

GENERAL NOTICE

NOTICE 686 OF 2011

DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM

INVITATION FOR COMMENTS ON THE GREEN PAPER ON LAND REFORM, 2011

The Department of Rural Development and Land Reform hereby invites any interested person or body to provide comments on the Green Paper on Land Reform, 2011 (hereinafter referred to as Green Paper), as published hereunder.

The Green Paper seeks to provide new policy direction on Land Reform and it also proposes the establishment of institutions to support the implementation of the policy proposals contained in the Green Paper.

Copies of the Green Paper can be obtained from the offices listed below and it can also be downloaded from the Department's website.

The closing date for comments is 60 calendar days from the date of publication of this notice in the Gazette. Written comments must be submitted to The Director General, Rural Development and Land Reform at the contact details below:

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1. INTRODUCTION

The resolution of the 52nd National Conference of the ANC (December 2007) on agrarian change, land reform and rural development, confirmed the ANC's acute awareness and sensitivity to the centrality of land (the land question) as a fundamental element in the resolution of the race, gender and class contradictions in South Africa. National sovereignty is defined in terms of land. Even without it being enshrined in the country's supreme law, the Constitution, land is a national asset. This is where the debate about agrarian change, land reform and rural development should, appropriately, begin. Without this fundamental assumption, talk of effective land reform and food sovereignty and security is superfluous! We must, and shall, fundamentally review the current land tenure system during this Medium Term Strategic Framework (MTSF) period. This we shall do through rigorous engagement with all South Africans, so that we could emerge with a tenure system which should satisfy the aspirations of most, if not all, South Africans, irrespective of race, gender and class.

The strategy of the Department of Rural Development and Land Reform is, fittingly, 'Agrarian Transformation' – interpreted to denote 'a rapid and fundamental change in the relations (systems and patterns of ownership and control) of land, livestock, cropping and community.' The goal of the strategy is 'social cohesion and development.' All anti-colonial struggles are, at the core, about two things: repossession of land lost through force or deceit; and, restoring the centrality of indigenous culture.

That is why colonialists targeted land to subdue conquered populations, in order to turn them into vassals and slaves. Their next target was the people's cultural practices, especially cross-cutting cultures, which served as a nexus holding together multi-cultural communities into single coherent societies, despite different cultures. **Ubuntu** or human solidarity is such a cross-cutting culture in the case of African societies. It is the over-arching way of life of the African people (consider the following two Xhosa expressions of ubuntu: (i) Nongenankomo uyawadla amasi; (ii) inkomo yenqoma, yintsengw'ibhekwa), which is integrally linked to land.

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Any attempt at restoring ubuntu without a concomitant land restoration would be futile. Land is a fundamental means to ubuntu, the end!

Fundamentally, therefore, social cohesion, just like development, is a direct function of land access and ownership - the basic tenet of, or requirement for, the exercise of ubuntu in traditional African society. It is not just about allegiance to national symbols, e.g. the National Anthem and Flag, important as they are in the modern state context. It is part of a people's expression of themselves, for themselves and of themselves. It is a way of life, integrally linked to land. If you denied African people (a definition which includes the San and the Khoi) access to, and, or, ownership of, land, as has been the case under both colonialism and Apartheid in South Africa, you have effectively destroyed the very foundation of their existence.

In rural communities social relationships are much deeper as they tend to be historical and inter-generational. Mutuality (both horizontal and hierarchical), a strong feature of ubuntu, is a way of life which would have evolved organically, nourished and cemented by shared hard and good times. Colonialism and Apartheid sought at all times, and by all means to destroy this mutuality amongst peoples of different cultures, but constituting the same society. Of all such means used, the Natives Land Act, Act no. 27 of 1913, and the migrant labour system are the ones which wreaked the most havoc in African rural communities, by seriously undermining the virtues of Ubuntu, as people lost their basic expression of it – the ability to give / *izinwe* - which disappeared with the loss of their land. They could no longer produce enough food to feed themselves as families; nor could they keep livestock. They had to survive on meager or slave wages, which could hardly meet their own family needs, let alone being generous and readily share with neighbours. Colonialism and Apartheid brutalized African people, turning them hostage to perennial hunger and want, and related diseases and social strifes and disorders. Rural development, agrarian change and land reform must be a catalyst in the ANC government's mission to reverse this situation. It took centuries to inflict it upon black people and it is going to take quite a while to address it, but it shall be done. That long road necessarily starts with the crafting of a new pragmatic but fundamentally altered land tenure system for the country. Not to do so would perpetuate the current social and economic fragmentation and underdevelopment.

Development and its corollary, underdevelopment, as outcomes, are a function of certain political choices and decisions, as well as certain administrative practices, processes, procedures and institutions. Defined in this context, development denotes 'social, cultural and economic progress brought about through certain political choices and decisions and realized through certain administrative practices, processes, procedures and institutions.' The key parameters for measuring development, therefore, are social, political, administrative, cultural, institutional and economic. Depending on the type of political choices made and decisions taken, and the administrative practices, processes, procedures and institutions put in place in pursuit of those choices and decisions, there will be social progress (development) or

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stagnation (under-development). In short, depending on the type of political choices and decisions we make and take now, and the type of administrative practices and institutions we put in place in pursuit of those choices and decisions, we will either bring about the desired social cohesion and development or we will perpetuate the current colonial-apartheid's social and economic fragmentation and under-development.

For the sake of clarity, 'development' indicators in this Draft Green Paper are 'shared growth and prosperity, full employment, relative income equality and cultural progress'; and, those for 'under-development' are 'poverty, unemployment, relative income inequality and cultural backwardness'. It is, thus, submitted here that these two opposing socio-economic pillars, development and under-development, are a direct function of certain political choices and decisions, as well as certain administrative traditions and institutions, processes and procedures. They are not a product of just any political choice and decision, or any administrative practice, process, procedure or institution. If there could be anything positive which come from Apartheid, it is (a) the political courage and will to make hard choices and decisions; and, (b) the bureaucratic commitment, passion and aggression in pursuit of those political choices and decisions. We are in the mess we are in today because of these two sets of qualities – **political courage and will to make hard choices and decisions, and bureaucratic commitment, passion and aggression in pursuit of those political choices and decisions.** We need them now to pull the country out of the mess.

Apartheid was an outcome of particular political choices and decisions which were executed through a plethora of oppressive policies and laws, which were carefully crafted to achieve the set outcome. Consider the following passage from Maurice Evans, on the reduction in the Natal land quota for black people in this regard:

"Yet even this will mean an average of 156 acres per head of European population, and 6.8 acres for every native, while the land which will fall within the European areas is infinitely healthier, more fertile, and altogether more desirable, than either present locations or the areas recommended by the Beaumont Commission". (M Lacey: Working for Boroko, 1981)

This was not an isolated case. It was the South African story in the systematic denudation and impoverishment of African people (African inclusive of the San and the Khoi and their descendants). Our effort to bring about the corrective measures necessary to tone down the anger, bitterness and pain of those who have been subjected to this brutal treatment must be collective. The Truth and Reconciliation Commission (the TRC) has adequately demonstrated the capacity and political will of black people, in general, and the African majority, in particular, to forgive. BUT, this goodwill should not be taken for granted, because it is not an inexhaustible social asset. It is an asset around which we should work together to build our collective future. That is the spirit of this Draft Green Paper.

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2. Problem Statement

- 2.1 The need to instill *national identity*, *shared citizenship* and *autonomy-fostering service delivery* are the primary reasons why the State must continue to invest in the transformation of land relations (systems and patterns of land control and ownership) in our country.
- 2.2 The rationale behind state investment in, and the enduring demand for, land in South Africa is to be found in the historical background of what has been described by some scholars as “*accumulation by dispossession*”.
- 2.3 The current economic structure of South Africa, as a result of this historical process and phenomenon, has produced, and continues to produce, net factors which combine to undermine the creation of conditions which are conducive to fostering social cohesion and development amongst those historically dispossessed of their land.

3. Vision for Land Reform

- 3.1 A re-configured single, coherent *four-tier system of land tenure*, which ensures that all South Africans, particularly rural blacks, have a *reasonable access to land with secure rights*, in order to fulfil their basic needs for housing and productive livelihoods.
- 3.2 *Clearly defined property rights*, sustained by a fair, equitable and accountable land administration system within an effective judicial and ‘governance’ system.
- 3.3 *Secure forms of long-term land tenure for resident non-citizens engaged in appropriate investments* which enhance food sovereignty and livelihood security, and improved agro-industrial development.
- 3.4 *Effective land use planning and regulatory systems* which promote optimal land utilization in all areas and sectors; and, effectively administered rural and urban lands, and sustainable rural production systems.

4. Principles Underlying Land Reform

- 4.1 The principles which underpin land reform are three-fold:
 - (a) de-racialising the rural economy;
 - (b) democratic and equitable land allocation and use across race, gender and class; and,
 - (c) a sustained production discipline for food security
- 4.2 The long-term goal of land reform is social cohesion and development. In this text, the concept ‘**development**’ refers to shared growth and prosperity, relative income equality, full employment and cultural progress. ‘**Underdevelopment**’ is the other side

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of this proverbial coin - poverty, relative income inequality, unemployment and cultural backwardness.

5. Current Challenges and Weaknesses: Rationale for Change

- (a) The land acquisition strategy / willing-buyer willing-seller model (a distorted land market);
- (b) a fragmented beneficiary support system;
- (c) beneficiary selection for land redistribution;
- (d) land administration / governance, especially in communal areas;
- (e) meeting the 30% redistribution target by 2014;
- (f) declining agricultural contribution to the GDP;
- (g) unrelenting increase in rural unemployment; and,
- (h) a problematic restitution model and its support system (communal property institutions and management)

6. An Improved Trajectory for Land Reform

6.1 In articulating this improved trajectory for land reform, a set of proposals is advanced, which attempts to:

- (a) improve on past and current land reform perspectives, without significantly disrupting agricultural production and food security; and,
- (b) to avoid or minimise land redistribution and restitution which do not generate sustainable livelihoods, employment and incomes.

6.2 This trajectory is supported by the following programmes and institutions:

- (a) a recapitalisation and development programme;
- (b) a single land tenure system with four tiers;
- (c) a Land Management Commission;
- (d) a Land Valuer-General;
- (e) a Land Rights Management Board, with local management committees;
- (f) properly aligned common property institutions (CPIs); and,
- (g) the Land Tenure Security Bill, 2010, which is an integral part of the Land Reform Programme (LRP), but is treated separately from it.

6.3 A Recapitalisation and Development Programme. The goal of this Programme is to ensure that all land reform farms are 100% productive. It focuses on all land reform farms acquired through state funds since 1994, as well as small-holder farms which had been privately acquired, but the new owners have had no means of keeping them productive. The strategy underlying the Programme is partnership with commercial farmers on a risk-sharing basis.

6.4 A single land tenure framework has been fashioned out, integrating the current multiple forms of land ownership - communal, state, public and private - into a **single 4-tier tenure system**:

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- (a) State and public land: Leasehold;
- (b) Privately owned land: Freehold, with limited extent;
- (c) Land owned by Foreigners: Freehold, but Precarious Tenure, with obligations and conditions to comply with; and,
- (d) Communally owned land: Communal Tenure, with institutionalised use rights.

The Communal Land Tenure (the 4th Tier), because of (a) its complexity (need for extensive consultations and constitutional compliance) and, (b) the recent nullification of the Communal Land Rights Act (CLaRA) by the Constitutional Court, will be treated in a separate policy articulation.

6.5 Land Management Commission (LMC)

The LMC will be autonomous, but not independent, of the Ministry and Department. It will be accountable to the Ministry through the Department; and, will submit regular reports to the latter. A financial manager, accountable to the Department's Accounting Officer, will manage the finances of the Commission. The LMC will be composed of all stakeholders in land and persons appointed by the Minister because of their special attributes.

6.5.1 Functions of the LMC

- (a) Advisory – issues advisory opinions, research reports and guidelines on land management to all land related departments and state organs.
- (b) Coordination – ensures alignment, inter-linkages and coherence of disparate land management agencies, departments, spheres and other organs of state.
- (c) Regulatory - Manage the regulatory environment that ensures that lands are managed in a manner that will protect the quality and values.
- (d) Auditing – assures the integrity of the inventory of state and public lands including monitoring its uses.
- (e) Reference point.

6.5.2 Powers of the LMC

The LMC will have power to:

- (a) subpoena anyone and any entity, private or public, to appear before it, and answer any question relating to its landholding or land interest;
- (b) enquire about any land question, out of its own initiative or at the instance of interested parties;
- (c) verify and /or validate / invalidate individual or corporate title deeds;
- (d) demand a declaration of any landholding, with all the necessary documentation relevant to such a declaration;
- (e) grant amnesty and / or to initiate prosecution, whichever the case might be, at its own discretion; and,
- (f) seize or confiscate land gotten through fraudulent or corrupt means.

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6.6 The Land Valuer-General (LVG)

6.6.1 Problem Statement

- (a) South Africa lacks a nationwide comprehensive, reliable and collated hub of property values;
- (b) absence of legislative framework to determine when 'market value' is one of the variables in determining values as opposed to being the only criterion;
- (c) probity of some of the valuation is questionable;
- (d) conflict of interest and malpractices;
- (e) improper or hurried valuations in order to meet deadlines or compliance planning; and,
- (f) an ahistorical or mechanical approach to valuation.

6.6.2 Responsibilities of the Office of the Valuer-General (OVG)

The Valuer-General will be a statutory office responsible for:

- (a) the provision of fair and consistent land values for rating and taxing purposes;
- (b) determining financial compensation in cases of land expropriation, under the Expropriation Act or any other policy and legislation, in compliance with the constitution;
- (c) the provision of specialist valuation and property-related advice to government;
- (d) setting norms and standards, and monitoring service delivery;
- (e) undertaking market and sales analysis;
- (f) setting guidelines, norms and standards required to validate the integrity of the valuation data; and,
- (g) creating and maintaining a data-base of valuation information.

6.7 Land Rights Management Board (LRMB) and Land Rights Management Committees (LRMCs)

6.7.1 The LRMB will be composed of representatives of sectors which hold rights to land and persons appointed by the Minister because of their special knowledge and capacity to provide professional services to the Board. The Land Rights Management Committees, on the other hand, will be composed of representatives of residents in a specific rural environment or settlement: farm-workers and dwellers, commercial farmers, relevant municipal councils, government departments such as the drdlr, Human Settlements, as well as the South African Police Service.

6.7.2 Functions of the LRMB

- (a) communication of legal reforms to farm owners, farm-dwellers and potential land beneficiaries;
- (b) build institutional capacity (inside and outside state institutions) to advise and support rights-holders, and facilitate their active use of the law;

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- (c) in collaboration with the Chief Deeds Registrar, develop accessible and efficient systems for recording and registering rights on land;
- (d) to encourage the primacy of social solutions to social problems and disputes;
- (e) to provide legal representation, where necessary, e. g. unlawful evictions; and,
- (f) to establish a co-ordinated and integrated support system for state, civil society and private sector participation in integrated development measures in rural settlements.

6.7.3 Powers of the LRMB

The LRMB will have power to:

- (a) establish and, or, dissolve Land Rights Management Committees (LRMCs);
- (b) set norms and standards for the LRMCs;
- (c) delegate certain powers to the LRMCs;
- (d) enforce compliance with norms and standards, as well as land rights management policies and laws;
- (d) hear appeals on matters handled by the LRMCs;
- (e) to over-turn decisions of the LRMCs; and,
- (f) enforce respect for, and observance of, rights of fellow dwellers.

7. The Strategic Thrust of Land Reform

7.1 Land Reform is located within the CRDP, and is anchored by the following pillars:

- (a) a coordinated and integrated broad-based agrarian transformation;
- (b) an improved land reform programme; and,
- (c) strategic investment in economic, cultural, ICT and social infrastructure for the benefit of all rural communities.

7.2 While separate in the design, *rural development* and *land reform* are aligned at policy, programme and institutional levels to ensure coordinated service delivery. In pursuit of agrarian transformation, the link between the *land question* and *agriculture is acknowledged* as the basis of the search for an economic rationale and a vision of a post-reform agrarian structure. Yet, demand for land may be for other productive but non-agricultural uses.

8. Land Reform Experience Elsewhere

8.1 Asia

8.1.1 China

China replaced the Commune System with a two-layer management system – household contract responsibility system and granting farmers self-management rights; it replaced monopoly over purchase and marketing, allowing farmers the right to

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exchange farm produce freely; and, it transformed the single collective ownership into various private ownerships, where the farmer can dispose of assets.

8.1.2 India

India introduced the following reforms: it regulated sharecropping; provided legal protection against eviction; instituted a land ceiling Act; and provided homestead plots.

8.2 Latin America

8.2.1 Brazil

Brazil embarked upon selective expropriation with compensation; viable family smallholder farms receiving government support, serving domestic market, while large-scale commercial farms serve export markets; and, combined market-related strategies with traditional land management systems, in a complementary manner.

8.2.2 Mexico

Mexico had mixed experiences: nationalisation in 1910; redistribution in 1935; denationalisation in 1946; and, a peasant revolt in 1970 resulted in the take-over of land owned by foreigners, turning it into collectives.

8.2.3 Chile

Chile expropriated large farms in the 1960s, turning them into co-operatives for peasants and small farmers. There was a reversal in 1974, after the assassination of President Allende, with the re-instatement of elite family farms. Regulatory reforms were introduced on land rentals and subdivisions in the 1980s.

8.3 Africa

On the African continent the **Egyptian** experience provides interesting lessons on land reform. Legislation was passed in the 1950s, limiting farm size to a maximum of 42ha per individual; limiting rental rates; and, setting minimum lease durations.

9. Challenges and Constraints

9.1 For the land reform programme to proceed rapidly and succeed, as it must, a number of challenges and constraints have to be confronted, and overcome. **The main challenges are:**

- (a) entrenched vested interests, in both the commercial and communal land spaces; and,
- (b) poor co-ordination and integration of effort and resources among public institutions, and between public and private sector institutions; and,

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(c) the main constraint is the poor capacity of organs of state to implement.

9.2 These three elements constitute a complex risk-factor to any effective, equitable and speedy resolution of the land question. It will require time and an enduring, collective, national political effort to overcome them. Co-ordination and integration across all relevant organs of state and civil society is the key to a successful execution of the sustainable land reform programme.

10. Summary and Conclusion

10.1 Undoing the social, economic and cultural effects of centuries of discrimination and exclusion, on the basis of race, class and gender will take time and an enduring national political effort.

10.2 Challenges and constraints experienced over the last seventeen years, and lessons drawn from other countries across the world, show clearly that there are no silver bullets to solving post-colonial land questions.

10.3 A systems approach seems necessary and appropriate in addressing complex and emotive challenges such land reform. The failure to protect the rights and security of tenure of farm workers and dwellers is a good illustration of this point. There is a strong view that the real problem in land reform in general; and, in the protection of the rights and security of tenure of farm-dwellers, in particular, may be that of a total-system failure (TSF) rather than that of a single piece of legislation, e.g., Extension of Security of Tenure Act (ESTA).

10.4 In the case of farm-workers and dwellers, this failure would reflect in a number of aspects: inadequate articulation of policy and legislative regime to protect farm workers and dwellers; poor implementation of existing policies and legislation by organs of the state; weak enforcement of legislation by law-enforcement agencies; the judicial system not being worker-friendly in handling eviction cases; labour unions not organizing effectively on farms; non-complementary (almost adversarial) relationship between non-governmental organizations and state organs in addressing problems of farm-dwellers; and, poor or non-existent monitoring, co-ordination and communication amongst state organs, within and across the three spheres of government, and other interested parties, on matters negatively affecting the rights of farm workers and dwellers.

10.5 The following passages, directly and indirectly, quoting the first President of the African National Congress, Dr John Langalibalele Dube, have been taken from the recently published book by Heather Hughes, First President (2011). It addresses the hunger and need for land by African people. The situation has not changed much since the 1930s, when the sentiment was expressed by Dr Dube. **We must change it now!**

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The points that Dube and his colleagues had made about the draft legislation (Natives' Representation in Parliament Bill, the Natives' Land Bill and the Natives' Council Bill) were incorporated and extended in his testimony to the Natives' Economic Commission....He had prepared a written submission on which he was closely questioned at great length in the hearing. Uppermost in his mind and, he said, in the minds of African people was the land issue. They needed far more of it, particularly those who could not afford to buy. The land ought to be purchased for them and handed over; all the African areas ought to be properly surveyed and divided into building plots, grazing grounds and gardens. People could pay a nominal rent for their plots.

"There are only one million of you and there are about six millions of us; and one million of you have three fourths of the land, and six millions of us have one fourth of the land. That is not fair....In asking (for more land) I do not think we are asking for charity; we have contributed to the development of South Africa with our labour...we have done our share in that respect, and in the matter of taxation, both direct and indirect".

He vigorously fought off the commissioners' views that Africans did not know how to use their land properly, that any more would just be wasted, that Africans multiplied too fast, that they had too many cattle:

"The black ox has nowhere to feed, and the white ox has all the pasture...I am sorry if I cannot make that clear to you".

[Heather Hughes (2011). First President. A Life of John L Dube, founding President of the ANC].