



## **rural development & land reform**

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Department:  
Rural Development & Land Reform  
**REPUBLIC OF SOUTH AFRICA**

DRAFT PROPOSAL

# **STRENGTHENING THE RELATIVE RIGHTS OF PEOPLE WORKING THE LAND**

## **Policy Proposals**

*Tuesday 30 July 2013*

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## **ABBREVIATIONS**

ANC	African National Congress
BFAP	Bureau for Food and Agricultural Policy
CPA	Communal Property Associations created in terms of the Communal Property Associations Act 28 of 1996
ECC	Employment Conditions Commission
ESTA	Extension of Security of Tenure Act No 62 of 1997
FAO	Food and Agricultural Organization
FES	Farm Equity Schemes
DLA	Department of Land Affairs
DRDLR	Department of Rural Development Land Reform
IDT	Investment and Development Trust
LCC	Land Claims Court
LTA	Land Reform (Labour Tenants) Act 3 of 1996
LRMB	Land Rights Management Board
LRMC	Land Rights Management Committee
LMC	Land Management Commission
MTSF	Medium Term Strategic Framework
NDP	National Development Plan
PLAS	Proactive Land Acquisition Strategy
RDP	Reconstruction and Development Programme
SAPS	South African Police Service
SLAG	Settlement/Land Acquisition Grant
LTS	Land Tenure Security Policy for Commercial Farming Areas

## DEFINITIONS

This proposed farm worker equity policy targets the following categories of people with vested interests in Commercial Farming Areas:

- i. **Farm dwellers** refers to any person, other than the owner, who is living on a farm;
- ii. **Farm workers** refer to persons who work on a farm regularly, whether full-time, part-time or seasonally, including those who are not necessarily farm dwellers, but live elsewhere. For the purposes of this definition, a “farm worker” means a person who is employed on a farm in terms of a contract of employment which provides that in return for the labour which he or she provides to the owner or lessee of the farm, he or she shall be paid predominantly in cash or in some form of remuneration, and not predominantly in the right to occupy and use land; and he or she is obliged to perform his or her services personally<sup>1</sup>;
- iii. **Labour tenant** means a person:
  - a. who is residing or has the right to reside on a farm;
  - b. who has or has had the right to use cropping or grazing land on the farm, or another farm of the owner, and in consideration of such right provides or has provided labour to the owner or lessee; and
  - c. whose parent or grandparent resided or resides on a farm and had the use of cropping or grazing land on such farm or another farm of the owner, and in consideration of such right provided or provides labour to the owner or lessee of such on said farm or another farm, including a person who has been appointed a successor to a labour tenant (in accordance with the provisions of the Land Reform (Labour Tenants) Act, but excludes a farm worker<sup>2</sup>;

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<sup>1</sup> Definition derived from: Act No. 3 of 1996: Land Reform (Labour Tenants Act).

<sup>2</sup> Definition derived from: No. 3 of 1996: Land Reform (Labour Tenants Act).

- iv. **Occupier** refers to a person residing on land which belongs to another person, and who has or on 4 February 1997 or thereafter had consent or another right in law to do so<sup>3</sup> (excluding a “labour tenant” as defined in the relevant legislation as well as a person using or intending to use the land in question mainly for industrial, mining, commercial or commercial farming purposes, but including a person who works the land himself or herself and does not employ any person who is not a member of his or her family);
- v. **Owner** means the owner of the land at the time of the relevant act, omission or conduct, and includes, in relation to the proposed termination of a right of residence by a holder of mineral rights, such holder in so far as such holder is by law entitled to grant or terminate a right of residence or any associated rights in respect of such land, or to evict a person occupying such land; and
- vi. **“Person in Charge”** means a person who at the time of the relevant act, omission or conduct had of has legal authority to give consent to a person to reside on the land in question.

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<sup>3</sup> Definition derived from: Extension of Security of Tenure Act 62 of 1997

# 1 INTRODUCTION

## 1.1 Context to Proposed Policy

### 1.1.1 Reversing the Legacy of the 1913 Natives Land Act

The root of the land question today arises out of the pervasive process of land alienation that dispossessed the majority of South Africans of their land over the past few centuries. 2013 is the centenary of the 1913 Natives Land Act, which was the first of a number of discriminatory laws that reinforced the massive dispossession of land from black South Africans. The proposed land tenure security policy for commercial farming areas seeks to reverse the wide range of tenure insecurities that were engendered throughout the 19<sup>th</sup> century<sup>4</sup> through a process of land dispossession, human degradation and exploitation. This led to a variety of conflicts over access to, control of and, ultimately, ownership of land. The 1913 Natives Land Act, consolidated by the 1936 Native Trust and Land Act, left only 13 per cent of the land for black occupation through culminating violent forced removals of whole communities for most of the second half of the twentieth century.<sup>5</sup> This legislation destroyed independent African existence in the interest of White settlers by creating reserves for the settlement of black people, and to serve as pools of migrant labour.<sup>6</sup>

The Native Land Act (No 27 of 1913) forced black women to work as labourers on white farms under labour tenancies that were easily subject to terminations. This made them more vulnerable to evictions than their male colleagues.<sup>7</sup> In South Africa's rural areas, women's access to land was limited by their gender and social position in the community.<sup>8</sup> This denial of land rights for

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<sup>4</sup> For historical details, see Bernstein H, "Social change in the South African countryside? Land and production, poverty and power", PLAAS, UWC, 2000

<sup>5</sup> Wegerif, M., Russel, B., and Grundling, I (2005). Still searching for security: The reality of farm dweller eviction in South Africa, Chapter 3, Nkuzi Development Association, South Africa.

<sup>6</sup> De Klerk, M. 1991. *A Harvest of Discontent: The Land Question in South Africa*. Cape Town: Institute for Democratic Alternative for South Africa. Letsoalo, E. 1991. "Land Reforms: State Initiatives." in *A Harvest of Discontent: The Land Question in South Africa*, edited by M. de Klerk. Cape Town: Institute for Democratic Alternative for South Africa.

<sup>7</sup> Yanon, M. 2006. Access to Land in Post-apartheid South Africa: Implications for the South African Black Woman. *Codesria Bulletin*, Nos. 1 & 2.

<sup>8</sup> Small, J. 1997. "Women's land rights: a case study from the Northern Transvaal" in Meer, S. 1997. *Women, Land and Authority. Perspectives from South Africa*. David Philip Publishers.

black women was only a part of a broad legacy of centuries of land dispossession through racially discriminatory laws.

The formulation of the proposed land tenure security policy for Commercial Farming Areas forms part of Government's undertaking to review all land reform policies as enunciated in the 2011 Green Paper on Land Reform, with a view to address issues relating to historical exclusion, equitable access to land, and participation in the optimal utilisation of land; as well as to address challenges relating to access to food at both household and national level to bring about household food security, food sovereignty and national food self-sufficiency. Furthermore, these broad policy initiatives and principles are embedded within South Africa's Constitution.

### **1.1.2 The Constitution**

The context of all rural development and land reform policies is the 1996 Constitution of post-apartheid South Africa. In this instance, the most pertinent sections of the Constitution are 25, 26, 27 and 36. The 1996 Constitution sets out the following framework for land reform:

*The state must take reasonable legislative and other measures, within its available resources, to foster conditions, which enable citizens to gain access to land on equitable basis (Section 25(5)).*

*A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress (Section 25 (6)).*

*A person or community dispossessed of property after June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress (Section 25 (7)).*

There are three key pillars in South Africa's post-1994 Land Reform Policy that reflect the constitutional pronouncement around land matters: land redistribution, land tenure reform and land restitution. As noted hereto, Section 25 (5) enjoins, "The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable

citizens to gain access to land on an equitable basis”. In a context wherein the majority of citizens still do not have equitable access to land, this constitutional promise still remains an imperative for the state to ensure its progressive realization. Furthermore, Section 25 (5) is the only clause that recognizes this exclusive right for “citizens” and it’s accordingly weighted higher than that of non-citizens or foreign controlled juristic persons; hence, although South Africa belongs to all who live in it and afforded Basic Rights, when it comes to land it is citizens that are prioritized.

Section 25 (4) affirms the imperative of land reform in advancing the national interest and states that “For purposes of this (a) the public interest includes the nations commitment to land reform and to reforms to bring about equitable access to all South Africa’s natural resources, and (b) property is not limited to land. Implied here is that national interests take precedence and that limitations and exemptions to such limitations of access, will be in furtherance of national interests.

Section 25(8) of the Constitution states that ‘No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36 (1). Consequently, this compels the state to spare no effort in addressing land reforms and racial disparity and inequity in land ownership by South Africans.

Furthermore, Section 36(1) limits the rights in the Bill of Rights and states the following, “the right in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom taking into account (a) the nature of the right; (b) the importance of purposes of the limitation; (c) the nature and extent of the limitation; (d) the relation between the limitation and its purpose; and (e) less restrictive means to achieve the purpose. Hence Sections 25 (4), (5) and (8) on the imperative of land reform, its national interest status and its override of rights, based on “general application” significantly underscores the importance of land reform and accelerating equitable access to land.



The envisaged policies towards limiting access to land by South Africans with excessive land holdings and foreign nationals and Juristic persons ought to be weighed against the stated importance and compulsion upon the state in Sections 25 (4), (5) and (8) addressed above. These define the nature and significance of land in engendering inclusive rural economic transformation.

Furthermore, Section 26 of the Constitution is on rights to housing which in essence affirms a guarantee of rights to a specific type of property. Section 26 (1) stipulates, “Everyone has the right to have access to adequate housing”.

Section 27 of the Constitution guarantees food security and poverty reduction by stating that every citizen has the right to have access to sufficient food and water, social security and health care and that the state must by legislation and other measures, within its available resources, ensure the progressive realization of the right. The Constitutional pronouncements made hereto are further given effect in the proposed legislative, institutional and policy regimes that have emerged from the 2011 Green Paper on Land Reform.

### **1.1.3 The Principles and Strategic Thrust of the Green Paper on Land Reform**

In 2011, the Green Paper on Land Reform provided for a single land tenure framework, integrating the current multiple forms of land ownership - communal, state, public and private - into “a single 4-tier tenure system” namely:

- (a) State and public land: Leasehold;
- (b) Privately owned land: Freehold, with limited extent;
- (c) Combination of freehold with limited extent and leasehold; and,
- (d) Communally owned land: Communal Tenure, with institutionalised use rights”.

The principles and strategic thrust underlying land reform, as set out in the Green Paper on Land Reform are aimed to: deracialise the rural economy; to promote democratic and equitable land

allocation; and enhance production discipline in order to promote social cohesion, food security (food sovereignty) and sustainable and shared economic growth and development in rural South Africa. The strategic thrust, also set out in the Green Paper, is that land reform should be pursued with minimal disruption to food production and based in the agrarian transformation strategy.

#### **1.1.4 The Comprehensive Rural Development Plan (CRDP)**

The proposed policy is closely aligned with the main objectives of the Comprehensive Rural Development Plan (CRDP), which was adopted in 2009 and serves as the overarching policy trajectory and strategy for the DRDLR. The strategy of the CRDP is three-pronged and includes agrarian transformation, which denotes “*a rapid and fundamental change in the relations of land, livestock, cropping and community*”<sup>10</sup>; an integrated and strategically planned rural development programme; and an enhanced land reform programme. Core objectives of the CRDP include self-reliance of rural communities, local economic development, increased agricultural production, sustainable use of natural resources, inclusive rural participation in developed value chains and improved rural livelihoods.

**The CRDP<sup>11</sup> firmly acknowledges the following central priorities in increasing the pace of land tenure reform: Fast-tracking the settlement of labour tenancy claims, especially in KwaZulu-Natal and Mpumalanga; Facilitating secure access to land by farm dwellers; Protecting the land rights of farm workers and creating decent jobs on farms; Dealing effectively and promptly with illegal evictions, which includes access to legal representation; Establishing agri-villages for local economic development on farms; and Providing basic needs for farm dwellers, including water, sanitation, electricity, housing. Here, the CRDP emphasises the State’s key role in ensuring that this group receives effective support and that their basic needs are met.** Furthermore, this latter observation is firmly acknowledged in the National Development Plan (NDP) and in the Medium Term Strategic Framework (MTSF).

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<sup>10</sup> Department of Rural Development and Land Reform (DRDLR). The Comprehensive Rural Development Programme Framework (CRDP). Pp. 13

<sup>11</sup> Department of Rural Development and Land Reform (DRDLR). The Comprehensive Rural Development Programme Framework (CRDP). Pp. 18

### 1.1.5 Alignment with the National Development Plan (NDP) and the Medium Term Strategic Framework (MTSF)

The proposed policy for strengthening farm workers' relative rights to land will also contribute to realising national objectives as outlined in the 2012 National Development Plan (NDP) and the Medium Term Strategic Framework (MTSF) for 2014-2019. The NDP 2030 vision is spatially, socially and economically well integrated rural areas - across municipal, district and provincial and regional boundaries - where residents have economic growth, food security and jobs as a result of agrarian transformation, land reform and infrastructure development programmes, as well as enjoy improved access to basic services, health care and quality education. By 2030, agriculture is envisioned to create close to 1 million new jobs, contributing significantly to reducing overall unemployment.

The NDP states that since 1994, the main challenge for rural development has been marginalisation of the poor, with many rural areas and households trapped in a vicious cycle of poverty. Rural areas and communities require greater social, economic and political opportunities to overcome the legacy of marginalization and poverty. **One key aspect of the NDP's proposed rural development strategy is to “ensure access to basic services, food security and the empowerment of farm workers”.**<sup>12</sup> The NDP further avers that the **“relationship between farmers and farm workers is difficult and needs to be far better to achieve agricultural expansion, higher employment and better living conditions”.**<sup>13</sup> In order to overcome this challenge and to achieve its vision, the NDP identifies the following policy imperatives, which will be the focus of the coming MTSF period:

1. Improved land administration and spatial planning for integrated development with a bias towards rural areas;
2. Up-scaled rural development as a result of coordinated and integrated planning, resource allocation and implementation by all stakeholders;
3. Sustainable land reform (agrarian transformation);
4. Improved food security;

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<sup>12</sup> National Planning Commission (NPC). 2011. National Development Plan. Vision for 2030, pp. 219

<sup>13</sup> *Ibid.* Pp. 233.

5. Smallholder farmer development and support (technical, financial, infrastructure) for agrarian transformation;
6. Increased access to quality basic infrastructure and services, particularly in education, healthcare and public transport in rural areas; and
7. Growth of sustainable rural enterprises and industries, characterised by strong rural-urban linkages, increased investment in agro-processing, trade development and access to markets and financial services, that result in rural job creation.

For subsequent MTSF cycles, the rural sector will focus on the following:

1. Leveraging established institutional arrangements and spatial planning tools and instruments to further advance effective urban-rural integration;
2. Strengthening development planning based on effective spatial development frameworks at all three spheres to further unlock benefits in the agricultural and non-agricultural value chain;
3. Sustainable management of natural resources; and
4. Up-scaling implementation towards achieving concrete targets.

**As noted in the MTSF (2014 – 2019), one of the intended key impacts on the lives of people living in rural areas, including those people living and working in Commercial Farming Areas, expected from the actions described above is a 20 per cent increase in ownership of productive land by previously disadvantaged individuals by March 2019. Hence, increased land ownership of farm workers is considered crucial in advancing the policy imperatives named above including rural integration, food security, equity in resource distribution.** As the central objective of this policy is expanded land ownership of farm workers/dwellers and labour tenants, with the secondary aim of establishing more racially equitable co-ownership and co-management arrangements for agricultural enterprises, this proposed policy is directly aligned with the above vision for South Africa.

## 1.2 Background to Strengthening Relative Rights of People Working the Land

### 1.2.1 Historical dispossession and marginalization of farm workers/dwellers

People living and working in Commercial Farming Areas<sup>14</sup> are amongst the most marginalised and destitute people in South Africa. Within the formal economy, this group ranks the poorest in the nation in terms of numerous development indicators, including household income, literacy rates and nutritional status. Certain studies have indicated that as high as one-fifth of all farm workers/dwellers' children are malnourished, and show a higher prevalence of stunting than children living in other areas of the country.<sup>15</sup> The commercial farming sector also houses the lowest paid workers in the formal economy, many of whom are forced to work long hours without compensation, refused annual leave and are often paid "in kind". Frequent deprivation of basic human rights enshrined in international and domestic law, including the right to land, housing, family life, safe work environments, freedom of discrimination, freedom of association and access to education, healthcare and other public services, make farm workers/dwellers and their families some of the least protected and most vulnerable groups in the country.

The approximately three million people<sup>16</sup> living and/or working on commercial farms also live under extreme tenure insecurity and experience restricted access to land, with less than 15 per cent of farm workers/dwellers able to cultivate their own crops in certain provinces.<sup>17</sup> This tenure insecurity is a direct effect of colonial and apartheid processes of dispossession, human degradation and exploitation that systematically destroyed the livelihoods of indigenous South Africans with the purpose of transforming the majority of the population into a pool of cheap

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<sup>14</sup> Commercial Farming Areas denotes a piece of land used primarily for agricultural purposes, either currently or in recent years. Farms are generally within an area not demarcated as urban, but do not necessarily include all land outside urban areas (*This definition is adopted from: Wegerif, M., Russel, B., and Grundling, I. 2005. Still searching for security: The reality of farm dweller eviction in South Africa, Nkuzi Development Association, South Africa*). An expanded definition of commercial farming areas would include farms producing agricultural products intended for the market, usually registered for value-added tax (VAT) and income tax. For the purpose of this policy, these farms are mostly located within the freehold tenure areas.

<sup>15</sup> Wegerif, M., Russel, B., & Grundling, I., 2005. *Op.Cit.*; Atkinson, D. Pienaar, D. & Zingel, J. 2004. "From on Farm to Own Farm". Report on a study commissioned by the Food and Agricultural Organization (FAO); HRSC: South Africa.

<sup>16</sup> Mayende, G. 2004. The Challenge of Land Tenure Reform in South Africa. Issues, Problems and Prospects in, Roth, M, Nxasana, V, Sibanda, S and Yates, T. 2004. Finding Solutions Securing Rights. Lexis Nexis, Butterworths.

<sup>17</sup> NLC, "Tenure Reform Media Fact Sheet", not dated. In Weideman, M. 2004. A History of Dispossession. Available at:[http://wiredspace.wits.ac.za/bitstream/handle/10539/275/21\\_chapter9.pdf;jsessionid=CEC95F42144308100EF803C7FB4ABBC8?sequence=21](http://wiredspace.wits.ac.za/bitstream/handle/10539/275/21_chapter9.pdf;jsessionid=CEC95F42144308100EF803C7FB4ABBC8?sequence=21) (Accessed on 17 JULY 2013).

labour. Such processes began as early as the 17<sup>th</sup> century and culminated in promulgation of the landmark Natives Land Act (No. 27 of 1913).

In general, commercial farming among blacks was essentially ruled out as a livelihood option during the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, due to a deliberate policy framework which designated the homelands as sources of cheap labour for the South African foreign and white-owned mines, farms and industries. Many blacks became “squatters” on their own, but dispossessed of their lands<sup>21</sup>. The labour tenancy system forced people to work for a certain amount of time per year or month for no pay except the right to stay on and use limited portions of the land. Sharecropping involved the sharecropper living on and working parts of the land, with the farm owner usually providing the seed, and the parties sharing the crop on an agreed to basis. Under both systems – labour tenancy and sharecropping – the original owners were reduced to tenants and had to provide for the new owner while also supporting themselves from their own production<sup>23</sup>.

**Consequently, farm workers/dwellers faced a systemic process of land dispossession which effectively dismantled their livelihood systems, resulting in their bearing the brunt of the triple challenges of poverty, unemployment and income inequality.** Most of these processes were viciously resisted by indigenous communities including through the struggle led by the national liberation movement as highlighted in the Freedom Charter.

### **1.2.2 Working conditions, wages and incomes in the commercial agricultural sector**

Farm workers/dwellers suffer some of the worst human rights violations occurring in today’s South Africa.<sup>24</sup> Although Government has ratified several international covenants that guarantee its citizens wide ranging basic human rights, as well as protecting such rights under the 1996

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<sup>21</sup> Sol, Plaatje, 1995. *Native Life in South Africa, 1876-1932*. Randburg: Ravan.

<sup>23</sup> Wegerif, M. 2004. “Creating Long-term Tenure Security for Farm Dwellers” in, Roth, M, Nxasana, V, Sibanda, S and Yates, T. 2004. *Finding Solutions Securing Rights*. Lexis Nexis, Butterworths.

<sup>24</sup> Kariuki, S., 2011. *Statistical overview of the agricultural sector and agricultural workers: A socio-economic insight*.; HRW, 2011. [Op.Cit.](#)

Constitution, these are all too often not extended to people living and working in Commercial Farming Areas.<sup>25</sup>

For instance, the right to decent working conditions and a healthy working environment is largely unrealised for most people living and working on commercial farms in South Africa. Farm workers are the lowest paid employees in the formal sector, most work longer hours than the legal limit without compensation, and black agricultural workers, especially women, receive lower wages than white co-workers.<sup>26</sup> While the average income of white farm workers in 1996 was R 4 613 per month, that of black workers was R 598, less than 12 per cent of wages received by whites (with much lower wages paid in some parts of the country). Furthermore, while the average male farm worker salary amounts to approximately R 667 per month, the average female salary averages R 458 per month. This unbalanced trend has not changed significantly in the past decade.<sup>27</sup> In 2013, the minimum wage for farm workers was increased from R 69 per day to R 105 per day. The new wages took effect from 1 March 2013.<sup>28</sup>

**Despite the recent wage increment, farm workers endure one of the lowest minimum wages for any employment sector in South Africa, with new wages still much too low to meet their daily needs. One study by the Bureau for Food and Agricultural Policy (BFAP), conducted to inform the recent negotiations on minimum wage determinations, found that even if raised to R 150 per day, farm workers and their families would still be unable to afford a ‘balanced daily food plate’ (which consists of only 61 per cent of recommended calorie intake and lacks adequate nutritional diversity). The BFAP report further indicated that (in actual values) the cost of a basic food basket rose from R 394 in October 2010 to R 486 in October 2012, with the poorest South Africans (including farm workers) spending more than 40 per cent of their total income on food and non-alcoholic beverages.<sup>30</sup> Furthermore, submissions made by farm workers to the Employment Conditions Commission (ECC) reported that it**

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<sup>25</sup> See International Covenant on Civil and Political Rights (ICCPR), the African Woman’s Charter, African Charter for Human and People’s Rights (ACHPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

<sup>26</sup> Atkinson, D. Pienaar, D. & Zingel, J. 2004. *Op.Cit.*

<sup>27</sup> DAFF, 2010. *Op.Cit.*

<sup>28</sup> Source: <http://www.labour.gov.za/media-desk/media-statements/2013/>

<sup>30</sup> Bureau for Food and Agricultural Policy (BFAP), 2012. Farm Sectoral Determination: An Analysis of Agricultural Wages in South Africa. Available at: [www.bfap.co.za](http://www.bfap.co.za).

was common practice for farm owners to deduct significant portions of wages for accommodation, electricity and water, leaving little for workers to sustain their families.<sup>31</sup> Thus, with the current minimum daily wage set at R 105, farm workers are not only unable to sufficiently satisfy their daily nutritional needs, but also unable to afford costs of transport, school fees or health care.

This largely explains why, in many instances, farm worker's household food insecurity is rampant. There is widespread incidence of food insecurity within communities of people living and working on commercial farms. This is one of the most unfortunate ironies of the agriculture sector. While white commercial farms provide the country with 90 per cent of its marketed produce, black farm workers and their children do not have enough food to eat.<sup>32</sup> Farm owners, on the other hand, have gained enormous profits from the labour provided by farm workers. Without this labour, the nation's agricultural industry would have been unable to develop and prosper. Therefore there is a firm justification for fully compensating farm workers/dwellers with land ownership as proposed in this policy.

Despite frequently cited arguments that allege the commercial farming sector is in financial distress (and thus cannot afford to increase wages of farm workers), available evidence indicates that this is at least partially inaccurate. While it is true that some smaller commercial farms in both freehold and communal areas are struggling to survive, the remaining medium- and large-scale farms (which make up approximately half of the sector) continue to accumulate significant profits.<sup>33</sup> Gross farming income of commercial units rose from R 53.3 billion in 2002 to 76.5 billion in 2007<sup>34</sup>, capital formation in the sector has doubled since 1994 and total agricultural output grew by 27 per cent between 1995 and 2002.<sup>35</sup> Additionally, South Africa continues to be one of the top global exporters of various agricultural products, ranking first in avocados, clementines and ostrich

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<sup>31</sup> Employment Conditions Commission (ECC), 2013. Report of the Employment Conditions Commission to the Minister of Labour on the Farm Worker Sector, South Africa. Available at: <http://www.labour.gov.za>.

<sup>32</sup> Kariuki, S., 2011. Op.Cit.

<sup>33</sup> AgriSeta, 2010. Sector Analysis: Agriculture. Available at: [www.agriseta.co.za](http://www.agriseta.co.za).

<sup>34</sup> Statistics South Africa, 2007. Census of Commercial Agriculture 2007 (Preliminary). Available at: [www.statssa.gov.za](http://www.statssa.gov.za)

<sup>35</sup> Hall, R., 2009. Dynamics in the commercial farming sector. In Ruth Hall, ed. *Another Countryside*. Cape Town: Institute for Poverty, Land and Agrarian Studies, p. 120-131.



produce<sup>36</sup>, with growth in exports increasing from R 8 billion in 1994 to R 25 billion in 2002.<sup>37</sup> While a significant proportion of profits made by commercial farming enterprises goes toward the numerous expenditures involved in farming operations as well as debt payment, it is apparent from the above figures that farm owners are accumulating notable profits.

The economic growth experienced by the commercial farming sector is however characterised by unequal income distribution in which more than half of all farms bring in less than R 300 000 annually, while only a handful enjoy a turnover of upwards of R 1 billion a year.<sup>38</sup> The inability of smaller farms to access economies of scale outside of primary production has resulted in consolidation of farms into larger units of ownership and production, with the number of commercial farming units decreasing from 45 818 units in 2002 to a reported 39 966 units in 2007.<sup>39</sup> Thus, with the majority of profits generated by commercial agriculture captured by a small group of producers, marketing agents and financial institutions, a major challenge facing Government is to create a more equitable pattern of income distribution in the sector, especially amongst farm workers who receive as low as 1 per cent of profits in some agricultural sectors.<sup>40</sup> **The highly unequal relationship between farm owners and farm workers/dwellers, in which the latter are completely dependent on the former for sustaining livelihoods, makes it almost impossible for these vulnerable groups to fight for their rights.**

### **1.2.3 Limitations of the LTA and ESTA to strengthen tenure rights on farms**

Since 1994, one of the key principles of tenure reform has been to move away from subservient forms of land rights into legally enforceable rights to land, in a manner, which is consistent with the Constitution's commitment to basic human rights and equality. Significant laws promulgated in this regard and dealing with the subject matter of this policy, include the LTA and the ESTA. Despite the promulgation of these laws in the post-1994 era, farm dwellers have remained in a

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<sup>36</sup> AgriSeta, 2010. Op.Cit.

<sup>37</sup> Hall, 2009. Op.Cit.

<sup>38</sup> Ibid.

<sup>39</sup> Statistics South Africa, 2007. Op.Cit.

<sup>40</sup> Ibid.

disadvantaged position due to the poor enforcement and resource endowment of the ESTA and LTA.<sup>41</sup>

While two pieces of legislation were enacted specifically to protect the land rights of those living and working in Commercial Farming Areas, namely the Labour Tenants Act, No. 3 of 1996 (LTA) and the Extension of Security of Tenure Act, No. 62 of 1997 (ESTA), the effectiveness of these laws to prevent illegal evictions and thus increase tenure security has been limited.<sup>42</sup> In addition, **neither of these policies sufficiently addressed the land rights needs of the wide range of farm dwellers, workers, tenants and occupiers. Both laws do not give adequate recognition to and protection of the rights of long-term occupiers and labour tenants who may have been the original indigenous landowners of the farms that they were dispossessed of.**

In essence, the ESTA has defined procedural rights that underpin legal evictions at the expense of creating a strong regime of substantive rights that supersede the procedural rights process<sup>49</sup>. With estimates of those either evicted or displaced from commercial farms reaching over six million in 2004, the South African farming sector continues to lose its most important component, black farmers.<sup>50</sup> **Thus, the wider range of land rights problems faced by farm dwellers suggest that a more expansive system of strengthening the relative rights of farm dwellers is required.**

#### **1.2.4 Limitations of other Land Reform Programmes and Empowerment Initiatives to address Farm Workers**

Another growing source of land tenure insecurities among farm dwellers and workers arises from tenure regime changes within Commercial Farming Areas. Land rights insecurities are

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<sup>41</sup> Department of Rural Development and Land Reform (DRDLR), 2013. Land Tenure Policy for Commercial Farming Areas

<sup>42</sup> Cousins, B., 2002. Legislating Negotiability: Tenure reform in post-apartheid South Africa. In *Negotiating property in Africa*, Juul, K. and Lund, C. (eds). Portsmouth, New Hampshire: Heinemann, (pp. 67-106). Pp. 16.

<sup>49</sup> Department of Rural Development and Land Reform (DRDLR), 2013. Land Tenure Policy for Commercial Farming Areas

<sup>50</sup> Cousins, B. & Hall, R., 2011. Rights Without Illusions: The potentials and limits of rights-based approaches to securing land tenure in rural South Africa. Working Paper No. 18. PLAAS.

manifested in various land disputes among land reform beneficiaries themselves, between them and existing farm dwellers, and among other competing land claimants. **Fundamentally, the failure of the land restitution and land redistribution programmes to systematically and substantially supply land to farm dwellers and workers (on- or off-site) is a major source of land tenure insecurity among these populations. Programmes of land reform such as restitution have served a very specific purpose, namely dealing with the social injustice experienced by victims of land dispossession. Restitution claimants as beneficiaries are however not often conceived as including farm dwellers, who instead have been conventionally addressed through a narrow land tenure reform policy. Historically dispossessed farm dwellers tend to be marginalized by new claimant communities within the restitution programme.**<sup>59</sup>

The land redistribution programme has tended to target aspiring black commercial farmers or a range of black South Africans in need of land for agricultural production. The DRDLR's Proactive Land Acquisition Strategy (PLAS), in which the government buys land available on the market directly from owners to redistribute to land reform beneficiaries, has not sufficiently reached farm workers or farm dwellers. Farm workers as a specific category of people in need of land for agricultural production are rarely prioritized in the land redistribution programme. Moreover, another major source of land tenure insecurity among farm dweller populations is the inadequate clarification and protection of farm dwellers and workers land rights on land that has been redistributed and/or restituted.

Furthermore, various empowerment programmes including farm equity schemes (FES) and Agri-BEE initiatives have generated limited benefits for people living and working on commercial farms. Unequal relations between equity partners (established landowners) and worker beneficiary shareholders (farm workers/dwellers) have meant that the latter are not able to effectively participate in decision making processes, with beneficiaries often “*given perfunctory status on the Board of Directors as a ruse to diffuse possible tensions*”.<sup>61</sup> **Furthermore, none of**

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<sup>59</sup> Department of Rural Development and Land Reform (DRDLR), 2013. Land Tenure Policy for Commercial Farming Areas

<sup>61</sup> See DRDLR, 2013. *Draft Farm Equity Scheme Policy of the Department of Rural Development and Land Reform* (Version 6 revised). Unpublished.

**these schemes have dealt with the critical question of acquiring shares in land ownership beyond the traditional focus in share ownership of the agricultural enterprise.**

**Hence, the biggest problem with both FES and Agri-BEE initiatives is their failure to view redistribution of land (and thus strengthened tenure rights of farm workers/dwellers) as the foundation upon which other transformation objectives can be achieved.** Although these empowerment programmes do mention increased tenure security as one of their objectives (agricultural land ownership is one of seven key elements on Agri-BEE scorecards), they are primarily focused on co-ownership and co-management of farming enterprises, **with land ownership positioned much lower on the list of priorities.**

**This sidelining of enhanced land ownership and tenure rights has meant that major power imbalances between farm workers/dwellers and owners have persisted, with FES and Agri-BEE interventions having accomplished little progress in effecting genuine agrarian transformation. Considering that both tenure security and increased ownership of land can significantly improve the overall well-being (economic, physical, psychological and social) of poorer rural citizens, enhanced tenure rights and land ownership should be a central component to any programme of transformation in South Africa, particularly when it comes to farm workers/dwellers. The proposed policy at hand aims to overcome the limitations of previous empowerment initiatives by placing land ownership and increased tenure security of farm workers/dwellers at the centre of transformation initiatives, viewed as the initial step to promoting co-ownership of agricultural enterprises.**

**For these reasons and others, this policy focuses on the notion of employer and employee in the agricultural sector, and seeks the best solutions for securing tenure rights in commercial farming areas. As more than three million farm workers/dwellers and labour tenants<sup>62</sup> who have resided on farms for elongated periods of time (often for the duration of their entire lives) remain dependent on white farmers for their social reproduction, the issue of land ownership as a key driver of their empowerment should be seen as a central way of strengthening land rights and creating equity within the farming sector. This can**

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<sup>62</sup> Mayende, G. 2004. Op.Cit.

serve as a basis for economic transformation as land ownership can be used as leverage to encourage other modes of empowerment such as equity shares in agricultural enterprises, as well as to further advance the broad principles of the Comprehensive Rural Development Programme (CRDP). Hence, the focus of this policy is to develop a system of incentives and disincentives to ensure that equitable access to land ownership is realised amongst farm owners and people working the land.

### 1.3 Rationale for Change

The African National Congress (ANC) has consistently pledged to address the plight of farm workers/dwellers and labour tenants since its establishment in the early 1900s. Clause 3 of the ANC's 1955 Freedom Charter declares:

***The Land Shall Be Shared Among Those Who Work It!***

*Restrictions of land ownership on a racial basis shall be ended, and all the land re-divided amongst those who work it to banish famine and land hunger; The state shall help the peasants with implements, seed, tractors and dams to save the soil and assist the tillers; Freedom of movement shall be guaranteed to all who work on the land; All shall have the right to occupy land wherever they choose; People shall not be robbed of their cattle, and forced labour and farm prisons shall be abolished.<sup>69</sup>*

Retaining this commitment to the liberation of farm workers and universal rights to land, the ANC's 1992 land policy document appealed for “*the promotion of human and employment rights for farm workers*”.<sup>70</sup> This intention to address the needs of farm workers/dwellers and labour tenants was also reiterated in the ANC's Reconstruction and Development Programme (RDP) of 1994, which placed land redistribution at the centre of societal transformation rural development. Here Section 4.5.2.5 of RDP calls for “*comprehensive measures*” to improve the “*living and working conditions*” of farm workers and labour tenants.<sup>71</sup> Furthermore, farm workers'/dwellers'

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<sup>69</sup> The People's Congress. 1955. The Freedom Charter. Sharpeville: The People's Congress. Clause 3.

<sup>70</sup> ANC's 1992 land policy document.

<sup>71</sup> African National Congress (ANC). (1994). Reconstruction and Development Programme: A Policy Framework. Johannesburg: Umanyano Publications. Section 4.5.2.5.

rights to land ownership and access, as well as the right of protection from arbitrary eviction, are provided by the 1996 Constitution<sup>72</sup> as discussed in Section 1.1.2.

The 1997 White Paper further reinforced the ANC's expressed commitment to securing land rights and improving the welfare of people living and working on commercial farms, indicating that the needs of this group would be addressed in the context of the Redistribution pillar of South Africa's land reform programme:

*The purpose of the land redistribution programme is to provide the poor with access to land for residential and productive uses, in order to improve their income and quality of life. The programme aims to assist the poor, labour tenants, farm workers, women, as well as emergent farmers.*<sup>73</sup>

**Most recently, considering the lack of progress achieved in securing land rights of farm worker/dwellers, the 2011 Green Paper on Land Reform acknowledged what it deemed “a total-system failure (TSF)” of land reform “to protect the rights and security of tenure of farm workers and dwellers” partially due to the ineffective design and implementation of tenure reform legislation (e.g. the LTA and ESTA).<sup>74</sup>**

**The DRDLR defines land reform to encompass the following four functions: (1) restitution of land rights; (2) redistribution of land; (3) land tenure reform; and (4) development of the land. The strategic objectives of land reform as defined by the DRDLR are: (a) to ensure that all land reform farms are 100 per cent productive; and (b) to rekindle the class of black commercial farmers that was deliberately and systematically destroyed by the 1913 Native Land Act and other subsequent pieces of legislation and policies enacted by colonial and apartheid regimes.**

**Thus, in accordance with the ANC's expressed commitment to improving the plight of farm**

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<sup>72</sup> Government of South Africa. 1996. Constitution of the Republic of South Africa, No. 108 of 1996. Sections 25(5), (6), (7) and 26(3) respectively.

<sup>73</sup> Department of Land Affairs. 1997. White Paper on South African Land Policy. Pretoria: Government Printers.

<sup>74</sup> DRDLR, 2011. Green Paper on Rural Development and Land Reform. Pretoria: Government Printers. Section 10.3.

**workers/dwellers and the national objectives for land reform, as well as the above constitutional mandates and 2011 Green Paper principles, this policy proposes to introduce a new approach to tenure reform in Commercial Farming Areas in which farm workers/dwellers and labour tenants are enabled to acquire shares in land ownership. This will require their compliance with certain conditions and fulfillment of prescribed roles and responsibilities.**

**In this way, more equitable patterns of land ownership can emerge without negative impacts on agricultural production. Also, the proposed policy will advance the 2011 Green Paper's overarching goal of promoting social cohesion as beneficiaries will purchase or gain access to land they are already occupying, thus avoiding the dispersal and resettlement of families and communities. In addition, relations between farm workers/dwellers and farm owners will become more equitable and the numerous land-related conflicts associated with redistribution initiatives that involve resettlement can be averted. Furthermore, this policy will empower people living and working on commercial farms to gain shares in agricultural enterprises, thus engendering an inclusive economic transformation of the sector. This is well deserved as farm workers/dwellers have provided poorly compensated labour upon which farm owners and owners of agribusinesses have greatly benefitted.**

**Considering the failure of other tenure reform legislation (i.e. the LTA and ESTA) to protect and secure the land rights of farm workers/dwellers and labour tenants, the inaccessibility of the redistribution and other land reform initiatives to these groups, and the neglect of FES and Agri-BEE schemes to target land ownership as a key driver of empowerment and transformation, it is crucial that a new policy addresses these gaps. It is also essential that approaches to bettering the plight of those who live and work on commercial farms include measures that go beyond tenure reform to address broader aspects of socio-economic development. This policy does so by increasing opportunities for farm workers to gain ownership of the land they live on, which is key to enjoying basic human rights of housing, health and family and cultural life, as well as critical in creating sustainable livelihoods.**

**Moreover, the proposed policy measures are not only key in overcoming the many challenges and limitations of tenure reform to date, but also in taking preemptive action to address various unintended consequences of the re-opening the Restitution programme's window period for lodgement of claims.** Here there are two major potential outcomes of the restitution re-opening that need to be dealt with. First, large numbers of claims for land restitution may be submitted by people who currently or previously live on commercial farms. This is due to the fact that a significant number of people working the land were excluded from claiming the right to restitution, including: persons and communities who were evicted in the post-transition era (who do not fall within the scope of the Restitution Act as such rights were ineffectively covered by tenure reform legislation); those commercial farm dwellers and labour tenants who managed to remain living on white-owned commercial farms; and long-time occupiers of commercial farms who cannot prove they were evicted for explicitly racial reasons.

Secondly, the re-opening is bound to introduce more land-related conflicts as much of the land that will be claimed is expected to fall within Commercial Farming Areas where farm workers/dwellers and labour tenants currently reside. Already, restitution has resulted in opposing interests between claimants and farm workers who are at risk of losing their homes and means of livelihood if land is restored.<sup>77</sup> Re-opening the cut-off dates thus poses the risk of increasing tenure insecurity for current rights holders as well as creating deepening tensions between various communities of potential land reform beneficiaries.<sup>78</sup> **In order to avoid the displacement of those people currently living and working in Commercial Farming Areas as well as an increase in land-related conflicts between the former and restitution claimants, this policy enables farm workers/dwellers and labour tenants to secure their relative rights to land and thus prevent any land restoration in these areas.**

**This is closely in line with the proposed Restitution Bill's provisions that original land will be restored only where possible, with several factors considered in determining the feasibility of restoration including: whether returning the land may result in further social disruption; any current provisions made for the land in question, especially in cases where**

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<sup>77</sup> Hall, R. 2010. Op.Cit.

<sup>78</sup> Institute for Poverty, Land and Agrarian Studies (PLAAS), 2011.



**they relate to exercises designed to advance equality and provide redress for past racial discrimination; and the current use of the land.**

**Another issue this policy addresses is the fact that the LTA fails to place any requirements on labour tenants to ensure that their tenure rights are earned and that the land is put to productive use.** This is problematic in the fact that this renders such rights systematically undefendable as the 2011 Green Paper's third underlying principle and strategic thrust of land reform is sustained agricultural production to ensure food security and national food sovereignty. **Thus the system introduced under this proposed policy must take this into cognisance, establishing a system of rights and responsibilities; duties and services; and opportunities and constraints, all of which are rooted in the authority of the Constitution.**

**Additionally this policy intends to fill the gap left by previous tenure reform legislation to ensure that people working the land are provided with alternative accommodation and means of sustenance if forced from the land. Although the LTA provides the capacity to translate tenancy rights into the right to claim land restitution, as well as securing protection against eviction (with no reference to whether or not such eviction was justified or arbitrary<sup>79</sup>), after a certain length of time working and residing on a farm, the vast majority of applications for land restoration submitted by labour tenants remain unresolved. This places labour tenants in an extremely vulnerable position as restitution of their tenure rights is dependent not only on the owner retaining his/her land rights, but also on labourers being able to maintain proof of their long-term residence and work contribution. This is extremely difficult for most labour tenants as the details of length of stay on land, terms of employment, boundaries of land held under usage rights are often undocumented and only known between the landowner and worker.**

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<sup>79</sup> Section 26 of the 1996 Constitution of the Republic of South Africa guarantees the right to adequate housing, requires the state to take reasonable legislative and other measures towards realising this right, and prohibits arbitrary evictions. An arbitrary eviction is one that is considered procedurally arbitrary because the procedure was unfair, or substantively arbitrary because there were not sufficient reasons for the eviction. Justified evictions, on the other hand, refer to cases in which the farm owner is deemed (by edict of the Court) to have reasonable cause for taking such extreme measures (i.e. threats or acts of violence inflicted on the farm owners, theft etc).

**Deepening the tenure security of farm workers/dwellers, without threatening food security and food sovereignty, is a key principle of the intended policy. Past attempts at tenure reform have also failed to hold beneficiaries responsible and accountable for proper utilization of restored land. Intending to fill this gap, this policy emphasises that the balancing of strengthened land rights and food security/ sovereignty must be maintained throughout all tenure reform initiatives.**

**In achieving strengthened tenure security and expanded land ownership of farm workers/dwellers and labour tenants in Commercial Farming Areas, South Africa will also be advancing the Freedom Charter principles, most notably that all national groups shall have equal rights (Clause 2); the people shall share in the country's wealth (Clause 3); and the land shall be shared amongst those who work it (Clause 4) (see beginning of this section). Furthermore, the proposed policy helps the country to further comply with the United Nations' Agenda 21 action plan for sustainable development, ratified by South Africa, which stipulates, "*people should be protected by law against unfair eviction from their homes or land*".<sup>83</sup> And finally, this policy conforms to the Food and Agricultural Organization's (FAO) guiding principles for attaining tenure security for all while also improving household and national food security.<sup>84</sup>**

#### **1.4 Outline of the Proposed Policy**

This policy focuses specifically on strengthening the relative rights of farm workers/dwellers in Commercial Farming Areas and excludes the tenure security issues on state owned and public lands, peri-urban areas and in communal areas, as these are dealt with in separate policy development processes. The remainder of this policy document first elaborates on the vision, purpose, principles and objectives of the policy (section 2). The document then presents two options identified to realise strengthened relative land rights for people working on commercial farms, including initiation of a share-equity programme in land ownership for workers or amending to the LTA to enable the Minister of the DRDLR to assist in the conferment of land

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<sup>83</sup> United Nations, 1992. Agenda 21. United Nations Conference on Environment & Development Rio de Janeiro, Brazil, 3 to 14 June 1992. Section 7.9.

<sup>84</sup> This conforms with the FAO guidelines on Land Tenure Principles: Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. 11 May 2012.

ownership rights to farm workers/dwellers and labour tenants. Section 5 outlines the legislative framework and legal arrangements required for enacting proposed measures. Finally, the last section of this document sets out the strategy for implementing the proposed policy, including the plans for establishing relevant institutions, monitoring and evaluation measures to be put in place and the sources of funding proposed.

## **2 POLICY FRAMEWORK**

### **2.1 The Vision of the Policy on Strengthening the Relative Rights of People Working the Land**

**The vision of this proposed policy is the actualisation of more equitable patterns of land ownership in Commercial Farming Areas in which people working the land enjoy secure tenure rights while progressively becoming capable owners, managers, professionals and well-compensated workers in the agricultural sector. In pursuance of this vision, there shall be minimal (or no) disruption in food production, with all of the South Africa's agricultural land used in its most productive capacity to ensure food security and sovereignty both for households and the nation. The proposed policy enables farm workers/dwellers and labour tenants to gain shares in land ownership shall advance the 2011 Green Paper's overarching objectives of social cohesion and inclusive development, as well as the realisation of the many rights and equity objectives provided by the Freedom Charter, the Constitution, the UN's Agenda 21 and other international covenants ratified by South Africa. This vision is guided by the wider vision of enhancing relative rights of people working the land for the broader development of South Africa as outlined in the CRDP, NDP and 2011 Green Paper.**

### **2.2 The Purpose of the Policy on Strengthening Relative Rights of People Working the Land**

The overall purpose of the proposed policy is realising a long lasting resolution of the tenure insecurities of people working the land, as well as their enjoyment of basic human rights and expansion of opportunities to sustain livelihoods. This entails a strategy of using redistributive

measures combined with share-equity and co-management schemes to create a system of positive incentives and disincentives for both farm owners and farm workers/dwellers to encourage equitable access to and ownership of land while sustaining maximum agricultural production. As noted previously in this policy, this purpose advances the three-pronged principles that underpin the Green Paper, national objectives as outlined in the NDP and MTSF and the CRDP's strategy for agrarian transformation.

**In addition, this policy compliments “The development of the Agricultural Landholding Framework: Setting Upper and Lower Bands for the Ownership and Use of Agricultural Landholdings” which focuses on the identification of a balanced approach that would, on the one hand, provide for access to land and the shared distribution of agricultural land to all South Africans. This policy framework is therefore part of a range of instruments that Government is employing to protect land-use, access to land and food security in the country.<sup>85</sup>**

### **2.3 Key principles of the Policy on Strengthening Relative Rights of People Working the Land**

This policy is guided by the following principles:

- Agricultural land is a common heritage for all South African citizens;
- All South Africans (including youth, women, female-headed households, child-headed households, people with disabilities) have **a reasonable opportunity to gain access to land** with secure rights, in order to fulfill their basic needs for housing and productive livelihoods (including subsistence and commercial farming);
- All farm workers should enjoy long-term security of tenure that enable them to participate in and contribute to national development;

### **2.4 Strategic Objectives of the Policy on Strengthening Relative Rights of People Working the Land**

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<sup>85</sup> Department of Rural Development and Land Reform (DRDLR). Agricultural Land Holdings Framework Document. Pretoria.

In order to achieve the policy's intended outcomes, the strategic objectives of the proposed policy are to:

- Increase opportunities for land ownership amongst farm workers/dwellers and labour tenants (especially women and youth within these categories), and thus enhance their relative rights to land that they occupy in order to fulfill their basic needs for housing and productive livelihoods (including subsistence and commercial farming);
- Develop a system of incentives and disincentives to encourage those with vested interest in the land to conduct their relationship around land according to the dictates of the Freedom Charter, the UN's Agenda 21 and FAO guidelines.
- Promote sustainable utilization of land to enhance shared growth, food security, employment development across the nation;
- Rekindle a class of small scale black commercial farmers that was destroyed by the 1913 Natives Land Act;
- Facilitate the creation of share equity, co-management and other empowerment schemes arrangements in which historically marginalised persons residing in Commercial Farming Areas are empowered to share in the ownership and management of farming operations in ways that will increase security of tenure;
- Curb unlawful evictions of farm workers/dwellers and labour tenants;
- Improve the working and living conditions of farm workers/dwellers and labour tenants so that their basic human rights are realised and exploitation of these groups is put to an end;
- **Advance the goals of the Agricultural Landholdings Framework which seek to:**
  - **Facilitate the entry and participation of small farmers into mainstream agriculture;**
  - **Redistribute land from large agricultural holdings to cooperatives and family owned landholdings; and to**
  - **Increase the efficiency, competitiveness and sustainability of all agricultural landholdings.**

### 3 PROPOSED POLICY OPTIONS

This policy proposes to establish a system in which farm workers and dwellers are provided opportunities to purchase and/or gain access to shares in the land in which they have occupied over an extended period of time based on their compliance in fulfilling prescribed agreed upon land-related roles and responsibilities. The policy aims to overcome the various limitations of other land reform initiatives and tenure reform laws that have largely neglected to focus on land ownership as a central means of addressing the tenure insecurities and livelihood challenges faced by people who work in Commercial Farming Areas.

The policy measures outlined below fall within a subset of initiatives to be undertaken within the context of the proposed Land Tenure Security Policy (LTS) for Commercial Farming Areas, which is in its final drafting stages and aims to establish sustainable institutional arrangements to identify, monitor and resolve the land tenure insecurities existing on farms using a number of different interventions. One such intervention suggested under the LTS is the creation of share equity, co-management and other empowerment schemes in which historically marginalised persons residing in Commercial Farming Areas are empowered to share in the ownership and management of farming operations in ways that will strengthen their land rights.

**In addition, the policy advances the principle objectives of the “The development of the Agricultural Landholding Framework: Setting Upper and Lower Bands for the Ownership and Use of Agricultural Landholdings (hereafter referred to as “the Policy”)” which focuses on the identification of a balanced approach that would, on the one hand, provide for access to land and the shared distribution of agricultural land to all South Africans, especially people from rural areas.** Thus, as an important and initial step in realising the establishment of such arrangements, this policy proposes measures to facilitate the acquisition of land rights of farm workers/dwellers and labour tenants for land on which they have lived for an elongated period, while also stipulating certain conditions that must be complied with to receive and retain ownership rights.

Central to these conditions is the sustained land productivity in which farm workers etc will be required to ensure through a regime of prescribed roles and responsibilities. Fulfillment of these

requirements will enable people living and working on commercial farms to then acquire a percentage of ownership shares in the land relative to the length of the compliance period. Subsequently, through enhanced tenure status and increased land ownership, people working the land shall be empowered to acquire shares in farming enterprises as well, thus bringing about economic transformation of the agricultural sector. **Two possible options are proposed for implementing this proposed system and are discussed in the sub-sections below.**

### **3.1 Option 1: Establish a System of Incentives and Disincentives for Strengthening Relative Rights of People working the Land**

Within this first option, the following proposals to protect and promote the relative tenure rights of people working the land are suggested:

1. Maintain the current regime of tenancy protection and derived rights, but balance this with introduction of a regime of duties and responsibilities that the farm worker/dweller must observe and comply with, in order to sustain the regime.
2. After ten years (but less than twenty-five years) of disciplined service, based on the regime of duties and responsibilities, the farm worker/dweller must be entitled to ten per cent share-equity on the land, based on its market value.
3. Should the farm worker/dweller wish to leave the farm, after ten years of disciplined service, having earned the ten per cent share-equity ownership of the land, he/she should be compensated to that extent, over and above whatever other rights were due to him or her.
4. After ten years of disciplined service, the farm manager should, by force of law, introduce the farm worker/dweller to basic elements of farm management, reflective of the new relational dynamics.

5. After twenty-five years of disciplined service, the farm worker/dweller shall be entitled to twenty-five per cent share equity of ownership of the land. The same conditions, which define the relationship between the farmer and the worker/ dweller, as set out in paragraphs 1 to 4 above, hold in this regard as well.
6. After fifty years of disciplined service, the farm worker/dweller shall be entitled to fifty per cent share equity of ownership of the land; and, all the conditions as set out in paragraphs 1 to 4 above apply.
7. In the event that a farm worker/dweller failed to comply with the regime, as set out in the contract of disciplined service, the Farm Manager is obliged to take the matter up with the Land Rights Management Committee (LRMC). The LRMC must consider the matter carefully and advise on steps to be taken. In the event that a decision is rendered in which the farm worker/dweller is ordered to leave the farm, the Municipal Council must provide the evictee and family members with suitable accommodation, within a prescribed reasonable period of time.
  - (a) If the farm-dweller has not completed ten years of service, the ordinary conditions provided by South Africa's labour legislation shall apply.
  - (b) If the farm-dweller has completed ten years of service, and thus has earned tenancy rights, the LRMC must take this into account if determining that the farm worker/dweller must vacate the land.

### **3.2 Option 2: Amend Section 16 of the LTA to include all categories of people living and working on commercial farms**

The Second Option for strengthening the relative rights of people working and residing the land is to amend Section 16 of the LTA which allows labour tenants to claim land currently occupied by them for ownership. As the core focus of this proposed policy is on people currently residing and working the land within the freehold farming areas, the LTA amendment will allow the Minister of the DRDLR to invoke the expanded LTA provision in Section 16 to allow the re-opening of land claims by labour tenants. In this way, labour tenants will be enabled to acquire a certain amount of share on the land in which they live and work, thus expanding their ability to



participate on more equitable grounds in the farming enterprise and the rural economy in general. Section 4 of ESTA would suffice to achieve similar outcomes provided it is not compulsory.

**In addition this amendment will be used in complimenting other available options provided under the Land Tenure Security Policy for Commercial Farming Areas such as the Tenure Grant, Redistributive Grant, the RECAP policy, and the Agricultural Land Holdings Policy in ensuring comprehensive support is given to the farm dweller community.** The incentive reward for farmers here will entail a number of options as articulated in the Land Tenure Security Policy options on Farm Equity Schemes such as Agri-BEE scores, including prioritization in gaining tax exemptions (e.g. income tax, sales tax), subsidies for service provision and preferential procurement. In this way, Option 2 accomplishes both enhanced tenure secure and livelihood opportunities for people working the land, while also ensuring that agricultural enterprises receive state support to sustain or improve productivity.

## **4 LEGISLATIVE FRAMEWORK**

The DRDLR is reviewing the various options required to give effect to the above policy proposals and associated institutional reforms. One preliminary option proposed is the amendment of the LTA as discussed in Option 2 above. In addition, the DRDLR is also considering what amendments would be required to review other relevant laws such as ESTA to strengthen the relative land rights of farm workers/dwellers in Commercial Farming Areas as proposed in this policy.

## **5 IMPLEMENTATION STRATEGY OF THE POLICY**

### **5.1 Planning Methodology**

The DRDLR shall design an implementation plan to ensure compliance with the proposed measures to secure the tenure rights of farm workers in Commercial Farming Areas. As this policy is a subset of the proposed LTS that deals specifically with strengthening the relative

rights of people working the land through expanded land ownership, the proposed measures shall be integrated with other programmes and projects presented under the LTS. This shall involve the rationalization and reconfiguration of existing land tenure project plans to suit the proposed measures and institutional arrangements, within the requirements of, *inter alia*, the PFMA and Treasury Regulations. Programme implementation shall begin with testing of the proposed measures in the field, followed by the implementation of some pilot projects in certain Commercial Farming Areas.

**One important policy that the proposed measures are to be aligned with is the Agricultural Landholding Policy (in its final drafting phase), which, in its aims to realise the NDP's overarching goals of poverty eradication, reduction of inequality and job creation, proposes to redistribute land from large agricultural holdings to smaller operations owned by cooperatives and families while also improving efficiency, competitiveness and sustainability of all agricultural enterprises. Through such redistribution, it is envisioned that small farmers will be assisted in entering and participating (on relatively equal grounds) in mainstream agriculture. The proposed Agricultural Landholding Policy compliments the policy for strengthening the relative rights of farm workers and dwellers as ownership of large commercial farming landholdings can be shared between current owners and farm dwellers thus bringing the sizes of landholdings above the ceiling level into middle band landholdings without disrupting production.**

## **5.2 Monitoring and Evaluation**

The programme shall be monitored and evaluated by the DRDLR in accordance with best practice and compliance with statutory requirements. However, the Monitoring and Evaluation plan will be gender sensitive and shall entail public participatory procedures, involving relevant stakeholders and their structures.

### 5.3 Resources Required

Officials of the DRDLR will stipulate the resource implications of this plan as the policy development nears its completion. There are two main sources of financing of this farm worker equity programme:

- a) through the Land Reform Programme; and
- b) through own historical contribution by the farm worker/dweller.

It is crucial that the historical contribution of the farm worker be taken into consideration in attaining shares in land ownership. Thus the relative equity stakes recognize this full contribution, which the exploitative wages have denied the workers for all of those years. The contribution made by Government through the land reform programme is a further attempt at restoring the dignity of the farm worker who has suffered immeasurable loss and hardship due to such exploitation. Contribution by the state must go to further development of the farm. With the acquisition of equity by farm workers/dwellers must also come a fundamental change in the control mechanism of the farm. The acquisition of equity is, and must be viewed as, a fundamental game-changer. It introduces co-management of the farm, based on relative equity-holdings.

Thus, this policy requires equity holders to establish an **Investment and Development Trust (IDT)** that must be representative of all land shareholders involved in the farm, to the extent of their holdings. The DRDLR shall deposit its contribution into the IDT, not to the farm owner, as that would mean double compensation was received for land shares. The farm owner will benefit, like all others, from dividends allocated by the IDT. With this contribution, the government earns the status of Ex-officio member of the Trust and thus shall be entitled to place one State representative on the IDT.

This approach will introduce a system of collective ownership, based on relative equity holdings. However, although the government has full speaking rights in the IDT, it will not have voting rights. Voting rights shall remain the preserve of the equity holders.

Furthermore, **rather than a forced measure, this policy shall be voluntary for both farm owners and farm workers/dwellers, with the creation of incentives to encourage widespread participation.** Here the state shall design an incentives programme encouraging farm owners to play a critical role in assisting the state to improve the land rights of and service delivery to farm dwellers. Those farmers who support the development of new entrants into the farming sector, including the farm dwellers who benefit from redistribution, shall also be prioritized for incentivization.

Providing incentives to farm owners to support the enhancement of farm dwellers land rights will require a combination of financial outlays (e.g. under the RADP, ) enabling them to gain Agri-BEE status and subsequent tax exemptions (e.g. income tax, sales tax), subsidies for service provision and preferential procurement Such options and applications shall be managed in a public participatory, transparent and accountable manner to avoid prejudicing the land rights, social services and grants that may be due to farm dwellers, tenants and workers. Furthermore, this initiative shall not be a substitute for the redistributive and rights protection measures to be implemented, but shall complement such measures. Thus this proposed policy is part of a multi-pronged strategy to assist in land acquisition.