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THE RIGHT TO LAND

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South African Human Rights Commission

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PREFACE

In this 10th year of our young but thriving democracy, we are all engaged in some way or the other, in critically reflecting on the achievements we have secured over the past years as well as the unfinished work that lies ahead. In the context of the various rights guaranteed by our Constitution, they seek in their totality to ensure that the individual and the society are able to develop to their full potential and indeed that human rights becomes a central feature of our society. In this regard we have made much progress, and in the main, few argue against the notion that civil and politcial rights are well secured both in law and in practise.

However, the challenge that is situated at the heart of our Constitutional contract is how we advance social and economic rights and in so doing ensure that we advance the interests of the poor and those many who are still to enjoy the full benefits of our democracy. The inclusion of social and economic rights in the Bill of Rights was a clear articulation that democracy was as much about the right to vote, and of free expression and of association as it was about the right to shelter, the right to food, the right to health care, the right to social security, the right to education and the right to a clean and healthy environment.

The Constitution has tasked the Commission with a specific mandate to advance social and economic rights. In particular, section 184(3) requires that: "Each year the Human Rights Commission must require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights, concerning housing, health care, food, water, social security, education and the environment."

A healthy and robust debate exists around these measures that the Constitution requires the State to take. In addition, the human rights discourse sees considerable contestation around issues such as the nature and scope of the right, the adequacy or otherwise of the measures taken and the meaning of the phrase 'progressive realisation of rights.' These are difficult issues and it is not always possible, nor may one say desirable, to always have consenus on them. In some instances the Courts have had to rule on them. We see this Report, however, not only as a contribution to those debates but also as a tool that can assist Government, Parliament and civil society in developing a critical understanding about social and economic rights and their implementation.

The modus operandi of the Commission in discharging its constitiutional mandate to monitor and assess the observance of economic and social rights has in the main focussed on requiring organs of state to report to us on measures they have taken. This continues to pose several challenges, namely: to ensure that organs of State submit to the Commission reports that are timeous, accurate and of good quality . We are pleased that good progress has been made on this front over the past year and the process of presenting draft reports to organs of state and civil society for comment has been most valuable to the Commission in finalising this report .

The launch of the 4th Economic and Social Rights report in April 2003 generated considerable interest and much debate and discussion on the Report ensued. We were invited by numerous parliamentary portfolio commiteees from the National Assembly and National Council of Provinces to present the Report. We certainly found the engagement with Parliament a very useful and mutually rewarding exercise. It provided the Commission with a unique opportunity to share its thinking and vision around its work

with Parliament while it enables us to better understand Parliament's expectation of the Report and its use to them as a tool in their work. There have been numerous valuable recommendations that have emerged from our presentations to Parliament which we are committed to giving effect to from our side.

So as we commence the beginning of the 2nd decade of our democracy the delivery of social and economic rights become crucial to the ongoing success of our nation and the entrenchment of a culture of human rights. It is certainly our hope, and the intention of this Report, to contribute to ensuring that the promise and the vision underpinning our Constitution is shared and enjoyed by all in our country.

Jody Kollapen

Chairperson - South African Human Rights Commission

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INTRODUCTORY SECTION

The aim of the *Introductory Section* is to provide an outline of the common analytical framework used in the reports, briefly discuss the political and economic context of the year under review, and provide an integrated summary of the key findings and recommendations of all eight reports in the series. Details of the report production process are also included at the end of this introduction.

The 5th Economic and Social Rights Report follows a more user friendly format than previous reports. There are now separately bound, less bulky, reports on Land, Water, Environment, Food, Health, Social Security, Education and Housing. Each report has an executive summary to facilitate access to the main findings and recommendations. Issues that connect one right to another are highlighted in the body of each report to emphasise the interrelatedness and interdependence of the rights in the Bill of Rights of the Constitution of the Republic of South Africa Act 108 of 1996 (simply referred to as the Constitution throughout the reports).

A) Analytical Structure and Framework

Each report in this series follows a basic structure:

1. **Introduction**: a discussion of the meaning and content of the right with reference to the Constitution, case law and relevant international human rights instruments.

2. **Progress in the realisation of the right**: a factual description of measures instituted by government during the period under review and their impact, especiallly on vulnerable groups.

3. **Challenges for the realisation of the right**: a description of key challenges that hamper the realisation of the right, and in some cases, government's response to these challenges.

4. **Critique of measures instituted**: a consideration of some of the shortcomings of the measures instituted by government.

5. **Recommendations**: a set of recommendations that may encourage progressive realisation of the right as expeditiously as possible.[1]

Each report consolidates information from various sources including: relevant government protocol responses, government Annual Reports and Strategic Plans, the Intergovernmental Fiscal Review, as well as research funded by government, international donors or other agencies.

All reports employ the standard of reasonableness as laid down in the *Grootboom*[2] and *TAC*[3] judgements of the Constitutional Court, in conjunction with relevant international human rights instruments.

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1 Some reports in the series end with a conclusion.

2 Government of the Republic of South Africa and Others v Grootboom and Others 2000 (11) BCLR 1169 (CC)

The constitutional provisions pertaining to socio-economic rights require the State to "take reasonable legislative and other measures within its available resources, to achieve the progressive realisation of [these rights]".[4] This requirement, read with the provision on the obligation of the State to "respect[5], protect[6], promote[7] and fulfil[8] the rights in the Bill of rights" in section 7(2) of the Constitution ensures an effective guarantee of socio-economic rights in South Africa. The judicial enforcement of these rights by the courts and the constitutional mandate of the South African Human Rights Commission to monitor and assess the observance of the rights by the State[9] and non-State entities also contribute to the effectiveness of the constitutional guarantee of these rights.

The Constitutional Court has played a significant role in ensuring the effective guarantee of socio-economic rights in our country. On the obligation of the State, Judge Yacoob held in the *Grootboom* case:

> *The State is obliged to take positive action to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing.*[10]

On the effective guarantee of basic necessities of life for the poor, Judge Yacoob further said:

> *This case shows the desperation of hundreds of thousands of people living in deplorable conditions throughout the country. The Constitution obliges the State to act positively to*

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3 Minister of Health and Others v Treatment Action Campaign and Others (1) 2002 (10) BCLR 1033 (CC)

4 See sections 26(2), 27(2) and 29(2) of the Constitution.

5 Respect is a negative obligation, which requires the State to refrain from denying or limiting equal access for all persons to the enjoyment of the rights. This also means that the State should abstain from carrying out, sponsoring or tolerating any practice, policy or legal measure which violates the integrity of the individual or which in any way interferes or limits his/her right to pursue the enjoyment of the rights in the Bill of Rights.

6 The obligation to protect places a positive obligation on the State to prevent the violation of any individual's rights by a third party.

7 The obligation to promote places a positive obligation on the State to create a conducive atmosphere in which people can exercise their rights and freedoms by promoting awareness of their rights through public education.

8 The duty to fulfil places a positive obligation on the State to institute active measures that enable each individual to access entitlements to the right and which cannot be secured through exclusively personal efforts. State parties are also obliged to provide a specific right when an individual or group is unable, for reasons beyond their control, to realise the right themselves by the means at their disposal. e.g. people in disaster situations or those in dire need.

9 See sections 184(1) and (3) of the Constitution.

10 Government of the Republic of South Africa and Others v Grootboom and Others 2000(11) BCLR 1169 (CC) [24]

ameliorate these conditions. The obligation is to provide access to housing, health-care, sufficient food and water, and social security to those unable to support themselves and their dependants. The State must also foster conditions to enable citizens to gain access to land on an equitable basis. Those in need have a corresponding right to demand that this be done.[11]

On the role of the courts in ensuring that the State fulfils its role in giving effect to these rights and thus ensuring that there is an effective guarantee of these rights, Judge Yaccob said:

I am conscious that it is an extremely difficult task for the State to meet these obligations in the conditions that prevail in our country. This is recognised by the Constitution which expressly provides that the State is not obliged to go beyond available resources or to realise these rights immediately. I stress however, that despite all these qualifications, these are rights, and the Constitution obliges the State to give effect to them. This is an obligation that Courts can, and in appropriate circumstances, must enforce.[12]

A similar position was taken by the Constitutional Court in another seminal judgment, *Minister of Health and Others v Treatment Action Campaign and Others*, where the Court held:

The state is obliged to take reasonable measures progressively to eliminate or reduce the large areas of severe deprivation that afflicts our society. The courts will guarantee that the democratic processes are protected so as to ensure accountability, responsiveness and openness, as the Constitution requires in section 1. As the Bill of Rights indicates, their function in respect of socio-economic rights is directed towards ensuring that legislative and other measures taken by the state are reasonable.[13]

In outlining the role of the courts, the Court also stated:

The primary duty of courts is to the Constitution and the law…Where state policy is challenged as inconsistent with the Constitution, courts have to consider whether in formulating and implementing such policy the state has given effect to its constitutional obligations. If it should hold in any given case that the state has failed to do so, it is obliged by the Constitution to do so.[14]

While there might be some criticism directed at the Constitutional Court pertaining to the determination of when there are no available resources for the State to fulfil its obligation pertaining to socio-economic rights, the courts, particularly the Constitutional Court, have and will continue to play an important role in ensuring that the provisions in the Bill of Rights are effectively guaranteed for our people.

B) The Political and Economic Context of the Year Under Review

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11 Ibid., [93]

12 Ibid., [94]

13 Minister of Health and Others v Treatment Action Campaign and Others (1) 2002 (10) BCLR 1033 (CC) [36]

14 Ibid., [99]

The period under review, 1 April 2002 to 31 March 2003, followed the 11 September 2001 attacks and a 24% depreciation of the South African currency (Rand) near the end of 2001. Consumer Price Inflation, especially for goods and services bought predominantly by the poor, increased sharply to the highest level since 1994. Concerns were signalled to the Competition Commission about the impact of import parity pricing in several sectors of the economy, most notably in food production, processing and retailing as well as metals and engineering. Interest rates were raised in an attempt to curb inflation, with a subsequent dampening effect on the rate of economic growth in the latter part of the financial year. According to the Reserve Bank Quarterly Bulletin for March 2003, economic growth stood at a robust 3% in 2002.

As a result of prudent fiscal management, the government introduced a more expansionary Budget in February 2002. Total government expenditure increased from R262,6 billion in 2001/2002 to R291,8 billion in 2002/2003. Overall, the budget directed more resources towards reducing poverty and vulnerability, improving education and training, developing skills amongst the youth, building and enhancing physical infrastructure and basic municipal services, as well as making communities safer places to live, work and play.

It is also important to note that the February 2003 Budget provided for significantly greater expenditure than the previous year. Total expenditure was R331,7 billion for 2003/2004. The additional allocations accomodated substantial policy changes for all three spheres of government and also provided for *higher than anticipated inflation in 2002*.

By the end of the reporting period in March 2003, the Rand had appreciated by 18%. This created concern about the job losses that could arise out of an increase in import competition. Therefore, during the period under review, the goals of progressively realising economic and social rights took place in the context of significant macro-economic volatility, inflation and an expanding government budget.

C) Key Interrelationships Amongst Economic and Social Rights

The Right to Land

The State was responsible for achieving progressive realisation of the right to land during the reporting period. The Commission demonstrates that there was a year on year improvement in land delivery performance by the State, especially through the Land Restitution and Land Redistribution sub-programmes. Improvements in rural tenure reform were less noticeable.

Between 2000 and 2001 there were 12 094 settled Restitution claims, while in February 2002 there were approximately 32 000 settled claims. By March 2003, there were 36 488 settled claims recorded. Although the majority of these claims were in the urban areas, settled rural claims show a substantial increase. The people working on the Land Redistribution for Agricultural Development sub-programme delivered 103 682 ha against a target of 81 555 ha for the year under review. Whereas the Department had targeted to benefit 3 601 people, the programme ended up benefiting 6 170. Concerning tenure reform, the State initially delivered 30 000 ha of land through 201 projects. Beyond that, the State is working towards bringing the Extension of Security of Tenure Act (ESTA) and Labour Tenants Act (LTA) together in the Consolidated ESTA/Labour Tenants Bill.

Throughout the report, the Commission reflects on the demand, voiced by landless people and others, that the pace of land redress is too slow and inattentive to vulnerable groups. The report recommends accelerating land reform to meet its new targets by relieving budgetary constraints and the associated problems of personnel shortages, lack of quality training and understandable communication; land acquisition; and improvements in monitoring and evaluation.

The Commission would also like to highlight that it was informed by the Department of Land Affairs that it was impossible to represent the racial and gender composition of land purchase transactions and repossessions, according to the size and value of land parcels.

The Right to Education

The right to education is analysed as a continuum of three bands of schooling- General Education and Training, Further Education and Training and Higher Education and Training. The State instituted measures to respect, protect, promote and fulfil the right to General Education and Training, and in the Commission's overall assessment, it succeeded in achieving progressive realisation of this right.

The Department of Education succeeded in ensuring that all targcoeted Early Childhood Development sites for children between the ages of five and six were operating. However, the Department acknowledges the challenge, which has budgetary implications, that only 13% of all children have access to the programme. In the context of a substantial increase in the rate of student enrolment in primary schools between 1994 and 2001, the National Department focused on further increasing access to General Education and Training through reviewing public school financing and the system of school fee exemptions. The report highlights the shortcoming that some schools and Provincial Departments of Education failed to make parents aware of the school fee exemption.

While progress was made in eliminating instances where learners are forced to receive education in environments that are not conducive to teaching and learning, the report emphasises that more needs to be done to address infrastructure backlogs, especially when it comes to water and sanitation. The Department also made progress in developing a redistribution model for personnel and operating expenditure that would achieve equality of teaching quality and equality of learning outcomes in the schooling system from 2003/2004 onwards. All stakeholders in education, including the SAHRC need to explore and come up with a definition of quality basic education which could be measurable and relatively easy to monitor.

Conditions in farm schools were identified as hinderance to progress in the realisation of the right to General Education and Training. The issue of street-children also has to be given some serious attention by all the relevant stakeholders. Amongst other recommendations to further observance of the right to General Education and Training, the report calls for better-published medium term strategies and improved spending on Adult Basic Education and Training. In the 2001 Census, 4,5 million people aged 20 years and older did not have a formal education and 4 million people had primary schooling only.

Most of the developments in the Further Education and Training band met the Constitutional requirement to respect, protect, promote and fulfil the right. *Dinaledi*, the programme that seeks to improve participation and performance of learners from historically disadvantaged backgrounds in Mathematics, Science and Technology (MST),

reportedly surpassed its target of 10% of students enrolling for MST in its first two years of implementation. The development of Recognition of Prior Learning (RPL) is another development that contributes to the realisation of the right to Further Education and Training. RPL recognises non-formal and/or non-academic education. RPL also stands to maximise learning opportunities for those without formal and/or academic qualifications to acquire formal qualifications in Further Education and Training institutions, which must all be registered with the State.

Areas where the State fell short of its obligations to progressively realise the right to Further Education and Training include: insufficient public education on school fee exemptions and insufficient Learner Support Materials and/or their late delivery. The report also highlights that participation rates in education by girl learners were being negatively affected by girls' involvement in income generating activities.

While Higher Education and Training is not explicitly recognised as a right in the Constitution, it obviously depends on the learning outcomes achieved in General and Further Education and Training. Here, there seems to be room for improvement as the average graduation rate for university and technikon students is 15%; less than half the ideal average of 33%.

Key challenges associated with the Higher Education and Training band include assisting potential students with subject selection choices and career guidance at school and university level, as well as lowering the high costs of accessing higher education and applying to different tertiary institutions. The report recommends ensuring that admission requirements to tertiary institutions are transparent and fair, promoting indigenous languages as academic/scientific/legal languages, mobilising funds for bridging courses and improving access for mature and post-graduate students, including part time students.

The Right to Water

Ever since 2001 and the introduction of Regulations Relating to Compulsory National Standards and Measures to Conserve Water, the State instituted a national measure to fulfil the right to water by supplying 6000 litres of free, clean water, per household per month, otherwise known as Free Basic Water.

During the reporting period, approximately 1,6 million people gained access to improved piped water supplies through Department of Water Affairs and Forestry's Community Water Supply and Sanitation Programme. Approximately 65 thousand toilets facilities were constructed during the reporting period under the same programme, but it should be noted that these figures exclude the large number of sanitation facilities that were delivered as part of the State's housing programmes. Less than 530 000 households also benefited from water and sanitation projects through the Department of Provincial and Local Government's Consolidated Municipal Infrastructure Programme. Although the above indicates that the roll-out of water and sanitation infrastructure is proceeding towards the Department's medium delivery targets, the report raises concerns about the level of dysfunctional infrastructure and projects, especially in rural areas.

At the end of the reporting period in March 2003, access to Free Basic Water by poor people stood at 38% or approximately 12,2 million people. Access to Free Basic Water by non-poor households stood at close to 100% or approximately 14,2 million people. A large number of poor people (19,6 million) were still to receive their Free Basic Water allocation. Where Free Basic Water was not available, the average cost of 6 kilolitres (kl)

was approximately R13 per month. The price for 6kl of life-line supply was highest in Limpopo province at approximately R19 per month. Gauteng and KwaZulu-Natal also had comparatively high average charges for life-line supplies where Free Basic Water services were not operational.

In order to remove these glaring inequities in Free Basic Water provision, the report calls for an urgent revision of the pricing system to include a significantly greater level cross-subsidisation from high volume water users to low volume users in the 0-6 kl range. More support and funding is required to assist municipalities with capacity problems in implementing Free Basic Water. During droughts, local governments should ensure that Free Basic Water supplies for domestic users are assured and that a situation cannot develop where agricultural, mining and industrial users are allocated large volumes of water at similar prices to low-volume users.

The report describes some aspects of the devolution of domestic water quality monitoring and testing from Provincial Departments of Health to local munipalities and calls for rapidly providing sufficient funds for water quality monitoring to prevent serious disease outbreaks and illness.

The report recommends that the Department of Water Affairs and Forestry (DWAF) should take a leading role in making sure that farm dwellers, residents near commercial farms and poor households in rural and urban areas access clean water and proper sanitation services. DWAF should also ensure that it develops and implements a plan to address the specific problems of water access experienced by people living with HIV/AIDS.

The report suggests that monitoring bodies should be created at local level to effectively monitor the implementation of policies and laws aimed at fulfiling the right of access to water. The report warns that monitoring will be only be effective if monitoring bodies from local, regional and national spheres work together. Where possible and when possible, the Free Basic Water allocation should be increased to cater for higher levels of domestic water consumption. A 50kl water allocation per household per month would bring South Africa's Free Basic Water allocation into the 'low level of health concern' range defined by the World Health Organisation.

The Right to Health Care

The report on the right to health care focuses on key developments in three key health programmes of the State (Health Service Delivery, Strategic Health Programmes and Administration). Although the policy and legislative measures developed in the fiscal year under review can be said to be “reasonable” in their conception, there remain large gaps in implementing them in a manner such that all the provinces, urban and rural peoples, rich and the poor have equal access to the same high quality of care.

The three most important, and universally acknowledged, indicators to measure the health status of a nation are Life Expectancy at Birth, the Maternal Mortality Ratio, and the Infant Mortality Rate. Life expectancy has fallen from 56 years in 1996 to 52,5 in 2002 and is projected to fall to 47 by 2005. The infant mortality rate has increased from 45 in 1998 to 59 in 2002. This means that more children under the age of one died in 2002 as compared to 1998. The under five-mortality rate has risen from 61 in 1998 to 100 in 2002. Similarly, the maternal mortality ratio shows a steady increase since 1998 and is

estimated to be 150 per 100 000 live births. The National Department of Health, as well as independent researchers, have concluded that this is due to HIV/AIDS related deaths.

The single most important challenge that government faces is the one posed by the AIDS pandemic and the high incidence of opportunistic diseases such as tuberculosis. It is estimated that about one tenth of the population of the population is infected with the HI virus i.e. close to 5 million people. The number of AIDS orphans is estimated to be one million. In a landmark case instituted by Treatment Action Campaign against the Minister of Health, the Constitutional Court, in 2002 confirmed the finding of the High Court that government's policy to limit Nevirapine to research and training sites was in "breach of the States obligations under section 27(2) read with 27(1)(a) of the Constitution." The report recommends that the Comprehensive National Aids Plan should be rolled out effectively in all the provinces so as to meet targets and timelines in order to substantially reduce new infections and to prolong the lives of those already infected.

In spite of the fact that policies and programmes directed at improving the health status of the country have been put in place such as the Integrated Management of Childhood Illnesses, the AIDS pandemic continues to be the single most cause of death in South Africa. This has placed an enormous strain on an already overburdened health system and undermines the efforts made by the State. This is compounded by the fact that the other economic and social rights, which contribute substantially to the health status of a nation, are also not fully enjoyed by the vast majority of poor South Africans due to the huge backlogs inherited from the past. Inadequate housing, poor sanitation, overcrowding, lack of clean drinking water, lack of efficiently run social services, insufficient nutrition and health education exacerbate the diseases of poverty. Moreover, a household that is affected by AIDS contributes to depleting the financial resources available to the family, thereby increasing the level of poverty.

government developed legislative and other measures to comply with its constitutional obligations in terms of section 7(2) of the Constitution. However, despite national policies and programmes, which, in the main comply with international standards and targets, the health care system has not been able to successfully deliver quality health care on an equitable basis in all the provinces. Provinces do not spend the same amount per capita on health care delivery, and there is a serious lack of managerial capacity in the health system. The biggest challenge facing the efficient running of the health system is training managers to operationalise efficient systems especially for running clinics and hospitals where many problems have been identified. Efficient management systems in conjunction with effective engagement with labour should be operationalised with immediate effect in the public health sector so as to ensure that hospitals and clinics run well.

The report also recommends that there is a need to increase efforts in promoting preventative health measures by the State as well as by non-state actors. Programmes and policies should also be put in place to address the needs of the poor and vulnerable members of society, including a National Health Insurance System. Inequities in the health system such as intra- and inter-provincial health expenditures, access to clinics and hospitals, number of doctors, specialists, and nursing staff need to addressed so as to give meaning to the constitutional right to universal and equal access to everyone. Finally, Departments of Health are strongly advised to improve their monitoring, evaluating, and reporting systems

The Right to Social Security

The Constitution provides that everyone has a right to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance. The number of social assistance beneficiaries increased dramatically by 966 311 people from April 2002 to the end of March 2003, mostly as a result of increased registration for Child Support Grants for children up to the age of seven. By the end of March 2003, 5,6 million people were beneficiaries of social assistance, which mostly comprised of child support grants (2,5 million people), old age pensions (2 million people), disability grants (897 050 people) and foster care grants (133 309 people). The most rapid increases in uptake of social grants took place in Gauteng, Free State, KwaZulu-Natal, Mpumalanga and Limpopo. Take up rates were considerably lower in the Northern Cape, North-West, Eastern Cape and Western Cape.

Most provincial departments indicated that the allocated budget was not enough and that numbers of grant beneficiaries were constantly increasing, resulting in overspending for social security. However, the delivery of social services has not been efficient in some parts of the country as a result of administrative problems, lack of documentation as barriers to accessing grants, poor conditions at pay points, as well as corruption and maladministration.

As a result of rapid inflation in the cost of basic goods bought by the poor, in 2002/2003, the State moved swiftly to implement above inflation related increases in social grants. The old-age pension was increased by R20 to R640, the child-support grant increased by R10 to R140, the grant in aid increased from R120 to R130, the foster-care grant from R450 to R460, and the care dependency grant from R620 to R640.

The National and Provincial Departments of Social Development spent 90% of the R49 million allocated to the HIV/AIDS (home based/community based care) programme. The Home/Community Based Care programmes, through the collaborative work of government, non-governmental organisations, including faith-based organisations, and communities have benefited 29 612 children orphaned or vulnerable to HIV/AIDS by the end of March 2003. The programme reached 75 000 children orphaned or vulnerable owing to HIV/AIDS since its inception in 2000.

The State also instituted new measures to to further the right to social security, including disability assessment panels, a social relief of distress policy and the implementation of the National Food Emergency Scheme/Programme. Figures of the number of households that were assisted with food parcels in the pilot phase of the National Food Emergency Programme from December 2002 to the end of March 2003 range from 60 089 to 149 779.

The social security system at present does not cater for everyone and not everyone in need of social assistance is afforded such assistance. This is especially so for children in child headed households and children who live in the streets who sometimes engage in exploitative forms of labour. Some parents also fail to provide and take care of their children and put strains on the maintenance and social assistance systems.

The report recommends that the Department of Labour should take the International Labour Organisation's Decent Work for All Strategy forward in South Africa. It is also recommended that the relevant organs of State achieve better regulation of the insurance, health and maintenance systems. Particular attention should be paid to the coverage of old

age pensions for workers in non-formal employment. The Department of Social Development is encouraged to continue fostering collaboration with all stakeholders, such as other government departments, Faith Based Organisations and Non-Governmental Organisations. The Basic Income Grant should continue to be considered as a viable option for addressing poverty in the country, especially amongst people of working age. The proposal to extend social assistance to all children in need (up to the age of 18), should also be kept alive.

The Right to Food

The report concludes that many people, and children in particular, had their right to food violated during the reporting period as they lost access to affordable food due to high prices and/or unreasonable plans devised and supervised by government. During the reporting period, 101 152 children were admitted to hospital with severe malnutrition and it was not possible for the Commission to state how many children died of malnutrition. However, it is alarming that case fatality rates for severe malnutrition in two under-resourced hospitals in the Eastern Cape ranged from 21% to 38%.

The report finds the National Department of Health's targets for reducing malnutrition to be unreasonable in their conception because the targets for 2000 and 2005 were virtually identical. The report also finds two elements of the Primary School Nutrition Programme to be unreasonable in their conception.

The first issue concerns the reduced allocation of resources to the programme in 2002/2003 as compared to 2001/2002. In 2001/2002 the total cost of the school food "meal" ranged from approximately 99 cents to R2.10. In 2002/2003, the maximum budgeted resource available per targeted learner per day was less than 67 cents. This is clearly an unreasonable set of parameters for the programme to be improved to meet the higher standards set by Cabinet.

The second element of the programme that was unreasonable was the reduction in the targeted number of children who should benefit from the programme. In the context of increasing numbers of children enrolled in schools, the Primary School Nutrition Programme did reach 4,5 million children in grades R to 7, however this was 151 615 children less than the year before. The drop in the number of learners who were reached is connected with government reducing its target from 5,4 million learners in 2001/2002 to 4,9 million learners in 2002/2003 as well as rapid increases in the cost of food procured for the programme. A three month gap in the implementation of the programme in the Eastern Cape also reduced access to the programme.

Non-State actors appear to have fallen short in their observance of their positive obligations to fufil the right to food. As one example, the Yiyo Lena sifted maize relief programme introduced by a group of companies is alleged to have sold relief maize packs at a 20% discount, despite that fact that the companies announced that the programme would entail a 50% discount.

High basic food prices during the reporting period, were partly attributable to inadequate safeguards on the South African Futures Exchange, where maize prices are formed. High prices for maize were passed on to low-income consumers, who could ill afford such dramatic basic food price increases for such a sustained period of time. The potential for market manipulation should have been prevented by the Johannesburg Securities Exchange when allegations of abuse were first signalled in 2002. The report identifies

that there are weaknesses in the State's observance of its obligation to protect against fraud, unethical behaviour in trade and contractual relations.

There were some signs of improvement in the State's delivery of production support to emerging farmers and people who grow their own food. For example, the Comprehensive Farmer Support Package was instituted during the reporting period to assist land reform beneficiaries. However, it was implemented in some provinces only.

The LandCare programme, which is one of the major production support programmes from the National Department of Agriculture, was heavily underspent at 65% of the total conditional grant to provinces. There is also a significant gap in production support for rural restitution beneficiaries.

It was found that very few Provincial Department's of Agriculture were operating well funded programmes designed specifically to provide grants or revolving loans to support increased access by small scale and emergent farmers to production and/or marketing related infrastructure. Production support materials and learning support materials that are relevant to resource to poor farmers in water scarce areas were also not readily available.

On the whole, the report determines that the State absorbed the heavy burden of duty to achieve the progressive realisation of the right to food as expeditiously as possible, within its available resources. However, there was a crucial weakness in the measures to protect the right to food from being violated by non-State actors or third parties that need not be repeated in future.

The report suggests that there is a need for greater care in the preparation of strategic and financial planning targets so that they inspire civil society to marshal their resources in support of the progressive realisation of the right. The report recommends: public education to raise awareness of malnutrition, rolling out the Integrated Food Security Strategy at a provincial level, improving food safety, achieving better regulation of the food industry through State procurement, accelerating agrarian reform, and communication policy and legislative developments more effectively. Finally, the report supports the call for government, labour, community and business representatives to negotiate an agreement at the National Economic Development and Labour Council (NEDLAC) to ensure the right to food and quality job creation in the food industry.

The Right of Access to Adequate Housing

In order to fill some gaps in the housing policy framework, the State identified medium density housing, rental housing, social housing and emergency housing as the key policy priorities for 2002/2003. Emergency, medium density, rental and social housing are part and parcel of addressing inequalities in access to transport and the legacy of racial segregation. The Emergency Housing Policy Framework was conceptualised as a result of the *Grootboom* judgment and aims to assist groups of people that are deemed to have urgent housing problems, owing to circumstances beyond their control (e.g. disasters, evictions or threatened evictions, demolitions or imminent displacement or immediate threats to life, health and safety). The report highlights that it was not clear whether the Emergency Housing Policy should also cover people living in informal settlements, because they are living in intolerable circumstances. Social Housing projects demonstrate that socially, environmentally and sunshine conscious design principles can make a difference to the quality of State subsidised housing.

The State reported on measures to protect the right to housing in the form of the Prevention of Illegal Eviction from Occupation of Land Amendment Bill and the commencement of the Home Loan and Mortgage Disclosure Act 63 of 2000. With a view towards curbing discriminatory practices, the Act compels financial institutions to disclose information in their financial statements on home loan patterns according to categories of persons and geographic areas (both of which may be prescribed). The Community Reinvestment Bill confirmed the State's intention to increase private sector investment in the lower end of the housing market. The report highlights that the State was also attending to some aspects of the Housing Act 107 of 1997, as amended, in order to ensure that the Act, and its implementation, did not violate an individual's right to property in terms of the Constitution.

In terms of on-going policies and programmes, in 2002/2003, the State reported 203 288 houses completed or under construction, whilst the State approved 519 498 subsidies to households with a joint monthly income less than or equal to R3 500, or R1 500 if the house was built under the apartheid system. By the end of 2002/2003, the State reported that over 1,4 million houses had been delivered since 1994, whilst the number of families without houses (i.e. dwellings in backyards, informal dwellings, backyard dwellings in shared properties and caravans/tents) was reflected as 2 399 825- from the 2001 Census. The State also increased the subsidy amounts for the housing programme to keep pace with inflation and maintain the well-known quality and size of housing. Sixty-three projects were also completed as part of the Human Settlement Redevelopment Programme in order to correct imbalances and dysfunctionalities in existing settlements that cannot be funded through the housing subsidy scheme (e.g. sports facilities, business hives, labour exchanges, cemetaries, parks and ablution blocks).

There was under expenditure on housing delivery amongst many provincial departments responsible for housing. Reporting on the constraints associated with underspending was not complete, but included the following in some cases: failure to secure suitably located land, delays in tender adjudication, municipalities failing to submit business plans, delays in the National Department approving projects, weaknesses and staff shortages at municipal level, incompetence, corruption, political intervention and nepotism, slow delivery associated with the People's Housing Process and delays at the Deeds Office.

Comparing performance in relation to targets was a problem in that provincial information was reported in the format of the number of units completed *or* under construction. Nevertheless, Gauteng and Limpopo provinces stand out as the only provinces to show a reduction in units, whether complete or under construction, from 2001/02 to 2002/03. The Gauteng Department of Housing reported delivering 59% of the target in the incremental housing programme and 39% of the target in the Social Housing programme. A Customer Support Service in the province acknowledged 83 714 queries and responded to a further 11 774 by letter.

According to the National Department of Housing, in 2002/2003, 6 469 houses did not conform to the Department's construction and safety standards. The National Home Builders Registration Council's (NHBRC) Warranty Scheme was instituted to provide assurance to beneficiaries that houses built and financed through the housing subsidy scheme are of an adequate quality. After trying to resolve disputes about the quality of constuction, a housing subsidy beneficiary can forward complaints to the NHBRC. However, the report highlights that public education is required to empower consumers to identify quality problems and make use of the complaint procedures of the NHBRC. The

Mpumalanga Department of Housing also reported that building works inspectors from provincial government and local government monitored the work of contractors.

The report makes one urgent recommendation, namely: to establish the dedicated fund for acquiring well-located land for low-cost housing. Other recommendations include reducing policy incoherence and institutional fragmentation, improving monitoring and evaluation, interpreting the Peoples' Housing Process as a route for strengthening culturally adequate housing, creating an informed and supportive environment for whistleblowing, and ensuring effective participation in the delivery of housing. Specific attention is drawn to the plight of farmworkers and vulnerable groups, especially HIV/AIDS orphans and People with Special Needs.

The Right to a Healthy Environment

Section 24 of the Constitution establishes the right to environment in order to ensure the health and well-being of present and future generations. At its core, the right to environment aims to grant this benefit to everyone in South Africa, not just to the few. Although, translating this vision of the benefit of environmental health into reality has become increasingly complicated, ensuring that there are no violations of this right is as urgent as any violation of other rights in the Bill of Rights.

Analysts of data from South Africa's Global Atmosphere Watch station at Cape Point contend that continued emissions of greenhouse gases are cause for concern. Like many countries, South Africa is sensitive to global climate change and there are also occasions, especially in major urban areas, when more localised air pollution becomes a health threat.

By way of illustration, the Johannesburg *State of the Environment Report 2003* indicates that "while in many parts of Johannesburg, air quality is within acceptable standards, approximately 20% of the City, particularly dense settlements and lower income townships, experience severe air pollution, with ambient air pollution levels exceeding acceptable guidelines by approximately 20-30% particularly during winter when temperature inversions prevent emissions from dispersing." The report goes further to state that "levels of particulate matter in certain townships can exceed the World Health Organisation standards by as much as 250% in winter."

Progress in the realisation of the right to environment could not be very well monitored and observed by the Commission during the year under review because annual progress reports in terms of section 11 of the National Environmental Management Act 107 of 1998, were inaccessible at the time of writing. These progress reports should contain detailed information on the implementation of measures instituted to ensure the right to environment.

Nevertheless, the Commission did observe the growing influence of the Committee for Environmental Co-ordination through an interpretation of its review, and subsequent consolidation, of Environmental Implementation Plans and Environmental Management Plans submitted by relevant organs of State. These reports contain the planned and *aligned* outputs of national and provincial departments with an impact on, or management function over, aspects of the right to environment. The Commission also recognises that some Environmental Co-ordinating Committees were established at the provincial sphere, also for the purposes of alignment and co-operative governance.

Progress has been made, through the courts and other avenues, towards realising the procedural aspects of the right to environment (access to information, participation in decision-making processes, redress and remedy). The report includes several examples of objections and court applications lodged by Non-Governmental Organisations, with a view towards safeguarding environmental health in low-income areas. Despite these opportunities to access information and participate in decision making, some remedies for old violations could not be realised without concerted action on the part of the State. One example, is the case of workers with mercury poisoning, which first occurred many years ago. In March 2003, Thor Chemicals was served with a R60 million toxic chemical clean-up directive by the State.

On the substantive issue of waste management and pollution control, what was reported by government to the Commission fell short of what was expected in terms of the strategic objectives of the policy and strategy for pollution and waste management. The report highlights that there is still no clear understanding among the different mandate holders for this function of what they are required to do and as a result, implementation was not as effective as it could be. Having said this, there were positive developments during the period under review, including the introduction of waste buy-back centres which address brown issues and could assist in strengthening the bargaining power of the very low income people who do the hard work of collection.

On the issue of Air Quality, the report acknowledges that progress was made in the Southern Industrial Basin through the focused action of the State and Community Based Organisations (CBOs) in linking asthma in school children to emissions, however there is an urgent need for national legislation to institute mechanisms and standards to effectively protect against pollution that threatens health and well-being, possibly including pollutant release and transfer registers.

Several new control measures were introduced to manage water pollution, including the second draft of the National Water Quality Management Framework Policy and the Waste Discharge Charge System. The Working for Water programme succeeded in protecting and preventing against water loss due to alien invasive plant species, however it was not clear how much of this work focused unfairly on commercial farmlands and not on areas inhabited by vulnerable sections of the population.

Most of the work by the State on inland as well as marine and coastal biodiversity and conservation was reasonable in as far as it related to tourism and the economic development of the country.

The report highlights that the challenges facing South Africa in terms of the right to a healthy environment include: allocating sufficient resources for progressive realisation of the right for the benefit of vulnerable groups; educating and training communities; ensuring that proper implementation systems are in place; ensuring effective co-operative governance; operating proper monitoring and evaluation systems.

The report recommends that while most policies and laws are in place or about to be instituted, there should be a quantum shift in focus towards implementation of measures to further the right to environment for vulnerable groups in a more decentralised way. Provincial government and local government should be resourced to concentrate their energies on implementation, in association with community based organisations that have already developed innovations to further the right, sometimes in the face of extreme resource scarcity.

The State has made valuable contributions to promoting the right to environment through for example, the "Bontle ke Batho" or the clean schools, wards and towns campaign; however, organs of State could do more to ensure that their own internal operations reflect implementation of the right to environment. For example, the Council for Scientific and Industrial Research (CSIR) implemented International Standards Organisation 14001 standards for handling and disposing of its own hazardous waste. This initiative by an organ of State seems to have afforded the CSIR the opportunity to gain some capacity and insight, which could be applied to other relevant contexts in the public or private sector within the South Africa.

The report also recommends that monitoring and evaluation systems need to be simplified where possible and improved. Annual progress reports in pursuit of targets and plans laid down in Environmental Implementation Plans and Environmental Management Plans should include a focus on the substantive aspects of the realisation of the right for vulnerable groups. The contents of the reports should also be widely communicated so as to avoid conflict and encourage effective participation. The Committee for Environmental Co-ordination could also be complemented by the National Environmental Advisory Forum (NEAF) envisaged in the National Environmental Management Act 107 of 1998. This provision to encourage participation should be effected without delay.

D) Protocols and the Report Production Process

The production process for this report began with the SAHRC sending questionnaires, which are called protocols, to various organs of State for their comment in May 2003. The Commission then took some time to revise the protocols, which were resent to all relevant organs of State for comment and suggestions in June 2003. The response from relevant organs of State was not satisfactory; with the Department of Housing (Gauteng Province), the Department of Land Affairs and the Department of Water Affairs and Forestry being the only organs of State to respond. However, the Commission acknowledges that further work is required, in the next reporting cycle, to ensure that the protocols are improved for all spheres of government and parastatals.

The final protocols were sent to various organs of state (national and provincial government, parastatals, metropolitan and local councils) in July 2003, as mandated by section 184(3) of the Constitution. In future, the Commission will pay more attention to smaller municipalities by focusing field research on the implementation of programmes and projects at a local level.

The first deadline for the release of this Report was in December 2003. However, the Commission had major problems in getting timeous responses from organs of State and as a result, the Commission took a decision to subpoena several departments and postpone the release of the Report until sufficient information had been received (see summarised list overleaf).

SPHERE	INSTITUTION	DATE RESPONSE RECEIVED
2 - Provinces	GAU Social Services andPopulation Development	21 August 2003
1 - National	NATIONAL Labour	29 August 2003
2 - Provinces	EC Health	29 August 2003
2 - Provinces	WC Agriculture	29 August 2003
2 - Provinces	LIMPOPO Agriculture and Environmental Affairs	31 August 2003
2 - Provinces	FS Health	1 September 2003
2 - Provinces	NW Health	1 September 2003
2 - Provinces	WC Social Services	1 September 2003
2 - Provinces	EC Education and Training	5 September 2003
2 - Provinces	GAU Health	5 September 2003
2 - Provinces	KZN Agriculture and Environmental Affairs	9 September 2003
4 -Parastatals	PARASTATAL Rand Water	9 September 2003
2 - Provinces	KZN Traditional and Local Government	10 September 2003
2 - Provinces	MP Local Govt and Traffic	10 September 2003
2 - Provinces	NW Education	10 September 2003
1 - National	NATIONAL Land Affairs	12 September 2003
2 - Provinces	FS Social Welfare	12 September 2003
2 - Provinces	GAU Housing	12 September 2003
2 - Provinces	NC Health	12 September 2003
2 - Provinces	NC Social Services and Population Development	12 September 2003
1 - National	NATIONAL Agriculture	15 September 2003
1 - National	NATIONAL Water Affairs and Forestry	15 September 2003
2 - Provinces	EC Agriculture and Land Affairs	15 September 2003
2 - Provinces	FS Education	15 September 2003
2 - Provinces	GAU Education	15 September 2003
2 - Provinces	MP Housing and Land Administration	15 September 2003
2 - Provinces	WC Education	15 September 2003
2 - Provinces	WC Environmental Affairsand Development Planning	15 September 2003
2 - Provinces	WC Health	15 September 2003
2 - Provinces	WC Housing	15 September 2003
2 - Provinces	NC Agriculture Conservation and Environment	15 September 2003
2 - Provinces	KZN Health	16 September 2003
1 - National	NATIONAL Education	18 September 2003
2 - Provinces	MP Health	18 September 2003
2 - Provinces	NW Agriculture, Conservation and Environment	23 September 2003
2 - Provinces	MP Social Services and Population Development	25 September 2003
3 -Metropolitan Councils	METRO Greater Tswane Metropolitan Council	2 October 2003
3 -Metropolitan Councils	METRO Nelson Mandela Metro Council	2 October 2003
1 - National	NATIONAL Correctional Services	3 October 2003
1 - National	NATIONAL Social Development	3 October 2003
2 - Provinces	LIMPOPO Health and Welfare	3 October 2003
2 - Provinces	EC Social Development	3 October 2003
1 - National	NATIONAL Health	10 October 2003
2 - Provinces	GAU Agriculture, Conservation, Environment and LandA	10 October 2003
4 -Parastatals	PARASTATAL Medicines Controls Council	10 October 2003
2 - Provinces	FS Local Govt and Housing	29 October 2003
1 - National	NATIONAL Housing	30 October 2003
1 - National	NATIONAL Provincial and Local Government	30 October 2003
1 - National	NATIONAL Environmental Affairs and Tourism	31 October 2003
4 -Parastatals	PARASTATAL Agriculture Research Council	31 October 2003
1 - National	NATIONAL Minerals and Energy Affairs	3 November 2003
2 - Provinces	KZN Education and Culture	3 November 2003
2 - Provinces	EC Housing, Local Government and Tradtional Affairs	4 November 2003
2 - Provinces	GAU Development Planning and Local Government	4 November 2003
2 - Provinces	LIMPOPO Education	4 November 2003
2 - Provinces	MP Agriculture, Conservation and the Environment	4 November 2003
2 - Provinces	NC Local Govt and Housing	4 November 2003
2 - Provinces	WC Planning and Local Govt	4 November 2003
4 -Parastatals	PARASTATAL National Education Financial Aid Scheme	4 November 2003
2 - Provinces	NW Developmental Local Government and Housing	5 November 2003
3 -Metropolitan Councils	METRO Eastrand Metropolitan Council	5 November 2003
4 -Parastatals	PARASTATAL Umngeni Water	5 November 2003
3 -Metropolitan Councils	METRO Cape Town Metro Council	6 November 2003
4 -Parastatals	PARASTATAL Medical Research Council	6 November 2003
2 - Provinces	FS Agriculture	7 November 2003
2 - Provinces	KZN Welfare and Pensions	7 November 2003
2 - Provinces	LIMPOPO Local Govt and Housing	7 November 2003
2 - Provinces	MP Education	7 November 2003
2 - Provinces	NC Education	7 November 2003
4 -Parastatals	PARASTATAL National Housing Finance Corporation	7 November 2003
2 - Provinces	KZN Housing	14 November 2003
3 -Metropolitan Councils	METRO eThekwini Metropolitan Council	17 November 2003
4 -Parastatals	PARASTATAL Landbank*	17 November 2003
4 -Parastatals	PARASTATAL Council for Scientific and Industrial Council	18 November 2003
2 - Provinces	FS Environmental, Tourism and Economic Affairs	19 November 2003
3 -Metropolitan Councils	METRO Greater Johannesburg Metropolitan Council	17 December 2003
2 - Provinces	NW Social Services**	

First deadline

Extended deadline

Subpoena hearings begin

Subpoena hearings end

* Extension granted as a result of communication problems
** No subpoena served, a letter explains the breakdown in communication

Most organs of State submitted their reports before they were meant to appear at a subpoena hearing. However, the North West Department of Social Services, Arts, Culture and Sport did not provide a response to the Commission as a result of problems with network cabling and the resignation of the personal assistant to the Acting HoD. The Department submits that it was not out of irresponsibility and deliberate disregard of the law that the Commission did not receive a report from the Department.

In order to improve the quality of the information, analysis and recommendations in the reports and to forge closer and better working relationships with government and non-governmental entities, a set of draft reports were released for comment to government and civil society before a National Input Workshop on 27-28 January 2004. Comments made at the workshop, and in writing, have been considered by each report writer.

A set of second draft reports were then made available to the Director General of the relevant national department in February 2003 to correct any remaining problems with factual information. Responses were received from the following departments: Water Affairs and Forestry, Minerals and Energy, Provincial and Local Government, Health, Social Development, Education, Land Affairs, and Housing. The final reports were also reviewed intensively within the Commission before being published.

E) Conclusion

One of the concerns acknowledged by the Commission about the monitoring process so far is that it still relies heavily on reports from government.

Furthermore, even though the Bill of Rights applies vertically and horizontally and binds State entities and non-State entitites, the Commission has some capacity problems in extending its mandate to non-State entities, especially big corporations.

In the next reporting cycle, the Commission will place more emphasis on conducting its own primary research in addition to improving on the existing protocols for each right and making better use of annual report information as soon as it becomes available.

ACRONYMS

ACHPR	African Charter on Human and People's Rights
ACHR	American Convention of Human Rights
ADR	Alternative Dispute Resolution
AgLAPC	Agriculture and Land Affairs Portfolio Committee
CCITP	Convention (169) Concerning Indigenous and Tribal Peoples
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CLRB	Communal Land Rights Bill
CPAs	Communal Property Associations
CRLR	Commission on Restitution of Land Rights
DFID	Department for International Development
DLA	Department of Land Affairs
ESR	Economic and Social Rights
ESTA	Extension of Security of Tenure Act
FIAN	Food First Information and Action Network
HSRC	Human Sciences Research Council
ICESCR	International Convention on Economic, Social and Cultural Rights
ILOSPC	International Labour Organisation Social Policy Convention
IPILRA	Interim Protection of Informal Land Rights Act
ISRDP	Integrated Sustainable Rural Development Programme
LCC	Land Claims Court
LRAD	Land Redistribution for Agricultural Development
LRBs	Land Rights Boards
LTA	Labour Tenants Act
MECs	Members of the Executive Committee
MTEF	Medium Term Expenditure Framework
NDA	Nkuzi Development Association
NGOs	Non-Governmental Organisations
PCUNFAO	Peasants Charter of the United Nations Food and Agricultural Organisation
PDoAs	Provincial Departments of Agriculture
PLAAS	Programme for Land and Agricultural Studies
PLROs	Provincial Land Reform Offices
RDP	Reconstruction and Development Programme
RDG	Restitution Discretionary Grant
SAHRC	South African Human Rights Commission
TAC	Treatment Action Campaign
UDHR	Universal Declaration of Human Rights
UNCCPR	United Nations Convention on Civil and Political Rights
UNDSPD	United Nations Declaration on Social Progress and Development
URP	Urban Renewal Programme

EXECUTIVE SUMMARY – RIGHT TO LAND

Constitution Obligations

The government has, since 1994, developed measures that would allow access to land, and ensure security of land tenure for our people. The land reform programme has taken the shape of land restitution which seeks to restore land to those that lost land as a result of colonial and apartheid legislation, and to compensate financially those who may not opt for the restoration of land; land redistribution is intended for residential and productive or agricultural purposes; and security of tenure is to allow tenure security for those who lack it.

Section 25 of the Constitution provides for equitable access to land, the right to reclaim the land lost through discriminatory laws and the right to security of tenure. Section 25(5) requires the government to take reasonable measures, within its available resources, to create conditions that enable citizens to gain equitable access to land. This right is viewed within the context of property rights protected under section 25(7) which provide that individuals or communities that lost rights to property due to discriminatory laws are entitled to restitution or comparable redress.

Progress in the realisation of the Right

Respect

To a great extent the DLA has moved toward instituting and adopting relevant measures, and it has had no reason to deny any person access to the right to land. The State, according to the obligation to respect the right to respect, should not prevent any deserving person from accessing, and enjoying, the right to land. The DLA adopted several measures during the reporting period.

Restitution

The Commission for Restitution of Land Rights (CRLR) instituted numerous projects and strategies. The Condonation of (restitution) Claims allows claimants to lodge claims under specific circumstances. For example, this accommodates claims not lodged in terms of the Restitution Act 22 of 1994, particularly claims lodged after the cut-off date of December 1998. Section 10(1) of the Restitution Act provides that the only other time that a claimant may lodge a late claim is when a community, or a generic part thereof, was not aware of the said claim by the cut-off date. Thus, there is a provision that claimants that had not registered "might" be accommodated through other land reform programmes.

The Value of a Rural Claims Guideline was instituted in 2002 to facilitate a meeting of interest between the DLA and the Community lodging a claim to consider the restitution options available. This guideline sought to do three things: a) to formalise the validation of rural land, and what process to follow in dealing with rural claims; b) to give room to discussion of restitution options

available to the community; and c) to set out procedures for the establishment of a legal entity, the valuation of property and the determination of the restitution award. The guidelines have been used since the beginning of the process of dealing with rural claims although discussions have not taken place in communities.

The Strategy to Deal with Claims on Forestry Land Conservation Areas and Land with Mineral Rights is implemented as part of an agreement (2002) with other relevant departments like Water Affairs, Forestry, as well as Public Works. Such an agreement was entered into to enable the Department to deal with high value complicated claims that involve forestry land, conservation areas, and land with mineral rights. Such lands would benefit claimants living around protected areas, forestry land, and land with mining rights.

Communication Strategy for Claimants and Other Stakeholders was established to inform claimants about the restitution process and the status of their claims. The objective of the strategy is to improve communication between the national Department and the nine provinces, by establishing a call centre for the validation campaign. The call centre will help to inform claimants about the restitution process, the status of their claims, claims made in terms of the settlement process, as well as challenges within the restitution process.

The objective of the Standard Settlement Offer Policy Guidelines project is to establish suitable alternatives for restitution packages with regards to urban claimants where people were dispossessed. Investigations have been underway for properties exceeding 3000m2. It also seeks to institute a method to accelerate the settlement of urban restitution, where claimants are permanent in their current residence, and they only prefer financial compensation for their lost land rights.

Some time ago the DLA established the Settlement Planning Grant to assist poor communities to plan for the acquisition, settlement, and the development of land. It also facilitates the mobilisation of funds for beneficiaries, particularly with regard to proper planning of projects for negotiated settlements. This allowed for timely release of funds to ensure sustainability of settlements. Other institutions, for example, local authorities and non-governmental organisations are free to use this grant to support land reform activities. Select services, among others, legal and financial planning assistance, assistance with land purchases, as well as the establishment of a legal entity, benefit from the grant.

Post-Settlement Support

This policy, administered by CRLR, was established with the objective of ensuring proper planning for projects of settled claims. The initiative is a result of criticism against the absence of “after-care” programmes to assist settled individuals and communities. The Department of Land Affairs created the Post-Settlement Support Co-ordination Unit with a view to dealing with issues arising from all programmes of land reform, although the unit was part of the CRLR. The aim is to establish working relations with other government departments to

guarantee that beneficiaries receive necessary support, for example, housing and part of planning, after claims have been settled. Post Settlement Units have been established in all 9 Regional Land Claims Offices, with specific focus on development facilitation and coordination. These offices will coordinate development issues and develop skills and management capacity of claimants so that claimants may develop and sustain the projects by themselves.

The main legislative development with regard to the restitution programme is the introduction of the Restitution of Land Rights Bill (2003), which amends the Restitution of Land Rights Act 22 of 1994. The Restitution of Land Rights Bill, which was enacted in January 2004, empowers the Minister to acquire or expropriate land for restitution without a Court Order. Although no land has been expropriated yet, the law will greatly enhance and speed up delivery of land, as there will be no obstacles or resistance to acquiring land for restitution purposes.

Land Redistribution

With redistribution, Land Redistribution for Agricultural Development (LRAD) has been performing well so there was no need for adoption of any alternative measures. Rather, the DLA has moved to forge working relations with the Land Bank to make provisions to speed up redistribution and support LRAD projects. The land redistribution programme, whose implementation cuts across all land reform programmes, also continued alongside the implementation of commonage projects.

Land Tenure

The DLA has enacted the Communal Land Rights Bill. This Bill has been long in the making and was immersed in controversy. The Bill has moved toward the resolution of such controversy, which involved gender representation in land boards and the influence of traditional leaders in apportioning communal land. By enacting this Bill, the DLA seeks to eradicate discriminatory and illegal practices, and thus guarantee tenure security for vulnerable groups like women and children.

Protect

The restitution programme has shown to be consistent in its delivery. The number of settled claims has escalated. Between 2000 and 2001 there were 12 094 settled claims, while in February 2002 there were approximately 32 000 settled claims. By March 2003, there were 36 488 settled claims recorded. Although the majority of these claims were in the urban areas, settled rural claims show a substantial increase. Some claims are complicated and involved conservation land, namely, Mbila and Mabaso in Kwa-Zulu Natal (48 claims), and Dwesa Cwebe in the Eastern Cape (23 claims), 13 in Limpopo and 35 in Mpumalanga. While most restitution cases have been resolved, numerous others are still awaiting resolution. Generally, for the resolution process of these claims to be completed, the budget has to be increased, and recommendations have been

forwarded to that effect. Moreover, the State President has advised that the process be concluded by 2005.

The DLA's Directorate is developing a policy that would regulate the purchase and ownership of land by foreign investors. Having identified ways, as well as legislation, of producing a viable status quo report, the Directorate will involve the Departments of Home Affairs and Foreign Affairs to assist in drafting the reporting and finally developing the policy. This action will immensely help in protecting South African land from being bought by foreign investors and thus guarantee the availability of land for the landless vulnerable groups.

Although it is generally accepted that the land redistribution programme has been slow in delivery, its sub-programme, the Land Redistribution for Agricultural Development (LRAD), has been performing well. In the year under review LRAD has surpassed its own targets. For instance, it delivered 103 682 ha against the target of 81 555 ha. Whereas it had targeted to benefit 3 601 people, it ended up benefiting 6 170. Nonetheless, land redistribution remains slow, hence the DLA has extended its time to redistribute 25 million hectares by 2005, and 30% of rural land by 15 years, instead of the 5 year goal set by the Government in the Reconstruction and Development Programme (RDP). This may only be reached if the budget for the redistribution programme is increased.

Concerning tenure reform, the State initially delivered 30 000 ha of land through 201 projects. Beyond that, the State is working towards bringing the Extension of Security of Tenure Act (ESTA) and Labour Tenants Act (LTA) together in the Consolidated ESTA/Labour Tenants Bill. This Bill comes after the DLA realised that separately these pieces of legislation were, since their adoption, not effective. Its objective is to ensure that tenure measures with regard to eviction and tenure security protect labour tenants from arbitrariness.

Promote

Generally, there is still ignorance about the observance and application of the law. With regard to the restitution programme, the national office has a co-ordinating component that deals with issues that have direct implications for the restitution process in general. The Communication Strategy for Claimants and Other Stakeholders was established to inform claimants about the restitution process and the status of their claims. This would work in conjunction with the established call centres. For instance, national media would be used for briefings to inform the public about restitution issues.

With respect to land tenure rights the DLA has not adequately enhanced the understanding of the beneficiaries. It was found that various communities understood their rights differently. There are instances where landowners and public officials disregard ESTA. There is evidence that the DLA occasionally conducts workshops and rallies to educate beneficiaries on land rights. Monitoring mechanisms for restitution and tenure reform programmes are still to be tested.

Fulfil

Generally, the DLA has shown that it is developing (and/ or has developed and realised) measures under various programmes to reach its land reform goals. For example, the amendment laws such as the Restitution Act 22 of 1994 to empower the Minister to expropriate land without a Court Order will make DLA's work much easier. The consolidation of ESTA and LTA will help DLA deal with issues that affect the labour tenants in a concrete way.

Overall Assessment

While there is no question that land reform is slow, and generally still has a long way to go before all beneficiaries are satisfied, it is worth noting that the DLA has taken steps to institute measures to reach its goals. To a great extent the DLA met the requirements of reasonableness in 2002/2003. The DLA developed and adopted measures that will help it achieve many of its targets. This has been proven by the achievements of the land reform programmes. In this manner, the element of reasonableness as referred to in Grootboom judgment has been exemplified by the fact that not only were the measures conceived, but their implementation attests to their effectiveness. LRAD has, for instance, shown its effectiveness by being relevant to all three land reform programmes. For example, with regard to tenure, labour tenant applicants can obtain housing grants through LRAD.

The understanding by the DLA that it needed to amend certain pieces of legislation, for example the Restitution Act and to enact Communal Land Rights Bill, testifies to DLA's determination to have reasonable measures. The amendment of the Restitution Act empowers the Minister of Land Affairs to expropriate land. However, according to section 25(2)(b) of the Constitution, the courts will still decide on how much compensation would be given to the former owner of the expropriated property.

Meanwhile, the enactment of the CLRB makes it possible for all stakeholders in the communal land to have equitable access in land disposal. The adoption of other supporting measures, as in the case of restitution programme, is proof of follow-up by the State to install reasonable measures. Of course, some measures are fairly new and others are just under construction. Some, like ESTA and LTA have proved to be unreasonable in that they have so far failed to satisfy the needs of the vulnerable groups. However, efforts are underway to consolidate them. The fourth draft, called the Tenure Security Laws Consolidation and Amendment Bill was completed early in 2003, and is now awaiting the Minister's approval.

Even under the constraints of the budget, all three land reform programmes were able to deliver. It is envisaged that these budgetary hurdles will be resolved so that the DLA can meet its targets. Research indicates that the DLA will have to work toward developing personnel to enable it to speed up delivery, more so that millions of people are still without land.

Recommendations

Several challenges are still facing land reform. In general they include the following: land acquisition, budgetary constraints, and capacity building. It is important that the State muster political will and put expropriation into practice to give effect to the Bill of Rights.

The DLA has reported personnel shortage for the last reporting periods. It is crucial that the Department train and deploy field workers to respond accordingly to issues, particularly where monitoring and evaluation of projects are concerned.

The SAHRC must also develop structures that would allow both it and the DLA to monitor certain legislation relevant to land rights.

1 INTRODUCTION

This report reviews key measures instituted by government to realise the right to access to land as provided in section 25(5) of the Constitution of the Republic of South Africa, Act 108 of 1996 (hereafter the Constitution) read together with relevant provisions of international law, during the financial year April 2002 to March 2003.

The Government took as one of its priorities, the redress of inequalities in land ownership and tenure security that resulted from past racially discriminatory laws and practices. Since 1994 the Government has battled to weave ways of satisfying the need for land ownership and tenure security. The five-year plan by which the Government set out to redistribute land – the 1994 Reconstruction and Development Programme (RDP) – for instance, has not met its goals,[1] leaving millions of people without land of their own. Very little progress has been made towards land reform; it is estimated that 2,4% of South Africa's surface area was delivered in the past decade.[2] According to the Department of Land Affairs, there was a total of 28 900 km^2 of land delivered between 1994 to March 2003.[3]

The 1997 White Paper on South African Land Policy[4] articulates the vision and implementation for land reform. The White Paper details Government's three land reform programmes as follows:

1. Land redistribution to facilitate access to land for residential purposes and agriculture;
2. Land restitution for compensation and restoration of land to victims of apartheid dispossession; and
3. A land tenure programme that seeks to guarantee tenure security to those whose tenure of land is legally insecure.

The objectives of the White Paper included the correction of past injustices; generating reconciliation and stability; the promotion of economic growth; and the improvement of the quality of life of people through the alleviation of poverty.

1.1 Developments in the Meaning and Content of the Right

Section 25(5) of the Constitution obliges the Government to "take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis." This means that the State must take measures to create conducive conditions for all citizens, including vulnerable groups, to have access to land.

The Constitution also obliges the State to compensate people and communities that were dispossessed of land and property after 1913. Section 25 (7) provides that "a person or community dispossessed of property post 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress."[5] The State may, in terms of section 25(8) take "legislative and other measures" to "achieve land, water and related reform". The Constitution thus provides for equal access to land for all citizens, including

providing for "reforms to bring about equitable access to all South Africa's natural resources".[6]

The Constitution also provides for the protection of individual property rights. For instance, section 25 (1) guarantees the non-interference with another's property without consideration of the "law of general application." It states: "No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property". According to section 25 (2) "property may be expropriated only in terms of the law of general application, a) for a public purpose or in the public interest; and b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court."

In the 2000 landmark *Grootboom*[7] judgment, the Constitutional Court reiterated that the State must use its available resources to create favourable conditions to fulfil the right of access to housing, especially for those living in desperate circumstances. The court emphasised the notion of reasonableness for the State to meet its obligations. In addressing reasonableness as stipulated in section 25 (5), the court pointed out that the State must not limit itself to the mere adoption of measures; rather, reasonableness should be seen in the implementation of those measures. According to the *Grootboom* case, therefore, the measures adopted "… must be reasonable both in conception and their implementation. The formulation of programmes is only the first stage in meeting the State's obligations…" and that "… an otherwise reasonable programme that is not reasonably implemented will not constitute compliance with the State's obligation."[8]

"Reasonableness" has become a recurrent feature in the South African *jurisprudence.* It is not surprising that reference to that theme was echoed in the *Treatment Action Campaign* (TAC) case. While TAC was concerned with a distinct subject surrounding the HIV/AIDS pandemic, the Court referred to other socio-economic rights, including land. The Constitutional Court stated that other than HIV/AIDS

> *... the state faces huge demands in relation to access to education, land, housing, health care, food, water and social security. These are the socio-economic rights entrenched in the Constitution and the state is obliged to take reasonable legislative and other measures within its available resources to achieve the progressive realisation of each of them.*[9]

the position taken by the Constitutional Court flows from the Constitutional clauses that task the State with responsibility to provide reasonable measures toward gaining access to socio-economic rights.

The Constitutional Court's interpretation of reasonableness of measures to be taken in the realisation of economic and socail rights concurs with internation norms and standards.

1.2 International Standards

The following international instruments are of relevance to the implementation of land reform in South Africa, within a human rights framework.

Although article 17 of the Universal Declaration of Human Rights (UDHR) of 1948 did not specifically mention land, it nonetheless included the right to property. For the Convention on Civil and Political Rights (UNCCPR), no reference to property is explicit, nor does the International Convention on Economic, Social and Cultural Rights (ICESCR) of 1976 touch on issues surrounding land.

However, the 1969 United Nations Declaration on Social Progress and Development acknowledged the utility of property and land, and advocated for land ownership that banished unequal rights to property.

The 1979 Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) seeks to protect the rights of women to access land and agrarian development initiatives. According to CEDAW, women should not be hindered in their quest to participate equally with men in the planning and implementation of rural and agricultural development. Further, women should have free access to credit and loan facilities, as well as resettlement schemes.[10]

The 1986 Declaration on the Right to Development promotes equity and equality in development, and is directly related to all issues pertaining to property, including land.

The 1991 Peasants Charter of the United Nations Food and Agricultural Organisation (PCUNFAO) promotes land tenure reform and land redistribution for landless vulnerable groups and emergent farmers. This charter regulates changes in customary tenure, and promotes community control over natural resources.

The International Labour Organisation Social Policy Convention (ILOSPC) of 1962 has the dual task of overseeing the arrangement of land tenancy and guaranteeing acceptable living standards for agricultural workers.

A number of articles (7, 13,14, 15, 16, 17, 18 and 19) of the ILO-linked Convention (169) Concerning Indigenous and Tribal Peoples (1989), which protects ownership of traditional land by indigenous communities and the right to access natural resources found in and on them.

Clauses in the African Charter on Human and People's Rights (1981) promote the lawful recovery, with compensation, of dispossessed property, thus guaranteeing the right to property. Article 14 seeks to guarantee the right to property, stating that the right to property may only be encroached upon in the interest of public need or in the general interest of the community, and in accordance with the provisions of relevant laws.[11] Meanwhile article 22 states that everyone shall have the right to economic, social and cultural development.

Finally, the American Convention of Human Rights seeks to protect the right to use and enjoy property, and thus prohibits any deprivation of property without compensation.

2 PROGRESS IN THE REALISATION OF LAND RIGHTS

2.1 **Policies and Programmes**

There have been some considerable changes in the policies and programmes of land reform, particularly in the implementation of strategies and frameworks.

As pronounced in the White Paper on South African Land Policy (1997), three programmes drive land reform. The restitution programme seeks to return land or compensate people who have been dispossessed of their land through discriminatory laws since 1913. The redistribution programme seeks to create favourable grounds for the equal redistribution of land so that the historically disadvantaged landless people may acquire land through sub-programmes such as LRAD. On the other hand, land tenure reform is intended to secure tenure and thus resolve tenure conflicts.

2.1.1 ***Land Restitution***

An impressive number of claims that came before the CRLR were settled. For instance, of the 79 694 valid claims, 36 489 were settled by 31 March 2003, although 43 205 remained unresolved. According to the CRLR, 30 012 claims were settled by March 2002.[12] During this reporting period, the Department recorded a total of 6 809 settled restitution claims, compared with 17 783 in 2001/2002, and a cumulative total of 40 323 settled claims since 1996.[13] By December 2003 a total of 46 727 claims had been resolved, with approximately 17 000 involving land restoration and about 27 000 financial compensation.[14] Meanwhile, about 29 000 claims were still to be settled. The majority of these claims were in the rural areas.

2.1.1.1 Claims Validation Project

A validation project was put in place to establish the validity of outstanding restitution claims in terms of the Restitution Act. The project was established with the view to investigate the circumstances of dispossession, property descriptions, and deeds research to determine if the lodged claims met acceptance criteria. This project was established in 2001, and the Minister of Agriculture and Land Affairs accepted its report in January 2003. According to the Commission on Restitution of Land Rights (CRLR), 30 012 claims were settled, while more than 37 000 others had been filed but were not on the priority list and their validity was unknown.[15]

By the end of March 2003 the CRLR had validated 36 940 claims through this project, and it aimed to finalise the validation of the remaining claims during the next financial year. The CRLR gives two reasons for the backlog: a) lack of capacity; and b) problems in verifying claimants, even after efforts were made to contact them.[16] The CRLR planned to validate 33 290 claims by end of December 2002, acknowledging all valid claims and disregarding all invalid claims by March 2003.[17]

2.1.1.2 The Policy Guideline on Betterment of Claims

The Policy Guideline on Betterment of Claims, which facilitates settlement-negotiating processes, was adopted in 2002 to determine guidelines and options relating to claims on land lost during the apartheid era, particularly claims with regard to betterment removals. The Department of Land Affairs (DLA) made available a draft on the Restitution Policy on State Land claims in June 2002, and existing restitution policies were reviewed in September 2002.

2.1.1.3 Condonation of Claims

Condonation of (restitution) Claims allows lodging under specific circumstances, particularly where claims are lodged after the cut-off date of December 1998. That is, claimants would be permitted to lodge their claims regardless of the cut-off date remaining unchanged. The Commission for the Restitution of Land Rights (CRLR) has accommodated those claims that were not lodged in terms of the Restitution Act 22 of 1994.[18]

Many people were disappointed when on 19 February, 2004 the Minister of Agriculture and Land Affairs, Ms Thoko Didiza, announced the decision to halt late registration of 1 000 claims in the Eastern Cape. The decision came despite the fact that an estimated 2 million beneficiaries were allegedly victims of "an administrative error."[19]

According to Section 10(1) of the Restitution Act 22 of 1994, the only time that a claimant may lodge a late claim is when a community, or a genuine part thereof, was not aware of the said claim by the cut-off date. According to reports, land restitution claimants that had not registered "might" be accommodated through other land reform programmes.

2.1.1.4 Value of a Rural Claims Guideline

This guideline, introduced in 2002, sought to formalise the way rural land is valuated and what process the DLA has to follow in dealing with rural claims. Rural claims have not been embarked on in the way urban ones have been. The guideline further indicates that the DLA and the community that has lodged the claim should hold a workshop as early as possible so as to discuss the restitution options that are available to the community. This includes consideration of the community's needs and the size of the community in relation to the claimed land. However, there is no evidence that such workshops have taken place.

Also, the guideline sets out procedures for the establishment of a legal entity, the valuation of property and the determination of the restitution award. The guidelines have been used since the beginning of the process of dealing with rural claims.

2.1.1.5 The Strategy to Deal with Claims on Forestry Land Conservation Areas and Land with Mineral Rights

This strategy is implemented as part of an agreement (2002) with other relevant departments like Water Affairs, Forestry, as well as Public Works. Such an

agreement was entered into so that the Department may be able to tackle complicated claims that involve forestry land, conservation areas, and land with mineral rights. Such lands would benefit claimants living around protected areas, forestry land, and land with mining rights.

According to the agreement, successful claimants shall, among other provisions, own land in title that has a notarial deed to restrict use based on the agreement; claimants who would be lessors, would agree to maintain current land use. There are claims that have been settled, which involved conservation land, namely, Mbila and Mabaso in Kwa-Zulu Natal (48 claims) , and Dwesa Cwebe in the Eastern Cape (23 claims), 13 in Limpopo and 35 in Mpumalanga.

2.1.1.6 Communication Strategy for Claimants and Other Stakeholders

The objective of the strategy is to improve communication between the national Department and provinces, by establishing a call centre for the validation campaign. The call centre will help to inform claimants about the restitution process, the status of their claims, claims made in terms of the settlement process, as well as challenges within the restitution process.

The national office has a co-ordinating component that deals with issues that have direct implications for the restitution process in general. For instance, national media would be used for briefings to inform the public about restitution issues.

2.1.1.7 Standard Settlement Offer Policy Guidelines

The objective of the Standard Settlement Offer Policy Guideline is to establish suitable alternatives for restitution packages with regards to urban claimants where people were dispossessed. Investigations have been underway for properties exceeding 3000m^2. It also seeks to institute a method to accelerate the settlement of urban restitution, where claimants are permanent in their current residence, and they only prefer financial compensation as compared to restoration of their lost land rights.

The Department was reviewing the Standard Settlement Offer during this reporting period. However no report has been released yet on its results.

2.1.1.8 Settlement Planning Grant

This Settlement Planning Grant[20] was established to assist poor communities to plan for the acquisition, settlement, and the development of land. It also facilitates the mobilisation of funds for beneficiaries, particularly with regard to proper planning of projects for negotiated settlements. This allowed for timely release of funds to ensure sustainability of settlements.

Other institutions, for example, local authorities and non-governmental organisations are free to use this grant to support land reform activities. There are select services that benefit from the grant, for instance, legal and financial planning assistance, land use and infrastructure planning, land valuation and survey, assistance with land purchases, as well as the establishment of a legal

entity. There are two main planning phases – the preliminary settlement and the detailed settlement – that may be financed through the grant.

2.1.1.9 Post-Settlement Support

This policy, administered by CRLR, was established with the objective of ensuring proper planning for projects of settled claims. The initiative is a result of criticism against the absence of "after-care" programmes to assist settled individuals and communities. The Department of Land Affairs created the Post-Settlement Support Co-ordination Unit with a view to confronting issues arising from all programmes of land reform, although the unit was housed in the CRLR. The aim is to establish working relations with other government departments to guarantee that beneficiaries receive necessary support, for example, housing and development planning, after claims have been settled.

This co-ordination, according to the Minister of Agriculture and Land Affairs, Ms Thoko Didiza, is critical and, as such, should involve concerned "… government departments and agencies, as well as civil society and the private sector …".[21] For this purpose, Post Settlement Units have been established in all 9 Regional Land Claims Offices, with specific focus on development facilitation and coordination. These offices also develop capacity of claimants to ensure that they are able to develop projects by themselves, thus sustaining the projects.

2.1.1.10 Reference Manual

This four-volume manual comprises policy guideline and process documents that would assist in steering the implementation of the restitution programme. The Commission for the Restitution of Land Rights (CRLR) is continually developing and revising these policy guidelines as required.

Table 1: Lodged Rural Claims by December 2002

Province	*Rural Claims Lodged*
Mpumalanga	5 210
Limpopo	4 113
KwaZulu Natal	2 810
Gauteng	2 035
Northern Cape	2 000
North-West	1 472
Eastern Cape	801
Western Cape	595
Free State	101
National Totals	19 140

Source: DLA, Electronic Communication, 15 March 2004.

Table 1 represents the number of rural claims provincially. Provinces such as Mpumalanga, Limpopo, KwaZulu Natal and Northern Cape have the highest number of lodged rural claims, whilst the, Eastern Cape, Western Cape and Free State provinces have the lowest number of claims to be settled. The processing

of these claims depends on the availability of resources – land, funds, and personnel. The CRLR does not have a celebrated history in dealing with rural land restitution claims, as it had always concentrated on urban claims. There are indications, nonetheless, that rural claims were also attended to during the review period. For instance, rural claims (11 092) constituted 32% of all settled claims.[22]

Unlike rural claims which are complicated by groups of people constituting a claim and often seeking land, urban claims are mostly financially based claims. These rural claims will prove to be a test of strength for the restitution CRLR.

2.1.2 Land Redistribution

2.1.2.1 Land Redistribution for Agricultural Development (LRAD)

The Department of Land Affairs has not instituted any new measures during the 2002/2003 financial year. Instead it has continued to implement Land Redistribution for Agricultural Development (LRAD), a sub-programme of the Land Redistribution Programme introduced during the 2001/2002 financial year.

LRAD was introduced with the objectives of providing rights and access to land, and redistributing white-owned commercial agricultural land to historically disadvantaged communities. According to the Department, during 2002/2003 LRAD focused on certain provincial projects to benefit women and the youth. Furthermore, LRAD was meant to serve a parallel role of sustainable development in addressing rural food security and income generation.

LRAD has a grant system which allows beneficiaries to acces funds ranging from R20 000 to R100 000. For any funds to be awarded, applicants are required contribution, depending on their ability. A minimum own contribution of R5 000 can earn an applicant a grant of R20 000. This contribution may, however, also be in-kind, where the beneficiaries are required to sacrifice their labour. Those beneficiaries who are able to contribute R400 000 can access the maximum R100 000 grant. LRAD grants are an improvement to the Settlement Land Acquisition Grant (SLAG). Whereas SLAG granted households a flat R16 000 irrespective of how many adult beneficiaries are in the household, LRAD considered every individual adult.

This sub-programme has shown itself to be a successful instrument. It has achieved the targeted number of projects, and also reached additional beneficiaries during the year under review. There is evidence to show that many people have been engaged in one or more projects initiated under LRAD. More than 3 000 people, 2 950 of which are women, benefited from LRAD projects in the 2001/2002 financial year. The South African Human Rights Commission (SAHRC) *4th Economic and Social Rights Report* recorded that for the two years under review (2000/2002) there was a total of 2 681 beneficiaries (but did not specify how many beneficiaries were from the marginalised groups), who received a total of 60 000 hectares (ha) of land.[23]

The Department of Land Affairs Annual Report (2002/2003) shows that 27% more land was delivered than promised under LRAD, and that 2 569 people more than the 3 601 targeted had benefited from this delivery.[24] Of the 6 170

beneficiaries, approximately 33% were labour tenants and farm workers, who acquired 22 474 ha of land out of the total of about 103 683 ha[25] delivered during the 2002/2003 financial year. The number of beneficiaries during 2002/2003 exceeds the number of beneficiaries in 2000/2001 and 2001/2002 combined.

The Department intended to extend the LRAD programme for implementation in the provinces over the 2002/2003 financial year. The idea was to acquire 308 farms constituting 80 363 ha of land, to benefit 4 208 marginalised groups, including women, youth and people with disabilities.[26] According to the Department, there are currently 729 LRAD projects – excluding projects that benefited from Land Bank funding.[27]

The 189 projects that have been transferred via the Land Bank since 2001 have yielded 95 650 ha, which benefited 2 173 households, 909 of which were headed by females.[28] Most of these projects (120)[29] were transferred during 2002/2003 review year, yielding 77 207 ha to the benefit of 1 105 people. In total, only 400 000 ha of land have been transferred through LRAD, which the DLA regard as the 'flagship' of the redistribution programme.

2.1.2.2 Land Bank Assisted Projects

All the nine provinces reported having had Land Bank Assisted projects.[30] The Free State and Mpumalanga provinces are leading with 36 and 20 projects respectively (see Table 2). With more than 34 000 ha allocated to beneficiaries, Mpumalanga leads the rest of the provinces, followed by the Free State, which allocated a total of 31 136 ha. The Northern Cape trails at just over 15 000 ha and the Western Cape received the smallest number of projects (4), its allocated land amounting to 173 ha.[31]

Mpumalanga's projects benefited more people (1 164), including youths (452), than any other province. The Free State followed with 259 beneficiaries that included 100 youths, and the Northern Cape had 248 beneficiaries that included 41 youths. Limpopo's seven projects, which benefited 60 people, included only one young person.

Table 2: Land Bank Assisted Projects (2002-2003)

Province	*Number of Projects*	*Hectares*	*Number of Beneficiaries*	*Number of Women*	*Number of Youths <35 years*
Eastern Cape	10	4 581	41	Unspecified	21
Free State	36	31 136	259	Unspecified	100
Gauteng	11	1 073	19	Unspecified	16
KwaZulu-Natal	8	2 281	44	Unspecified	12
Limpopo	10	3 737	61	Unspecified	1
Mpumalanga	20	34 331	1 164	Unspecified	452
Northern Cape	6	15 677	148		41
North West	13	2 985	30	Unspecified	6
Western Cape	4	173	37	Unspecified	25
Total	116	94 974	1 783	n/a	674

Source: Department of Land Affairs Annual Report 2002–2003.

It is obvious that more work has to be done to mobilise young people to take up projects in rural areas. There is a need to make young people aware of projects, where awareness has not been fostered.

According to the Land Bank, 143 141 ha were made available through 272 approved projects to 2 226 beneficiaries, while 104 032 hectares worth of land redistribution were awarded through grants, benefiting 2 298 people. Of the land awarded through grants, approximately 22 671 ha benefited 725 people in the North West Province, while 1 015 ha went to 28 beneficiaries in Gauteng.[32] Compared with last year (2001/2002), the Land Bank reported more hectares of land delivered with respect to transferred projects in the present reporting cycle. For instance, only 2 203 ha of land were made available for projects during 2001/2002, while the Land Bank delivered almost 50 times that amount of land during 2002/2003.

The Land Bank-assisted projects cover a variety of enterprises, including dairy, poultry and livestock farming in general; cash crop production; sugarcane; hydroponics; bee-keeping; pastures; herbs; vegetables; peanuts; ecotourism; fruit and timber.

The Land Bank projects,[33] which are based on the Land and Agricultural Development Act 15 of 2002, benefited 905 people, 21 of whom were unemployed youth, and 152 women. These projects, which were mainly for agricultural business development, received funding of about R313 million.[34] The Land Bank also released R187,7 million through the Step Up (Micro Loan) programme to 40 905 unemployed persons and low-income and poverty-stricken groups (otherwise called the un-bankable group). By funding these vulnerable groups the Land Bank sought to create opportunities for all groups to have equitable access to finance.

While the Land Bank did not release records of land released for the projects during 2001/2002, it reports that in the 2002/2003 financial year 2 226 beneficiaries received 143 141 hectares. The 272 Land Bank projects spanned all the provinces, with the Northern Cape, Eastern Cape, North West and Mpumalanga receiving more land than Gauteng, KwaZulu-Natal, Free State and Limpopo.

A recent submission from the Land Bank sets out the financial value of the transferred land.[35]

Table 3: Land Bank Transfer – with LRAD (2002-2003)

Land Bank Transfer – With LRAD					
Provinces	*Rand Value Transfer Loan Component*	*Rand Value Transfer LRAD (Grant)*	*Total no. of Loans transferred*	*Hectorage*	*Beneficiaries*
Western Cape	13 399 133	19 195 757	17	9 024	432
Eastern Cape	5 069 912	4 172 188	30	16 756	92
Northern Cape	2 010 900	1 391 067	6	4 225	32
Free State	9 984 485	11 392 402	55	20 255	245
KwaZulu Natal	19 433 000	8 816 963	25	6 815	138
North-West	39 634 744	37 223 106	36	22 671	725
Mpumalanga	22 633 000	20 358 720	31	18 577	552
Gauteng	3 610 500	1 577 361	15	1 026	28
Limpopo	24 955 379	6 284 838	13	5 521	64
TOTAL	140 731 053	110 412 402[36]	228	104 868	2 308

Source: Land Bank. Mishack Maloba, Electronic Communication, 16 March 2004.

From Table 3 above only North-West, Limpopo, Mpumalanga and KwaZulu-Natal provinces received more money from the Land Bank loan component (with the exception of Limpopo with 64 beneficiaries) even though they received less land compared to the Eastern Cape, which benefited 92 people, and the Western Cape with 432 people. The largest number of loans went to the Free State (55), North-West (36), Mpumalanga (31) and the Eastern Cape (30).

However, other information is missing. For instance, without the total value of "own contribution" of each beneficiary, it is not easy to compute the amount of money ploughed into buying the property. Nonetheless, it is common cause that the bank will transfer funds to beneficiaries who have a substantial amount of property (or collateral) in the form of land and / or equipment.

2.1.2.3 Commonage projects

The Department has commonage projects earmarked for various marginalised communities, including women, youth and disabled people. The project was established under the Commonage Programme, which the Department reviewed during 2002/2003. However, less Commonage projects were registered in the period under review. Commonage land, which is acquired by the State for municipalities or local authorities, seeks to support the needs of poorer residents of a town who seek grazing land. Residents of a given town are allowed to acquire grazing rights, even if they do not own the land themselves.

There were more commonage projects (20) in the 2001/2002 reporting period than in the 2002/2003 financial year,during which 15 projects were recorded. While 584 people received only 14 600ha during 2001/2002,[37] there were 21 706 ha delivered during 2002/2003, benefiting 278 people, 115 of whom were women.[38] Table 4 indicates that more land was delivered in the Northern Cape (where landholdings are drier and larger), while more female beneficiaries came from the Eastern Cape province.

Table 4: Commonage Programme Per Province (2002/2003)

Province					
Eastern Cape	5	5614	63	63	na
Free State	na	na	na	na	na
Gauteng	1	187	32	12	na
KwaZulu-Natal	2	1 115	123	na	na
Limpopo	na	na	na	na	na
Mpumalanga	2	2 111	60 from 49 HH*	40 FHH**	na
Northern Cape	5	12 679	na	na	na
North West	na	na	na	na	na
Western Cape	na	na	na	na	na
Total	**15**	**21 706**	**278**	**115**	**na**

*Source: Department of Land Affairs Annual Report 2002-2003 na – no information available HH - Households.** FHH – Female-headed households*

Meanwhile, the Department has reported that it is "currently" (2002-2003) involved in 121 projects nationwide under the commonage programme nationally.[39]

In their analysis of DLA annual reports (1996-2002), Megan Anderson and Kobus Pienaar counted 11 commonages, but only for the year 2002.[40] It follows, then, that if these data included 2003, as the DLA had, more commonage projects may have been recorded. A way must be devised for the DLA to verify and report on its data accurately.

The contradiction in these numbers makes it difficult for one to make an assessment. On this basis, it cannot be concluded whether or not the right has been progressively realised. It could have been expected that the newer version, which came much later than the annual report, would give an updated feature, that is, with more data testifying to progressive delivery. However, this has not been the case.

2.1.3 Tenure Reform

The DLA would like to speed up the programmes and resolution of labour tenant claims through land redistribution and restitution, respectively. As at December 2002, the DLA had redistrributed 70 845 ha toward tenure reform land.[41] Some of the land marked for tenure reform would come from the agricultural land in the custody of the Minister for Agriculture and Land Affairs.

There are outstanding labour tenant claims which still await resolution. Available estimates of the number of processed labour tenants applications, lodged in terms of the Land Reform (Labour Tenants) Act 3 of 1996, are

between 19 000 and 20 000.[42] The majority of these applications were in Mpumalanga and Kwazulu-Natal. The DLA said that the resolved labour tenant claims (6 200) constitute 34% of all lodged claims.[43]

Below is the testimony to how much the DLA has done with regard to tenure reform sub-programmes and project.

2.1.3.1 Farm Dweller Programme

The programme is aimed at securing tenure for, and the protection of, farm workers and labour tenants against illegal evictions. It also ensures that people who have been legally evicted are provided with alternative land. Beneficiaries of this programme, which falls under ESTA, include labour tenants and farm workers. The DLA did not provide data regarding implementation of this programme.

2.1.3.2 Proactive Land Acquisition Strategy

This strategy involves the policy direction on land acquisition and land for housing. The strategy cuts across all land reform programmes and focuses on a needs-based approach to land reform. This entails selection of suitable land before the beneficiaries are identified. The strategy targets historically disadvantaged groups in rural areas, informal settlements, women, persons with disabilities, unemployed and other poverty-stricken groups by identifying available for low-cost housing. The targeted date for the completion of this strategy was 15 November 2002. This strategy has been submitted for Ministerial approval, and no further information has been given to that effect.

2.1.3.3 Urban Renewal Programme

This programme seeks to alleviate poverty, meet basic needs, build capacity, and widen the economic base of stressed communities. With regard to the Urban Renewal Programme (URP), a number of townships with urban renewal projects, namely Galeshewe (Northern Cape), Alexandra and Bramfischerville (Gauteng), and Mdantsane and Potsdam (Eastern Cape) received land.Land has been acquired in the Western Cape province to initiate urban agriculture in Khayelitsha.

According to the DLA Director General, Dr. G.N. Mayende, R1.8 million was released “for surveys, sub-division, registration and infrastructure development in Potsdam.”[44] The two Gauteng projects yielded 176 ha of land that benefited 3180 people, of which 1750 were women.[45] Land was acquired at the value of R8 million for 5 500 households in Alexandra.

Meanwhile, the Department has earmarked 3 776 ha of land for the Urban Renewal Programme which would benefit 14 026 households.[46]

2.1.3.4 State Land Disposal

The State Land Disposal Policy was developed in June 2002 with the sole purpose of unleashing of State for land for agriculture. According to the policy on State land, the DLA should dispose of 669 000 ha of land in the custody of the State. For the year under review (2002-2003), the Department disposed of 9 397ha of agricultural State land ander sale agreement, while 109 leases were up for purchasing option.[47] The land was disposed of through the Power of Attorney. Vesting of land was also lower than the targeted number of hectorage. The State had intended to to vest 53 780 ha, but only 17 693 was vested in the period under review.[48] Guidelines for land administration were completed in April 2002. However, it has not been said how this policy has been operationalised yet.

2.1.3.5 Alternative Dispute Resolution (ADR)

The Alternative Dispute Resolution (ADR), which was conceived in 2002 and is in the process of development, will have a "proactive" and "preventative approach" and provide improved "dispute resolution mechanisms for tenure legislation and related conflicts". The disputes attended through this process involve conflicts between the farmowners and the labour tenants where there are, for instance, illegal evictions or other manner of conflict arising from , for example, burial rights.

The development of the document on the ADR system was with a view to allay concerns that a proactive strategy on conflict resolution has not been desirably effective and preventative approaches had not been present. It resulted from the fact that access to legal support and the courts for vulnerable groups was lacking, so there was a need to develop a dispute resolution mechanism that would be supported by government, Nongovernmental Organisations (NGOs), landowners and land occupiers.

The document on the ADR system was due to be finalised by December 2003, and it was envisaged that it would be piloted in 2004. Nothing has been reported so far in the positive. It is expected that training will be provided in this regard and training materials developed.

2.1.3.6 Electronic Eviction System

The target date for the launch of the Electronic Eviction System was June 2002, with the aim of bringing about better ways of monitoring evictions. However, this target was not met, and the Department was by 2003 still in the process of redesigning the system. For it to be effective, this eviction system will involve different stakeholders who, in turn, will consider various issues relating to evictions. The system is still in the development stage and this affects the recording of the number of people who are victims of illegal evictions.

In addition, the DLA has conducted an investigation to find out the status of evictions, focusing on the measures adopted to deal with evictions in the provinces of the Free State, Mpumalanga, North West, and the Western Cape.

Of the recorded 719 eviction cases 283 went before the Land Claims Court (LCC) while the rest 436 eviction orders were reviewed under Section 19(3). Literature shows that there has been a radical decline in the number of eviction cases that come before the LCC.[49] This results from the fact that legal evictions are widely regarded as being weightier than illegal ones. Consequently, as opposed to the illegal ones, legal evictions have been clearly recorded, even though there are more reported illegal eviction cases that go to the DLA than do the legal ones. This is mostly becstly due to the fact that there is a lack of data monitoring systems.

2.1.3.7 Labour Tenant Act Claims

In the last three years since the 31 March 2001 deadline for lodgement of applications, the DLA embarked on a campaign that ended with the registration of an estimated 21 000 applications, 2 000 of which failed validation, with about 5 000 beneficiaries of transferred land.[50] The majority of these applications were from Mpumalanga (9 709) and KwaZulu-Natal (7 713).

Ruth Hall suggests that these figures may not be correct, saying that the DLA may have gone beyond its boundaries and disposed of the "invalid" applications. She thinks that the data from the DLA national office could be bloated since they do not tally with those from the provincial offices. According to Hall, "… the level of progress seems surprisingly high and is contradicted by information from DLA's provincial offices and NGOs," although she admits that "this is the best information available".[51]

Because the process involves many applications, many people are expected to benefit. For instance, an estimated 250 000 labour tenants will be beneficiaries. It is anticipated that many others will follow as one application involves many people who form a project unit. Thus, in this sense, there are similarities between land restitution and tenure reform programmes.

There are 52 labour tenant projects that have so far been confined in KwaZulu-Natal and Mpumalanga. These projects are registered with the Communal Property Association (CPAs) and KwaZulu-Natal is due to establish 63 more in both the Tugela and the Midlands regions.

By 2003 the DLA had approved funds for the transfer of 27 949 ha of land to benefit 2 336 households belonging to 76 projects in KwaZulu-Natal.[52]

2.2 LEGISLATIVE MEASURES

2.2.1 Restitution of Land Rights Amendment Bill (2003)

In its draft form, the Restitution of Land Rights Amendment Bill (2003) seeks to empower the Minister of Land Affairs to purchase, acquire in any manner, or expropriate land for the purpose of the restoration or award of such land. The motivation to draft such a Bill was to empower the Minister to expropriate land without a Court Order. This Bill was drafted because provisions in sections 35 (5A) and 42 D(1) of the Restitution of Land Rights Act 22 of 1994 that empowered the Minister to acquire or expropriate land for restitution without a

Court Order were delaying the restitution process. This process was also limited to circumstances in which the Minister, in the absence of a Court Order, would expropriate land only where agreement had been reached between the parties who are interested in the claim.

Some stakeholders, particularly those in commercial agriculture, have challenged this provision, arguing that it gives the Minister undue power which he or she might use arbitrarily, hence the delay in its enactment. This challenge evidenced itself in the *Farmerfield* case in the Eastern Cape, where the argument was that expropriation should not happen without the owner's consent.[53] The Bill still has to address the issue of a particular piece of land, which may have been targeted for restitution, being used for land redistribution purposes instead.

Despite the expropriation provision in the Constitution, no land has yet been expropriated. Indeed, government is still exploring possibilities for expropriation. By March 2003, the Bill had not yet been finalised and was being reviewed by the Agriculture and Land Affairs Portfolio Committee (AgLAPC). Nonetheless, the Bill was passed into law in January 2004.

2.2.1.1 Spatial Information Infrastructure Bill (2003)

The Spatial Information Infrastructure Bill (2003) was also due to be submitted to Cabinet by August 2003. This Bill seeks to establish easy ways of accessing spatial information and land related information, the main objective of which is to assist in Land Reform. This helps in informing (provincial) land reform offices on the kind of land is available for land restitution, as well as land reform projects. Approximately 25 information stations had been installed and operationalised by mid-2002. The spatial information has great effect on land use management.

2.2.2 Land Redistribution

2.2.2.1 The Land and Agricultural Development Bank Act 15 of 2002

In June 2002, the Land and Agricultural Development Bank Act 15 of 2002 came into effect. This Act replaces the Land Bank Act of 1944. The new Act seeks to transform the Land Bank by establishing and creating the Land and Agricultural Development Bank. This bank will effect changes in the patterns of land ownership created by apartheid, by providing appropriate financial services to, and promoting greater participation in the agricultural sector by, historically disadvantaged persons.

Thus, this Act seeks to create conducive grounds for equitable redistribution, access to and ownership of land, and entrepreneurship. It is also geared towards enhancing "productivity, profitability, investment and innovation in the agricultural and rural financial systems". Above all, it is hoped that the Act will foster conditions for employment and food security.

2.2.3 Tenure Reform

2.2.3.1 Communal Land Rights Bill, 2003

The Communal Land Rights Bill (CLRB) was gazetted on 14 August 2002, and was made law on 13 February 2004. It aims to clarify and strengthen the land tenure rights of people living in the communal areas. It also lays out a framework for the transfer of ownership and tenure security in the communal lands. The communal lands have been a point of contestation because of the ineffectiveness of laws that were meant to regulate tenure systems in these communal lands, most of which are in the custody of the State. Hence, the Minister of Agriculture and Land Affairs has the legal power to lease communal land or not.

The Bill has gone through a series of consultations, with the Department embarking on a publicity campaign. Media such as radio, newspapers and pamphlets, with instruction in all official languages were used in order to reach all stakeholders. Public comments on the Bill were submitted at the end of 2002.

The enacted Bill is implicit in guaranteeing tenure security for every deserving individual and community. Section 4(1) state that "a community or person is entitled to the extent and in the manner provided for in this Act and within the available resources of the State, either to tenure which is legally secure or to comparable redress..." The Act goes further to state that women would not be discriminated against because of their gender, and would have the same benefits as men. Thus, in its practice the Land Rights Bill will have to be compatible to its provision so as to merit reasonableness.

The Act appears to be all-inclusive with regard to the composition of land administartion committees, which exclude traditional authorities. For instance, the Act provides that a member of the administration committee will commit him- or herself to serving the interests of vulnerable groups in the community, including women, childre and the youth, the elderly and people with disabilities. This is an attempt to eradicate the unfairness that characterised the initial draft bills.

The composition of Land Rights Boards will reflect various affected members of the community, including child-heade households, persons with disabilities, female-headed houselds, and the youth. Thus, with regard to the registration of land rights, the decision is left entirely in the hands of the community.

The Communal Land Rights Bill (CLRB) will replace the Interim Protection of Informal Land Rights Act (IPILRA), which was a temporary measure seeking to protect the rights of people without tenure security in communal rights, while a long-term measure was being drafted. It is envisaged that the legislation would secure tenure to an estimated 2.4 million households (approximately 12 million people) "or 32% of the total population of the population located in 13% of the land surface of South Africa."[54]

The other envisaged aspect of the legislation is that it will accelerate delivery of the tenure reform programme and the development opportunities in the communal areas.

2.2.3.2 The Extension of Security of Tenure Act (ESTA) 29 of 1997

The Extension of Security of Tenure Act (ESTA) seeks to secure tenure rights for farm dwellers and protect them against arbitrary evictions. ESTA provides that eviction may not take place without a court order. It also lays down procedures through which evictions may take place, thus regulating the relationship between farmers and farm occupiers. For instance, the occupiers are expected to observe the conditions of their occupation, that is, that they are on the farm only because of the consent of the owner; should they violate these conditions, the owner will have the right to evict the occupiers. ESTA also allows occupiers to be visited on the farm by relatives, and gives them the right to maintain graves on the farm on which they are tenants.

ESTA also provides that farmers should provide alternative accommodation for those tenants and workers that are evicted from their farms. The SAHRC report on human rights violations in farming communities revealed that the unavailability of suitable and affordable land has resulted in "eviction crisis with people unwilling to leave the land, as they have nowhere to go."[55] This has not been well received by the farmers, who have demonstrated a growing reluctance to provide decent accommodation for the evictees. Because ESTA does not have enforcement powers, evictions have continued. Thus, ESTA has not been able to protect the rights of farm dwellers in the manner intended.

2.2.3.3 Land Reform (Labour Tenants) Act of 1996

The Labour Tenants Act was intended to provide for the protection of labour tenants against arbitrary eviction, and create grounds for them to secure tenure rights so as to acquire land they are using or any suitable land. The Act entails all those people who live or who are permitted to use farmland for grazing, residence, or crop production, for which they offer their labour as compensation. The group include people who are descendant to former labour tenants on a given farm.

The right to such land is dependent on verification by the landowner to find out if, where there is a claim, the application is authentic. Claims to the land are similar to those in the restitution programme, where the Land Claims Court (LCC) will arbitrate between the claimant(s) and the landowner.

A revised strategy for processing the Land Reform (Labour Tenants Act) (LTA) applications under the Department's Medium Term Strategic and Operational Plan 2002–2006, was expected by June 2002.

The Department has a draft Bill (the Consolidated ESTA/Labour Tenants Bill) that is aimed at fortifying both ESTA and LTA. The draft Bill, which was due to be gazetted by the end of 2003, is a response to the Minister's directive to overhaul both pieces of legislation to grant independent tenure rights to occupiers.

2.3 Budget

2.3.1 The National Budget[56]

Table 5 captures the Department's overall budget for the years 2001/2002 and 2002/2003. It indicates an increase in allocation from the previous financial year.

Table 5: Department of Land Affairs Budget Allocation (2002-2003)

Year	*Total Allocation in Rands*	*Actual expenditure in millions of Rands*
2001/2002	1 039 671 000	976 156 000
2002/2003	1 091 861 000	1 077 196 000

Source: Department of Land Affairs, electronic (e-mail) communication.

The total budget for land reform for the financial year 2002/2003 was R1 091 861 000, R52 million more than the previous year's overall land reform budget of R1 039 671 000. Of the total allocation during 2001/2002, R976 million was spent, leaving a surplus of R63 million. During the 2002/2003 financial year, total expenditure stood at R1 077 196 000, leaving close to R14 million unspent.

Most of the allocated amount was spent in 2002/2003. However, it remains that the unspent funds, no matter how paltry, could have been used towards other post–settlement projects.

2.3.2 The Budget for Land Restitution

The Land Restitution budget increased for the 2002/2003 financial year.

Table 6: Budget for Land Restitution (2002-2003)

Year	*Total Allocation in Rands*	*Percentage of total departmental allocation*	*Actual expenditure in millions of Rands*
2001/2002	311 042 000	30%	290 981 000
2002/2003	394 901 000	36%	394 265 000

Source: Department of Land Affairs, electronic (e-mail) communication.

The budget allocation for restitution has increased by R84 million from the previous financial year. This is in line with the Department's protocols, which indicated that this budget was inadequate, as evidenced by expenditure of almost 100% of the total programme allocation for the year in review. Consequently, the Department has not been able to meet the challenges facing the programme. The CRLR has estimated that it will need at least R1,2 billion to settle claims earmarked for 2003/2004,[57] and the same amount will be required for the 2004/2005 financial year.[58]

Land restitution received about R395 million for the 2002/2003 financial year. The CRLR reports that the funds were used to acquire land, provide financial

compensation and allocate development grants.[59] This amount was inadequate; hence the budget for 2003/2004 financial year was raised to R800 million.

The budget for the restitution programme is broken down three ways. At the national level, the DLA had over R18 million for administration and R50 million was budgeted for personnel needs. A substantial amount of money, R77 million went to restitution regional offices, and R295 million was earmarked for restitution grants. This allocation indicates that most of the budget went toward management of projects.

Commissioner Tozi Gwanya of the CRLR has stated that for the restitution programme to be effective, there must be an injection of more money. He estimates that the Commission will need R1,2 billion "to finalise claims prioritised for this year (2002/2003)".[60] Thus the success of the restitution programme, like all land reform, will depend largely on the availability of resources.

2.3.3 The Budget for Land Redistribution and Tenure Reform

Table 7 shows that less money was allocated in 2003 than in the previous financial year.

Table 7: Budget for Land Redistribution and Tenure Reform (2002-2003)

Year	*Total Allocation in Rands*	*Percentage of total departmental allocation*	*Actual expenditure in millions of Rands*
2001/2002	455 772 000	43,8%	443 534 000
2002/2003	417 632 000	38,2%	415 983 000

Source: Department of Land Affairs, electronic (e-mail) communication.

The 2002/2003 allocation for redistribution and tenure reform shows a reduction of over R42 million. This reduction could be a result of under-spending more than R12 million during the 2001/2002 financial year, and R97 million in 2000/2001. However, the reporting period under review shows that the budget was almost exhausted. Under spending in the past two financial years has affected the delivery of land in 2002/2003 negatively.

The budget for tenure reform is even meagre, and it seems there are no prospect for its increase in the short-term. Instead, the medium-term strategic and operational plan of the DLA indicates that tenure reform budget will continue to decline. For the year under review the programme received only R2.2 million for all its targets, while for 2002 and 2006 the DLA has committed R5.8 million to transfer 122 618 ha of land.[61]

This money is far less than the R442 million committed towards LRAD, more so that it includes funds to cater for the anticipated completion of ESTA and LTA cases. There were 2 220 completed ESTA and LTA cases during the year 2002-2003, which were the targeted number budgeted for, and benefitting 1 264 households.[62]

3 CHALLENGES FOR THE REALISATION OF LAND RIGHTS

3.1 Restitution

Challenges facing the CRLR on the Restitution of Land Rights are numerous and generally fall under three streams: the number of outstanding unsettled claims; political pressures; and minimal resources.

To begin with, the CRLR still has over 30 000 claims which were not validated by the end of 2002. It is doubtful that the CRLR will be able to complete resolution of these claims on time. The time factor itself has become a pressing issue. The question remains as to how realistic it will be for the Commission to complete its work. Some of these claims are difficult to resolve in the sense that they involve familial and communal disputes. As though this was not enough, other people have waited till the last minute before they could lodge their complaints, and now that claimants are pushing the CRLR to speed up its priorities.

Perhaps the most daunting issue is political pressure. President Mbeki has implored the Commission to speed up its work, and have all restitution claims to be settled by 2005. On the other hand, some of the landless masses are impatient that delivery is slow and some non-governmental organisations (NGOs), like the Landless People's Movement, are already threatening land invasions.[63] Meanwhile, established commercial farmers are questioning government restitution efforts, particularly the Restitution Amendment Act. In effect commercial agriculture is against the fact that the Act empowers the Minister to expropriate land without prior agreement with owner and without a court order.

The challenge of lack of resources has been reported over the years, and the DLA is still struggling to overcome them. Thus, lack of qualified personnel and shortage of funding have impacted negatively on settlement of claims; landowners have set the price for land too high, while only few people are available for implementation and monitoring. This state of affairs is most likely to continue should the Commission fail to employ more qualified personnel. According to the CRLR, there were 91 posts that needed to be filled *immediately*. Although to date nothing has been reported to that effect, there are indications that this will soon change. The CRLR, through the Chief Land Claims Commissioner, Tozi Gwanya, disclosed that regional land claims offices needed to beef up the current number of employees in order to manage claimants and other stakeholders. To that effect, the Commissioner said:

> *... The Commission currently has 342 employees and thus approximately 40 people in each of the regional land claims commission offices. The commission actually needs 20 more people in each office in order to deal with the urgency of getting the job done in the time frames set.*

In effect, there will be 180 new posts created. On the other hand, PLAAS disclosed that the Regional Land Claims Commissioners' offices in Limpopo and the Eastern Cape provinces are poorly staffed, to the extent that they are outsourcing services. However, that is a problem, too, as most contracted service providers are not skilled and their services cannot be effectively managed by few CRLR staff.[64]

The low restitution budget has also contributed to the slow restitution progress. All the same, the CRLR is determined to mobilise more funds to complete all settlements by 2005. The DLA strategic plan (2002-2006) indicates that R1.9 billion will have been spent by the 2005/2006 financial year.

Various other factors in rural areas impede progressive realisation of land rights. For instance, illiteracy is rife among the majority of claimants, hence it takes considerable time and effort for the CRLR to secure the necessary documentation, such as death and marriage certificates, and affidavits.

3.2 Redistribution

The redistribution programme was introduced with the objective of transferring 30% of commercial agricultural land, estimated at 25 million hectares, within 5 years. However, because of challenges facing the programme -- having failed to reach the set target – it was agreed that that objective be met by 2015. Generally, the land redistribution programme faces two major challenges, namely the transfer of land to the disadvantaged and overall economic development of the rural communities.

These two conditions are held to ransom by the scarcity of land. Commercial farmers own most of the land, and a small fraction is in the custody of the State. In many instances, these farmers are reluctant to release land to willing buyers. This is done to curtail aspiring emergent farmers. The purchase of land is market based and the sellers tend to overprice land, thus making it impossible for some buyers to acquire land. Because of that the government is at times also not able to purchase that land. With the powers to expropriate, however, the DLA will acquire more land.

Also, the DLA still has a task of unbundling the bureaucratic structures, which some sellers (White farmers) blame for prolonging the sale of land.

Another challenge has been the failure of projects due to inadequate post-transfer support. These projects have profound development implications, which affect among others, the “extension services, training and infrastructure” of rural beneficiaries. The situation is compounded by the fact that there seems to be no particular institution responsible for this service. As with restitution, funding for post-transfer projects, through the Restitution Discretionary Grant (RDG), has been scarce, due to the general inadequacy of the restitution budget.

Budget inadequacy has remained a challenge for land redistribution, and allocation for 2002/2003 was less than that of 2001/2002. For land redistribution, under-spending has been a dominant characteristic, although this changed in the last three years. During 2001/2002, for example, under-spending was reduced to R63 million. Meanwhile, research shows that the percentage of

capital spending for all land reform rose from 47% in 1997 to an estimated 77% in 2002.[65]

Notwithstanding the paltry budget allocation for land reform, Provincial Land Reform Offices (PLROs) over-spent on their redistribution budgets. The Eastern Cape office spent R45.7 million beyond its budget. However, this almost nothing compared to the Western Cape's R102 million spent against the R48 million of its allocation.[66] It was impressive that by the end of 2002, these offices reported "over-committed" budgets for the period under review.[67] However, this over-commitment had some implications for some provinces. For instance, Western Cape's land reform office was bound to discontinue the processing of LRAD application.

Although acceleration in redistribution with respect to LRAD is evident, the DLA needs to allocate more funding for this programme to meet its targets. Disturbingly, the redistribution budget is set to decline further, although LRAD will continue to receive a greater proportion of the land redistribution and tenure reform budget. In the process other sub-programmes (especially tenure security) are sacrificed, hence they do not progress.

3.3 Tenure Reform

There are numerous challenges facing the tenure reform programme, but scarcity of land proves to be the most difficult. Without land there is nothing the DLA can do in the direction of tenure reform. Whether small or large, the idea of having their own land will satisfy labour tenants and farm dwellers, particularly women who are, in most cases, short-changed by customary relations. The fact that tenure reform has a low and declining budget makes realisation of tenure rights impossible. The DLA should strive to release some of the state landholdings to toward tenure reform.

Securing tenure rights for labour tenants and farm dwellers has also not been easy. Implementation of legislation has been weak because there is a lack of enforcement mechanisms, specifically in the area of evictions. ESTA and LTA, each of which has the objective of regulating and stopping evictions, have not been seen as working. Consequently, the level of evictions has increased as labour tenants and farm dwellers continue to be arbitrarily evicted by farm owners. The effectiveness of two pieces of legislation can be realised when their consolidation is accompanied by enforcement.

Linked to the point above is the fact that bureaucratic processes and lack of strong institutions constrain projects. For instance, the working relations forged between the DLA and municipalities to implement legislation have not been satisfactory. The dedication of efforts by other departments to promote LRAD projects works against advancement of issues relating to labour tenants and farm dwellers. For example, by effectively giving LRAD first preference, the Department of Agriculture in KwaZulu-Natal has overlooked the significance of other tenure reform projects.

There are many applications that still have to be finalised. To that effect, DLA has to separate tenure reform applications from those of restitution. Ruth Hall has deduced that this confusion is a result of opportunistic tendencies by tenants

who after eviction they apply for restitution, or were frustrated by seemingly stagnant redistribution and restitution programmes.[68]

These challenges[69] bear testimony to the fact that the tenure reform programme has not created an atmosphere conducive for labour tenants and farm dwellers to gain access to tenure rights.

4 CRITIQUE

4.1 Restitution

Prior to 2002/2003 more restitution work concentrated on urban claims, so that most settled claims have been urban-based, and involved mostly financial compensation. The challenge for the CRLR is to complete the remaining settlement of claims, most of which are in the rural areas.

Many people were disappointed when the Minister of Agriculture and Land Affairs, Thoko Didiza announced the decision to stop late registration of claims. This decision came despite the fact that approximately 2 million supposedly late applicants in the Eastern Cape were victims of "an administrative error."[70] Lodgement by these claimants would require further amendment of the Restitution Act, so that all the remaining claims would be settled through other land reform programmes. However, with the impending deadline pressures for the restitution programme, amending the Act will mean the programme may not meet its target by 2005.

Land restitution legislation and programmes have not been implemented successfully. The CRLR has realised this, hence it amended the Restitution Act. Thus with the power to expropriate, the Minister is enabled to access the land held by commercial farmers who dictate terms by demanding excessive sale prices. This means that while restitution remains a mechanism of last resort, nothing now stops the Minister from getting land needed for reform.

One study revealed that should the restitution programme fail the implementation phase, South Africa risks rural land invasions. This study singles out areas such as KwaZulu-Natal, Limpopo, Mpumalanga, and Northern Cape as time bombs.[71] Indeed, as has been pointed out earlier, the rural populations are growing impatient with the slow pace of reform.

Other critics have commented on the difficulty in resolving claims. Professor de Villiers (2003) cautions that land reform should not be a "claims-driven, litigious process" but should, through combined policies and programmes, be an effort geared towards assisting "the landless to gain access to, and successfully manage, land".[72] He points out that the difficulty lies in the mere restoration of land, without any development. He says that:

> *A claims-driven process is ... difficult and even impractical to sustain as the sole basis for land reform. While restoration of rights is important, the emphasis should also be on development, sound justice and alleviating poverty – in other words development issues.*[73]

Thus land reform should not be an end in itself; it must go beyond mere compensation or settlement, and bend towards economic empowerment of rural communities. The Department is moving towards that vision, albeit slowly.

Inadequate resources continue to hinder the progress of the restitution programme. For instance, R1.8 billion was spent between 1995 and 2003, while the budget for 2002/2003 was only R394 million. As it was illustrated above, for this programme to meet its objective there must a serious injection of funds.

Other critics have expressed their concerns. For instance, Nkuzi Development Association (NDA), working mainly in the Limpopo Province, has concluded that there is great need for the land restitution budget to be increased so that settlement of claims is accelerated, particularly for lands with agricultural implications. According to Lucas Mufamadi of NDA, restructuring agriculture "without land reform will not work … it will amount to the government telling us there could be further agricultural development without land."[74] NDA suggests that with current funding land restitution can take 150 years to complete.[75]

Even though the DLA may meet its target to settle all the claims for the land lost between 1913 and 1993, resolving issues of land dispossessed before 1913 remain a challenge. The progress made so far is a far cry to the number of resolved claims, particularly that they have to be resolved within a year (2004/2005). Nonetheless, with the enactment of the Restitution Amendment Bill, and working within the limited resources as has been the case, we may say that there has been progress during the period under review.

4.2 Land Redistribution

Redistribution of land is for the most part still very slow, and the redistribution programme has thus contributed only minimally to land reform. The State has not met the targeted 30% of land it hoped to have redistributed as was initially hoped. The South African Human Rights Commission (SAHRC) and land activists acknowledge that redistributed land has only amounted to an estimated 2% since 1994, with less than 1% of the land in the hands of white commercial farmers having been redistributed. This slow pace is attributable to the unavailability of land and the unwillingness of some landowners to sell the land at reasonable prices.

Even so, the LRAD sub-programme has excelled for the past year, as it went beyond its set targets. However, it still has to match the delivery of land with viable projects and support systems so it can create a favourable environment for sustained development, especially among rural communities. There is criticism over the R5 000 that beneficiaries must contribute to qualify for LRAD grants. Other grants range from R20 000 to R100 000. Indeed, viewed superficially, such an amount could be seen as exerting unbearable pressure on the poor.

However, this criticism does not consider the other part of the LRAD grant requirement that gives an alternative for the poor. For instance, the LRAD grant applicants may contribute "in cash or in kind" to access the minimum grant. An in-kind contribution requires beneficiaries to contribute their labour in exchange for the minimum grant. However, what is not readily apparent is how long the

poor must contribute their labour before they are given access to the entry level R20 000 grant.

The willing-seller, willing-buyer option applied by Government in its effort towards land redistribution has also been criticised by civic organisations, some opposition political parties and academics. Primarily because the majority of the beneficiaries of land redistribution are poor, most of them will not benefit, as they do not have the financial resources to contribute in return for access to the grant. This approach, which has been supported by the World Bank, has not been successful anywhere in the world. The Food First Information and Action Network (FIAN) has determined that market-related approach to land reform fails in:

> *... societies in which the distribution of land is highly unequal; it rather contributes to the further marginalisation of landless peasants, indigenous people, peasant women and other groups that are extremely poor.*[76]

Whereas LRAD has been touted as having advanced land redistribution, its implementation largely took place within the first year (2001-2002) of its implementation. Besides the fact that it is financially strenuous for the poor people who might aspire to be commercial farmers, the LRAD has not taken into consideration other factors affecting vulnerable groups. According to Festus (2003), LRAD ignores the fact that domestic issues like fending for their families, and caring for HIV-positive and AIDS patients, burden landless women.[77] She asks: "What is the possibility of them saving R1 000 to contribute towards acquiring land?" Indeed, while women attempt to feed their households through farming, the lack of land is always a stumbling block.

Cross and Hornby (2002) report that women in KwaZulu-Natal say they and their children survived on "crop earnings …once their husbands became unemployed",[78] while women in the poorest provinces – Eastern Cape and Limpopo – are no longer able to produce food because of rising costs of food production and falling wages. These authors have determined that:

> *The rising costs of household production inputs, including ploughing, fertiliser and water, have dramatically shifted the cost structure and risk profile of household food production ... Many poor women respondents in these provinces bitterly lamented losing their cultivation option owing to rising costs and falling wage incomes. Poor families chose to cease food production because they face a cost-price squeeze, in which the costs of production are not matched by rising returns to household income. The higher the input costs, the higher the unsecured risk to the household, because a crop failure now represents not only lost labour time, but also the loss of production cost investments, which can average between R1 000 and R1 500 for a family that may have no other cash income, save a pension. Increasing numbers of poor rural households give up because they can no longer afford to take this risk.*[79]

In such cases, Government will be forced to subsidise households so they are able to produce their own food. At the same time, there must be efforts towards establishing a timeframe for the completion of land reform. In some instances, targets have been elusive. For example, whereas the DLA has targeted to deliver

approximately 70% of land within the 2002-2006 medium-term, there are indications that instead of the one third women were due to receive through LRAD, they would only between 5% and 7% of all transferred land.[80]

In the assessment of land activists there are 6 million landless people,[81] yet the Government has not delivered all of the 25,5 million hectares it has promised to distribute since 1994.[82] Thus, the initial commitment of the Reconstruction and Development Programme (RDP) to redistribute 30% of agricultural land is still far from being realised.

The weakness of land redistribution lies also in the ineffectiveness of post-settlement support of LRAD projects. The importance of the post-transfer support in land redistribution has been emphasised by the DLA since 1997. However, from year to year implementation has not materialised. This has been attributed to two factors. One is lack of adequate co-ordination efforts by the DLA, even though some arrangements exist where some institutions, for example the Provincial Departments of Agriculture (PDOAs), provide support particularly "in areas such as extension services, credit, training and infrastructure; the second factor involves the shortage of funds".[83]

Others think that the level of awareness serves as a shortcoming of the post-transfer support. In a study that it conducted in some provinces, the Human Sciences Research Council (HSRC) found that in most cases, the recipients of support did not even know the institutions they should go to after they have acquired land.[84]

This lack of support after people had acquired land undermines any effort toward development. Another study revealed that some beneficiaries rely on rudimentary methods and experience gained from years of livestock farming. They complain that they hardly received any training, let alone "the simplest training of rearing cattle"[85] for commercial purposes.

Generally the budget has not favoured the PDOAs to make the post-transfer support projects meaningful. PLAAS gives the Eastern Cape PDOA as an example of how budget deficiency can hinder the progress of post-settlement support projects. According to PLAAS, most of the money budgeted for these projects goes to concerns other than the intended projects. Hence, the larger part of the allocated amount is reserved for salaries and staffing.[86]

It is of great concern that despite the increase in overall budget, post-transfer support for LRAD beneficiaries will be compromised. The Comprehensive Farmer Support Programme, has during 2002/2003 parted with R1.8 million to provide post-settlement training to 1 865 LRAD beneficiaries.[87]

Another area of concern is the people's loss of interest in commonages, with almost half of the people that benefited during 2001/2002 accounting for beneficiaries during the year under review. A possible explanation of this drop in interest could be that while many rural residents want to benefit, they are migrating to the nearest cities.

Other people identified three reasons for the decline in interest in commonages:

a) ignorance of beneficiaries about commonages;

b) lack of demand for commonages; and

c) absence of tradition of commonages.[88]

Although there have been positive results in commonages used for agriculture, there is a sense of insecurity among those people in commonages that are far from towns. This question of distance has impacted negatively on capacity of managerial support.

The picture is not all that bleak, though. There are isolated areas where commonages are vibrant. Out of 9 provinces, 5 had projects, albeit few, that together delivered a total of 2 170 ha to 278 beneficiaries. Further, out of 1 million hectares transferred by 2003, more than 400 000 ha went toward commonage, with 67% of redistributed land in the Northern Cape, while the average percentage of land transferred to each province, excluding KwaZulu-Natal and Mpumalanga, comprised 16%.[89]

The redistribution programme transferred only 2% of land to the municipal commonage programme in 2002. As such, with only about R13 million going towards municipal commonage in the next three years,[90] not much will be achieved in this direction. Anderson and Pienaar say that this is a result of de-emphasis of the commonage programme by the DLA due to policy shifts, resulting in some provinces, for example Northern Cape, making "the delivery of LRAD" a priority.[91]

While it is commendable that the DLA has put such measures in place, institutional support has not been forthcoming. It is hoped that the DLA will muster all relevant support so that it meets the provision of progressive realisation as stipulated in the decision of the Constitutional Court, with particular reference to *Grootboom*.

4.3 Tenure Reform

Tenure security legislation is supposed to minimise and, in the long run, eliminate the vulnerability of those who are deprived of tenure security. While the numerous pieces of legislation testify to DLA's commitment to tenure reform, farm workers and labour tenants still do not enjoy secured tenure.

There are a number of factors that contribute to the slow pace in tenure reform. Foremost, there are issues concerning the new legislation, especially where communal property is concerned, officials tend to give little clarification of legislation to potential beneficiaries.

Some of the issues that hinder progressive realisation are at the community level, and arise from lack of official support and training. There is in particular the lack of training in understanding of rights directly affecting the beneficiaries. The extent of understanding and knowledge of the rights varies from one community to the next,[92] as is explained in the passage below.

> *... In some places, people are moving towards greater clarity and knowledge of their rights, while in others increasing confusion and uncertainty is being experienced. Land reform interventions appear to have muddied issues in some cases, leading to gaps between practice and law, and confusion about who is*

> *entitled to what. In other cases, it is becoming clear that some issues are human and thus not easily open to policy interventions ...*[93]

An earlier account by these two authors reveals that groups were clearer about their rights where a title deed for the transferred land was offered. However, some communities are at risk of losing their entitlements. Communities like the Khomani San, who almost lost their land to a creditor after being unable to repay a debt,[94] should be considered fortunate.

The State itself has not given tenure reform much institutional and financial support, but not many people have noticed this. This produced tenure systems that were shielded from external observation.[95]

This is compounded by the fact that the Department is managing two programmes – tenure reform and land redistribution – concurrently. The Department insists that the two programmes are being managed in accordance with the allocation of resources.[96]

However, this does not overlook the fact that tenure reform is still an issue of concern in the communal lands, particularly in the former homelands. Approximately ten years into democracy people living in the former homelands still have insecure tenure. This attests to the fact that the Bill is not being dealt with in a satisfactorily speedy manner.

Although minimal, the analysis of available information at the Land Claims Court (LCC) gives a clue to the progress in tenure reform. Of the 742 LCC cases 218 involve labour tenants. For the period under review (2002 only) there were 15 settled cases of labour tenants out of 121 LCC cases.[97] The LCC recorded the cases beginning with the first applications in 1996, and there are noticeable fluctuations in the numbers, which result from "the decline in the labour tenant cases."

The decline does not indicate much, more so that in some cases applications are not disputed, and therefore there is no need to go before the LCC.

4.3.1 Evictions

According to the Department of Land Affairs protocol report, 799 eviction cases went before the Land Claims Court between 1998 and 2003. There were 48 cases in 1998; 139 in 1999; 188 in 2000; 190 in 2001; and 80 in 2003. This shows a marked decrease in 2003 compared to previous years.[98]

There is no indication as to how many of these involved farm workers and how many were labour tenants. Also, the decrease in 2003 could not necessarily suggest that more work was being done to discourage evictions, as there are no records to corroborate those figures, particularly since many evictions go unreported.[99]

Moreover, the alternative accommodation offered to evictees in terms of the legislation is not qualified – what standard is used to determine whether the alternative accommodation is of a desirable quality? Lack of proper monitoring systems on evictions in general makes it impossible to determine the quality of alternative accommodation.[100]

The figures indicate that the LCC still handled a substantial number (136) of eviction cases between 2002 and 2003. At a recent launch of a book on land reform by Professor Bertus de Villiers in Johannesburg, Michelle Festus of the NLC expressed concern over the continued evictions despite the Extension of Security of Tenure Act (ESTA).

It must be borne in mind that, according to the Department of Land Affairs protocol report for the SAHRC *4th Economic and Social Rights Report*, there was no audit on illegal evictions. However, the Department had indicated in a discussion with SAHRC researchers that it was aware of "constructive evictions"[101] of farm workers and labour tenants.

It is unacceptable that the Department does not have information on farm workers who have been illegally evicted. In fact, the general unavailability of eviction records in the Department is of great concern. The Department should take appropriate action toward a "fair and procedural" approach, and arrange for alternative accommodation for the evictees. It is hoped that the Electronic Eviction Monitoring System the Department is developing will improve eviction monitoring.

4.4 The Budget

There has been improvement in spending during the year under review, where about R14 million was not spent, a small amount compared to the 2000/2001 deficit of R152 million. Current spending trends indicate that the Department is using its allocated funds, although with an allocation below 0.5% of the total government budget, budgetary constraints remain a challenge.

While the Department of Land Affairs has received criticism for under-spending its budget allocation in the past, under spending is now very limited. The budget for land reform is still inadequate, although it has increased.

4.4.1 Restitution

The CRLC is set to spend over R812 million on restitution grants over the next three financial years, with R1,45 billion targeted to be spent during 2004-2005 financial year. But even this amount is not adequate; land reform will continue to be very slow, and the Department may not meet its targets.

Given the Commissioner's request for R1,2 billion to complete the claims for one year, it would appear that in order to meet the 2005 proposed target, an amount of approximately R4 billion would be required. Others say that this amount may not be enough, given the cost of settlements. For example, Ruth Hall has determined that 50% of rural claims may cost approximately R10 billion to settle, "at an average of R250 000 each."[102]

The success of the restitution programme depends to a greater extent on the allocation of more funds and establishing a fair value of compensation paid for farms, buildings and equipment. Although the CRLR would like a budget of R1,4 billion for 2002 to 2006, its spending trends indicate that a budget of more than R10 billion would be required for the restitution programme to achieve its

goals. Inadequacy of financial resources has hindered the restitution progress. It is thus clear that the lack of resources is slowing the progress of restitution. According to Ruth Hall, though, the restitution budget has singularly matured by 521% since 1999, compared to an increase of 46% for all land reform.[103]

It remains to be seen whether, with this increase in restitution budget, the CRLR will be able to resettle all claims, in light of the scarcity of land.

4.4.2 Redistribution and Tenure Reform

While the budget for restitution is set to increase, there is a marked decrease of the land redistribution and tenure programmes budget, particularly for the period in question.

According to the Department's Strategic Plan 2002–2006, a hectare of land costs R1 000. This means that it will require more funds for the Department to meet its goal of redistributing 30% of land by 2015.[104]

Even though the Department is still operating on a low annual budget there has been a marked shift in spending, so that for the financial year 2002/2003, the Department spent nearly all of its allocated funds. The DLA spent 98% of its budget, with 79% going to land reform, the bulk of which was committed to LRAD funding. Because of the priorities and goals set by the Department to achieve 30% redistribution, it is foreseen that the total land reform budget will increase dramatically in future. So far the DLA's budget allocation still constitutes the lowest percentage of the national budget.

In reaching its conclusions on the *Grootboom* judgment, the Constitutional Court emphasised three elements -- progressive realisation, reasonableness of measures, and availability of resources. As we shall see below, these elements, while complementing one another, they may still be applied effectively one at a time under certain circumstances. Therefore, analysis of the fulfilment of the right is not necessarily dependent on satisfying all elements at the same time. Nonetheless, all these elements are important. For our analysis, these elements are treated each in turn.

4.5 Reasonableness of Measures

Reasonableness of measures is one of the elements to which the Constitution refers in order for the State to meet its obligations. Section 25(5) provides that the State adopt reasonable measures to create favourable conditions for access to the right to land. These measures may not be an end in themselves, but should be effective in their implementation.

As was noted above, there are measures that made enabled the DLA to deliver set targets, while others have failed to meet the test for reasonableness.

The implementation of LRAD is a good example of a reasonable measure. Since its adoption in 2001, more land has been redistributed to marginalized groups than in previous years.

Most legislative and programmatic measures, as well as projects, have not been operationalised in terms of their objectives. With respect to restitution,

settlement of claims has been slow, not only due to limited resources, but also because the Restitution Act did not empower the Minister to expropriate land without a court order.

Another example of unreasonableness of legislative measures would include ESTA and LTA, which have not been effective enough to facilitate tenure rights for labour tenants and farm dwellers. The measures cannot be considered convincing if they fail to satisfy the needs of vulnerable groups.[105]

Of course other unreasonable measures would include those structures across all land reform programmes that were adopted but not supported, but resulted in beneficiaries not realising the right. As was put in Grootboom "… An otherwise reasonable programme that is not reasonably implemented will not constitute compliance with the State's obligation."[106]

By not being implemented, even if they were adopted, they fail the test for reasonableness. The implementation of measures must take into consideration the role played by other sectors of the State. With land, other spheres of government play minimal roles with the main task of land reform being the competence of the national Department.

4.6 Availability of Resources

In accordance with section 25 (5) of the Constitution, the Court in *Grootboom* decreed that while it is expected that the State should mobilise adequate resources, it would not be held liable for not delivering due to lack of resources. The phrase "within available resources" implies that the State may only do what it can based on its allocation. Thus, "… failure on the part of the State to fulfil a socio-economic right due to lack of adequate resources is not, in itself, a violation of that right."[107] The resources in question include both personnel and material.

It is incumbent on the State to prove that all of its resources have been applied to achieve its stated objectives. Whereas over the years the DLA has had difficulty using its budgets, in this review year it almost exhausted the allocated funds.

Our analysis reflects that the DLA, although it spent almost all of its allocated funds, its budget was not enough to meet all set targets. However, taking each programme at a time, it can be seen that in some instances, the resources available to the DLA were put to use in a meaningful way. While resources for the restitution programme were limited, the CRLR was able to settle a substantial number of claims in 2002/2003.

In light of the ruling of the Constitutional Court, it is enough that the CRLR laboured "within its available resources" (that is, within budgetary constraints) for disadvantaged people to access land. In effect, non-delivery as a result of unavailability of resources is not necessarily a violation of the rights of beneficiaries to access land.

With reference to redistribution, the resources were scanty but money committed to LRAD projects yielded better results where LRAD delivered more than its targets. However, the same may not be said about tenure reform, which received the smallest allocation of all land reform sub-programme budgets.

It is important to note, however, that access to a right cannot happen at once to satisfy all persons, hence the Court ruled that realisation must be progressive. Thus, there is room for improvement of programmes and other measures.

The unavailability of resources across all the programmes, especially in view of the decreasing land reform budget in the midterm, poses a great obstacle for the landless to gain access. The land, which is a socioeconomic right that is to be accessed by vulnerable groups, and is equally a resource that the State must deliver to these groups, is scarce. The DLA has not been able to acquire enough of this resource to satisfy the landless masses, particularly with regards to programmes like restitution for which deadlines are nearing. Thus progressive realisation is impossible in the short-run.

4.7 Progressive Realisation

Progressive realisation means that the State must take meaningful steps towards the realisation of socio-economic rights over time. While the time period within which realisation should take place is not dictated to be short, it does not mean the State may indefinitely extend the time for the realisation of a given right.

The UN Committee on Economic, Social and Cultural Rights (UNCESCR) points out that progressive realisation should be directed with full appreciation of the circumstances prevailing in that given country. While it requires the State to move expeditiously toward realisation of rights, progressive realisation should provide a mechanism for "… flexibility… reflecting the realities of the real world and the difficulties involved for any country."[108]

For the State to be perceived as respecting, protecting, promoting and fulfilling its obligations, it must be inclined towards the elimination of all legal, administrative, operational and financial obstacles that may interfere with its progress. The DLA is for the most part still battling with this qualifying factor of progressive realisation. Whereas policy measures such as LRAD have made great impact, with regard to redistribution as a programme, legislative hurdles, particularly with regard to tenure reform and restitution programmes, are being reconsidered.

From the analysis above we may conclude that since the DLA and its agencies realise the shortcomings of some of the applied measures and are striving to correct them, the Department has been moving in a progressive manner to make land rights accessible to vulnerable groups, specifically women and youth.

However, lack of support structures may render delivery through any measure ineffective because, land delivery alone is not enough. In its ruling in *Grootboom*, the Court said that housing implied more than just the structure.

> *... It requires available land, appropriate services such as the provision of water and the removal of sewage and the financing of all these, including the building of the house itself. For a person to have access to adequate housing ... there must be land, there must be services, there must be a dwelling. Access to land for the purpose of housing is therefore included in the right of access to housing...*[109]

Therefore, by merely transferring land the DLA cannot be said to have fulfilled its obligations. It follows that the quality of that land should be enhanced by projects that will improve the livelihoods of the recipients.

Our analysis finds that the State has pulled together its efforts in adopting and implementing progressive measures towards land reform. With regard to the restitution programme, the DLA was able to settle more restitution claims even within very limited funds, hence the CRLR is proposing an increase in funding to meet the 2005 deadline to conclude the resolution of outstanding restitution claims. It is envisaged that with the Restitution Amendment Act (2004) in place, more land will be acquired to meet the demands of claimants seeking land compensation.

In terms of delivery in tenure reform, it is worth noting that the DLA is moving towards creating a conducive environment by consolidating ESTA and LTA. This will enhance the culture of observance of legislation, and thus better monitoring and delivery. This law will be able to remove all obstacles so progress may be realised.

Given the challenges faced by the DLA in the delivery of land, particularly where land is not readily available due to obstacles erected by the landowners, and the fact that there are measures adopted to expropriate land, the conclusion would be that in general the State has created an environment for progressive realisation of the right to access of land. The overall challenge would be whether the DLA will satisfy the targeted benefiaries within the set deadlines.

4.8 Constitutional Obligations

There are a number of obligations to which actions of the State are subjected. According to Section 7(2) of the Constitution, these are: obligation to respect, obligation to protect, and the obligation to promote and fulfil.

The obligation to respect the right of access to land provides that the State should not under any circumstances, except where a general law of application states otherwise,[110] prevent any person the right to access land. Thus, it follows that the State must endeavour to see to it that it creates an environment where everyone who needs land is awarded accordingly.

With regard to restitution in particular, the DLA has not awarded much land to victims of land dispossession, who were disadvantaged as a result of past discriminatory laws. There are projects in place to facilitate land restitution. For the most compensation has been financially based, although a sizeable number of land claims have been settled. In redistribution, the DLA has, through LRAD, disposed of tracts of land beyond the number of beneficiaries targeted for the review period.

By instituting the Claims Validation Project of the Restitution Programme to investigate the criteria of the lodged claims, the DLA would be able to distinguish between legitimate and illegitimate claims so that compensation may be given without any unfair discrimination. Related to this measure is the policy on post-settlement support to advance the economic well-being of the beneficiaries. These two measures are a testimony that the Department is

working hard to meet its constitutional obligations to respect the right to gain access to land. The Communal Land Rights Bill was instituted to ensure that communities and individual households gain that right.

The obligation to protect provides that the State must protect the rights of beneficiaries from violation by a third party. The obligation to protect was experienced in the State's ability to deliver land to the targeted beneficiaries. For the period under review, labour tenants and farm workers received over 30 000ha of land, through 201 projects. By bringing together ESTA and LTA into a consolidated Bill (the Consolidated ESTA/Labour Tenants Bill (2003), the DLA realised that separately these measures were not meeting their objective. The Consolidated ESTA/Labour Tenants Bill will ensure that tenure measures relating to evictions and tenure security are such that they protect the rights from arbitrariness. ESTA has not had enforcement powers, so that evictions had continued, because landowners and members of the justice system failed to observe the legal requirements enshrined in ESTA.[111] The continued rate of delivery by LRAD testifies to the preparedness of the Department to satisfy people's demand for land.

The obligation to promote requires that the State create an environment wherein the rights and freedoms of given people by raising awareness of their rights through education. Our analysis has revealed that the DLA has not adequately enhanced the understanding of rights of land tenure beneficiaries with regard to tenure reform. For instance, that understanding is not equal in all communities, to the extent that there are gaps between law and practice. Also, there is still great ignorance about the observance and application of the laws even among public legal workers. For instance, many landowners do not respect ESTA. Although there is evidence of workshops and rallies conducted to educate beneficiaries about land rights, it remains to be seen how monitoring mechanisms for tenure reform and restitution programmes are to be operationalised.

The obligation to fulfil places a positive obligation on the State to adopt necessary measures to enable the beneficiaries of the right to realise the right. The DLA shows that it is moving towards adopting measures that will help various programmes to attain their goals of land reform. In the review period the DLA has shown that it is heading toward that direction. For example, laws like the Restitution Amendment Act to expropriate land where necessary, will make DLA's work much easier, particularly when the land is soscarce and expensive. By synthesising the provisions of both ESTA and LTA in the Consolidated ESTA/LTA Bill, the DLA is strengthening the tenure reform programme, in order to deal meaningfully with the issues directly affecting labour tenants like unfair or illegal evictions. The enactment of the Communal Land Rights Bill is an example of the DLA attempt to accord tenure security equally, without favour or discrimination. This Act protects victims of erstwhile discriminatory tenure laws, including vulnerable groups like women, from further illegal practices.

5 RECOMMENDATIONS

The limited resource base is slowing the land reform process. It is recommended that more money be allocated toward land reform programmes. So far as acquiring land is concerned, legislation alone is not enough. Therefore, Government must muster political will to make expropriation practical.

The continued shortage of personnel in the Department of Land Affairs is a concern in that it hinders the work of the Department. For the past three financial years the DLA has reported low human capacity. The Department must ensure that there are funds for recruitment and training of personnel not only to fill all vacant post, but to maintain structures to retain them as well. This would require an intensive capacity building programme directed particularly towards empowerment of rural youths.

It is recommended that the Department put in place effective support mechanisms to help resettled families and communities with the rehabilitation of their land so as to promote development and alleviate poverty. This will guarantee quality life for newly resettled populations.

The Department should train and deploy field workers to respond to situations as they occur, especially in 'inaccessible' areas where abuse and violation of the rights of farm workers and labour tenants go unreported. In this sense, not only would a record of incidents of violations or abuse be kept, but the monitoring and evaluation of reform would be facilitated. There is need also to empower the provincial offices of the Department of Land Affairs so they can draw palns and budgets for implementation to ensure that the State provide farm dweller populations with secure land of their own.

It is important that the Department submit information relevant to the required reporting period. While it is key to report information on the Medium Term Expenditure Framework (MTEF), for the purpose of analysis, it would help if yearly output were clearly spelt out.

The willing-seller, willing-buyer concept appears not to benefit the landless people, particularly those without a solid financial base. The practice creates a burden, not only for the landless poor, but also for the Government. It is instructive that other ways are explored that would deal with redistribution meaningfully. At present, the market-based concept favours emergent farmers, and thus tend to sacrifice the poor even if the contribution is paid in kind.

Measures like commencing the Subdivision of Agricultural Land Act Repeal Act 64 of 1998 and limits on the size of land-holdings in different agro-ecological zones need to be considered for their potential to make good quality land available to land reform beneficiaries. In this regard, there is a need to gain a better understanding of the land reform experiences in Brazil.[112]

The SAHRC must also find ways to develop monitoring structures that can liase with the Department to enforce ESTA. It is not acceptable that even with legislation in place, people are subjected to arbitrary evictions.

The Proactive Land Acquisition is strategic in the sense that it applies across all land land reform programmes, particularly where acquisition of land for

settlement and housing land are concerned. Thus, it is imperative that this startegy is implemented so that it complements the sub-programmes and support projects pertaining to settlements and housing.

6 CONCLUSION

Generally, land reform in South Africa has remained slow, and targets have yet to be met. This is mainly because land is scarce, and where it is available it tends to be expensive. The land in the country is mainly still in the hands of white commercial farmers who sell it expensively. This has prevented the state and emergent farmers to acquire the land. Thus, high land prices impact negatively on delivery. In some instances where the State has managed to convince commercial farmers to sell at reasonable prices, the land has been found to be infertile, or even uncultivable.

When considering the process of restitution over the past eight years, it appears that great progress has been made. This is so mainly because often there is no distinction made between land transfer and financial compensation. The cumulative nature of reporting on land reform tends to hide actual facts as they occur. If, in three years, seven projects were undertaken, but only one of those was established in the year under review, it is easy for a mistake to creep in. Thus, for accurate reporting, specific numbers have to be supplied for specific reporting periods. There is aneed for more reliable data on delivery.

Given such issues, the minimal budget allocation for land restitution may not enable the programme to meet its goal of completing the settlement of claims. The budget for redistribution and tenure reform are also negligible, hence programmes and projects cannot be supported effectively.

There is approximately one year remaining before the 2005 deadline set by President Mbeki for the resolution of restitution claims. The concern remains that with minimal budget allocation for restitution, compared with the level and amount of work, the determination and intent of the CRLR to meet the President's directive will not be realised.

The report on restitution is based mainly on rural issues as opposed to urban ones. The reason for this is that urban claims have been quite manageable, as they had to do only with financial compensation. Redress for rural claims entail large tracts of land, which in some cases are not available. Hence, long periods of time are exhausted by negotiations between the State and landowners, particularly on the price of land. This is not in anyway suggesting that urban compensation has been completed; it is, rather, an indicatication that more work still needs to be done.

Although there have been a significant number of settled claims to date, restoration of land remains slow, with restored land amounting to approximately 2% of South Africa's total land area. With this pace, it is doubtful that the restoration programme will meet its target by 2005. It also remains a matter of speculation whether this programme will have significant effect given the uneven patterns of land ownership that benefit commercial farmers, mainly.

It should be emphasised, though, that whereas the DLA has, in some instances, not fulfilled its mandate to deliver land as targeted, land reform has improved during the period 2002/2003.

Given the slow pace of land reform, it is important, therefore, that South Africa does not relax in improving the land reform process, in order to avoid problems in future. With approximately 70% of land in the control of a handful of commercial farmers, it is hard to ignore the fact that South Africa's land problem is bigger than that of its northern neighbour, Zimbabwe, whose commercial farmers owned a mere 23% of agricultural land.[113]

1 One of the main aims of RDP was to redistribute 30% of agricultural land over five years.

2 South Africa's land area is estimated by the Department of Land Affairs to be 1 219 090 km² (Statistics South Africa, Census in Brief 1996, third edition, 1999).

3 Department of Land Affairs, Electronic Communication, 15 March 2004.

4 White Paper on South African Land Policy, April 1997.

5 Section 25 (7) of the Constitution of the Republic of South Africa.

6 Section 25 (4) of the Constitution.

7 Government of the Republic of South Africa and Others v Grootboom and Others 2000 (11) BCLR 1169 (CC).

8 Ibid. para 42.

9 *Minister of Health and Others v Treatment Action Campaign and Others* 2002 5 SA 721 (CC), 2002 (10) BCLR 1033 (CC) par 94.

10 See for instance, article 14(2)h of the Convention on the Elimination of all Forms of Discrimination Against Women (1979).

11 See Article 14 of The African Charter on Human and Peoples' Rights, 1981.

12 In its last report, the South African Human Rights Commission (SAHRC) indicated that Idasa had disclosed that more 32 389 claims than were reported by the Commission during the same period.

13 Commission on Restitution of Land Rights, *Land Reform in South Africa, our Achievements, Issues and Challenges*, A paper delivered by Commissioner Tozi Gwanya, at Konrad-Adenauer-Stiftung, Johannesburg, August 15 2003.

14 Commission on Restitution of Land Rights. *Cumulative Statistics*. http://land.pwv.gov.za/restitution.

15 CRLR. 2003. *Annual Report April 2002-March 2003*, Commission on Restitution of Land Rights, p.6.

16 Ibid.

17 According to the Commission on Restitution of Land Rights 2002-2003 Annual Report, during 2002 there were 37 938 claims that were filed but had not been validated, thus were not on the priority list.

18 Secton 10 of the Restitution of Land Rights Act 22 of 1994 provides that all people dispossessed of their land rights after June 1913 due to racially discriminatory laws and practices were entitled to compensation or restoration of their land pending settlement of their claims.

19 Marietie Louw. "No more land claims." News24.Com. 18 February 2004.

20 The grant was designed with a view to support all three land reform programmes – restitution, redistribution and tenure reform.

21 Ministry of Agriculture and Land Affairs, "Land Affairs Budget Vote Speech by the Minister of Agriculture and Land Affairs," Ms Thoko Didiza, MP, National Council of Provinces, Cape Town, 20 June 2002.

22 DLA. 2002. *Media Briefing, "Getting People Back to the Land"* by Dr. GP Mayende, the Director-General Department of Land Affairs, 03 December 2003, p. 8.

23 See SAHRC, *4th Economic & Social Rights (ESR) Report 2000/2002*, Johannesburg, April 2003, p83.

24 Department of Land Affairs, *Annual Report 2002-2003*, National Office of the Department of Land Affairs, p.57.

25 Ibid., p.58. These data are different from those in the protocol sent to the Commission.

26 Ministry of Agriculture and Land Affairs, Land Affairs Budget Vote Speech by the Minister of Agriculture and Land Affairs, Ms Thoko Didiza National Council of Provinces, Cape Town, June 20 2002.

27 Department of Land Affairs. Protocol submission to SAHRC *5th ESR report*, 2003.

28 Ibid.

29 The DLA supplied a new number of LRAD Land Bank projects as 128.

30 Regrettably, it is not indicated whether these were LRAD or other projects. However, it is worth commenting that there has been more Land Bank involvement during the present reporting cycle than during any other year.

31 Department of Land Affairs. *Annual Report 2002-2003*. Pretoria, 2003.

32 These figures may suggest the number of applications approved, thus they may not necessarily be used as a measure for judging progressive realisation.

33 It is not clear how the Land Bank projects differ with Land Bank assisted projects as reported by the Department of Land Affairs; notice that the figures recorded by the two institutions are incongruent.

34 Protocol response from the Land Bank, dated October 31 2003.

35 Table 3 is a representation of the Land Bank's loan component in regard to LRAD land transfers.

36 Some records state that the Land Bank had by December 2002 approved LRAD grants worth R194m awarded to 1753 beneficiaries. See for instance, SAHRC. 2003. *Final Report on the Inquiry into Human Rights in Farming Communities*, Johannesburg, p. 19.

37 DLA. *Annual Report 2001/2002*. Department of Land Affairs, Pretoria, 2002.

38 DLA. *Electronic Communication.* Department of Land Affairs, Pretoria, August 2003.

39 It must be pointed out that the DLA has not supplied reliable data. These statistics, which came from the DLA's annual report, are contradicted by yet another set sent electronically from the Department. This version records 121 commonage projects, that transferred 502 505 ha of land to 5005 households, including 77 female-headed households.

40 Anderson, M and Pienaar, K. 2003. Evaluating land and agrarian reform in South Africa. Municipal Commonage. An occasional paper, No. 5. University of the Western Cape, Cape Town, p. 5.

41 DLA. 2002. *Media Briefing, "Getting People Back to the Land"* by Dr. GP Mayende, the Director-General Department of Land Affairs, 03 December 2003, p. 12.

42 Ruth Hall (*Farm Tenure*, p. 25) estimates that there are 19 416 applications, Mpumalanga (9 709) and Kwa-Zulu-Natal (7 713), having most, while Northern Cape had the least (15). The DLA claims that an estimated 20 000 applications were processed and resolved. (See Media Briefing, *"Getting People Back to the Land"*).

43 DLA. 2002. *Media Briefing, "Getting People Back to the Land,"* p. 12.

44 Ibid., p. 18

45 DLA *Annual Report 2002–2003*, Department of Land Affairs, Pretoria, p. 67.

46 Ministry of Agriculture and Land Affairs, "Land Affairs Dept Budget Vote 2002/2003, NCOP", Address by the Minister of Agriculture and Land Affairs, Ms Thoko Didiza, at the Budget Vote of the Department of Land Affairs.

47 DLA. *Annual Report 2002–2003.* Department of Land Affairs, Pretoria, p. 58.

48 Ibid.

49 See for example, Ruth Hall. *Evaluating land and agrarian reform in South Africa. Rural restitution.* An occasional paper series, PLAAS, University of the Western Cape (September 2003), p. 6.

50 Ruth Hall. *Evaluating land and agrarian reform. Farm tenure.* An Occasional paper, No. 3. PLAAS, University of the Western Cape. Cape Town, p. 25.

51 Ibid. p. 25.

52 Ibid. p. 26.

53 See Ruth Hall. *Evaluating land and agrarian reform in South Africa. Rural restitution.* An occasional paper series, PLAAS, University of the Western Cape (September 2003).

54 DLA, *Electronic Communication,* March 2004.

55 SAHRC. 2003. *Final Report on the Inquiry into Human Rights Violations in Farming Communities.* South Africnan Human Rights Commission, Johannesburg (August 2003), p. 62.

56 The DLA budget information does not include the budget for the provincial offices as, according to the DLA, land reform is the competency of the national office.

57 Commission on Restitution of Land Rights. 2003. *Annual Report April 2002-2003*, and Tozi Gwanya. "Land Reform in South Africa: Our Achievements, Issues and Challenges", Presented by the Chief Land Claims Commissioner at Konrad-Adenauer-Stiftung, Johannesburg (August 15 2003).

58 Ibid.

59 Ibid.

60 Ibid.

61 DLA. *Medium Term Strategic and Operational Plan 2002-2006.* Department of Land Affairs, Pretoria.

62 DLA. 2002. *Medium term strategic and operational plan, 2002-2006: Getting people back to the land.*Department of Land Affairs, Pretoria. Also cited in Ruth Hall, *Farm Tenure.* 2003, p. 35.

63 The Landless People's Movement has since the World Summit for Sustainable Development in August 2002 threatened to invade land. To date, other than demonstrations, no massive land occupations have taken place.

64 Ruth Hall. 2003, p. 19.

65 Jacobs, P. et al. 2003. *Evaluating land and agrarian reform in South Africa. Land redistribution.* An occasional paper, No. 1. University of the Western Cape. Cape Town, p. 8.

66 Ibid. p. 10.

67 Ibid. p. 8.

68 Ruth Hall. 2003. *Evaluating land and agrarian reform in South Africa. Farm tenure.* An occasional paper, No. 3. University of the Western Cape, Cape Town.

69 Ruth Hall has outlined several other challenges linked to these ones. See her report cited above for further reading.

70 Marietie Louw. "No more land claims – minister". News24.com. 18 February 2004.

71 Steyn, L. 2002.*Review of Land Occupation in South Africa.* Africa Groups of Sweden.

72 Bertus de Villiers (2003). *Land Reform: Issues and Challenges: A comparative overview of experiences in Zimbabwe, Namibia, South Africa and Australia.* Johannesburg: Konrad Adenauer Foundation, p. 141.

73 Ibid., p. 142.

74 Russel Molefe. "Slow restitution a hurdle for growth." Sowetan. 26 September 2002.

75 Ibid.

76 FIAN Press Release. 2002 *World Bank and land policies under attack*. http://www.fian.org/enlish-wersion/arc_pr.htm Accessed 23 August 2003. Also quoted by Michelle Festus in "We are the Women, We Are the Land", a paper presented at Konrad-Adenauer-Stiftung, Johannesburg, 15 August 2003.

77 Michelle Festus (2003). "*We are the Women, We Are the Land*", a paper presented at Konrad-Adenauer-Stiftung, Johannesburg, 15 August 2003.

78 Cross, C. and D. Hornby (2002) *Opportunities and Obstacles to Women's Land Access in South Africa: A Research Report for Promoting Women's Access to Land Programme* at http://www.nlc.co.za/pubs2003/womenlandaccess/wlatoc.htm Accessed 3 June 2003.

79 Ibid, p. 47.

80 Department of Land Affairs. *Medium Term Strategic and Operational Plan 2002-2006*. Pretoria. See also, Jacobs, P. et al. 2003. *Evaluating land and agrarian reform in South Africa. Land redistribution*. An occasional paper, No. 1. University of the Western Cape. Cape Town, p. 9.

81 Note that Samantha Hargreaves and Ann Eveleth put seven million as the landless population in the urban areas, and 19 million as the total for landless rural dwellers.

82 Michelle Festus. 2003. "We are the Women, We Are the Land". A paper presented at Konrad-Adenauer-Stiftung, Johannesburg, 15 August, 2003.

83 Jacobs, P. et al. (2003). *Evaluating land and agrarian reform in South Africa: Land redistribution*. University of the Western Cape. Although R1 million has been put aside to monitor restitution programme's post-settlement support, no review has been done so far.

84 Human Science Research Council. 2003. *Land Redistribution for Agricultural Development: Case Studies in Three Provinces*. Integrated Rural and Regional Development.

85 Nelwamondo, Tendani C. 2003. *Land Redistribution for Agricultural Development for Sustainable Local Economic Development: Bophirima District Municipality: North West*. A Master's Thesis. Potchefstroom University.

86 Jacobs, P. et al. (2003). *Evaluating land and agrarian reform in South Africa: Land redistribution*. University of the Western Cape, p. 20.

87 Department of Agriculture. *Annual Report 2002-2003*. Department of Agriculture, Pretoria, 2003., p. 36.

88 Marc Wegerif, cited in Anderson M. and K. Pienaar. 2003. *Municipal Commonage. Evaluating land and agrarian reform in South Africa. An o*ccasional paper. No. 5, PLAAS. Cape Town.

89 Ibid, p. 1.

90 Ibid. This amount includes commonage, equities, and other Act 126 projects, as well as the implementation of LRAD.

91 Ibid, p. 6.

92 Tessa Cousins and Donna Hornby. 2003. "Communal property institutions: Adrift in the sea of land reform" in *Peacemeal Reforms and Calls for Action*. Stephen Greenberg (ed.), Development Update Vol. 44 No. 2, p. 134.

93 Ibid.

94 Ibid. For more information, see *Business Day* 25 September 2002.

95 Tessa Cousins and Donna Hornby. p. 140.

96 Meeting between DLA and SAHRC researchers, South African Human Rights Commission, Johannesburg, 22 September 2003. Indeed, redistribution and tenure reform programmes get a combined budget allocation.

97 See Ruth Hall for a complete LCC case table.

98 The information indicates that these numbers are per calendar year. It is difficult, therefore, to speculate how many cases were attended to during a specific financial year.

99 In some cases, the police dismiss the reports summarily, in favour of the landowners.

100 On 30 March 2004 Nkuzi Development Association and Social Surveys (Pty) Ltd conducted a consultative workshop (Eviction Survey Reference Programme) on the study to determine the extent and impact of displacement of former farm dwellers. It is from the results of this study that information on quality alternative accommodation will be determined.

101 Meeting between DLA and SAHRC researchers, South African Human Rights Commission, Johannesburg, September 22 2003.

102 Ruth Hall. 2003. *Evaluating land and agrarian reform in South Africa: Restitution.* An occasional paper series. PLAAS, University of the Western Cape, p. 30.

103 Ibid., p. 31.

104 Other estimates put the required amount at R2 billion. See for example, Department for International Development (DFID) Southern Africa. 2003. *A Scoping Study of Current Freehold and Farming Communities.* Final Report. McIntosh Xaba & Associates (Pty) Ltd. p. 26.

105 *Grootboom*, par 43-4.

106 Ibid, par 42.

107 Lahiff, E and Rugege S. "A critical analysis of land redistribution policy in the light of the *Grootboom* judgement." in *Law, Democracy & Development.* Vol 6 (2), p. 288.

108 General Comment No. 9, UN Committee on Economic, Social and Cultural Rights, E/C. 12/1998/24 par 9.

109 Grootboom, par 35.

110 See for instance, section 36(1) of the Constitution.

111 SAHRC. 2003. *Final Report on the Inquiry into the Human Rights Violations in Farming Communities*, South African Human Rights Commission, Johannesburg, August 2003, pp. 9-10.

112 The Special Rapporteur on the Right to Food recommended that Brazil's projected law on limiting the size of landholdings should be implemented. See UN Special Rapporteur on the Right to Food, *Mission to Brazil*, E/CN.4/2003/54/Add.1, 3 January 2003.

113 See for instance, "Land reform is a bigger issue in SA than Zimbabwe", at http://www.sabcnews.com/Article/print_whole_story/0,1093,57024,00.html April 14, 2003, Accessed 30 July 2003.