

CHAPTER EIGHT

THE RIGHT OF ACCESS TO LAND¹

Everyone has the right of access to land. The state must respect, protect, promote and fulfil this right and should thus take reasonable legislative and other measures, within its available resources to achieve its progressive realisation.²

POLICY MEASURES

Summary of Responses

National Level

In fulfillment of the right of access to land, the National Department of Land Affairs (hereinafter, National DLA) has implemented the land reform programme that includes land redistribution, land restitution and tenure reform. The departmental Policy Committee (POLCOM) approved sixteen policy documents whilst nine were returned pending further amendments.

The land redistribution programme is designed to assist the poor, labour tenants, farm-workers, women and emerging farm-workers. This policy makes it possible for poor and disadvantaged people to buy land with the help of government. To promote the right of access to land, significant policy measures have been developed under the land redistribution programme. The following were the policy developments implemented by the National DLA towards the progressive realisation of the rights pertaining to land:

- The policy and procedures for expropriation of land in terms of Act 126 and Extension of Security of Tenure Act (ESTA), 62 of 1997. This policy outlines a just and equitable approach to land expropriation, which directly benefits landless people.
- The land reform credit facility, which provides loans with a deferred repayment option for the development of commercially viable redistribution projects.
- The Post Transfer Production Grant aimed at improving the viability and sustainability of projects.

¹ Please note that the analysis of the right of access to land is based on the responses provided by the government departments.

² Section 25 (5) of the Constitution, Act 108 of 1996.

Furthermore, the National DLA instituted the following achievements of the policy measures. These are:

- Donations of immovable property to beneficiaries of the land reform. Beneficiaries are now exempt from the payment of donations tax. Landowners are empowered by this programme to make a positive contribution to land reform by donating portions of land to their workers.
- The transfer of funds for land reform projects to community-based organisations, which outlines the manner in which funds should be transferred.
- The flexible application of the balance of the Settlement Land Acquisition Grant (SLAG) that accommodates purchase of a broader range of agricultural inputs. Beneficiaries are able to use the balance of the grants to purchase agricultural input items that will increase the productive value of the land.
- The Department has increased the SLAG from R15 000 to R16 000 to allow households to purchase land directly from willing sellers, including the state.

The restitution of land rights means giving back land where possible to those people who were removed by force from their land. The policy measure developed is geared towards 'the delivery of restitution of land rights and the implications for development support for restitution beneficiaries'. This measure allows the land claimants to apply for an optional grant of R3 000 in order to manage land or the settlement of persons on land that has been obtained through a negotiated settlement.

Tenure reform provides people with secure tenure and prevents arbitrary and unfair evictions. The policy document approved during the reporting period in terms of tenure reform is the procedure for the registration of Communal Property Associations (CPAs) in terms of section 2(1)(a) of the Communal Property Associations Act, 1996 (Act No 28 of 1996). This programme enables a speedier transfer of land to CPAs, which are land entities formed by land reform communities. The appointment of title adjustment commissioners in terms of the Land Title Adjustment Act, 1993 (Act No.119 of 1993) was another policy measure developed in order to determine the person to whom land title should be transferred. It also gives legal authority for the transfer of ownership.

The Department indicated that the policies implemented were reasonable and effective but acknowledged that older persons, persons with disabilities and people with the Human/ Acquired Immunodeficiency Virus (HIV/AIDS) were not factored into the policy measures. The report also indicated that there has been considerable improvement in terms of delivery because the number of women participants in redistribution projects has increased.

In order to promote the right of access to land, studies have been conducted to determine the impact of policy measures developed through a Quality of Life

(QoL) survey and project assessments. The findings were used to improve the quality and sustainability of existing and future projects. These findings contributed to a policy review and procedural aspects of the programme.

Provincial Level

The Provincial Departments dealing with land issues did not provide information on their understanding of their specific duties in respect of the right of access to land. Only two provinces provided information, and these were Free State and Gauteng, while other provinces did not respond to the questions as asked in the protocols.

On one hand, the Free State Department of Agriculture (hereinafter, DoA) implemented the Community Project Fund Support Programme which is aimed at assisting farmers. The Gauteng province reported on the Gauteng Farmer Settlement Programme (GFSP), which provides for the redistribution of agricultural land to the vulnerable groups, and the Household Food Security Programme (HFSP), which utilises vacant, underutilised, and donated land for food production.

Commentary

National Level

Information provided by the National DLA indicated significant policy developments for the land reform programme, which emphasised land redistribution.

While the Department indicated that eleven policy measures were developed during the reporting period, only seven policies were reported upon. The policy developments³ not reported upon were as follows:

- The policy on exemption from payment of Transfer of Duty by land reform beneficiaries.
- Procedural guidelines for the development of small projects in order to simplify procedures and to reduce the amount of expenditure required in planning.
- A supply-led policy to allow the Minister to buy land and later dispose of it to beneficiaries who may not have been identified at the time of purchase.
- Policy and procedures for the transfer of funds to redistribution projects. The Department however is in the process of investigating the transfer of funds directly to beneficiaries.

³ Department of Land Affairs. *Annual Report*. (1998) 109.

The Department also did not report on redistribution courses presented regularly with an aim of updating personnel on new policy developments and to train new recruits as well. So far, 225 provincial office staff members attended the course.

The policy measures reported on showed the Department's awareness to promote and fulfill the right of access to land. This is evident in the redistribution programme which aims to assist vulnerable groups. The aim of this policy was to improve the quality and pace of the land reform programme, but this was not clearly indicated in the report. It is worth noting that almost all the policies listed by the Department were not explained in detail. For instance, the department indicated that it developed a policy geared towards delivery of restitution of land rights, but there was no indication on how this operates in order to ensure maximum benefit of the vulnerable groups in terms of the right of access to land. It also did not mention how these policy measures contributed towards the progressive realisation of the right of access to land.

Another point of concern relates to the problem that claimants encountered during the process of lodging land claims in relation to land restitution. The Department should have reported on how it promoted the right of access to land by indicating whether the policies informed vulnerable groups of the land reform programme, including the dissemination of information pertaining to land claims. However, to promote the right to land, the National DLA Annual Report indicated that the Department implemented the restitution "Stake your claim" 1998 campaign in order to inform potential claimants of their rights to lodge claims before 31 December 1998.⁴ There was national and regional media coverage for this purpose. Workshops, rallies and road shows were also organised in townships and rural communities and throughout the country. In so doing, people were reached and informed of the land programme and have come to appreciate the land restitution programme. The report submitted to the Commission should have indicated this initiative.

The National DLA ought to have addressed issues pertaining to traditional leaders who control large portions of land in rural areas. The Department should have reported on measures taken to make land accessible particularly to the vulnerable groups. It is a fact that many people are still without land and large areas of land are not utilised. The report should have indicated how the Department plans to use privately owned land that is no longer in use for the promotion of the right of access to land.

The reasonableness and effectiveness of policy measures provided by the Department were not shown in the report. The Department arrived at a conclusion that its policy measures were effective due to the fact that women were involved, whereas this is not the case. The Department should not have measured the effectiveness of the policy measures developed solely on the basis

⁴ Department of Land Affairs. *Annual Report*. (1998/1999) 104.

of the involvement of women, but should also indicate the number of vulnerable groups that benefited from this project and the accomplishments made in realising the right of access to land.

Attempts to provide an explanation on what studies have been conducted to assess the impact of the policy measures through the QoL would have helped in assessing the effectiveness of these studies. The report mentioned that the findings of the studies conducted will be used for policy review and procedural aspects of the programme, but there is no clarity on what those findings are, and how these will fit in policy developments. The report ought to have indicated how vulnerable groups benefited from these studies and how these policies assisted these groups in realising the right of access to land.

Provincial Level

The information furnished by Free State and Gauteng provinces lacked sufficient detail to allow a meaningful assessment of the right. Consequently a coherent description of what each Provincial Department views as its specific role and functions in realising the right to land was not provided.

The provincial departments that failed to report on the right of access to land maintained that land issues fall within the competency of the National DLA and not of the provinces. This is not correct because provincial governments have the responsibility in a number of functional areas that are closely linked to land matters. For instance, the White Paper on South African Land Policy 1998 indicated that the chief purpose of provincial governments concern the implementation of the land reform programme. The exact form of these departments' functions and relationships will be determined by the conditions specific to each province. Provincial departments have the general responsibility to perform functions relating to land matters and these include:

- Provincial legislative programmes in respect of Schedule 4 functions of the 1996 Constitution of the Republic of South Africa;
- Executive authority assigned or delegated by the President or the Minister for Agriculture and Land Affairs;
- Powers of attorney or agency agreements;
- To provide the delivery of land-related services where third tier government is not available or unable.⁵

The provincial departments also perform tasks related to the implementation of the National Land Reform Programme. This entails the integration of land reform projects into regional, urban and rural development plans where no local government capacities exist. Another task is the development and administration of settlements established for beneficiaries of land reform projects; and the

⁵ Department of Land Affairs. *White Paper on South African Land Policy*. (1998) 99.

provision of ongoing support, development assistance and administrative services to settled communities.

In addition, the responsibility of the provincial governments might be located within one department, or may be split between different departments in the same province. In view of the responsibilities of the departments, this suggests that relevant provincial government departments have a mandate to execute land matters. The departments are therefore not absolved from reporting to the South African Human Rights Commission. The provincial departments should thus have reported on the activities carried out in their respective provinces. Furthermore, indication on the effectiveness and reasonableness of measures instituted to address the needs of vulnerable and previously disadvantaged groups is essential to assess the progressive realisation of the right of access to land. There was no adequate information provided by most provincial departments in this regard.

Recommendations

- The National DLA should indicate the shortcomings of policy measures that are instituted to respect, protect, promote and fulfil the right of access to land.
- The departments should indicate the effectiveness and reasonableness of the policy measures implemented.
- The reports submitted by government departments should clearly indicate the period within which respective policy measures were instituted.
- The departments should report on how vulnerable and formerly disadvantaged groups benefited from the measures instituted in realising the right of access to land.
- The National DLA should assess the role of traditional leaders in relation to the land rights.
- Clarity on the role of different spheres of government on land rights is required. Assignments and delegations are desirable for either sphere of government.
- Provincial governments' responsibility for land matters should be clearly identified and staff capacity created to carry out the necessary functions.
- Close co-operation between National, Provincial and Local Spheres of Government is essential to ensure that beneficiaries of land reform enjoy services provided by the provinces as envisaged by Schedule 4 and 5 of the Constitution,⁶ and to ensure the most appropriate and effective use of land.

⁶ *Ibid* 16.

LEGISLATIVE MEASURES

Summary of Responses

National Level

The National DLA has undertaken several amendments to legislation with a view to expedite the land reform process and delivery. The Provision of Land and Assistance Act 126 of 1993, formerly called the Provision of Certain Land for Settlement Act, No 26 of 1998, was amended in 1998 to provide more benefits to participants and a framework for speedy land delivery. Through these amendments, the relevant Minister is empowered to grant financial assistance for the acquisition, development and improvement of land or to secure tenure rights.

The Land Affairs General Amendment Act 61 of 1998 was enacted to amend the laws that were administered by the Department of Land Affairs. This law has amended the following pieces of legislation in 1998:

- Upgrading of Land Tenure Rights Act of 1991; to make it applicable to the whole country;
- Restitution of Land Rights Act of 1994; to provide for secondment of officers to the Land Claims Commission;
- Land Reform Act of 1996; to give authority to the Land Claims court to determine whether a person is a labour tenant or not;
- Communal Property Associations Act of 1996; to provide for further delegation to the CPAs;
- Interim Protection of Informal Land Rights Act of 1996; to give authority to the Minister to extend application of this law;⁷
- The Land Survey Act 1997; to rectify the difference between English and Afrikaans texts, and to make a division of survey related responsibilities, and
- Extension of Security of Tenure Act of 1997, to extend the definition of “court” to include special tribunals established under Special Tribunals Act of 1996.

The Transformation of Certain Rural Areas Act 94 of 1998 repealed the Rural Areas Act of 1987 by removing restrictions on the alienation of land. The former law provides for the transfer of land to municipalities and other entities, and puts fiduciary and management responsibilities on municipalities so that they become accountable to the people under their jurisdiction and to include them in decision-making regarding the transferred land.

The Deeds Registry Amendment Act 93 of 1998 was also passed during the present monitoring period. Regulations in terms of the Extension of Security of Tenure Act 62 of 1997 were promulgated in December 1998.⁸ The act regulates

⁷ The application of this law was due to end in December 1998, but was extended to December 1999. The IPILRA protects people with informal rights to land, such as tribes, land invaders and occupiers of land under the homeland system.

⁸ See Government Notice No. R1632 of 1999.

just and fair procedures for eviction from land, and makes unlawful eviction a criminal offence punishable by a fine or a term of imprisonment.

Provincial Level

The majority of provincial departments that deal with land issues have not submitted reports on legislative measures. The Eastern Cape asserted that it does not have the competency to deal with issues relating to legislation on land. Mpumalanga is the only province that has reported on legislative measures instituted during the reporting period. The Mpumalanga Land Administration Act 5 of 1998 was passed to promote the right to gain access to land in terms of making it possible for the transfer of land from the provincial government to municipalities. The main purpose of this Act is to provide for the acquisition and disposal of land owned by Mpumalanga Provincial Government and to provide for matters connected thereto. The Mpumalanga Department of Housing and Land has made it possible for the passing of the Mpumalanga Land Development Objective Regulations. These regulations oblige the municipalities to compile land development objectives in their respective jurisdictions. Public participation is essential in compiling the land development objectives. The final objectives are only revisable once a year over a period of five years.

Commentary

National Level

The National DLA has generally provided reasonable information on the laws that were enacted to realise the right of access to land. However, it has not covered crucial issues such as land restitution,⁹ land redistribution and procedures regarding just compensation in cases of expropriation. The report only placed emphasis on land tenure reform. These issues are seminal to the entire land reform process.

Furthermore, although it was reported that in terms of the Provision of Certain Land for Settlement Act 26 of 1998, the Minister is empowered to grant financial assistance for acquisition, improvement and development of land, the Department did not indicate the criteria for awarding such grants. According to section 5(2) (a)-(c) of the Act, the Minister may grant financial assistance to persons that do not have access to land or those that wish to improve the conditions under which they live, and those that were dispossessed of land but do not have a right to land restitution.

⁹ Minister of Agriculture and Land Affairs tabled the Amendments to the Restitution Act 22 of 1994 before Parliament in February 10, 1999. These Amendments were intended to shift emphasis from a judicial to an administrative process in dealing with restitution claims. Presently, the Land Claims Court deal with all claims. It is believed that this paradigm shift will expedite delivery of land restitution. For more information, see Commission on Restitution of Land Rights. *Annual Report* (1999) 31.

The National DLA has proposed the Land Rights Bill of 1999.¹⁰ According to this Bill, a system of land rights management in which right holders themselves manage their own land rights, shall be introduced. Land rights will thus vest in the persons who occupy the land and not to institutions such as traditional authorities and municipalities.¹¹ The report has failed to mention this important legislative proposal. This proposed law is crucial for the recognition of people's right of access to land. The same applies to the Sub-division of Agricultural Land Act Repeal Act 64 of 1998,¹² which was also excluded from the report. The purpose of this law is to repeal laws pertaining to the sub-division of agricultural land, and to provide for matters connected therewith.

There are a number of challenges facing the government with regard to the restitution, redistribution and security of land tenure.¹³ The report of the National DLA does not indicate any measures taken for the provision of legal assistance to people making claims, and to simplify procedures for making claims. The question of redistribution was excluded from the report. Therefore, the challenge is to release state land to effect positive redistribution. Many people are insecure about their tenure of land because of past racially discriminatory laws. The protection of these people should be provided for in terms of legislation referred to in section 25(6) of the Constitution.¹⁴ The report is not clear as to whether the particular law has already been passed or is still being developed as required by the Constitution.

The general quality of the national report is reasonable in terms of appreciation and comprehension of the right. However, the question of the progressive realisation of the right of access to land was not adequately dealt with. The constitutional obligations to respect, protect, promote and fulfil were not dealt with adequately. Further, there is no indication as to how the legislative measures have advanced the land reform process. In terms of the land reform, which was introduced by the government in 1994, the government must take reasonable legislative and other measures, within its available resources, to foster conditions that enable citizens to gain access to land on an equitable basis.¹⁵

Provincial Level

Almost all of the provinces have failed to submit reports on legislative measures for the realisation of the right of access to land. The Eastern Cape's assertion that legislative competency is only vested in the National DLA is not correct. Though there are no specific Provincial Departments of Land Affairs, the National

¹⁰ Tenure Newsletter, vol. 3, January 1999.

¹¹ *Ibid.*

¹² This law was assented to in September 16, 1998, but has not yet entered into force.

¹³ The *National Action Plan for the Promotion and Protection of Human Rights* (1998) 116-7.

¹⁴ The Constitution obligates Parliament to enact laws as provided in section 25(6).

¹⁵ Section 25(5) of the Constitution. The objectives of the Land Reform Process should be considered when laws pertaining to land are enacted.

DLA has regional offices in each province. These offices have the obligation to report on legislative measures pertaining to land in each province. From the interpretation of Schedule 4 and 5 of the Constitution,¹⁶ land is a functional area of which legislative competency is only vested in the national government. However, section 14(1) of Schedule 6 of the Constitution provides for assignment of legislative powers to the provinces by the President by way of a proclamation. This empowers the provinces to make laws regarding any matter listed in Schedule 4 and 5, which when the new constitution came into force, was administered by an authority within national executive. Land is an example of such matters, hence the Mpumalanga province passed the Mpumalanga Land Administration Act 5 of 1998, as well as the Mpumalanga Land Development Objective Regulations.

The Free State province has also passed the Free State Land Administration Act 107 of 1998 with the same purpose as that of Mpumalanga. There is also the Gauteng Land Administration Amendment Act of 1997 that provides powers to the Premier to expropriate land and to regulate the registration of land. The preamble of the Western Cape Land Administration Act 6 of 1998 provides that “whereas the province is the repository of legislative powers incidental to the powers vested in it in terms of Schedule 5 of the Constitution...” In conclusion, the provinces are not entirely without legislative competency to deal with land issues.

Recommendations

- Legislative measures include laws that are still being developed, such as Bills and Regulations. The National DLA should provide all information on what it is doing in terms of advancing the progressive realisation of the right of access to land.
- In the process of instituting legislative measures, the National DLA should consider the challenges outlined in the National Action Plan for the Promotion and Protection of Human Rights.
- The constitutional obligations to respect, protect, promote and fulfil as entrenched in the Constitution should be accounted for.
- The provincial governments should provide information on legislative measures in terms of section 184(3) of the Constitution.

¹⁶ Act 106 of 1996.

MONITORING

Summary of Responses

National Level

The minimum standards to define adequate access to land were not defined by the National DLA.

To monitor the progressive realisation of the right to land, the Department collected the following statistical data:

Redistribution

- Number of households involved;
- Number of female-headed households involved;
- Number of hectares involved; and
- Cost per project.

Restitution

- Numbers of claims lodged;
- Numbers of claims gazetted;
- Numbers of claims settled;
- Numbers of households affected; and
- Cost of settlement in terms of restoration and financial compensation.

Tenure Reform

- An Eviction Monitoring System is used to monitor tenure reform programmes.

The data is 'desegregated according to milestones in the project cycle, geographical location of the provinces or according to product type, which includes land for settlement or production'.

The National DLA indicated that the Monitoring and Evaluation (M&E) program exist. This is used as a tool for providing information and analysis to managers and implementers of land reform at a national, provincial and project level. This program consists of the Core Project Data (CPD) system, which is used to 'track projects through determined project cycles'.

The "Quality of Life" (QoL) Survey is another element used to monitor and evaluate the progress and impact of Land Reform Programmes on its beneficiaries according to various socio-economic variables. The household questionnaire is used to obtain data on the socio-economic life circumstances of rural households. The guidelines are in relation to age, gender, education, residence, and activity, income and expenditure patterns, wealth (as measured by assets and credit), employment, land use and agricultural production.

Other forms of data collection used are:

- Community Questionnaire (CQ)- which contains specific questions on local food prices, communal projects, community institutions and communal agricultural activities;
- Qualitative Appraisals (QA)- used to monitor programme implementation and the impact thereof;
- Environmental Impact Assessment (EIA)- used as a tool to measure the impact of land reform programmes; and
- Diagnostic Evaluation Studies (DES)- used for a quantitative appraisal of the implementation of programmes.

Provincial Level

The provincial departments dealing with land issues did not furnish information to assess how the progressive realisation of the right to land is monitored. It was reported that a Monitoring and Evaluation (M&E) Unit has been established to monitor progress of the provincial departments in terms of the delivery of land rights.

Commentary

National Level

A crucial point indicated by the National DLA is that monitoring tools such as M&E, CPD, QoL, EIA, DES, CQ, QA have been developed. This is a critical step in evaluating progress in terms of the delivery of land rights. However, the National DLA should have provided more detailed information on how these systems operate. It would also be useful to obtain further information on the effectiveness of these monitoring systems for the progressive realisation of the right of access to land.

The size of land needed per family as requested in the protocols was not indicated nor the standards to define adequate access to land. This would have assisted in assessing the promotion of the right of access to land.

While statistical data on redistribution, restitution, and tenure reform were collected, the Department did not provide in detail how it monitored progress regarding the right of access to land. Furthermore, the National DLA reported that an Eviction Monitoring System is in place to monitor the tenure reform programme, but the manner in which this system operates was not indicated.

Regarding objectives of redistribution to improve the pace and quality of land redistribution, the Department failed to indicate how it planned to improve this programme. It also failed to show progress in terms of what has been reported

upon namely the 'milestone in the project cycle, geographical location and product type'. However, according to the National DLA Annual Report progress recorded in land redistribution is tracked in terms of the number of projects, households and hectares that have been designated.¹⁷ This indicates progress, which has been achieved over the years in terms of land redistribution.

Provincial Level

Whilst the provincial departments consider land rights as the competency of the National DLA, the national department maintains that the provincial departments are to a certain extent bound to the constitutional obligations.¹⁸ The respective provincial departments reported that the M&E unit monitors the activities, policies, programmes and projects of the national and provincial departments. Nonetheless, the National DLA Annual Report only reported on the activities of the M&E unit and accomplishments instead of indicating how it monitors the land programme.

In terms of the quality of the report, the report is not satisfactory as the provincial departments failed to indicate how the progressive realisation of the right of access to land is monitored.

Recommendations

- The departments should report on the minimum standards or size of land needed per family.
- A detailed account of indicators of the size of land required should be clearly outlined.
- The provincial departments should provide an explanation on how they monitor the progressive realisation of the right of access to land rather than referring to the M&E unit.

BUDGETARY MEASURES

Summary of Responses

National Level

The National DLA defined the budgetary allocation for the right of access to land as 'capital funds' spent on land reform programmes. However, the Department believed that supplementary spending on other projects such as deeds registration and surveys contribute towards the realisation of the right. Hence the

¹⁷ *Ibid*, 109.

¹⁸ Please refer to policy section.

National DLA presented the budgetary allocation in terms of capital costs and total costs (See Table 1).

Table 8.1: National Department of Land Affairs Expenditure on the Realisation of the Right of Access to Land

Period	Spending on realisation of the right to land – capital expenditure on redistribution, tenure reform and restitution	Total DLA spending on the right to land, including deeds registrations, surveys, and all other costs
1996-1997	90 669	276 682
1997-1998	191 876	417 198
1998-1999	288 971	717 938
1999-2000 ¹⁹	387 271	761 320
2000-2001	489 852	846 504

The report indicated that the 1999/2000 land reform budget was insufficient constituting only 0.34 % of the national budget.

Provincial Level

The table below indicates budgetary allocations for the realisation of the right to land between 1996 and 1999 for the Gauteng province.

Table 8.2: Gauteng Department of Agriculture Expenditure on the Right of Access to Land

Period	Budget (000)	Spending on the realisation of the right to land ('000)	Department's spending
1996-1997	28 095	7 187	40 743
1997-1998	18 737	18 687	64 554
1998-1999	25 903	14 980	93 992

In Mpumalanga, the budget for the realisation of the right of access to land was R22 million in 1997/1998. In 1998/1999 the budget was drastically reduced to R15 million. During 1997/1998 the spending on the realisation of the right to land constituted 10% of total Departmental spending, while in 1998/1999 it constituted 11% of total spending.

¹⁹ Budgetary figures presented for 1999-2000 and 2000-2001 represent planned expenditure.

The Mpumalanga Department's focus was on people living in rural areas, informal settlements and previously disadvantaged racial groups, such as Africans, Coloureds and Indians.

The Eastern Cape, Free State, KwaZulu Natal, Northern Cape, Northern Province, North West, and Western Cape Provinces failed to provide budgetary allocations for the realisation of the right to land.

Commentary

National Level

The National DLA did not provide a satisfactory response in that all the questions asked in terms of the budgetary allocations of the realisation of the right to land were not answered.

Table 1 indicates that the National DLA has progressively increased funding for land reform programmes from 1996-2001. Nevertheless, the Department believes that funding for land reform was insufficient, as only 0.34 % of the national budget was allocated for land reform for 1999/2000.

A shortcoming of the response by the National DLA was that it was unable to provide information on the financial resources that were committed towards the realisation of the right amongst the different categories of the previously disadvantaged groups.

Provincial Level

Only Gauteng and Mpumalanga responded on budgetary allocations that were committed for the progressive realisation of the right of access to land. Gauteng spent R18 million on the realisation of the right to land whereas Mpumalanga spent R22 million for 1997/1998. However, budgetary allocations were drastically reduced to R14 million for Gauteng and R15 million for Mpumalanga respectively during the reporting period. It is worth noting that for Gauteng province, almost 100% of the budget for the realisation of the right to land was spent in 1997/1998, while less than half of 14 million was spent in 1998/1999. Thus, even though not specifically requested, it would have been useful if the provincial departments indicated where the bulk of the money was spent on during the period under review. Further, the provincial departments should also indicate if their financial resources were adequate to provide for the right of access to land.

Whilst Mpumalanga reported that the departments' focus was on the vulnerable and disadvantaged groups, the National and Gauteng Departments dealing with land issues did not account for the impact of the budgetary allocations on the previously disadvantaged groups as requested in the protocols. The departments did not also provide an account for monetary changes in the allocation of funds

between different financial periods. Hence, the information provided was not satisfactory.

The provincial departments in the Eastern Cape, Free State, KwaZulu Natal, Northern Cape, Northern Province, North West, and Western Cape did not make submissions on budgetary allocations for the realisation of the right to land. This rendered the evaluation process difficult, especially because information could not be found from other sources. These provinces should have provided information on the financial resources that were provided for the fulfillment of the land reform programme.

Recommendations

- It is essential that the national and provincial departments provide information on the financial resources that were committed for the different components of land reform programmes.
- The departments must provide a specific explanation of how the different categories of the previously disadvantaged groups benefited from the resources allocated for the realisation of the right of access to land.
- The departments should account for monetary changes in the allocation of funds between different financial periods.

5. OUTCOME MEASURES

Summary of Responses

National Level

The National DLA provided information on the restitution, redistribution and tenure programmes. In terms of redistribution and tenure reform programmes, 494 projects were approved between April 1994 to October 1999. These projects benefited 56 760 households. Of the households that benefited, 7 278 of them were female headed and the programme resulted in the distribution of 1,4 million hectares of land.

By November 1999 the Department had under the land restitution process, restored land to 13 930 households, at a cost of R46 million for 264 868 hectares of land. Financial compensation of R32 million was given to 969 households. In total, the Department had in its restitution process settled 784 claims that benefited 14 899 households, translating to 89 518 people at a total cost of R78 million.

Provincial Level

Most provincial departments dealing with land issues failed to respond to the questions as requested in the protocol. Those who responded did not provide clear information to enable the Commission to make a proper analysis.

Commentary

National Level

The National DLA did not provide information on

- The number of rural households which do not have access to land for farming;
- The number of households that were removed from their land since 1913 and have not been compensated; and
- The area of state owned land and the area of land, which is not in use.

No explanation was given as to why this information was not provided.

The National DLA Annual Report reveals that between 1994 and 31 December 1998, 54 218 land restitution claims had been lodged with the DLA.²⁰ Of all these claims, 20 % of them were from rural areas, and the other 80 % were claims made in the urban areas. The Department had managed to verify and gazette 3 915 claims, and about 284 of the claims made were dismissed. The report further stated that by the end of 1998, 26 claims had been resolved, thus enabling 11 359 households to be beneficiaries of 167 534 hectares of land. In addition, at the end of 1998, 60 claims were presented before the Land Claims Court.²¹ By April 1999 about 264 615 hectares of land had been transferred to disposed families and communities at a cost of R50 million.²²

The South African Yearbook indicated that the complexity of the restitution process has led to the slowing down of the restitution process.²³ Because of this slowness, the Minister instituted a review of the entire process to investigate problems affecting the pace of delivery on the resolution of claims. The review included the investigation of the legislative framework on restitution, the structures and process, and all the institutions involved in the implementation of the restitution projects.²⁴

²⁰ National Department of Land Affairs, *Annual Report*. (1998/1999) 89.

²¹ *Ibid*, 89.

²² Burger, D (ed) *South African Yearbook* (1999) 358.

²³ *Ibid*, 358-359.

²⁴ *Ibid*, 359.

Provincial Level

It appeared that the provincial departments did not respond to the questions due to conflicting responsibilities between national and provincial departments. The provincial departments maintained that land rights are the competency of the National DLA, whilst the National Department indicated that provincial Departments are responsible for certain aspects of land delivery such as administrative issues and therefore are bound by constitutional obligations. This was also supported by the National DLA Annual Report which showed that the Mpumalanga province had nine designated distribution projects in 1998, which involved 1 068 households.²⁵ The total number of people who have benefited from the distribution programme in Mpumalanga was 34 000, which involved about 32 163 hectares of land. The Department had a further 140 projects underway, and they were in the pre-planning stage. The Mpumalanga Department of Land Affairs together with the Land Claims Commission had about nine restitution claims lodged. Out of these claims, four claims benefited 30 000 households.

For the monitoring period 48 applications were received through the redistribution programme, 146 labour tenant cases were registered, 110 eviction cases were dealt with. With the help of the Land Claims Commission the Provincial Department managed to handle 15 cases on redistribution and 35 tenure cases were registered during 1998. This suggests that the provincial departments also have a mandate to provide information on how the programmes implemented in the province promoted the right to land, and whether these programmes have taken into consideration the vulnerable and disadvantaged groups.

Recommendations

- The departments need to provide complete and relevant information to enable a proper analysis of the situation in the provinces.
- The departments need to provide information as requested in the protocol, and provide reasons when information cannot be provided.
- Explanatory notes need to accompany the figures provided; especially with regards to the information on the sites made available to people previously denied access.
- The departments must provide information regarding the number and profile of people or households who were assisted.
- The departments should provide information as requested by the Commission in terms of its constitutional obligation provided by section 184(3) of the Constitution.

²⁵ National Department of Land Affairs. *Annual Report*. (1998/1999) 147.

LIST OF ABBREVIATIONS

CPAs	Communal Property Associations
CPD	Core Project Data
CQ	Community Questionnaire
DES	Diagnostic Evaluation Studies
DLA	Department of Land Affairs
DoA	Department of Agriculture
EIA	Environmental Impact Assessment
ESTA	Extension of Security of Tenure Act
GDP	Gross Domestic Product
GFSP	Gauteng Farmer Settlement Programme
HFSP	Household Food Security Programme
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome
IPILRA	Interim Protection of Informal Land Rights Act
M&E	Monitoring and Evaluation
POLCOM	Policy Committee
QA	Qualitative Appraisals
QoL	Quality of Life
SLAG	Settlement Land Acquisition Grant
UDHR	Universal Declaration of Human Rights

LIST OF TABLES

TABLE 8.1: National Department of Land Affairs Expenditure on the Realisation of the Right of Access to Land.

TABLE 8.2: Gauteng Department of Agriculture Expenditure on the Right of Access to Land.

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