

11. The Mbeki Era: Since 1999

Following the election of President Thabo Mbeki in June 1999, land reform efforts encountered a number of difficulties stemming from new policy initiatives, bureaucratic reshuffling and the Zimbabwe crisis. Derek Hanekom, who had served as minister of land affairs since 1994 and whose portfolio had been expanded to include the Ministry of Agriculture, was dropped from the cabinet. As minister for land affairs, he had become a major target of criticism in the white farming press. After he assumed responsibility for agriculture, he was often sharply at odds with a commercial farming lobby that viewed him as a threat to their direct interests. Following Mbeki's election, former Deputy Minister of Agriculture Thoko Didiza was given both portfolios. The new minister quickly indicated dissatisfaction with existing policy, shelved the draft Land Rights Bill in July 1999 and imposed a moratorium on land redistribution projects. Her appointment led to a substantial reshuffling of personnel in the land reform bureaucracy. There was an immediate exodus of the "white liberals" in the bureaucracy and the director-general and the two deputies responsible for land reform resigned, along with three chief directors and several directors and their deputies. Three regional land claims commissioners of the Restitution Commission also departed, and a completely new management team was appointed to the department. Overall, the bureaucracy was restructured to bring decision-making and control closer to the new director general and to appoint more black professionals to senior management positions.⁴⁰⁷

While land redistribution had been gaining steam since 1996, the change of administration brought a marked slowdown. Project approvals dropped from 17,243 in 1999 to 5,692 in 2000. Actual land transfers fell from 14,250 to 1,513 households during the same period.⁴⁰⁸ The first year of the Mbeki administration also sparked increasingly strident exchanges in the press between an NGO land coalition, the National Land Committee, and Minister Didiza.⁴⁰⁹ Land NGOs, which had championed reform since the dark days of apartheid, continued to decry the government's efforts as

⁴⁰⁷ *Business Day*, 22 June 2000.

⁴⁰⁸ Louise Cook, "Land Redistribution: the Acid Test", *Business Day*, 4 January 2001.

⁴⁰⁹ The National Land Committee is a coalition of land rights NGOs, which had its origins in the anti-apartheid movement.

excessively conservative and slow. Although Minister Didiza made her displeasure with earlier policies known quickly, she did not issue her first statements on new directions until February 2000.⁴¹⁰ From her initial statements, it appeared that land redistribution would be targeted to promoting black commercial farmers rather than on uplifting the poor, a position that further angered land reform NGOs.

The exodus of senior managers and the relative upheaval within the department chilled relations with donors, not least when, following the occupation and seizure of white farms in Zimbabwe, the minister questioned the close involvement of donors in land reform.⁴¹¹ At the same time the nation was shocked by racially motivated outrages by a number of white farmers against farm workers as well as an increase in murders of farm owners. Amidst the resultant rise in tensions, a new land and agrarian policy was sought that could help end racial injustice on white farms and replace many white commercial farmers with black ones.⁴¹²

A. THE IMPACT OF ZIMBABWE

The first announcement of new directions came shortly before Zimbabwe's land crisis erupted in April 2000. Not surprisingly, the invasion of white farms there resulted in a huge increase in interest in land reform in South Africa. For many South Africans, their neighbour's events underscored the limitations of a market-assisted land redistribution strategy. Indeed, the land invasions struck a responsive chord among militants, and Zimbabwean diplomats were given a standing ovation at the annual conference of South Africa's Pan African Congress (PAC) in April 2000.⁴¹³ A poll carried out in black townships that month showed 54 per cent support for the farm seizures.⁴¹⁴

⁴¹⁰ See "Strategic Directions on Land Issues", policy statement by the Minister for Agriculture and Land Affairs, Strategic Planning workshop, African Window in Pretoria, 11 February 2000; "1999 Annual Report of the Department of Land Affairs", March 2000; "Integrated Program of Land Redistribution and Agricultural Development in South Africa", 8 June 2000; Dr. Gilingwe Mayende, *The Star*, 11 July 2000; and various press briefings by the minister and deputy minister and the director general, reproduced on the Oxfam website at www.oxfam.org.uk/what_we_do/issues/livelihoods/landrights/index.htm.

⁴¹¹ Department of Land Affairs, "Land Reform Support Project, Final Extension Phase 2000/2001", Directorate Strategic Management Support, Pretoria, 4 December 2000.

⁴¹² Stephen Turner and Hilde Ibsen, *Land and Agrarian Reform*, op. cit. 2000.

⁴¹³ The PAC, which split from the ANC in 1959, took its inspiration from Anton Lembede, who wrote in 1946: "Africa is a black man's country....The basis of national unity is the nationalist feeling of the Africans...."

⁴¹⁴ *Sunday Times* (UK) 20 April 2000.

Events in Zimbabwe galvanised the networks working for more radical land reform. A land reform advocate said:

Zimbabwe has been an inspiration to landless people in South Africa. It is the first time any country in southern Africa has done anything on land transfers in the last decade. Zimbabwe was a wake up call for South Africa. The government is now waiting to see if the Landless People's Movement will really undertake occupations. But the government itself has not yet woken up.⁴¹⁵

Another representative of a land rights NGO said, "Mugabe is far more popular than most of our leaders here in South Africa. In fact, he is their hero. They never tire to mention his name or to support him in public. And they want him to come to South Africa to inspire them further and find solutions to the South African land problem".⁴¹⁶ To be sure, there was also stinging criticism of radical redistribution. An NGO official close to commercial farming interests argued, "Poverty is not addressed by destroying title and creating aid-dependent nations. Rather, prosperity is created by individual endeavour on property securely held with value that can be traded and used as collateral for development".⁴¹⁷ Given their advantages in financing, organisation and political access, landed elites have frequently been able to blunt land reform efforts. These elites have been able to lobby governments with arguments – often strong – about the importance of improving food production and the need to maintain farm employment and export revenues. This has often caused land reform debates to begin as a discussion of promoting land redistribution for the landless masses, but shift toward policies that favour fewer people who argue they have the potential to contribute disproportionately to economic growth and national prosperity.

Initially, the ANC endorsed the ZANU-PF-backed farm seizures and largely shrugged off charges that President Mugabe was exploiting the land issue for electoral purposes.⁴¹⁸ While the government sought to reassure the business community, it also made sweeping promises about future land redistribution. In June 2000, Minister Didiza announced to parliament that the government aimed to transfer ownership of 15 million hectares of state and privately held property over the next five years. This amounted to about 18 per cent of South Africa's agricultural land and 12.5 per cent of all

⁴¹⁵ ICG interview, March 2003.

⁴¹⁶ ICG interview, August 2002.

⁴¹⁷ ICG correspondence, 9 May 2003.

⁴¹⁸ Jaspreet Kindra, "ANC secretary general Motlanthe endorses ZANU-PF land-grab policy", *Mail & Guardian*, 2-8 June 2000.

territory. At the time, less than 2 per cent of South Africa's land had been transferred.⁴¹⁹ The government's goal for transfers to blacks over a longer span of fifteen to twenty years, according to government officials, amounted to 30 per cent of all territory in South Africa.⁴²⁰ The latter goal would be remarkably ambitious and require a rate of land redistribution far more rapid than had been achieved in the previous five years.

However, the high cost of supporting Zimbabwe's approach became apparent when statements by Vice President Jacob Zuma at an October 2000 SADC conference were viewed as pro-Mugabe and led to a sharp decline in the value of the rand. This prompted President Mbeki to give quick assurances that land invasions would not be allowed in South Africa.⁴²¹ Minister Didiza echoed these sentiments. While acknowledging that market-based land reform had not been effective in Zimbabwe, she stressed that South Africa had a viable land reform program and would not fall into a state of lawlessness.⁴²² After an agreement was reached with President Mbeki, the Business Trust published advertisements in national and foreign newspapers stressing that the Mugabe policy would not be replicated in South Africa.

The emergence of land invasions in Zimbabwe and their popularity among many South Africans occurred as it was becoming increasingly apparent that the land market, as currently configured, was unlikely to transfer land to black farmers on a large scale, and certainly not on the scale which the government itself has pledged. Although there has been a noticeable increase in militancy among some land reform groups, with the formation of the Landless People's Movement (a radical offshoot of South Africa's National Land Committee) and a series of actual and threatened land invasions, it is unlikely that the Zimbabwe pattern will be reproduced. All political parties, with the exception of the ineffective Pan African Congress, have stated opposition to land occupations and have called for the pace of reform to be increased to ensure stability. Even organisations of the landless, such as the Homeless People's Federation and the Landless People's Movement, have only supported occupations when negotiations with the government and private landowners have failed. Nevertheless,

⁴¹⁹ Similarly, several months later, in December 2000 at the annual summer cabinet retreat at Swakopmund, the then Namibian Prime Minister Hage Geingob committed his government to the redistribution of 9.5 million hectares in five years. This represented approximately 25 per cent of the farmland in private hands and more than five times the total of land redistributed since 1991. Both countries now face a huge disparity between their stated redistribution targets and the practical steps actually taken to achieve them.

⁴²⁰ ICG interview with Minister Thoko Didiza, August 2002.

⁴²¹ *The Star* (South Africa), 13 October 2000.

⁴²² *Business Day*, 23 October 2000.

events in Zimbabwe have put new wind into the sails of some advocacy groups. In particular, the Landless People's Movement has been successful in raising attention to the issue through well-publicised mass actions.

The affiliates of the National Land Committee have taken different positions. For example, the committee issued a statement at its 2002 annual meeting maintaining that the organisation "does not promote or advocate land occupations", while noting, "land occupations are an expression of landlessness and a demonstration of frustration with the non-redistribution of land". The National Land Committee and advocates of more radical approaches have argued that South Africa should follow Zimbabwe's lead and remove requirements for the state to pay compensation for land compulsorily acquired for land reform. They maintain this is the only way to make the systematic acquisition of farms for redistribution affordable.⁴²³

Land rights groups point out that they have worked through legal means – marches, sit-ins, letter writing campaigns and demonstrations – to bring movement on reform. They want the government to convene a large national land summit. If they see no changes in policy in 2004 and no prospect for such a summit, they vow to pick up the pace of land occupations.⁴²⁴ At the other end of the political spectrum, commercial farmers have supported the concept of land redistribution but made it clear that they will not back a program that "allocates land to people who cannot use the land". Agri-SA, representing the commercial farmers, says that beneficiaries of land transfers will need extensive training by white farmers to ensure that productivity levels do not falter. "We have to train them", said Jack Raath, the executive director of Agri-SA, "In the grain industry we have in the vicinity of 7,000 black farmers that have gone into study groups with white farmers in an effort to transfer skills. We have thousands of black farmers with white mentors. We want to bring people in a market-driven way. It is a process that has to take twenty to 30 years. We have established partnerships in the rural areas. We know that we have not done enough".⁴²⁵

Noting that, "farming is a business", Raath maintained that South Africa was lucky to have a government with the "right mentality on land reform". He also observed that given South Africa's economy, its constitution and the general approach of the government, the potential for a Zimbabwe-type crisis is small, but added, "You can never say never. If we go another fifteen to twenty years and we don't have a more diverse ownership of land in this country who, knows? Populists could start beating the drums and get

⁴²³ "About-turn on land draws fire; Committee says withdrawal of expropriation amounts to a betrayal of claimants", *Business Day*, 23 March 2001.

⁴²⁴ ICG interviews in South Africa, May and June 2003.

⁴²⁵ ICG interview in South Africa, August 2002

enough support to change the status quo".⁴²⁶ Events in Zimbabwe have made South Africa's white farmers rather more pragmatic; a recent study found not only that 75 per cent of white commercial farmers considered land reform inevitable but that 54 per cent supported land reform and the emergence of more black farmers. They recognise now that reform is necessary to protect their own long-term interests.⁴²⁷

B. VIOLENCE AND LAND OCCUPATIONS

Farm attacks in South Africa have been on the increase for more than a decade, from a baseline in 1991 of 327 incidents, the numbers increased in 2001 to 1,011 attacks with 147 people killed.⁴²⁸ From 1991 to the end of 2003, more than 1,500 white farmers and their relatives were killed. In addition to the sheer violence, these murders have a significant economic effect. Each time a farmer is murdered, according to Agri-SA, it takes the farm eighteen months to return to full production, which affects not only the families of farmer owners but farm worker salaries.⁴²⁹ There is no hard evidence that these crimes have increased as a result of the violent seizure of white-owned land in Zimbabwe.⁴³⁰ Indeed, police officials claim that there has been a decrease in attacks on farms.⁴³¹ However, just as damaging

⁴²⁶ Ibid.

⁴²⁷ "Half SA Farmers Support Land Reform", South African Press Association, June 8, 2004.

⁴²⁸ Committee of Inquiry into Farm Attacks, *Report of the Committee of Inquiry into Farm Attacks*, 31 July 2003, p. 417. Available at www.saps.gov.za/farmat. Farm owners organisations claim that more than 1,000 people have died in such circumstances between 1991 and 2001. South African Agricultural Union (Agri-SA), press release, 8 March 2001.

⁴²⁹ ICG interviews in South Africa, November and December 2003.

⁴³⁰ This "orthodox" view is disputed by Patrick Laurence, "Struggle for Land, a Crucial New Chapter", *Focus* 28, 28 December 2002. Available at www.hsf.org.za/focus28/focus28conts.htm. Laurence claims, "After declining in 2001—when there were 389 attacks on farms and smallholdings, resulting in the killing of 62 people—the tempo of these attacks is on the increase again. Official figures leaked to the Afrikaans newspaper Rapport show that between January and July 2002 there were 690 attacks and 80 killings. They appear to foreshadow a return to the high level of attacks and murders in 2000 and 1999 (905 attacks and 144 murders in 2000 and 813 attacks and 144 murders in 1999)".

⁴³¹ ICG interview, South Africa, 27 November 2003. Police officials cite the establishment of priority committees on rural safety as a main reason for the recent purported decline. The committees involve the army, police, Department of Land Affairs, elements of organised agriculture, farm workers and landless advocates. Other factors they cite include the development of security guidelines and continuous analysis of points of vulnerability and lessons learned from mistakes.

is the climate of fear that some white farmers perceive and which causes their children to envisage a future outside South Africa.⁴³²

Black farmers and black farm workers are also victims of violence, although much of the evidence is unsystematic. The South African Human Rights Commission found that attacks on farm workers were rarely followed up by the authorities. Human Rights Watch claimed that farm workers and dwellers are more vulnerable to violence and receive less help from the police and court systems.⁴³³ According to police statistics, 40 per cent of victims of farm attacks are black. Attacks on black farmers are on the increase, and most women who are raped on farms are black.⁴³⁴ Clusters of attacks have occurred where white commercial farmers are adjacent to former homelands, but anyone with assets in these areas is a target.⁴³⁵ References to brutal, even lethal, attacks on farm workers by farmers are frequently featured in the media.⁴³⁶

The government appears determined not to allow the land question to spin out of control.⁴³⁷ From president to metropolitan councils, officials continually issue statements that illegal land occupations will not be tolerated. However, in some areas such as the KwaZulu-Natal coast, land invasions, occupations, the burning of crops and theft of livestock have been part of the landscape since 1993. *The New York Times* described the confrontation there between farmers and occupiers as "low level guerrilla warfare".⁴³⁸ While these incidents may not amount to a national crisis, they reflect an extremely precarious situation for landowners and result from a desperate situation for landless blacks.

Perceptions of the motivations behind farm attacks differ widely, as evident in submissions to the South African Human Rights Commission. Agri-SA believes that they arise from revenge and racism. "The Commission

⁴³² ICG interviews, South Africa, May, November and December 2003.

⁴³³ Human Rights Watch, *Unequal Protection: The State Response to Violent Crime on South African Farms*, World Report 2001, 22 August 2001.

⁴³⁴ ICG interviews, November and December 2003.

⁴³⁵ Ruth Hall, "Land as a Source of Conflict in South Africa", World Bank Land Policy Consultation, Kampala, 29 April 2002.

⁴³⁶ Johnny Steinberg, *Midlands* (Johannesburg/Cape Town: Jonathan Ball Publishers, 2002) is a moving account of the murder of a white farmer in the festering frontier battle of KwaZulu Natal, is an even-handed account of the struggle for land that has touched the public. Steinberg describes the pattern of young boys who grow up on farms, see or experience violence and inequities on the farm, leave the farm at a certain age for the township, go through long periods of unemployment and slowly cross over into a life of criminality.

⁴³⁷ Edward Lahiff, Institute of Security Studies, Zimbabwe Conference, Pretoria, 27 November 2002.

⁴³⁸ Sharon La Franiere and Michael Wines, "Africa Quandary: Whites' Land vs. the Landlessness of Blacks", *The New York Times*, 6 January 2004.

investigated political motives but not racial motives", said an expert on farm attacks from the commercial farming community. "We feel these attacks are often racially motivated. Racial motivations help determine the target, although economic problems drive people into crime".⁴³⁹ A donor official elaborated, "White farmers feel under threat in certain areas. They feel it is a situation of low intensity conflict. There are many land invasions, but they are not called that".⁴⁴⁰ Another South African land reform official commented, "Commercial farmers are the only white South Africans that actually live with blacks. There is an ongoing interaction between huge white wealth and angry black poverty. It is not politically organised, but it will be, and it is lurking behind the white farmer murders. Someone will come along and mobilise this sentiment".⁴⁴¹ Along these same lines, a donor government official concluded, "If nothing is done, violence will increase, and if we don't provide hope to the landless, it will get worse".⁴⁴²

A handful of organised agricultural and political groups – including the Freedom Front and the Afrikaaner Unity Movement – have come together to form the Freedom Front Plus. They argue that there is an organised political force behind the attacks, aimed at driving whites off the land. The commercial farming community is concerned about government efforts to phase out the commando system, a private security system originally introduced for the protection of these farms. Agri-SA says that it prevented 177 farm attacks in 2002. The government has introduced sector policing in its stead, which has engendered scepticism from white commercial farmers.⁴⁴³ The police, on the other hand, have been largely unable to identify anything other than ordinary criminal motives for attacks and point out that all citizens in rural areas are exposed to a high level of crime, not only whites. "We don't know of any politically organised force that is perpetrating any attacks", said a top police official. "We have carried out formal criminal investigations that bear this out. Most of these investigations – roughly 90 per cent – reveal criminal motivations".⁴⁴⁴

Some land advocacy NGOs and human rights activists and the Pan African Congress argue that the farmers are primarily to blame for the violence because of the abuse of workers. Evictions of long-time farm residents create bitterness and motivation.⁴⁴⁵ A Department of Land Affairs official commented, "Illegal evictions can cause violent reactions, as can

⁴³⁹ ICG interview, South Africa, 26 November 2003.

⁴⁴⁰ ICG interview, South Africa, March 2003.

⁴⁴¹ ICG interview, South Africa, 25 November 2003.

⁴⁴² ICG interview, South Africa, December 2003.

⁴⁴³ ICG interviews, November and December 2003.

⁴⁴⁴ ICG interview, 27 November 2003. The Committee of Inquiry into Farm Attacks found 90 per cent of attacks to be motivated by robbery between 1998 and 2001.

⁴⁴⁵ ICG interviews in South Africa, November and December 2003.

other grievances like working conditions. If we move fast to make the necessary interventions in areas where there are farm occupiers, then a significant amount of violence could be averted".⁴⁴⁶

Since 1994, the government has enacted specific laws to protect the workers and residents on farms: security of tenure for legal residents on farms; the need for eviction orders from courts; the court's obligation to establish alternative living space. However, as a senior Department of Land Affairs official admitted, "the DLA does not have the personnel or resources to ensure that the [laws are] effectively communicated and enforced".⁴⁴⁷

Judicial and policing systems related to evictions are also a problem. A senior official commented, "Although there is new legislation, it would appear that the justice system is not yet up to speed, despite ongoing training. Some of those in the justice system are colluding with white farmers".⁴⁴⁸ The police are discussing procedures with the Department of Justice, and landless groups believe the laws have actually encouraged an increase in evictions. "Farm workers have rights in theory, but farmers kick them off the land because they fear they will get tenure", said a private sector representative. "These huge squatter settlements will be an increasing source of demand for land".⁴⁴⁹ Worse still, according to a donor government official, "There are anecdotal stories of the police being in bed with farmers in some areas, and if not actively collaborating in evictions, preventing eviction cases from going to court. The police are used to forcibly removing black people, which is reminiscent of apartheid".⁴⁵⁰

A 2002 study of South African land occupations highlighted that many land conflicts have a distinctly urban – and residential – dimension. The Bredell case is a good illustration.⁴⁵¹ In early July 2001 an estimated 2,000 people occupied small plots of land on private and state property at Bredell in Kempton Park, Johannesburg.⁴⁵² While the Pan African Congress initially denied involvement, it expressed strong support. The government denounced the action and declared that the properties had to be vacated, leading the squatters to warn they might resist violently. After the

⁴⁴⁶ ICG interview in South Africa, December 2003.

⁴⁴⁷ Siphso Sibanda, "Land Reform and Poverty Alleviation in South Africa", Paper presented at the SARP conference, 4 June 2001.

⁴⁴⁸ ICG interview, South Africa, December 2003.

⁴⁴⁹ ICG interview, South Africa, December 2003.

⁴⁵⁰ ICG interview, South Africa, December 2003.

⁴⁵¹ Lala Steyn, "Review of Land Occupations in South Africa", Africa Groups of Sweden, 2002.

⁴⁵² Gillian Hart, *Disabling Globalisation: Places of Power in Post-Apartheid South Africa* (Berkeley: Univ. of Calif. Press, 2002), p. 305. There were allegations that the organisers had paid activists \$3 per plot.

government took swift court action, the occupiers were ordered off the land and eventually removed by contractors working for the Johannesburg Metropolitan City Council.

Bredell was not an isolated case; there have been some 50 similar urban land occupations since 1994. For example, the National Land Committee's Northern Cape affiliate, the Association for Community Rural Advancement, supported the Groot Vlaktefontein community in its land restitution claim. In June 2001, people from that community occupied land in question; most were arrested and charged with trespassing. Within three weeks, the government resolved the claim, three years after it had been lodged.⁴⁵³ Shortly thereafter, the Landless People's Movement was formed. Bredell was something of a watershed, however. Before it, the government and the ANC seemed ambivalent toward land occupations and commended Zimbabwe for repossessing white land. Landless communities had hoped the ANC would side with them on the issue.⁴⁵⁴ Afterwards, however, the government took a firmer position.

Squatting is quite regularised now. If someone moves on to someone else's land, and the owner does not protest legally within 24 hours, it is almost impossible to move the squatter off. Land occupations are rapidly expanding the townships. In most cases, the government eventually puts in sanitation and water. This keeps the lid on violence and political protest. For example in Gabon, 60 kilometres east of Johannesburg, where 15,000 squatters have moved onto a section of a white farm over the last three years, and no rent has been paid. Attempts to enforce a court-ordered eviction foundered with the farmer claiming that the sheriff demanded \$250,000 to execute it.⁴⁵⁵

Land activists, however, view government policy as hostile to the interests of people trying to survive on the margins of larger cities and towns. They argue that the government has plans to move 1 million people from roughly 100 informal settlements in Gauteng Province (encompassing Johannesburg and Pretoria). One land and housing activist claimed, "The government says that the land on which these settlements are built is not good, and that the settlements will sink into the ground. The reality is that they want to expand higher income development in many of these areas, such as shopping centres".⁴⁵⁶ Officials insist the numbers are exaggerated.

ICG visits to several informal settlements, such as the Eikenhof community outside Johannesburg, revealed the presence of large numbers of unemployed former farm workers, who were displaced from their former

⁴⁵³ National Land Committee, *South Africa's Land Reform Quagmire?*, op cit., p. 2.

⁴⁵⁴ Steyn, "Review of Land Occupations in South Africa", op. cit.

⁴⁵⁵ La Franicre and Wines, "Africa Quandary", op. cit.

⁴⁵⁶ ICG interview, South Africa, May 2003.

work places by mechanisation, eviction or a general lack of opportunity. Residents in these shantytowns have constructed a variety of living quarters, developed some small businesses, begun small-scale community gardens and created a community school. Residents of the Eikenhof community claim the government seeks to move them to an area called Vlaktefontein Extension, roughly fifteen kilometres away, which has few houses, no schools and no utilities. A resident complained, "The government is taking us away from our community support networks".⁴⁵⁷ While some residents relocated to Vlaktefontein Extension, it appears most of them have since moved back to Eikenhof. The Eikenhof community has hired an attorney and taken its case to court. Activists want the government to allow them to remain and provide basic services. Residents are also eager for assistance in building proper houses and hope those who wish to farm will receive title.⁴⁵⁸

Similarly, the Protea South settlement in Soweto Township, established in 1989, continues to expand, with new shacks erected every week despite government threats to tear them down. While the government has built houses in Protea South, residents say they are unaffordable. One observed, "When the government comes to forcibly remove people, they use bulldozers and are armed. Over 3,000 families have been evicted, because the government says the place is full. We think we deserve to qualify to stay here in these places. This is like the 1950s when I lived in Sophiatown, when people like me were kicked out like dogs by the apartheid regime".⁴⁵⁹

A land activist maintained that government efforts to break up the informal settlements are fundamentally destructive: "The government is creating atomised communities that are breeding grounds for increased poverty and crime. The forced removals decimate the links that communities establish. It is a real struggle to hold on to identity, community and livelihood".⁴⁶⁰ Land activists and community residents have called for more consultations regarding the fate of shantytown dwellers and are eager for tenure security. Having more formal and secure access to land, in their view, would allow them to grow food, build better houses, undertake entrepreneurial activities, qualify for government services and reduce the impact of unemployment.⁴⁶¹

The police believe that the Landless People's Movement and National Land Committee are training landless people to conduct land invasions

⁴⁵⁷ ICG interview, May 2003.

⁴⁵⁸ ICG interviews, May 2003.

⁴⁵⁹ ICG interview, May 2003.

⁴⁶⁰ ICG interview, May 2003.

⁴⁶¹ ICG interviews, May, June 2003. A community leader said, "If we get our own land, we would have food and livelihoods".

over the next two years. "They believe they can speed up the government's land reform program through land invasions", said a high-ranking police official.⁴⁶² The link between squatting and farm violence is likely to increase as well. The Committee of Inquiry into Farm Attacks concluded that land occupations will increase and incite further farm attacks, as people are becoming increasingly impatient with the pace of land reform.⁴⁶³ "We might reach a crisis at some point", said a top Department of Land Affairs official, "if people become impatient at the speed at which we are delivering. They may start rising against the government".⁴⁶⁴ Farmers say they will resist this with violence themselves.

The Landless People's Movement has been growing restless. In March 2004, 300 members stormed the Eastern Cape premier's office and issued an ultimatum: "give us land or we will take over farms forcefully on 14 April".⁴⁶⁵ Police defused the immediate threat by arresting 50 members but the longer-term one remains. The LPM is organising a Landless People's Assembly in late August 2004 and in the run-up it will lead a month of marches, calling upon the government to expropriate the property of absentee landlords, abusive farmers and underutilised land and carrying lists of farms for expropriation. "Land reform is not happening and that is problematic for relations between whites and blacks", said a NGO activist. "The government must take land from whites. We haven't tested the constitutional limits of expropriation. Willing buyer, willing seller is out of sync with current realities".⁴⁶⁶

C. LAND RESTITUTION

The Mbeki administration promised to accelerate the pace of settlements of land restitution claims and to review the methods of calculating compensation where restoration of land was not feasible. In addition, it pledged to reduce the costs of research and administration and to refocus the Land Claims Commission on rural claims. President Mbeki's determination to resolve all restitution claims by 2005 has led to the restitution budget overtaking that for redistribution for the first time. The pace of settling restitution claims has increased rapidly since the process shifted from a judicial to an administrative one in 2000.

⁴⁶² ICG interview in South Africa, 27 November 2003.

⁴⁶³ Committee of Inquiry into Farm Attacks, "Report", op. cit.

⁴⁶⁴ La Franiere and Wines, "Africa Quandary", op. cit.

⁴⁶⁵ Michael Dynes, "White Farmers Fear for Future", *The Times*, 27 April 2004.

⁴⁶⁶ ICG interview, South Africa, December 2003.

In total, 79,694 claims for restitution were filed.⁴⁶⁷ As of March 2004, the land restitution program had settled 48,463 claims at a cost of about \$500 million. The initiative had delivered 810,000 hectares and provided more than \$250 million in financial compensation.⁴⁶⁸ There are still around 6,000 outstanding rural claims, which are more complex and have ten times more beneficiaries involved than urban claims.⁴⁶⁹ A senior Department of Land Affairs official blamed "the excessively legalistic systems and procedures at the initial stages" for the difficult start.⁴⁷⁰ Land Affairs Minister Didiza elaborated: "Some of the challenges in processing the rural claims include the difficulty we face in getting relevant documentation and information, the construction of family trees, resolution of disputes and unregistered and unsurveyed land".⁴⁷¹ According to the Commission on Restitution of Land Rights, major constraints include exorbitant land prices, the beneficiaries' poverty and dearth of relevant skills, protracted negotiations and mediation, uncooperative white farmers and funding.⁴⁷²

Looking forward, another top Department of Land Affairs official said that the 2005 challenge would be met, but warned, "This will have huge resource implications".⁴⁷³ These resource demands have led to overcommitted budgets in many provinces and an informal moratorium on new land distribution projects in some provinces. The national government appears to be committed to the challenge: the land restitution budget has risen dramatically from about \$35 million in 2002-03 to about \$105 million in 2003-04 to about \$235 million in 2004-05.⁴⁷⁴

Advocates in the National Land Committee and the Landless People's Movement argue that the nature of the settlement of most claims is problematic. They say that 70 per cent are settled through cash compensation, usually divided among all of the descendants, not through the return of land. "People are forced into cash settlements", claimed one land activist. "Otherwise they have to go through long, drawn-out legal

⁴⁶⁷ Abdul Milazi, "Fuller Purse Should Allow Faster Land Reform", *Financial Mail* (South Africa), 20 February, 2004.

⁴⁶⁸ Department of Land Affairs, "Cumulative Statistics", op. cit.; Department of Land Affairs, "Settled Restitution Claims". Available at land.pwv.gov.za/restitution/Statistics/March/Cumulative%20statistics%2029%20february%202004.xls.

⁴⁶⁹ Department of Land Affairs officials say that their attention is shifting to rural claims. ICG interviews, South Africa, May 2003.

⁴⁷⁰ ICG interview, South Africa, August 2002.

⁴⁷¹ IRIN web special, "South Africa: Long Road to Empowerment under Land Reform", July 2003.

⁴⁷² Commission on Restitution of Land Rights, *Restitution Update: Annual Report to 31 March 2003 and Progress to Date*, Portfolio Committee on Agriculture and Land Affairs, Pretoria, 2003, pp. 9-11.

⁴⁷³ ICG interview, South Africa, May 2003.

⁴⁷⁴ Milazi, "Fuller Purse", op. cit.

processes".⁴⁷⁵ Government statistics paint a more balanced picture in which financial compensation comprises about 59 per cent of the settled claims, alternative remedies 5 per cent and land restoration 36 per cent.⁴⁷⁶ This means there has been a limited impact on the pattern of property ownership and rights. To date, only 810,000 hectares of land have been transferred to claimants.⁴⁷⁷

The settlement of most claims through cash settlements is questionable on a variety of counts, and not simply because of the budgetary squeeze that will inevitably result from forthcoming, more expensive rural claims. Cash settlements:

- ❑ do not address unequal land ownership patterns or access to land obstacles;
- ❑ contribute little to economic development or poverty reduction;⁴⁷⁸
- ❑ focus on the applicants as victims of apartheid instead of beneficiaries of land reform;⁴⁷⁹ and
- ❑ compete with resources that are needed for health, education and employment generation.⁴⁸⁰

One compromise approach, which government officials are said to be considering in some circumstances, is the transfer of land in title. This would mean that the development on the land would continue but the beneficiaries of restitution would hold title and receive rent. Over time, the beneficiaries would make the economic choice of receiving the rent or assuming direct control over the land.⁴⁸¹

As of March, 2004, the land restitution program had processed 42,490 urban claims to 5,973 rural ones.⁴⁸² The government has focused on urban claims because, as a senior South Africa government official argued, it "must be seen to be delivering". The official explained: "The public loses confidence if the process is too slow. We had to begin with the easier ones,

⁴⁷⁵ ICG interview in South Africa, May 2003.

⁴⁷⁶ Department of Land Affairs, "Cumulative Statistics", op. cit.

⁴⁷⁷ Department of Land Affairs, "Settled Restitution Claims", op. cit. The source of the debate over numbers has its origin in the way restitution cases are calculated. A single settlement can have hundreds of beneficiaries, and thus can be counted as resolving one or hundreds of cases.

⁴⁷⁸ S. Turner and H. Ibsen, *Land and Agrarian Reform in South Africa: A Status Report*, Research Report no. 6, PLAAS, November 2000, p. 11.

⁴⁷⁹ De Villiers, *Land Reform*, op. cit, p. 67.

⁴⁸⁰ Ibid.

⁴⁸¹ ICG interview, South Africa, April 29, 2004.

⁴⁸² Department of Land Affairs, "Cumulative Statistics", op. cit.

which are urban".⁴⁸³ It is the outstanding rural claims that hold the most potential for transforming landholding, redressing the past, alleviating poverty and creating jobs. Many rural people see land ownership as a route out of poverty and a historical right. However, if not expedited, these complex rural claims also could be the source of significant conflict.⁴⁸⁴

In January 2004, President Mbeki signed an amendment to the 1994 Restitution of Land Rights Act that allowed the state to expropriate land through administrative rather than judicial means if the land was taken from blacks after 1913 and the owner refused to sell. The minister of land affairs can now expropriate directly rather than apply to the Land Claims Court for an order, but landowners subject to this expropriation can still appeal to the courts. It is not widely expected that expropriation will speed up land restitution; it could even slow it down. What is important, however, is that it offers a way out of the impasse when owners refuse to sell.

It is likely that the government will invoke expropriation in rather few cases, principally for its potential demonstration effect to encourage other landowners to negotiate reasonable prices, although white farmers say such settlements would be made under duress.⁴⁸⁵ The amendment has raised the expectations of expropriation advocates and alarmed white farmers; but it is worth noting that the South African government's powers now are no more radical than the U.S. government's under the modern judicial interpretation of eminent domain.⁴⁸⁶ These powers can be a useful tool – if used extremely judiciously – in accelerating land reform efforts.

D. LAND REDISTRIBUTION

The most significant change made to the land reform program by the Mbeki administration has been in land redistribution, dubbed the Land Reform and Agricultural Development program (LRAD). It is focused on creating 70,000 new black commercial farmers by 2017, with less emphasis on smallholder agriculture and poverty alleviation.⁴⁸⁷

LRAD provides beneficiaries access to grants ranging between \$2,600 and \$13,000 per adult, depending on the amount of their in-kind contribution of labour or cash, which must be more than \$650. LRAD is financed through the capital budget of the Department of Land Affairs, and provincial grants committees disburse funds. Planning documents

⁴⁸³ ICG interview in South Africa, April 2004.

⁴⁸⁴ Ruth Hall, *Rural Restitution*, PLAAS, 2003.

⁴⁸⁵ ICG interview, December 2003.

⁴⁸⁶ Basildon Peta, "South Africa Heading for Political Land Grab, Say Farmers," *The Independent*, 12 January 2004.

⁴⁸⁷ COSATU, *Ways to Take Land Reform Forward*, op. cit., p. 24.

note there could be up to 250,000 applicants for a range of grant sizes (both commercial and smallholder), with a cost of approximately \$2-2.9 billion, without even factoring in agricultural support. The program is demand-led. The primary responsibility for design and implementation rests with the applicants. Its budget, however, has only been sufficient to accommodate a small percentage of land redistribution applications.

The program was originally slated to come into operation in April 2001 but was delayed until August 2002. At the time, the extent to which it would significantly increase the rate of land transfer was difficult to predict. The potential for black commercial farming was still constrained by formidable barriers to entry into the white-dominated commercial agricultural sector. Since its beginning in 2002, LRAD has not received significant budgetary support from the Department of Agriculture, though it was designed as a joint program with that ministry. In fiscal year 2002-03, the budget was exhausted, and three provinces had to suspend operations before the end of the fiscal year, but the 2003-04 budget did not allocate increased resources.⁴⁸⁸ From June 2003 through March 2004, the government settled only 1,655 black farmers through the LRAD program.⁴⁸⁹ It is clear that the scope of the program was far less than needed to tackle rural unemployment or fundamentally alter ownership patterns.⁴⁹⁰

By mid-2003, government redistributive initiatives had transferred approximately 1.5 million hectares, or 1.8 per cent of agricultural land, to black households. When combined with the restitution program, overall land reform efforts had transferred about 2.3 million hectares – about 2.8 per cent of all agricultural land.⁴⁹¹ To meet the target by 2015, delivery would need to increase five-fold.⁴⁹²

Medium-scale black farmers who enter commercial farming in "white areas" confront high risks. Without white farmers' networks of social contacts, they experience considerable difficulties in obtaining insurance, credit and contracts for the supply of produce to large supermarkets. The new farmers, black or white, who have done well are largely those who

⁴⁸⁸ Not all land redistribution funds go to LRAD programs.

⁴⁸⁹ Figure from 2004 budget speech of Agriculture and Land Affairs Minister in "South Africa: Call for More Aid to Land Reform Beneficiaries", United Nations Integrated Regional Information Network, June 17, 2004.

⁴⁹⁰ Michael Aliber, "South Africa's Land Redistribution program: An Economic Perspective", prepared for the initial meeting of the Voluntary Group on Land Reform in Southern Africa, Manhattan Hotel, Pretoria, March 2003.

⁴⁹¹ Figures adapted from Doreen Atkinson, Daniel Pienaar and Jeff Zingel, *'From on Farm to Own Farm?' The Role of Farm Workers Unions in Land Reform in South Africa*, Food and Agricultural Organization, May 2004.

⁴⁹² Ibid.

have inherited farms and do not labour under a significant debt burden.⁴⁹³ Still, program participants have made important livelihood advances, and some of the black empowerment ventures associated with LRAD have been very successful.⁴⁹⁴ In the wine industry in the Western Cape, land has been given to newly emergent black commercial farmers, with support provided for marketing. This resulted to an extent from an initiative by landowners to undo some of the harm that the wine industry had done to the country.⁴⁹⁵

Some members of government have downplayed the need for support, arguing that the government has not "targeted LRAD at the 'poorest of the poor', but at people who have some significant experience of farming and who may also have some agricultural capital in the form of stock and equipment".⁴⁹⁶ Indeed, this official suggested: "In the absence of a thoroughly integrated approach and budget, as well as a commitment and appropriate approach from the Department of Agriculture, I think we would be irresponsible to provide grant assistance, and therefore land, to people who know very little about farming and who have no agricultural assets".⁴⁹⁷ That may be the theory, but in practice the majority of projects do in fact accommodate poor people who know very little about farming and have no agricultural assets to contribute.

Increasingly, though, the government has begun to recognise the virtue of post-settlement support. In her 2004 budget speech, Agriculture and Land Affairs Minister Thoko Didiza conceded that "our experience... over the past 10 years makes it clear that it is not sufficient to provide prospective farmers with access to land without also providing government support for production inputs and technical advisory services."⁴⁹⁸ The government has established the Comprehensive Agricultural Support Program to provide technical assistance, regulatory services, training, marketing and business assistance. The 2004-05 budget makes provision for \$32 million for the initial rollout of the program.⁴⁹⁹

⁴⁹³ ICG interview with the National African Farmers' Union adviser, April 2003.

⁴⁹⁴ See, for example, Association for Rural Advancement, "Land Reform: How Has it Helped?", AFRA News, May 2003; and Cheryl Walker, "Piety in the Sky? Gender Policy and Land Reform in South Africa", *Journal of Agrarian Change* 3, nos. 1 and 2 (January and April 2003).

⁴⁹⁵ The extremely high levels of alcohol consumption in the Cape were fuelled historically by the practice of paying workers partly in alcohol. ICG interviews, South Africa, November 2003.

⁴⁹⁶ ICG correspondence, 23 June 2003.

⁴⁹⁷ ICG correspondence, 23 June 2003.

⁴⁹⁸ "South Africa: Call for More Aid to Land Reform Beneficiaries", United Nations Integrated Regional Information Networks, 17 June 2004.

⁴⁹⁹ *Ibid.*

LRAD has no income ceiling, and its programs prioritise emergent black commercial farmers. Critics claim land redistribution is no longer an anti-poverty endeavour but rather an attempt to change the racial profile of the large-scale commercial agricultural sector. However, no empirical research has been undertaken to confirm or deny these hypotheses. The Program for Land and Agrarian Studies (PLAAS) of the University of the Western Cape concludes: "The access of the very poor to LRAD is increasingly in doubt. In terms of targeting, there has been a discernible shift away from the broad category of 'rural poor' to ill-defined 'marginalised groups', including women, farm workers, youth and the disabled. Between them, these groups are earmarked to receive just 11 per cent of all LRAD resources, but no specific measures are in place in most provinces to give effect to this, and official targets for women's participation are no longer mentioned".⁵⁰⁰

Advocacy NGOs representing landless constituencies have called upon the government to abandon the willing seller, willing buyer constraint and to use its constitutional powers to expropriate land to speed up the land redistribution process. The government has resisted, stating that it will undertake its land reform efforts within the rule of law. The amendment to 1994 Restitution of Land Rights Act may broaden the government's ability to speed up land reform, although the amendment was primarily designed to deal with restitution claims.

F. LAND TENURE REFORM

The Mbeki government faces a multitude of issues related to tenure reform, many of which contain the seeds of future conflict. Ownership or control is the point of contention among a number of groups in the former homelands, including rural dwellers who actually use the land, traditional leaders who normally hold powers of land allocation, elected local councils that oversee development and the minister of land affairs who holds the title deeds. This chaos has undermined efforts to generate investment and created opportunities for exploitative power relationships. Farm workers and dwellers face insecure tenure arrangements, increased illegal evictions and deteriorating living conditions.⁵⁰¹

The outcome of debates over land tenure in the former homelands, particularly on the issue of the Communal Land Rights Act, is a major potential flashpoint. The traditional chiefs, who largely control the land,

⁵⁰⁰ Hall, Jacobs and Lahiff, *Evaluating Land and Agrarian Reform in South Africa*, op. cit, p. 9.

⁵⁰¹ Edward Lahiff, *Tenure Reform Back on the Agenda*, PLAAS, December 2001.

feel threatened by any changes that might erode their powers. In response, it is possible they will organise violence in some areas.

In a worst case scenario, the Inkatha Freedom Party (IFP) could potentially use this issue as a rallying cry and once again lead violent resistance to the government. Zulu King Goodwill Zwelethini said in August 2003: "Our history has always recalled that land has been one of the major sources of internal conflict within the Zulu nation and within each traditional community. Many people have died and many fratricide battles have been fought to secure control over land, even small portions".⁵⁰² In mid-2003, the KwaZulu-Natal minister of local government and traditional affairs, Nyanga Ngubane, said the draft bill could lead to bloodshed if traditional leaders were removed from decision-making.⁵⁰³ President Mbeki reacted strongly, indicating that the state would not allow anyone to impose minority views through extra-judicial means and condemning what he called an "open threat against the lives of innocent South Africans".⁵⁰⁴

It should not be forgotten that in the last decade of apartheid, a low-intensity conflict between the ANC and IFP left 20,000 dead in KwaZulu-Natal. The power of traditional leaders was at the heart of that conflict, and if issues surrounding land tenure reform (and the broader reform of local governance) threaten their powers, a new conflict could ensue. The dominance of the chiefs over land is fundamentally at odds with the government's desire to provide title to smallholders and a political challenge the ANC will need to answer as it decides how to move forward on the tenure issue.

Reform of the land tenure arrangements in the former homelands is long overdue. During apartheid, blacks were forcibly moved to these areas without reference to either their wishes or the concerns of established inhabitants. Land was held in trust by homeland state premiers. With the democratic transition in 1994, the president delegated these powers to the minister of land affairs, who became the registered "owner" and the bearer of fiduciary responsibility for these areas. Land relations did not fundamentally change, with remnants of old laws in place.⁵⁰⁵ Land is still administered in each former homeland under different laws established during the apartheid era. Further complicating matters, land administration has steadily eroded as record keeping has broken down. Most land

⁵⁰² Siphso Khumalo, "New Act Will Not Strip Zulu Leaders' Rights", *The Mercury* (South Africa), 20 August 2003, p. 2. See also "Recent political tensions could ignite conflict in KwaZulu Natal", IRIN, 3 December 2002.

⁵⁰³ Zukile Majova, "Minister Warns of Bloodshed Over Land Bill", *The Mercury* (South Africa), 6 June 2003.

⁵⁰⁴ Angela Quintal, "Mbeki Declares War After Threats of Bloodshed", SAPA, 1 November 2002.

⁵⁰⁵ Particularly, the Old Bantu Areas Land Regulations Proclamation no. R188 of 1969.

transactions take place extra-legally. Often it is unclear which laws should apply, and the unauthorised issuance of permits is common. This lack of legal clarity has discouraged both public and private investment.

It is easy to predict some of the challenges that will likely arise in any process of creating tenure security. Once formal maps are required for registration of ownership, the process of land survey will inevitably spark numerous disputes, especially where "tribal" boundaries are contested. Apart from the difficulties of determining the dimension and location of land parcels, the process of identifying legitimate holders and interests could well stretch administrative capacity beyond its limits. Because of the high transaction costs involved, it is a reasonable assumption that land will be allocated in very large parcels, probably encompassing many thousands of informal holdings and tens of thousands of people. Under such circumstances, holders of rights may find it very difficult to have their claims and interests adjudicated in a fair, transparent and impartial fashion. Land tenure arrangements for women provide additional challenges, given that farm employment, not dwelling, has emerged as the basis of rights.⁵⁰⁶

Government efforts under President Mbeki have moved forward with great caution. But tenure reform has occurred in two major arenas: the rights of commercial farm tenants and dwellers and the rights of those residing on communal land, principally in the former homelands. Complicating efforts on the latter are debates over the appropriate role and power of traditional authorities, who are largely allied with the ANC. Political battles have emerged, as traditional leaders have dug in on the issue of control of communal land after their loss of control of local government. The few localised challenges to ANC electoral dominance have come from parties aligned with traditional authorities, such as the Inkatha Freedom Party in KwaZulu-Natal and the United Democratic Movement in the Eastern Cape.

The government will have to confront the ambiguity of its position in regard to traditional authorities and their control of tribal lands, mostly in the former homelands. On the one hand, it relies on traditional leaders in many provinces to deliver the rural vote. On the other hand, the constitution commits it to provide secure tenure to the residents of the former homelands. Customary or indigenous law dictates tenure rights at present, since traditional leaders usually control land as a result of historical tradition and custom. The chiefs want to formalise their control, while many in the government and in land advocacy NGOs want greater control to go to individuals and communities in a more democratic, transparent tenure framework.⁵⁰⁷ For some, it is a question of whether chiefs should have automatic power over land in communal areas, without reference to any

⁵⁰⁶ ICG interviews in South Africa, November and December 2003.

⁵⁰⁷ *Business Day* (South Africa), 29 August 2002.

more objective measurements of popular will. Although most communities would probably want traditional leaders to have a role in land administration, some chiefs are not supported by their communities, and others were imposed by the apartheid government and would be marginalised in any popular consultation.⁵⁰⁸

A February 2000 statement by Minister Didiza attempted to express a coherent policy that would allow the transfer of state land to benefit historically disadvantaged communities. The state land in question was either leased by the government to farmers and agricultural development corporations or occupied by "tribal groupings and communities" in the former homelands.⁵⁰⁹ Land held in trust by the government in the former homelands would be transferred in full ownership to "tribes" under the terms of the 1991 Upgrading of Land Tenure Rights Act, a National Party land law introduced under President F. W. de Klerk. The Land Rights Bill, intended by the Mandela administration to confirm the established rights of those occupying and using land in the former homelands, was shelved.⁵¹⁰

In August 2002, after eight contested drafts, the Department of Land Affairs gazetted a draft Communal Land Rights Bill that reflected the government's interest in divesting its responsibilities as trustee and owner of the "state land held in trust for tribes".⁵¹¹ It aimed to minimise the budget costs associated with land administration and also to placate traditional leaders. The draft provided for land to be transferred in absolute ownership, a form of tenure that is underpinned in South Africa by rigorous survey and

⁵⁰⁸ Lahiff, *Tenure Reform*, op. cit.

⁵⁰⁹ This land was once known as South African Development Trust (SADT) land, some 1 million hectares of state-owned agricultural property originally acquired for extending the homelands but never allocated for that purpose. According to the 1997 White Paper on South African Land Policy (Box 5.3, p. 79), it was "leased to farmers and agricultural development corporations", who acted as caretakers pending its redistribution.

⁵¹⁰ This was reportedly the result of a pre-election pact with South Africa's Congress of Traditional Leaders (Contralesa). A two-thirds majority for ANC in the 1999 general elections seemed to require the support of traditional communities and their leaders in KwaZulu-Natal and the Eastern Cape. It is rumoured that in March 1999, Thabo Mbeki agreed to Contralesa's demand to scrap the proposed law, which would have reduced the powers of traditional leaders in land allocation in the former homelands. See also Aninka Claassens, "Land Rights and Decision-making Processes: Proposals for Tenure Reform", in Ben Cousins (ed.), *At the Crossroads*, op. cit., pp. 111-128; See also Ben Cousins, "Legislating Negotiability: Tenure Reform in Post-Apartheid South Africa", in Kristine Juul and Christian Lund (eds.), *Negotiating Property in Africa* (New Hampshire: Heinemann, 2002).

⁵¹¹ *Government Gazette* 446, no. 23740, 14 August 2002. Available at www.gov.za/bills/02index.htm. See also Claassens, "Land Rights and Decision-making Processes: Proposals for Tenure Reform", in Ben Cousins (ed.), *At the Crossroads*, op. cit., pp. 111-128, and Cousins, "Legislating Negotiability", in Juul and Lund (eds.), *Negotiating Property in Africa*, op. cit.

registration requirements.⁵¹² A top Department of Land Affairs official described the draft as thus: "Tenure is about how land is held. The Communal Land Rights Bill will provide a menu of options, and will involve a redistributive component. It will confer *de jure* rights to people living on communal land. It will create a unitary system of land administration rather than all these different laws regarding different homelands".⁵¹³

The draft text provided for the transfer of land from the government to "communities" (defined as a "group of people who possess historical social cohesiveness") and suggested that the intention would be to provide for the transfer of land ownership to tribes. The draft proposed to create democratically elected administrative structures that would presumably bypass traditional authorities in the management of communal land.

Transfers of land in ownership to "tribes" in Ragwadi in the former Lebowa homeland in what is now Limpopo Province under the National Party, immediately prior to the democratic transition in 1994 offer some insight into the dangers of this approach. The effect in Limpopo has been largely disastrous for the communities involved. Land transfers to tribes effectively provide chiefs with ownership rights to communal land. The Ragwadi case shows a chief using his supposed title deeds to threaten eviction and a reversion to the strong-arm tactics that characterised the Lebowa homeland government under apartheid.⁵¹⁴ In KwaZulu-Natal just before the transition in 1994, the National Party government secretly transferred 3 million hectares to Zulu King Goodwill Zwelithini, who holds the land in trust, creating further complications for reform efforts.

Six years in the making, the draft Communal Land Rights Bill was rejected by the Department of Provincial and Local Government and the South African Local Government Association, criticised harshly by land rights NGOs, and opposed by traditional leaders. It has helped inflame the issue of who controls the land, increasing the competition between traditional authorities and local governments throughout the country that was already difficult from disputes over the provision of rural social services. The traditional chiefs – organised in an interest group called the Congress of Traditional Leaders of South Africa (Contralesa) and in part through the Inkatha Freedom Party – are threatened by changes in tenure. If the ability of chiefs to parcel out land is undermined, it undercuts an important aspect of their traditional power structure. A senior DLA official

⁵¹² Absolute ownership is generally equivalent to freehold in English law.

⁵¹³ ICG interview, South Africa, May 2003.

⁵¹⁴ Aninka Claassens, *It is Not Easy to Challenge a Chief: Lessons from Rakwai*, Research Report no. 9, PLAAS, October 2001.

said the bill should not be a cause for conflict, as it is intended to ensure the security of tenure.⁵¹⁵

The cabinet approved revisions in October 2003. These addressed many of the concerns of the traditional leaders and would restore control of land in most instances to the chiefs. Minister Didiza indicated that proposals made by the representatives of traditional leaders had convinced the government not to effect major changes in homeland tenure arrangements, particularly in flashpoint provinces such as KwaZulu-Natal.⁵¹⁶

NGO opposition has become even more vocal after this reversal. The National Land Committee and PLAAS published an advertisement in the South African *Business Day* that called the bill "an apartheid piece of legislation disguised in new South African legal lingo", and said it was "fundamentally flawed, and will undermine rather than strengthen the land rights of one-third of the population, those currently living in the former... homelands". The groups claim the bill would undermine rural women's rights and disempower local communities by giving control over communal land to traditional authorities. They predict that conflicts between local governments and chiefs will deepen, and numerous boundary disputes ensue.⁵¹⁷ The government dismissed these claims as baseless, and parliament passed the bill in February 2004.

One positive example from what were known as the "Act 9 Areas" – the 23 former coloured reserves in the Western Cape, Northern Cape, Free State and Eastern Cape – provides hope that a more consultative way can be found to address tenure security for the former homelands. The Western Cape Provincial Government has engaged residents about the kind of tenure arrangements they desire. The response suggests this is "community governance of common resources through local institutions, but with state support", which would provide roles for the traditional leaders, for more direct community participation, and for the state itself.⁵¹⁸ The provincial government is pursuing this initiative under the Transformation Act of Certain Act 9 Coloured Rural Reserves.

G. THE MBEKI RECORD

South African land reform has been comprehensive but often painfully slow, despite the disturbing events in Zimbabwe. Land reform

⁵¹⁵ ICG interview, South Africa, December 2003.

⁵¹⁶ Sipho Kumalo, "New Act Will Not Strip Zulu Leaders' Rights", *The Mercury* (South Africa), 20 August 2003, p. 2.

⁵¹⁷ *Business Day* (South Africa), 10 November 2003.

⁵¹⁸ Hall, Jacobs and Lahiff, *Evaluating Land and Agrarian Reform in South Africa*, op. cit.

has been only a modest priority within the government's broader economic and social development policies. The land reform program as a whole has been receiving no more than 0.4 per cent of the overall budget. Delivery of land and support for beneficiaries are increasingly constrained by inadequate funding. Despite this, the programs have managed to increase land transfers, accelerate restitution claims, raise budgets for land reform, improve the ability of the Department of Land Affairs to spend its resources and create partnerships for implementing land reform with a variety of institutions.⁵¹⁹

However, the gap between government promises and its capacity to deliver land to the landless remains pronounced. Although some early progress was made, intractable problems of policy and implementation were apparent from the outset. Institutional fragmentation and divided responsibilities between the Department of Land Affairs and provincial agricultural departments compound the problems and hinder effective progress. But it is unrealistic to expect that the leadership of any ministry could make extensive progress in the absence of the broader political will necessary to implement something as complex as land reform.

There is a growing recognition that in South Africa, and also in countries throughout the region, there has been remarkably rapid rural depopulation and an increase in the urban population. This has profound implications for those remaining behind in the countryside – mostly the young, old and women. Labour for herding, ploughing, weeding and other critical tasks is scarce. Relations between neighbours have deteriorated with the loss of young people and increased sickness associated with the onset of AIDS. The question that needs to be asked, especially in South Africa, is whether today's young people want to be farmers. If they were to be given a choice between a job and a house in a town or a piece of land for farming, complete with tools and training, what would they choose? People clearly and rightly care about the historical injustice and inequality inherent in the current situation, but is rural land what they really want? If the answer is that a significant number wish to move to towns, there are implications for land policy and the way in which overall inequality is addressed, and for dealing with shantytowns and urban squatters. In his "state of the nation" address to Parliament in February 2003, President Mbeki pronounced that "the problem in South Africa is homelessness, not land".

Notwithstanding progress in the formal settlement of restitution claims, land redistribution and land tenure reform are beset with challenges. While the budget has increased substantially over the last two years, levels will likely flatten out and the overall plan for land reform remains unclear. Most of the budget will be dedicated to meeting the costs of land restitution claims,

⁵¹⁹ PLAAS, "Evaluating Land and Agrarian Reform in South Africa", slide presentation, 8 October 2003.

many of them urban and most through cash settlements rather than land restoration. The failure to settle large outstanding rural claims is a growing cause for concern.

A South African advocate for the landless argues, "The market basis limits real opportunities for land redistribution. Sustainability and economic criteria are important, but inequalities simply must be addressed".⁵²⁰ Yet, given the relatively modest budgets dedicated to the efforts since 1994, it is not at all clear that the limits of a market-based approach have been reached. Land redistribution in rural areas has fallen far below the government's target of transferring 30 per cent of agricultural land by 2015.⁵²¹ At current rates, transferred land will be unlikely to reach 5 per cent by 2015. While experience has highlighted the importance of delivering substantial post-transfer support services to land reform farmers, funds for these services are likely to decline.

The administrative and technical capacity of the Department of Land Affairs is also stretched. This is the principle reason market-assisted land reform and legal expropriation have gone slowly. It also explains why the government's creditable commitment to land restitution has yet to translate into the resolution of the majority of rural restitution claims.

The land reform debate in South Africa has also focused attention on the Subdivision of Agricultural Land Act of 1970. Although the act was originally designed to prevent the subdivision of farms into uneconomic units, the legislation has often served to function as a zoning regulation that has prevented subdivision of good quality arable land for residential purposes and other unauthorised uses. There is general agreement that the Subdivision of Agricultural Land Act must be phased out to free up the land market, but the government has concluded that the act should not be repealed until a law is in place to protect high potential agricultural or environmentally sensitive land. In the meantime, the government has stated that the law's application should not be allowed to frustrate land reform. Revised regulations covering exemptions to the Act are needed. These should enable subdivision surveys for land reform to be routinely approved by the Surveyor General and for interests to be registered by the Registrar of Deeds. In these cases, the requirement for them to be referred to Pretoria for approval by the minister should be waived.

In South Africa, compulsory acquisition of land for reform purposes does not require legislative change. The constitution permits expropriation – specifically including land – in the public interest. Yet the government has generally preferred to negotiate a sale, sometimes using the threat of expropriation, in order to save time and legal costs. The 2004 amendment

⁵²⁰ ICG interview, May 2003.

⁵²¹ *Business Day*, 21 June 2000

that allows expropriation through administrative rather than judicial procedure will facilitate the government's efforts; a few high profile cases could do much to improve the negotiating position of the Department of Land Affairs, but it will need legal skills to exploit the new tool and the hard won property clause in the constitution. Nevertheless, despite public pressure for forcible expropriations and the fact that none of the eight donors who contributed funds to land reform insists on the willing seller principle as a condition for development aid, the government will likely resist relying on this tool.⁵²²

The Communal Land Rights Act, meanwhile, is deeply flawed with regard to tenure reform and could well do more harm than good. It will need amendment and is being challenged by groups including the Commission on Gender Equality, the Congress of South African Trade Unions (COSATU) and various NGOs and rural women's groups. What is most needed in the communal areas is a bill that strengthens the rights of the great majority of poor, who should be ensured that their land cannot be alienated or otherwise used without their consent, whether by government, traditional authorities, developers or other parties.

It is surely no coincidence that the Mbeki government passed two of its most important pieces of legislation – the Restitution of Land Rights Amendment Act and the Communal Land Rights Act – in the lead-up to the 2004 parliamentary elections. In the event, the African National Congress secured 69.7 per cent of the vote, up from 66.4 per cent in 1999. It is possible that with years before the next election and no credible political opposition, the government will once again slow its activity, eschewing the difficulty and sacrifices of sustained land reform. However, in the aftermath of the election, the government has reiterated its commitment to finishing land restitution by the end of 2005 and the first budget substantially increased funds for this project. The growing activism of land advocates, such as the Anti-Evictions Forum in the Western Cape and the Landless People's Movement, indicates that the government may be forced to work harder to keep its word.⁵²³

⁵²² ICG interviews, Pretoria and London, May 2003.

⁵²³ Economist Intelligence Unit, June 2004.