho, 2013).

Land reform and particularly the land redistribution policies of the South African government emanated largely from the World Bank advice. The World Bank recommended that the state subsidize black South Africans so that they are able to purchase land in the existing market. This

was in the early 1990s, but there were no clearly and coherently defined strategies aiming at focusing on the rural poor or women. The prediction was that the eventual consequence of the World Bank's approach would be 'a package of state subsidies to a class of black male rural capitalists' (Macro Economic Research Group 1993: 192). The internalization of the World Bank's views on land redistribution was seen in the President Mbeki's government. This was confirmed when the Integrated Programme of Land Redistribution and Agricultural Development (IPLRAD) was introduced by the Ministry of Agriculture and Land in 2000.

The IPLRAD provided that the beneficiaries should make their own contribution for them to access grants; it was also made clear in IPLRAD that it seeks to promote black commercial farmers (Turner and Ibsen, 2000). When analyzing this, it becomes apparent that the government had shifted its focus from the rural poor people to the creation of black commercial farmers. This is characterized as a shift in focus because; initially, land reform and/ or redistribution policy indicated that it seek to respond to the challenges of land which were brought about by both the colonial and the apartheid regime. The people who were mostly affected by the discriminatory policies of the two regimes are the rural poor. Hence the decision to call for contributions before grants are given is a clear depiction of the shift in focus and interest as this requirement is most likely to favour rich black people who can raise funds to draw down with ease ...grants of up to R100 000 (Turner and Ibsen, 2000: 40).

Between 1994 and 2000, there were about 37 000 households which benefited from the transfer of land. Although the estimates of poor households in the rural parts of South Africa are unreliable, Aliber (2001), argue that there are recent calculations which suggested that there are about 'one million chronically poor rural households' out of a sum totaling around 3.3 million rural African households, which meant that there is above 96 per cent of households which are

poor that did not benefit from land reform programme (Aliber, 2001: 33). It is therefore astonishing how the World Bank claims that the results of their random surveys gives them the ground to 'reject the hypothesis that program benefits are appropriated by non-poor' and to come to a conclusion that their results 'imply that the program is well targeted to the poor' (Deininger and May, 2000: 12). What is more surprising though, as Cross and Hornby (2002) argue, is that the Bank dismisses concerns that the land reform programme has/ was biased against women. There are other careful studies which shows that women and the specifically the poor rural women, do not seem to be getting any benefits from the land reform programme. Of course, there are some women who were, in some groups that had acquired land, registered as beneficiaries but no one between the nominated or the registered female head believed that they (contrary to their male relatives) have rights to the land which are secured (Cross and Hornby, 2002).

There are no survey reports which clearly depict a picture of wage employment opportunities created as a result of 'farm enterprises' that were formed under the land redistribution programme. Even the survey reports on the ratios of 'unpaid family labour in inputs' in these enterprises is not available. On the contrary, the evidence which is available is the one which suggests that the populists pronouncement by government on land reform have resulted in the decline of wage labour which is brought by the 'fear of loss of control over the land' (Aliber and Simbi, 2000; Hall et al, 2001). One can therefore argue that land reform has had adversative consequences on the standards of living of many poor rural people. Some of them did not acquire land and they suffered from the rural wage earning opportunity declines which are important for their survival.

Cousins (in Hall and Ntsebeza, 2007) argue that there is compelling evidence that poverty is getting worse. The rate of unemployment is growing at a high speed. It was estimated to be at 16 per cent in 1995 and accelerated to about 29 per cent in 2002 (Cousins, 2007: 222). As a result of employers choosing capital-intensive over labour-intensive techniques, there has been a decrease in employment of people who are semi-skilled both in commercial farming and in mining sector. It is estimated that there are between 45 and 55 per cent South Africans who are currently living in poverty. Rural poverty has been seen as a huge problem since 70 per cent of the poor people lives in the rural areas and almost half of these people are chronically poor (Aliber, 2003: 474).

The impact of land reform on South Africa's agricultural sector

The post-apartheid government policies continue to be drawn in line with the influence of commercial agriculture which is restructured, organizationally, into AgriSA. The transfer of land and the support for black farmers occurs within the terms of some commercial farming sector. These sections of white commercial farming sector shares similar interests with the post-apartheid government of creating conditions which will bring an increase in profit among the productive core in agriculture, while at the same time embarking on efforts to deracialise commercial agriculture. Black farmers, within this framework, are expected to become commercial farmers and therefore integrated into the networks of production and distribution which are already in existence. The influence that commercial agriculture has is evident in the role they played in both the designing of the Land Redistribution for Agricultural Development (LRAD) programme and also in the adoption of the Strategic Plan for South African Agriculture by government in 2001. The latter programmes were drawn by commercial farmers; both AgriSA and the National African Framers' Union (Ministry of Agriculture and Land Affairs, 2000).

The Minister of Land and Agriculture, Thoko Didiza, in her foreword on the Strategic Plan for Agriculture, clearly stated that both the government and the industry are in agreement as to what are the strategic issues of the agricultural sector. These issues are to empower black people economically, while at the same time enhancing the profitability of the agricultural industries (National Department of Agriculture, 2001a: 3). Chief among these strategies is the deracialising of both land and enterprise ownership as well as fully unlocking the entrepreneurial potential in the agricultural sector. This is a clear indication of a desire to only allow black entrants into the agricultural sector based on their ability to handle competition that exist in the market. In South Africa, driven by commercial agriculture, this element of land reform has become an end-goal (National Department of Agriculture, 2001a: 15-16).

The Strategic Plan makes it clear that LRAD intensifies the ideas of market assisted land redistribution as was earlier envisaged in the land reform programme. LRAD is a programme designed with an aim to promote a class of black commercial farmers. Notwithstanding the fact that there are some elements of support given to subsistence farming and non-market farmers, most of the resources are likely to be directed towards assisting emerging farmers who do have some resource base to match the funds from government for them to enter into large scale commercial farming. The programme is therefore targeting technicians and extension officers from the former [bantustans] as a base for commercial farmers (Ministry of Agriculture and Land Affairs, 2001: 10).

Hall and Aliber (2010: 3) argue that the small scale farmers have been subjects of official neglect for many years. They further argue that this happens in the presence of a plethora of policies and programmes which proclaim to support and encourage small scale farming (Hall and Aliber, 2010). This is evident in the government's efforts to encourage commercial farming, and thus

changing the face from being pro-poor to encouraging profitability in the programme within the auspices of the commercial farming sector. In 2004, the Department of Agriculture launched the Comprehensive Agricultural Support Programme (CASP), and this programme became the largest form of support in the agricultural sector. CASP brought a significant capital budget line which was then potentially available to black people engaged in small scale farming (Department of Agriculture: Comprehensive Agricultural Support Programme, 2003- 2005: 6). CASP focuses on the already existing black farmers as well as land reform beneficiaries, and it is largely for developing infrastructure (Lahiff, 2007).

In the second half of 2007, the government introduced Land and Agrarian Reform Project (LARP) as it planned for a new departure in the approach it use for redistribution of land. From earlier discussions about forming a special mechanism for land reform, and public-private partnerships emanated a new Project Management Unit (PMU) which was to be coordinated by both the Ministries of Agriculture and Land Affairs. There was further development in the work which was proposed to be done by this Project Management Unit. It was further developed ‘as one of 24 Presidential priorities, known as Apex Priorities’, aiming at delivering 5 million hectares of agricultural land by 2009 to about 10 000 new agricultural producers and farm dwellers (Lahiff, 2008: 28).

The effectiveness of the mechanism used for the implementation of land reform

The South African land policy was constructed around the ideas of the World Bank. These ideas encompassed the willing-buyer willing-seller approach which was to be paralleled with the protection of private property, state grant as well as market value compensation for those whose land is expropriated. The World Bank had advised that, in the process of land reform, there

should at least be 30 per cent of agricultural land transferred to black people within the first five years of implementation of land reform (Department of Land Affairs, 1997: 39). The government of South Africa in the post-apartheid era adopted this 30 per cent goal, but it did not even come closer to meeting that target.

South Africa has, since the 1994 democratic breakthrough, adopted an approach which is pro-market towards land reform. Both the conservative forces within the country and international, the World Bank in particular, has enormous influence on South Africa's land reform and the market assisted agrarian reform (MLAR). The rate of land transfer has been slow, and as a result, there is a spread of calls for an approach which is more radical. A more radical approach will be able to speed up the redistribution of land from the minority to the majority of the people, but such an approach has a potential of deflecting the state from the path it has chosen (Lahiff, 2007).

Contrary to countries such as the Philippines and Brazil, where the idea of market-led agrarian reform emerged from, the land redistribution programme in South Africa has fallen entirely within the parameters of MLAR. Among the factors which led South Africa to follow the MLAR approach includes, but not limited to, high inequalities in land holding which are largely along racial lines, the commercialized nature of agriculture in South Africa, the existence of a land market which is well developed and the commitment of the government to neoliberal policies as well as national reconciliation (Lahiff, 2007). Besides, the path of historical development of agriculture in South Africa, especially the dispossession or enormous marginalization of tenant farmers and smallholders and the fact that production was consolidated in the hands of the few large-scale producers, meant that the approach of 'land to the tiller' was not realistic. Hence for land reform to make meaningful impact, it would have to be essentially redistributive, and it

should not only benefit those who are taking part in agriculture but also those were dispossessed a long time ago (Lahiff, 2007: 1577-1578).

The South African land reform and particularly land redistribution, as stated in the White Paper, has been characterized by the application of the willing-buyer willing-seller approach. This was focused on helping those who were previously excluded to enter into the existing land market, together with other players, without necessarily diminishing the rights of those who have previously enjoyed access to the land market, or the existing owners' rights (Lahiff and Rugege, 2002). The concept of the willing-buyer willing-seller approach has been dominant in the land reform discourse in South Africa, and as has been seen above, it can be said to be the defining factor of the land reform programme in the country. Generally, the principle of willing-buyer willing-seller signifies a transaction between the buyer and the seller which is completely voluntary. It has been argued in some sectors of the society that in the context of South Africa this exposition of the willing-buyer willing-seller principle is, in one way or the other, different. This is drawn from the fact that the land owners are not willing sellers on one hand and the government is not a willing buyer on the other hand. Instead the government is legally bound to buy land for restitution and/ or redistribution purposes. The willing-buyer willing seller principle is therefore merely an imaginary activity instead of being an actual practice (Lahiff, 2005).

As a result of the willing-buyer willing-seller principle, the speed of land redistribution is largely determined by a plethora of negotiations which are not coordinated between the owners of land and those who are prospective buyers. Most of the land is owned by commercial farmers, and there is only a small portion of land which is in the ownership of the state. It has been argued that this was done to minimize the participation or the emergent of new farmers. Since the purchase of land in South Africa is based on the land market, some sellers decide to overprice land, thus

making it difficult or even impossible for some prospective buyers to acquire land (Kollapen, 2004). The fact that it is the government officials, who engage in negotiations and not the beneficiaries themselves, land redistribution attempts are often undermined as most, if not all, sellers inflate the land prices. In many cases, it is argued, that the officials at the negotiations do not want to walk away because of the time they have invested and also because of the fact that they have deadlines that they have to meet. As a result of this, the owners of land exploit this and demand unreasonable prices (Dreyer, 2005).

The doctrine of willing-seller willing-buyer as has been used in South African context necessitates that the concept as a whole is transferred from the state to the beneficiaries (Lahiff and Rugege, 2002). However, mere willingness by landless people does not guarantee that they will have the ability to secure the land that they need. The latter emanate from the fact that people that are in need of the land do not only depend on the cooperation of the owners of land, but they also depend on the willingness of the government to approve their applications and provide them with the funding necessary for their projects. The negotiated settlement of the transition from apartheid to democracy accommodated the interests of large scale farmers, and through the willing-seller willing-buyer principles to land acquisition and redistribution, the commercial farming sector had an upper hand on the matter (Cousins, 2004).

Overtime, it has become evident that the problem with the willing-seller willing-buyer doctrine lie in the fact, as concepts, [willing-seller] and [willing-buyer] do not receive equal protection and respect. It is therefore argued that a [willing-buyer] may refer to either the state or the prospective beneficiary, or both. As a result it is seen to be representing an abstract concept containing both the state and the prospective beneficiary who are supposedly working in unison (Lahiff, 2005). The [willing-seller] on the other hand, precisely denotes the absence of any

means of compulsion on land owners. The proponents of the market-led agrarian reforms have regarded the [willing-seller] component as a factor which is of utmost importance in the successful implementation of land, and it is therefore contended that this is in itself the weakness of the doctrine (Boras, 2003).

Furthermore, the [willing-seller] concept protects the existing land owners' interests since it does not force them to sell unwillingly or to sell at a price which they are not satisfied with. The same privilege does not apply to the people without the land, since there are no provisions of protections and guarantees offered to them. The landless people continue to rely on the state to approve their applications for grants and on the willingness of the land owners to transact with them. As a result, South African land reform can emotionally and harshly characterized as a [willing-seller] programme (Lahiff, 2005).

Ultimately, it is contended that social justice is not merely about restitution, but it is also about the way in which redistribution is conducted. The social justice nuanced to redistribution is likely to account for the rejection of the whole notion of the willing-seller willing-buyer which gives white farmers the power to decide whether or not to sell and also the power to decide which land to sell or not to sell to black people (Aliber, 2003). The austere limitations of the market-led approach to land reform in South Africa are plainly evident. Many argue that this has almost nothing to do with the failures of the market or the unwillingness of land owners to leave their land, but it has to do with the limited assistance which the government has made available to the landless and its refusal to participate proactively in the land market in order for it to gain outcomes which will be favourable the masses of the poor people. Thus market based land redistribution becomes a fragmentary redistribution which only serves a few lucky people while

leaving the problems of the massive rural poverty and landlessness, and the basic structures of the agrarian economy intact (Lahiff, 2005).

The doctrine of willing-seller willing-buyer is considered to abhorrent because it places the people on the position where they have to buy back their land, even though the money is largely paid by the state (Aliber, 2003). There have been arguments which claim that the provisions of the willing-seller willing-buyer principle effectively protect white South Africans from any costs associated with restitution, and as such, place the burden on all South Africans (Barry, 2004). While this is in accordance with the philosophy of South Africa which is based on principles of restorative justice and not punitive justice, this may be objected on the basis that in the process of remedying past injustices, new injustices are created. The reason for this is that the process is seemingly asking the innocent people to pay for the crimes committed by the guilty. As a result of the slow pace of the redistribution process, frustration are mounting on the part of citizens, and there are now fears that landless South Africans may follow along the lines of what happened in Zimbabwe and invade farms (Barry, 2004).

Conditions necessary for effective implementation of land reform

For every programme to be successful there ought to be proper structures in place complimented by the necessary human capacity, so is the successful implementation of land reform in South Africa. If land reform is going to make the impact that it ought to make, there is a need for conditions conducive for the implementation of the programme. The people whom the government is trying to serve must be aware of what and how is happening. The introduction of land reform programme in South Africa brought into being a plethora of laws which were created to support the whole framework of redistribution and development programme. The

government set up targets for the implementation of land reform, but such targets have always fallen short.

The creation of the new laws with regards to land reform meant that people, the rural poor in particular, had to make themselves familiar to the laws enacted for the implementation of the rights-based reforms [land tenure reform and land restitution]. The bigger question one will therefore have to respond to is whether rural poor knows that there are laws in place for their utilization, and whether they have access to courts in cases of disputes. Cousins (1997) argued that the rural people of South Africa have to actively make use of the new legal frameworks for them to successfully place their claims to land as well as to natural resources (Cousins, 1997). According to Cousins, land reform had to make clear provisions for successful and effective implementation right based laws. Cousins, like many other commentators in the land reform discourse believes that beneficiaries must be given adequate information pertaining legal reforms, and that institutional capacity, both inside and outside government should be built. This will in return assist in terms of advising and supporting right-holders and also expedite their use of law. Access to courts, in case of disputes, must be made easily available to all prospective beneficiaries (Cousins, 1997).

Many of the rural population have never seen a small farm which is both productive and successful. Hence many of the beneficiaries of land reform are seemingly believing that the possibility of efficient agricultural farming only exist in large farms. This therefore shows how important capacity building is (Deininger, 1998). There are some studies which have shown how limited is the impact of land reform projects, and these have been shown in terms of household livelihoods and productive land use. There are many factors to which this has been attributed to; amongst those is the lack of capital and skills on the part of beneficiaries, inappropriate and

inadequate planning and the failure of state agencies to provide post-settlement support. The government has tried to come up with strategies to deal with the shortage of post-settlement support. This is evident in the government's introduction of Comprehensive Agricultural Support Programme (Hall and Lahiff, 2004).

In accordance with the market-led land reform, those who benefit from land reform should not exclusively rely on government's post-settlement support services, but they ought to be able to access other services from both private and public sectors. The problem with this is that the large commercial farmers have been able to assistance from other institutions and cooperative services, while the small scale farmers and beneficiaries of land reform are by and large left to fend for themselves (Vink and Kirsten, 2003). Services such as credit, extension advice, training, ploughing services and transport have been a problem for beneficiaries of land reform. Access to input and produce markets as well as veterinary services are also among the numerous problems which are faced by land reform beneficiaries (Bradstock, 2005; Hall, 2004b; Wegerif, 2004; HSRC, 2003)

Provincial government departments of agriculture, together with some few non-governmental organizations are the only ones who tend to be providing support to land reform beneficiaries, but it is argued, based on evidence, that these only provide services for few projects. A research produced by Human Science Research Council (HSRC) indicated that '...in many cases there is still no institutionalized alternative to laying the whole burden of training, mentoring and general capacitation on the agricultural departments' (HSRC, 2003: 72). In a study conducted by Hall (2004b) on nine LRAD projects, it was found that not even a single one had been offered support by private sector while most have not even had any encounter with the Department of Land Affairs since they were given land; two of these projects had received grants for infrastructure

from the Department of Agriculture, but there is not even a single one which has been given any form of extension services.

Jacobs (2003) believes that the failure to provide post settlement support lies in the failure to conceptualize land reform programmes beyond merely transferring land and the communication breakdown between the national Department of Land Affairs and the provincial Departments of Agriculture. The rigid distinction between land delivery and agricultural development in South Africa's land policy has resulted in the neglect of the post-settlement support (Jacobs, 2003). Therefore, one may argue, for effective implementation of land reform programmes, there ought to be strong mechanisms of monitoring and evaluating the progress which the projects make. In that way, it would be much easier for government to identify the existing problems as well as possible problems, and would therefore easily deal with them. This would be a cost effective exercise as it would not only come into play only when there are major problems which sometimes require more resources as the projects may have to be started afresh.

Very little information is available on the impact that land reform has made on agricultural production and/ or even the livelihoods of beneficiaries. What is clear is that there is prevalent under usage of land, and there are also very limited benefits for many participants. The resource poor farmer operates under hostile conditions, and these are caused largely by the changes in both the local and the world markets as well as in government policy. Generally, argued Vink and Kirsten (2003), the conditions of people in the communal farming areas not changed much and in some areas they have worsened after land reform. There is really no evidence which shows that the people who participated in land reform lives better because of their participation in the programme. On a similar vein, Seekings and Natrass (2005) make a clear link between increasing poverty and change in agricultural economy and they further link this to land reform

failures. Government's macro-economic policies have, instead of increasing jobs in agriculture, caused a dramatic fall. Consequently, increasing the number of people who are unskilled and unemployed (Seekings and Natrass, 2003).

“Overall ... government policy has not succeeded in being pro-poor. Farm workers have experienced continued retrenchments and dispossession, despite supposedly protective legislation. Land reform has not benefited the poor significantly. The reforms that have been implemented have generally been to the benefit of a constituency that was already relatively advantaged. In this crucial sector, the post-apartheid distributional regime has not resulted in improved livelihoods for the poor”. (Seekings and Natrass 2005: 357)

What Seekings and Natrass are saying goes back to what has been said above that without properly coordinated or the creation of a conducive environment for the implementation of land reform, almost all of its efforts will go in vain. Hence there is a need for a more focused and programme oriented approach for providing support to beneficiaries of land reform as well as those who are supposed to benefit. Information dissemination and capacity building are the bedrock of successful implementation of any programme which seek to reform or restructure the lives of the ordinary people.

CHAPTER FIVE: Conclusion

Summary of Findings and Conclusion

In an effort to assess the impact of land reform on the agricultural sector and the rural poor, this study has engaged on a number of issues concerning land reform programme in South Africa. Firstly, the study engaged in a historical analysis of land dispossessions which took place in both the colonial era as well as during the apartheid rule in the country. In analyzing the effects of the massive land dispossessions which occurred in South Africa, it became apparent that these dispossessions were driven by the quest of white people to dominate the agricultural sector, and also have access to cheap labour as those who are dispossessed land would have to look for alternative means of living. Both the 1913 Native Land Act and the 1936 the Native Trust and Land Act appear to be the corner stones of forced removals and the resettlement of African people in the homelands.

The South African land reform programme has three pillars: Land Redistribution, Land Tenure Reform and Land Restitution. The government has made inroads in terms of implementing these sub-programmes of land reform, but has always fallen short on the targets that they have set for the implementation. In the first five years, government aimed at redistributing 30 per cent of agricultural land from white farmers to black people. In 1999, five years after the launch of the programme, there was only about a per cent of the land redistributed. Most of the cases which were settled were the cases of restitution, and in most cases, the government offered cash settlement to claimants. Both the tenure reform and the restitution of land are rights-based reforms. As prescribed by the Constitution of the Republic of South Africa, victims of the discriminatory laws and policies which were in place from 1913 onwards have a right to make

claims for the land they lost. They can either be restored to their original land or be compensated for their loss.

The land reform programme has impacted people's lives in different ways. Initially, land reform was aimed at assisting the poor and particularly the rural people to gain access to land and enhance their tenure rights. Seeing the slow progress of the programme, government brought into place some initiatives which were meant to fast track the redistribution of land. New initiatives were brought into play, but what seemed to be happening was the change of character on the side of government (land reform) from being pro-poor to focus more on enhancing economic participation of beneficiaries. From this point onwards, the beneficiaries were not only the poor people. The government had shifted its focus from being pro-poor to the creation of a black commercial farming class. Instead, the beneficiaries became those who were able to contribute towards getting the grants from the state. In overall, land reform did not benefit a significant number of poor people.

The major shortcomings of the land reform programme are found on the state's failure to provide adequate post settlement support for those who benefited from the programme. Many people are given land with minor or no knowledge at all on how to farm commercially. Even those who can engage in commercial farming are still facing challenges on how to enter the agricultural market. If the government continues to play a passive rather than a proactive role in the implementation of land reform, poor people who are expecting to benefit from the programme will not be able to do so. The willing-buyer willing seller approach has proven not to be working, or at least not yielding the desired results. Therefore, there is a need for a proactive government intervention. People are steadily becoming tired of waiting, so there is a need for the government to act as soon as possible to avoid illegal invasions of land which people may resort to.

A successful land reform programme will therefore be the one which is able to respond to the needs of the people, particularly the rural poor. Since land reform is seen as a transitional justice measure, government and other stakeholders should never forget what land reform seeks to address. The elite, because of having power, may take for granted the needs of the rural people. To most rural people, land is means for survival. Now, without land, it means that the people have been robbed their way of living. Land reform remains an important tool to rectify the wrongs of the past. But the pace with which it is moving, a sizable number of people have lost hope.

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