

**Paradigm Shift from Land Redistribution to use of Redistributed  
Land for Poverty alleviation and Sustainable Development in South  
Africa: a critical Legal insight**

By

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### **Declaration by Promoter**

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I, Precious Sihlangu, declare that 'Paradigm Shift from Land Redistribution to use of Redistributed Land for Poverty alleviation and Sustainable Development in South Africa: a critical Legal insight' hereby submitted, has not previously been submitted by me for a degree at this or any other University, that it is my own work in design and execution and all materials contained herein has been duly acknowledged.

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Dated:

## **DEDICATION**

I dedicate this thesis to my mother Grace Hlamalani Ndlovu, it is with your love and prayers that I stayed motivated. I appreciate all your sacrifices and the support you continuously give me.

To my husband Kgaugelo Eddie Thulare your love, patience, prayers and support have kept me focused and determined.

To my precious kids Kamogelo and Kearabetswe Thulare your presence in my life keeps me focused.

Last but not least to my Late Father Bennet Victor Sihlangu, I dedicate this thesis to you, and I am pleased to have lived your dream to acquire a doctoral degree. Your love for academia will continue to inspire me to study a little bit more, this is in your name, Champion Father.

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## LIST OF ACRONYMS

ABC-Agricultural Business Chamber  
ADFA-Agricultural Development Fund Act 175 of 1993  
ADP-Agricultural Development Programmes  
AFASA-African Farmers Association  
Agri SA-Agri South Africa  
ALPF-Agricultural Landholding Policy Framework  
ANC- African National Congress  
APSA-Agricultural Products Standards Act 119 of 1990  
ARBLA-Abolition of Racial Based Land Measures Act 108 of 1991  
ARC-Agricultural Research Council  
AZAPO- Azanian People's Organization  
BLAA- Black Law Amendment Act  
CASP-Comprehensive Agricultural Support Programme  
CBN-Central Bank of Nigeria  
CLARA -Communal Land Rights Act  
CLRA-Communal Land Rights Act of 2004  
CLRB – Communal Land Rights Bill  
CODESA- Conversion for a Democratic South Africa 1991  
CPAA-Communal Property Association Act 28 of 1996  
CPA-Communal Property Association  
CPI - Communal Property Institutions  
CRDP- Comprehensive Rural Development Programme  
DADA-Designated Areas Development Act 87 of 1979  
DAFF-Department of Agriculture, Forestry and Fisheries  
DBSA-Development Bank of South Africa

DFA-Development Facilitation Act of 1995  
DFT-Development Facilitation Tribunal  
DG-Director General  
DLA - Department of Land Affairs  
DLDLR -Department of Rural Development and Land Reform  
EA- Expropriation Act 63 of 1975  
EIB-European Investment Bank  
ESTA-Extension of Tenure Act 82 of 1997  
FC- Freedom Charter  
FTLRP-Fast Track Land Resettlement Policy 1999  
GAA-Groups Areas Act 56 of 1966  
GATT-General Agreement on Tariffs and Trade  
GDP-Gross Domestic Products  
GPLR-Green Paper on Land Reform 2011  
HDSA-Historical Disadvantaged South Africans  
IBRD-International Bank for Reconstruction and Development  
ICCPR-International Covenant on Civil and Political Rights  
ICESCR-International Covenant on Economic, Social and Cultural Rights of 1966  
IDC-Industrial Development Corporation  
IDP-Integrated Development Plan  
IFAD-International Fund for Agricultural Development  
IMF-International Monetary Fund  
IPLRA-Interim Protection of Informal Land Rights Act 31 of 1996  
LADBA-Land and Agricultural Development Bank Act 15 of 2002  
LARD- Land Redistribution for Agricultural Development  
LRLT-Land Reform Labour Tenants Act 3 of 1996  
LUMB-Land Use Management Bill  
LUMS-Land Use Management System

MA-Marketing Act 59 of 1968

MEC-Minister of Executive Council

MIGA-Multilateral Investment Guarantee Agency

MPRDA-Mineral and Petroleum Resources Development Act 28 of 2002

MTSF-Medium Term Strategic Framework

NAFU-National African Farmers Union of South Africa

NALDA-National Agricultural Land Development Authority

NDB-New Development Bank

NDP-National Development Plan

NGO-Non-Government Organisation

NLA- Native Land Act 27 of 1913

NLIS-National Information System

NSCA- Native Service Contracts Act 1932

NTLA-Native Trust and Land Act 18 of 1936

OHCHR-Office of the United Nations High Commissioner for Human Rights

PAC- Pan Africanist Congress

PALA-Provision of Land and Assistance Act 126 of 1993

PDA-Provincial Department of Agriculture

PGC -Provincial Grants Committee

PIE-Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998

PLAS-Proactive Land Acquisition Strategy

PLROs -Provincial Land Reform Office

PPECA-Perishable Products Export Control Act 9 of 1983

PTO-Permission to Occupy

RADP-Recapitalization and Development Programme Policy 2001

RDP- Reconstruction and Development Programme of 1994

RDPP-Recapitalisation and Development Programme Policy

RIDFF- Rural Investment and Development Financing Facility

RLA-Restitution of Land Rights Act 22 of 1994  
RLRA-Restitution of Land Rights Act 22 of 1994  
SADT-South African Development Trust  
SANC-South Africa Convention  
SANNC-South African Native Congress  
SLAG-Settlement Land Acquisition Grants  
SLDP-State Land lease and Disposal Policy 25 July 2013  
SLP-Social Labour Plans  
SPLUMA-Spatial Planning and Land Use Management Act 16 of 2013  
TBVC-Transkei Bophuthatswana, Venda and Ciskei  
TBVC-Transkei, Bophuthatswana, Venda and Ciskei  
TCRAA-Transformation of Certain Rural Areas Act 94 of 1998  
TEM-Transworld Energy and Mineral Resources (SA) (Pty) Ltd  
TPTO-Town Planning and Township Ordinance 15 of 1986  
UDHR-Universal Declaration of Human Rights of 1948  
UIF-Unemployment Insurance Fund  
ULTRA - Upgrading of Land Tenure Rights Act 1991 (Act 112 of 1991)  
UNIDO-United Nations Industrial Development Organisation  
UNIDRIP-United Nations Declaration on the Rights of Indigenous Peoples  
UN-United Nation  
WPLP-White Paper on Land Policy 1997  
WTO-World Trade Organisation

## **ABSTRACT**

Access to land in South Africa has become a pressing concern and one that needs special attention. This is so despite the advent of democracy in 1994 which brought legislative frameworks and other measures promoting access to land. This study seeks to demonstrate the importance of accessibility of land to ensure realization of socio-economic rights through productive use of land and consequently contribute to poverty alleviation and sustainable development in South Africa. The study examines adequacy of access to land and productive use of such land by evaluating the effectiveness of delivery of land reform program. The study emphasises that productive use of land should be strengthened in order to ensure acceleration of realization of sustainable socio-economic rights such as provision of food and better living conditions for land reform beneficiaries. The study further encourages the need to strengthen legislative measures and compliance in order to improve the delivery of post-settlement support services to land reform beneficiaries. The Legislation such as Restitution of Land Rights Act, Provision of Land and Assistance Act , Extension of Security tenure Act and Land Adjustment Act were promulgated and mainly aimed at addressing and regulating the allocation or distribution of land to persons or communities who were previously dispossessed of their land and further made provisions for instances where one or more persons claim ownership of land, but do not have registered title deeds in respect thereof, and to provide for incidental matters. There is a need for radical enforcement of laws, legislation, and regulations promoting access to land through restitution, redistribution and strengthening tenure reform in order to realize the delivery and enjoyment of socio-economic rights through productive use of land. This study reviews laws and regulations in an attempt to utilize land as a tool to alleviate poverty and accelerate sustainable development in South Africa, which will enable people to gain access to essential services particularly in rural areas. Therefore, there is a need to ensure that redistributed land is used productively to improve the lives of land reform beneficiaries.

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## CHAPTER ONE

### OVERVIEW OF THE STUDY

#### 1.1 Introduction

South African communities, particularly the rural areas remain the extremely penurious societies in the country experiencing restricted access to land, poor education, lack of employment, and lack of adequate housing, poor health services and other essential social amenities. Sometime where there is access, the services being provided are poor and of low quality.<sup>1</sup> However, it is pertinent to point out that the current level of poverty in South Africa is linked to lack of ample access to land, whether for agricultural purposes or for other developmental purposes, predominantly by the Previously Disadvantaged Black South Africans. According to May, poverty is the dire aftermath of the apartheid policy which took from people their valued property, particularly land.<sup>2</sup> This stripping of land from Black people was formalised by the introduction of the Native Land Act 27 of 1913 (NLA), which barred Black people from buying, let alone owning land. The Act was given effect to by section 1 of the NLA which provided that the natives were not supposed to enter into any agreement to purchase, hire or acquire land from any person even from a fellow native.<sup>3</sup>

However, since the inception of the constitutional democratic South Africa in 1994, focus and energy have been directed towards land reform. This has been mainly to redistribute the land that was illegally taken away from the rightful indigenous owners through the land reform programmes. The attempt was aimed at eradicating the injustices and inequalities of apartheid and to alleviate poverty. However, even to date, the majority of rural areas in South Africa still experience extreme impoverishment and development in these poverty-stricken communities is very low.<sup>4</sup>

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<sup>1</sup> Mohan Gopaul, the significance of rural areas in South Africa for tourism development through community participation 2004.

<sup>2</sup> Julian May and Juby Govender, "Poverty and inequality in South Africa," Indicator South Africa 15 (1998), 53-58.

<sup>3</sup> See section 1 of the Natives Land Act 27 of 1913.

<sup>4</sup> Adams Martin, Ben Cousins, and Siyabulela Manona, "Land tenure and economic development in rural South Africa: constraints and opportunities." At the crossroads: land and agrarian reform in South Africa into the 21st century. Papers from a conference held at Alpha Training Centre, Broederstroom, Pretoria, South Africa, 26-28 July 1999. Programme for Land and Agrarian Studies (PLAAS), 2000.

Moreover, the majority of South African households are faced with absolute poverty and most of the households are faced with the possibility of outright poverty—this is despite South Africa being an upper middle income.<sup>5</sup> According to Matandare, residents of middle upper middle income countries enjoys high or better living standards than those in lower income countries.<sup>6</sup> However, this is not the reality in South Africa, the country is still faced with severe poverty lifestyles particularly amongst the historically disadvantaged black people.

Furthermore, the dispersal of earnings and wealth in South Africa is amongst the recorded uneven incomes globally and numerous homes continue to have inadequate access to clean water, energy, health care and education.<sup>7</sup> There are still lack of broad development infrastructure in the rural communities despite the fact that Apartheid was abolished since 1994. Although, land for developmental projects have been made available through land redistribution, failure to utilise redistributed land in a productive way and manner has consequently led to the afore-mentioned state of poverty in South Africa. When Black people were dispossessed of their land, they did not only lose possession of their land, but lost their means of livelihood. Black people relied on land to fend for their families, land was their only means of providing food for their families. However, the colonial land dispossession robbed Black people of their means of survival and subjected Black South Africans to slavery system of having to till the ground that used to belong to them for the benefit of white oppressors who paid them very little. Black people were not offered opportunities to better themselves except to serve the white oppressors. Hence even after the inception of the democratic governance, Black people had to learn and take part in sectors and industries they have been previously deprived with very little knowledge and understanding of certain functionalities of those sectors. Particularly the agricultural sector, majority of the farm workers were confined into tilling and harvesting the crops, but they were not taught how to manage a farm or rehabilitate the soil and other necessary logistics relating to ploughing and nurturing crops till harvest time. Hence even after land has been redistributed to Black people there is very little production done on it. This unproductive utilisation of land is caused by lack of skills, resources and poor implementation of laws promoting land reform and

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<sup>5</sup> Smith Dirkie, Land reform in South Africa as a means to combat poverty Dutch Reformed (2004), Theological Journal, Nederduitse Gereformeerde Teologiese.

<sup>6</sup> Matandare, M. A. (2018). Botswana Unemployment Rate Trends by Gender: Relative Analysis with Upper Middle Income Southern African Countries (2000-2016). Dutch Journal of Finance and Management, 2(2), 04. <https://doi.org/10.20897/djfm/3837>

<sup>7</sup> May Julian, Poverty and Inequality in South Africa: Meeting the challenge 2000.

development by the Department of Rural Development and Land Reform (DLDLR) together with Department of Agriculture, Forestry and Fisheries (DAFF).

Section 67 of the Development Facilitation Act of 1995 (DFA) aimed at enabling and advancing land for development projects, but failure to implement the law to foster development consequently results in the lack of developmental infrastructure such as shopping malls, commercial farms, libraries and health centres including industrial developments particularly in the rural communities. These challenges are closely associated with factors that aggravate poverty levels in South Africa. Such as the land reform programme's main focus to redistribute the land without offering any post-settlement support service to land reform beneficiaries. Notwithstanding the great need of redistributing land but availing land to poor beneficiaries and failing to couple it with support services such as resources and training to productively utilise land, does not necessarily improve the lives of beneficiaries nor does it have a positive impact on their social and economic status. Furthermore, the continued availing of land without support services result in many plots left laying fallow, due to lack of resources and consequently results in lack of developmental infrastructure, projects and industrial development. These challenges negatively affect growth of the country's economy; and consequently, instead of the country producing local goods and strengthen the economy by exporting to other countries, South Africa imports from foreign countries.

South Africa relies mostly on imported goods than goods produced locally. The reasons for this could be that there is limited capacity, lack of skills, lack of knowledge and infrastructures for production of goods, or the local goods are not meeting the expected market standard. Infrastructural setbacks are the upshot of the influence of the terrible apartheid period which weaned people of their valued possessions including land. Land has always been the source of living for Black people, Black people depended on farming to fend for their families and without land Black people would not be able to farm and sell produce for income and developmental projects.

Land as a resource should be made available to previously disadvantaged and denied for farming and socioeconomic development.<sup>8</sup> Pragmatic land redistribution requires that the Department of Rural Development and Land Reform (DLDLR) which is aimed at

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<sup>8</sup> Ibid note 7.

transforming rural economy to realise sustainable and equitable rural communities, to implement training programmes such as skills transfer programmes for the land reform beneficiaries commonly referred to as historically disadvantaged Black people to ensure that resources given to them such as farming machineries and funds are optimally used.<sup>9</sup> Cooperate companies should be approached to invest in redistributed land in partnership with the land owners, the investment could be in funds or resources that could enable land reform beneficiaries to utilise land productively. The introduction of the White Paper on South African Land Policy of 1997<sup>10</sup> together with the Reconstruction and Development Programme of 1994 (RDP) were aimed at addressing “the need for rapid release of land for development and the need to administer land available to the public to ensure productive use of the land.”<sup>11</sup> Despite the intentions of this provision, very little has been done when it comes to implementation. Land reform programme has managed to redistribute a substantial amount of land to black people, however most of the redistributed land has not been used productively due to lack of resources and skills.

While this approach would ensure sustainable development among communities by providing support services such as skills training to aspirant farmers and funds to developers to build infrastructures and run other developmental projects using the land productively, in the contrary, physical delivery of these support services and developmental projects are still not feasible because a number of redistributed land portions are still left unattended. This is owing to a number of reasons ranging from lack of financial capacity to corruption practices. This is due to poor implementation of the policies on land reform and sustainable development because of failure to offer upkeep amenities to land reform recipients such as skills training programmes and funds for beneficiaries to develop their land.

The main purpose for the introduction of the White Paper on South African Land Policy of 1997, is to redress the injustices of apartheid focusing on finding new techniques to expedite such as redistributing land to black South Africans to ensure equitable access to land and ensure continued delivery of services such as adequate housing and clean water to all citizens, especially those impoverished citizens.<sup>12</sup>

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<sup>9</sup> May (n8).

<sup>10</sup> White paper on South African policy of 1997.

<sup>11</sup> Ibid note 10.

<sup>12</sup> White paper(n10)

However, this objective is yet to be achieved due to the slow and poor implementation. This could be owing to a number of reasons such as the lack of capacity either financially or institutional capacity from the designated department to roll out the process of land reform. The RDP<sup>13</sup> was promulgated in 1994 aimed at addressing the previous injustices of apartheid regime and alleviate poverty amongst the Historically Disadvantaged South Africans (HDSA). The RDP defined and explicitly explained the crucial necessity for infrastructural and social improvement in South Africa, particularly in the poorer and rustic communities.<sup>14</sup> In paragraph 2.2.3, the RDP provides *inter alia* that

“the central objective of our RDP is to improve the quality of life of all South Africans, and in particular the poorest and marginalised sections of our communities. This objective should be realised through a process of empowerment which gives the poor control over their lives and increases their ability to mobilise sufficient development resources, including from the democratic government where necessary.”<sup>15</sup>

This was to ensure that poverty is alleviated through delivery of sustainable development and job creation. To achieve this, there is a need to vigorously implement legislation and policies such as Provision of Land and Assistance Act 126 of 1993, Extension of Security Tenure Act 62 of 1997, Labour Tenants Act that seek not only to reallocate land to those persons who were previously dispossessed but also to foster implementation of productive use of redistributed land in order to alleviate poverty, hunger and starvation. Legislation such as the Provision of Land and Assistance Act 126 of 1993 (PLAA) which is aimed at making certain designated land available to people and also render financial assistance for acquisition of land and secure tenure rights. However, the provision of section 10(b)(i)-(vii) of the PLAA only makes available supplementary funds to people who already have a certain amount set aside to purchase land. The scope of this section does not extend to previously disadvantaged people with no funds but have intentions to acquire land for purposes of developmental projects, particularly agriculture. Despite the need to ensure development in rural areas to encourage economic growth and improve household welfare as intended by the White Paper on South African Land Policy of 1997. However, the objectives of the later were supposed to be actualised by the implementation of policies such as Land Redistribution for Agricultural Development of 2001 which was designed to help previously disadvantaged people to buy land and agricultural equipment. However, the

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<sup>13</sup> Reconstruction and Development Programme of 1994.

<sup>14</sup> Ibid note 13.

<sup>15</sup> Reconstruction and Development Programme (n13).

programme is only confined to making available funds to supplement to what beneficiaries already have. Therefore, beneficiaries who are already in possession of land but lack resources to utilise their land productively are not considered in terms of this provision due to lack of own contribution to the fund in order to become eligible for supplement funds. Hence interventions of policies such as the Proactive Land Acquisition Strategy (PLAS) of focusing on speeding up transfer of land in the market by government, does not necessarily address the issue of ensuring that land is optimally used to improve the lives of the beneficiaries and contribute to the economy. However, this only ensures that land is made available to beneficiaries but fails to assist beneficiaries to utilise their land productively. Therefore, this study examined laws and policies that sought not only to advance the redistribution of land but also ensuring the productive use of redistributed land.

The study critically analysis the legislative framework made available to assist land reform beneficiaries to improve their lives. Particularly laws that advocate for development especially in rural areas. The study intends to encourage cooperate partnership for purposes of developmental projects that will improve the lives on local people and alleviate poverty. Moreover, highlight the need to invest in capacitating land reform beneficiaries to enable them to farm productively. However, in order to achieve this, a more robust approach on legislative implementation must be adopted to clarify procedures in which land reform beneficiaries can gain access to support services. Hence, the study intends to merge the gap between state and land reform beneficiaries working together to achieve complete redressal of unjust practices and eradicate poverty in the process.

## **1.2 BACKGROUND TO THE PROBLEM**

In 1653 colonisation started and the process of land dispossession and racial discrimination also begun in South Africa. The Colonists (Dutch and British) managed to place Black South Africans into smaller areas.<sup>16</sup> This was formalized by the introduction of the NLA.<sup>17</sup> The aim of the NLA was to lay a complete prohibition in law between the black and non-black landholding<sup>18</sup> together with the Native Trust and Land Act (NTLA),<sup>19</sup> which was aimed at abolishing the individual land ownership and created a procedure whereby a person

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<sup>16</sup> Fourie Clarissa , Land and cadastre in South Africa : its historical and present government policy 2000.

<sup>17</sup> Act 27 of 1913.

<sup>18</sup> Kloppers Henk J and Pienaar Gerrit J, The Historical Context of Land Reform in South Africa and Early Policies (2014), Vol 17 No 2, Potchefstroom Electronic Law Journal.

<sup>19</sup> Act 18 of 1936.

(representative) held property as its nominal owner for the benefit of others. These laws have regressive effects in formalising the racial discrimination and access to land in South Africa. Moreover, during the era of NLA & NTLA these laws effectively ensured that Blacks occupied only about 13% of land in the rural areas.<sup>20</sup> The NTLA was introduced to abolish communal land rights by bringing about restricted freehold land by an individual; this is in terms of Section 2 of the NTLA which provides that certain areas of land be transferred to native trust and be administered by the trust.<sup>21</sup> Areas such as Transkei, Bophuthatswana, Ciskei, Venda, Gazankulu, KaNgwane, KwaNdebele, KwaZulu, Lebowa, and QwaQwa.<sup>22</sup> These different Bantustans were created to separate black people by ethnic groups, for example Gazankulu was an area set aside for Tsongas and Shangaans, whilst Venda was purely restricted for Venda's. A person belonging to a different ethnic group was not allowed to go and reside in an area belonging to another ethnic group. People were forced to keep to their ethnic groups, this created an animosity amongst the people of the same skin colour. To date, there are issues of hatred and undermining amongst the different ethnic groups owing to the discriminatory practices of apartheid era.

The NTLA further ensured that Blacks were given access to the most remote areas which were set aside for them,<sup>23</sup> by forcing them to occupy small areas which were secluded from towns and urban places. Whilst fertile land, towns and city were designated for whites only and to the exclusion of all Black people, including Indians and coloureds. However, according to the Natives (Urban Areas) Act 21 of 1923, Blacks were allowed to reside in the outskirts of white urban areas and industrial areas. Although the permission was not automatic, Blacks were required to get approval from the local urban authority to gain access to the said outskirts areas commonly referred to as Locations. Blacks could only acquire temporary residence in towns and urban places and they were not allowed to own land in white towns. According to Christopher, Black people were legally barred from residing and owning property in white urban areas.<sup>24</sup> As a result, Blacks would illegally occupy some parts of the cities as they were struggling to fit in the small spaces, taking into account the growing number of the population of Black people. The current informal settlements

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<sup>20</sup> White paper(n10).

<sup>21</sup> See section 2 of the Native Trust and Land Act 18 of 1936.

<sup>22</sup> South African history online, The Homelands | South African History Online (sahistory.org.za), last accessed 12/06/2021.

<sup>23</sup> Native Land Trust (n21).

<sup>24</sup> Christopher, A.J. 1999. Towards the post-apartheid City. *L'Espace géographique*, 28(4):300–308.

consisting of shacks exist today because of the deprivation of land ownership by Black people. The NTA and NTLA also had an impact of stripping Black people of their right to own land prior to 1991.<sup>25</sup> This process was initiated by the provisions of NLA particularly section 2 which prohibited buying or owning of land by a native person. Furthermore NTLA and its successors continued to advance the provisions of NLA by ensuring that Bantustans was established in order to separate Black people and categorise them by ethnic groups. Giving way to the introduction of Group Areas Act 36 of 1966 (GAA) that ensured that a certain ethnic group keep to itself and limit interaction amongst people with different ethnic groups. According to Govender and Reddy the National Party (apartheid government) main objective was to establish residential segregation, which was successfully achieved and remains to be one of the major challenges the Democratic government is faced with.<sup>26</sup> To date, South Africa is still struggling to redistribute land which was illegally taken away from Blacks.

To date, the Department of Agriculture and Land Affairs is still yet to achieve its target to transfer 30% of commercial farms over the period of 15 years which was introduced in 1999. The NLA and NTLA had a major implication on land delivery systems, because these laws created special land delivery procedures known as “Proclamation R293 of 1962 for proclaimed urban areas and R188 of 1969 for rural areas”.<sup>27</sup> Proclamation R293 was aimed at establishing, administer, regulate and manage townships for the homelands of Black people (Transkei, Bophuthatswana, Ciskei, Venda, Gazankulu, KaNgwane, KwaNdebele, KwaZulu, Lebowa, and QwaQwa), previously referred to as Bantus. However, the rural areas were divided in to 3 categories; the South African Development Trusts land, self-governing territory land (KaNgwane, KwaZulu and QwaQwa) and the states Transkei, Bophuthatswana, Venda and Ciskei (TBVC). The said Bantustans were introduced by the NTLA and regulated by the Bantu Homelands Citizenship Act of 1970 which granted black people living in these areas citizenship, however such citizenship was limited to the designated area group. Furthermore, there were no civil and political rights granted to people living in Bantustans or Homelands. The likes of Bantu Authority Act, Act 68 of 1951 made provision for the establishment of black homelands and regional authorities, with an intention of creating greater self-governance. However, such governance was subject to the

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<sup>25</sup> Kloppers and Pienaar (n18).

<sup>26</sup> Govender N and Reddy PS, Urban Regeneration in South Africa The Apartheid Legacy and Legislative Framework Re-examined – The Case of eThekweni Municipality.

<sup>27</sup> Kloppers and Pienaar (n18).

greater administration of the National Party. Lastly the Promotion of Bantu Self-Government Act 46 of 1959, which separated Black people into different ethnic groups advancing the interests of NTLA and the GAA of ensuring cultural segregation amongst Black people. The Black Administration Act 38 of 1927 gave rise to various other legislation dealing with regulation and land tenure rights, Legislation such as Proclamation R188 and Proclamation R293. Whilst according to regulation 1 of the Black Areas Land Regulations, 1969 (Proclamation R188), Proclamation R188 is design to deal with rural land tenure, providing occupants with Permission To Occupy is known as a (PTO), consequently denying occupants ownership rights over the piece of land they have been assigned to occupy. The policy version of R293 was developed as a so-called independence of each homeland or Bantustan.<sup>28</sup> Due to the lack of provincial jurisdiction of ordinances over the areas which were regulated in terms of this proclamation. According to Black Laws Amendment Act 56 of 1949, provincial ordinances has no jurisdiction over land use administration of the areas that were under South African Development Trust (SADT). This includes the rural and urban areas that were occupied by Blacks but regulated in terms of Proclamation R293. Hence the Proclamation was entitled to regulate the control of Townships and administration in Black areas solely for purposes of urban tenure development. There were also other laws that prohibited Black people from owning land in white farming areas and prohibited white farmers from contracting land to Black people and share the yields.<sup>29</sup> Laws such as the GAA regulated acquisitions, alienation and occupation of land by stipulating which part of the Republic could be occupied by which race. The Black (Native) Laws Amendment Act (BLAA) No 46 of 1937, which prohibited Blacks from acquiring land in urban areas unless the Director General (DG) grants them consent. Read together with the NLA which prohibited renting and purchasing of land by a Native person. Although the former appeared to be a bit reasonable by making an exception of granting of consent by the DG, however, such provision was mostly overruled by the provision of the latter, making it impossible for Black people to acquire land. In essence the BLAA was intended to grant permission for Black people to occupy white only areas for purposes of rendering services to the white minority. The intention was not to grant permission to occupy for any other reason. In addition, The Native Service Contracts Act of 1932 made provision for white farmers to evict Black workers for defaulting in labour and whipping Black people for any conduct that may

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<sup>28</sup> Fourie (n16).

<sup>29</sup> Ibid note 28.

indicate disobedience of instructions given by the white master. Furthermore, the NSCA compelled Black people to carry passes everywhere they went. In essence the consent granted by the DG was subject to other provisions such as the NSCA need to carry passes as a form of identification and prove or substantiate your presence in the white designated areas. Not only the white areas were patrolled and monitored to avoid Black intrusion, rural areas were also subjected to unjust practices through the use of discriminatory laws. Particularly Proclamation R293 and Proclamation 188, these laws created special land delivery procedures for urban areas and for rural areas separately and as a result there was no uniform regulation of land ownership. African land ownership was limited to native reserves, with communal land tenure administered by traditional leaders, who were custodians of communal land in terms of section 2 of the NTLA which provides that certain areas of land be transferred to native trust and be administered by the trust. Land that has been transferred to trust to be administered as communal land has created far more challenges that still prevails to date. Ranging from the role of the traditional leaders to the tenure system at play. Buthelezi and Yeni are of the view that traditional leaders are operating in misconception of owning communal land whilst their duties are that of a custodian, holding the land on behalf of the community. Due to this misconception traditional leaders often advance business interest over community interest. This often results in abuse of power and compromise the livelihoods of people residing in these areas. Buthelezi *et al.* further argues that the state continuous giving of power to administer and control communal land to traditional leaders is merely a strategy of securing votes from their constituencies.<sup>30</sup> This assertion suggests that there is no valuable reason for state not to change tenure system of the communal land to that of secured land rights to the occupants. Even after the country has gained its independence the legacy of apartheid era is still thriving, although the difference is that now it is used for a different objective of securing votes and advancing political agendas. However, the effect is still the same for people living in rural areas, they are still experiencing insecure tenure rights. As a result, their use and enjoyment of the land is limited to that which the PTO has allowed for that specific portion of land. In this democratic era rural dwellers are still experiencing limited rights over the land that belongs to their ancestors. It is However, unfortunate that the democratic governance does not

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<sup>30</sup> Nelsonmandela.org, The Power of traditional leaders, the politics of land use and tenure insecurity in rural areas, what has law got to do with it, February 2016.

consider that granting ownership rights to the communal areas occupants, will not only grant them ownership over land but will also improve the value of the land.

In the 1950's a document called the Freedom Charter (FC) was promulgated by the African National Congress (ANC), a political structure that fought for freedom and equality among Blacks and Whites. The FC was aimed at "putting nationalization forward as the mechanism necessary to redress decades of dispossession and destruction of Black property and economic rights".<sup>31</sup> Acquiring land including its natural resources through the process of nationalisation would assist the state to speedily redistribute land without having to spend more money on expropriation of land and having to later spend even more when redistributing land to historical disadvantaged people. The main focus of this visionary document was to redress the previous dispossession of property; this is yet to be achieved to date, due to poor implementation of laws advocating for redress of previous inequalities and injustices of apartheid era. The FC aimed at giving people access to the land from which they have been previously dispossessed. This objective was later carried out in the form of land redistribution under the Land Reform Programme, although satisfactory results under this redistribution programme are yet to be achieved. This is owing to a number of reasons, such as the lengthy bureaucratic processes of identifying true claimants over counterclaimants of the same land. In order to address these challenges, the state introduced land claims court as a tribunal to preside and resolve the challenges.

When the RDP was promulgated in 1994, it was aimed at addressing the previous injustices and inequalities of the apartheid regime, by addressing the immense socio-economic problems such as lack of food (poverty) and adequate housing which consequently resulted from lack of access to land including limited resources made available to Blacks.<sup>32</sup> This policy provided for a set of guidelines and principles that mandated direction to the initial process of formulating the land reform policy and programme. Two years later, the Constitution of the Republic of South Africa<sup>33</sup> was promulgated in 1996 (Constitution) and it retained the earlier negotiated property clause which was referred to as Section 28 in the Interim Constitution of 1993 and now is referred to as Section 25 of the 1996 Constitution<sup>34</sup> which provides that "no law may permit arbitrary deprivation of property". While

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<sup>31</sup> Reconstruction and Development Programme (n13).

<sup>32</sup> White paper (n10).

<sup>33</sup> Constitution of the Republic of South Africa Act 108 of 1996.

<sup>34</sup> See section 25 of the Constitution of the Republic of South Africa Act 108 of 1996.

expropriation is allowed "in the public interest"; this term is defined to include land reform policy. Both the Constitution and the RDP paved the way for the implementation of the land reform programme. In 1997, the White Paper on South African Land Policy was introduced, and it became the driving force for introducing land reform in South Africa. This policy outlined the guiding principles of land reform and how each of the principle was going to apply. The policy identified three principles namely Land Tenure, Restitution and Redistribution. Land Tenure is focused on providing security to those with unsecured tenure system, particularly those living in former homelands. Whilst Restitution is aimed at restoring land to previously dispossessed people. Redistribution is aimed at providing access to land for both residential and agricultural purposes. Moreover, these laws were intended to play important roles as the central and driving forces of the programme of rural development. The land reform programme mainly focuses on redressing the injustices of forced removals and ensures that there is security of tenure for rural dwellers. It was also intended to ensure that there is developmental transformation in the rural areas, although the development aspect is yet to be achieved. So far, failure to offer aid facilities to land reform recipients resulted in unused redistributed land. These laws were intended to improve household welfare and alleviation of poverty, by creating opportunities such as commercial farming among Blacks. However, land reform beneficiaries' failure to use redistributed land in a productive manner hinders development, particularly in the rural communities and it fails to eradicate poverty amongst the land reform beneficiaries resulting in defeating the objectives of the White Paper of redressing historical injustices through land reform and eradicating poverty.

Despite the adoption of the policies and laws that sought to ensure redressing of previous injustices and eradicating poverty amongst Blacks, failure to assist Black people to use their land productively to generate income and make a living does not address the aspect of alleviating poverty. Furthermore, the slow pace of implementation and enforcement of laws and policies aimed at promoting the land reform programme have become an obstacle yet to be overcome. This has contributed to the delay in the process of redistribution of land to the people who were previously dispossessed coupled with failure to utilise redistributed land in a productive manner. Consequently, this aggravates and exacerbates poverty levels, hunger and starvation among the land reform beneficiaries.

### **1.3 Pre 1994 legislation that have negative effect on access to land**

Land tenure in South Africa is a burdensome issue.<sup>35</sup> The enormity of this challenge is huge that we are constantly reminded of it in almost every economic aspect and livelihood of Black South Africans. With prevalent knowledge that every South African dream of owning land, it is pertinent that we reflect on the core cause of this challenge. The core cause of the challenge dates back to 1652 when Jan Van Riebeeck forcefully took the land from the Khoisan by simply arguing that the Khoisan had no rights and title to the land, and further claimed that there was no written evidence (title deed) of their true ownership of the land<sup>36</sup> and robbed them of their only jewel.<sup>37</sup> This marked the beginning of land dispossession in South Africa, followed by the introduction of The Native Land Act 1913 and the Trust Land Act 1936. These pieces of legislation were aimed at regulating access to land, although their provisions and practices were discriminatory, in that they were instrumental to racial separation in South Africa. The application has thereof occasioned great disproportions in relation to access to land, land use and land ownership. Black people were forced to move from arable land to mountainous areas, where land was not arable and therefore, they could not farm productively. As a result, Black people suffered hunger and starvation as they could not make a living from farming, the only skill Black people had at that time.

This led to Blacks living in appalling conditions and in poverty. Black people's loss of land was the beginning of the change of their social, economic and political status in South Africa. Not only did the injustices of access to land confined Blacks in small non-arable land but it also striped Black people of their freedom to access other places where White people lived. And further ensured that Blacks were controlled and politically oppressed by the apartheid government. The land issues soon became a political issue, one that Black people sought to resolve as soon as they attained political power and fought for democracy that would liberate Black people from the White oppressors. Hence, the need to redress the injustices and inequalities of the apartheid era took a spotlight when South Africa became a democratic Republic in 1994.

Pursuant to that, a number of legislation were enacted in line with the Constitution such as the RDP, which paved the way for the promulgation of legislation that promotes land reform.

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<sup>35</sup> Thinanadvha D Mashau, More than just a piece of land :Power dynamics in the land discourse within the city of Tshwane, Southern African Journal of mission studies,42,192-211,92014.

<sup>36</sup> Leibrandt Hendrick Carel Vos, Kepper of the Achieves ( 1897), P 1(7).

<sup>37</sup> Ibid note 36.

But prior to the promulgation of these progressive interventions, a number of destructive and discriminating laws were in full operation which makes it of a paramount importance to firstly outline the particular pieces of legislation that drove South Africa to its current state on land issues. Hence this aspect highlights the major pieces of legislation that had negative effects on access to land, particularly highlights the race discriminatory practices these laws introduced and entrenched.

### **1.3.1 Legislation that had negative impact on access to land**

It is a common knowledge that indigenous people had unlimited access to land prior to the land dispossession during the pernicious colonial period, however the arrival of the Dutch and British colonist in 1652 changed the position of the Black South Africans on land ownership and constrained the accessibility of land. The colonist introduced land administrative systems that ensured that Black South Africans were left landless in overcrowded areas, administered by trustees often referred to as traditional leaders or chiefs. These land systems were introduced by a number of discriminatory Acts,' specifically the Natives Land Act 1913 together with its successors. These legislative measures were put in place specifically to limit Blacks from owning land or having access to arable land. And as a result, Black South Africans were left landless and in poverty, and this was achieved through the application of the discriminatory Land Acts as they are herein discussed in detail as follows:

### **1.3.2 The Natives Land Act 27 of 1913 (NLA)**

The NLA sets the groundwork for apartheid and formalized racial discrimination and limited Black ownership of land. Jeannie asserted that the promulgation of the NLA signalled and commenced legislation of discriminatory nature. Jeannie's assertion features accordingly within the provisions of section 1 of the NLA, and according to section 1 of the NLA the natives were not supposed to enter into any agreement to purchase, hire or acquire land from any person even from a fellow native.<sup>38</sup> This provision of the NLA ensured that Blacks had no right to acquire or own land. This was the beginning of race restrictions and limitation of access to land. Kloppers and Pienaar asserted that the aim of the NLA was to legalise a complete ban/prohibition concerning the Black and non- black landholding.<sup>39</sup>

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<sup>38</sup> See section 1 of the Natives Land Act 27 of 1913.

<sup>39</sup> Kloppers and Pienaar (n18).

The application of the NLA resulted in stripping Black people of their ownership of land. However, Harvey is of the view that the NLA did not entirely restrict Blacks from owning land and further asserted that Blacks were bitter about the enactment of the NLA and because of their attitude, Blacks ignored an important clause in the NLA “A person other than a native shall not enter into any agreement or transaction for the purchase, hire, or other acquisition from a native of any such land or of any right thereto, interest therein, or servitude there over”, which bestowed the state with the privilege to assent to the buying of land freestanding of reserves by Africans.<sup>40</sup> Harvey further asserted that Black leaders failed to acknowledge that many Africans profited from this exception clause in the NLA by purchasing farms and lots after 1913.<sup>41</sup> However, Doreen is of the view that practices of NLA were fraught with uncertainty due to the observation that the political future of urban Black people within the white cities held a constant state of myopia.<sup>42</sup> During the period of apartheid, Black people were forced to stay in their homeland where they could exercise political freedom there, however there were no chances for Black people to exercise their political freedom outside their native reserves. Hence there were very limited chances that Black people living in the cities could make a significant change in the political arena. Despite these challenges associated with restrictions of political freedom Black people managed to overthrow the apartheid system. However, same cannot be said about the apartheid system that has left the legacy of landlessness and poverty amongst Black people.

Although white officials were of the view that “Black people in urban areas would remain permanently subservient in the cities, others believed they would eventually achieve full status as equals within a modern civil society”.<sup>43</sup> This indistinctness caused continual problems to the design of urban policies and led to persistent misunderstanding and disputes about appropriate urban Management System.<sup>44</sup> However, the reality of the impact of NLA proves to the contrary of Harvey’s views, in that majority of Black people were left to suffer the harsh reality of hunger and starvation as a result of their landless situation and

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<sup>40</sup> Harvey MFeinberg, Protest in South Africa: Prominent black leaders commentary on the Natives Land Act, 1913-1936, *Historia*,51,119-144(2006).

<sup>41</sup> Ibid note 40.

<sup>42</sup> Doreen Atkinson, Patrichalism and paternalism in South Africa ‘Native Administration’ in the 1950’s , *Historia*,54,262-280,(2009).

<sup>43</sup> Atkinson (n42).

<sup>44</sup> Ibid note 43.

complicated land policy systems; the people were unable to farm or productively use the land to fend for their families and generate income and that has not changed to date.

Majority of Black people opted to invade land in cities which resulted in today's informal settlements in a quest to find employment in the cities to fend for their families. Jeannie is also of the view that the application of the NLA and its successors has severe impact on spatial planning which is a strategic process that was sought to organise how the economy, society and build environment operate in a space and also ensure the protection and restoration but notwithstanding the management of the natural environment. However, even after 105 years of its enactment and 25 years after its repeal by Abolition of Racially Based Land Measures Act 108 of 1991, South African towns, cities and rural areas are still confronted by the legacy of the NLA.<sup>45</sup> The planning system still comprises of “the use of land grounded on an intricate web of legislation employed on land designated for use by Blacks; multiple laws still control planning in different areas of South Africa, occasioning in confusion, inequality and fragmentation, impeding the proper planning of land use and perpetuating the deep inequalities of the past”.<sup>46</sup> Therefore, to eradicate the legacy of the NLA requires more radical approach on policy drafting and implementation.

The NLA distributed land on a racial basis by putting aside scheduled areas for exclusive land acquirement and landholding by Blacks.<sup>47</sup> And as a result of there was shortage of land for Blacks. The 1913 Development Trust and Land Act extended the operation of the 1913 Act provides for the acquisition of released regions for eventual occupancy and acquirement by Blacks.<sup>48</sup> In these areas or reserves, where the land was held in trusts by state, Blacks had the right to procure land taken from them and as a result they were rendered to utilise the land that was regulated by traditional leadership or tribal rulers.<sup>49</sup> The people's right to obtain land during the apartheid era was limited to permission to occupy overcrowded native reserves, well known as former homelands. Black people were stripped off the right to own land and make a living out of utilising land productively but they were subjected to force removals and relocated to overcrowded areas. As a result, Black people had no sufficient land to occupy nor to farm. The shortage of land necessitated the need to promulgate the NTLA. The NTLA was promulgated to ensure that Black people who were

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<sup>45</sup> Jeannie van Wyk, The legacy of the 1913 black Land Act for spartial planning (2013) 28 SAPL.

<sup>46</sup> Ibid note 45.

<sup>47</sup> Van Wyk (n45).

<sup>48</sup> Ibid note 47.

<sup>49</sup> Van Wyk (n45).

forcefully relocated do not gain access to the land they previously owned and occupied. Hence there was need to create a land hold system for the overcrowded areas to instil control and limit access of Black ownership of land.

### **1.3.3 The Native Trust and Land Act 18 of 1936 (NTLA)**

The NTLA introduced native trusts and abolished individual land ownership by Black people through the introduction of Trust tenure and created an arrangement whereby a person (a trustee) holds property as its nominal owner for the benefit of other beneficiaries. This consequently established the South African Development Trust which was the government body responsible for purchasing land in released areas for Black settlements. In terms of section 2 of the NTLA, “certain areas of land were transferred to native trust to be administered by the trust”.<sup>50</sup> According to Kloppers and Pienaar, the aim of the NTLA was to strip Black people of their right to own land. Black people were forced to occupy land in these severed areas administered by the trustees (chiefs/traditional leaders). Hall also asserted that policies coined in the apartheid South Africa shoved millions of Black people into the infamous excessively crowded place (the match box houses and squatter camps) and disadvantaged reserves, homelands and townships.<sup>51</sup>

The application of the NTLA further ensured that Blacks do not live in demarcated areas which were specifically chosen for whites only without a paper of authorization by the Governor General. African land ownership was therefore limited to native reserves, with communal land tenure administered by tribal leadership. Whereby Black people were given PTO land held in trust by traditional leaders, however the PTO does not warrant the occupant’s ownership rights. Occupants are only allowed to occupy the land and ownership rights remains with the trust administered by traditional leaders as custodian of the community’s interests. Kloppers and Pienaar are of the view that the aim of racial segregation, eventually occasioned the need of land reform. Although land reform was introduced to rectify the injustices and inequalities caused by the NTLA, it has however proven to be difficult if not almost impossible to achieve such an objective, without having to invoke radical approaches in legislation drafting that will racially disadvantage whites. Approaches such as the proposed expropriation without compensation, it is however unfortunate that not only the proposed land expropriation without compensation will face

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<sup>50</sup> See section 2 of the NTLA (n21).

<sup>51</sup> Ruth Hall and Lionel Cliffe, *Another countryside?* pg1, 2009.

major challenges in implementation, but also in classification and identification of beneficiaries and land to expropriate.

Most of the private owned land is owned by juristic persons (companies) which have natural persons as directors, it will be difficult if not almost impossible to put colour to juristic persons. Furthermore, the identification of beneficiaries will also be another major obstacle, because not every Black South African is a legitimate beneficiary. We have more South African citizen by virtue of birth location; thus, to say about 30% of South African citizens obtained their citizenship because they were born in South Africa, but their parents are not South African nationals. Moreover, the question of food security; should the proposed land expropriation without compensation be approved, will food security be secured? Do we have policy interventions to secure the surety that nation security is not threatened? And finally, alternatively, should the state resort to long term leases, who is going to benefit from the proceeds thereof, etc.? In a nutshell, our fragmented land legislation and policies have a long way to go.

There are evidently more challenges to encounter in the process of redressing the previous injustices, and not even land expropriation without compensation will be able to solve half of these problems. It is therefore without doubt that there are policies and legislation which are very instrumental for redressing the previous injustices and inequalities of land ownership, but the poor implementation and enforcement of these policies render them useless to the dispossessed Black South Africans. The legacy of the NTLA is very difficult system to remove, and still haunts the current initiatives to redress the previous unjust land administrative systems. Evidence of this is in the bleak reality, which is that Black people are still under the same old communal land systems in rural areas where land is held in trust for the benefit of the community and administered by tribal authorities.

Land in communal areas is not owned by individuals and as a result it cannot be sold but rather a system of paying annual levies to traditional leaders is at play. Therefore, a person who holds a land under communal area has no right to sell the land, but Traditional Leaders are vested with the right to allocate the land for residential purposes, thus making it almost difficult to utilise the land for business, because another land administrative measure of local government will have to come to play. Moreover, holding a piece of land in communal area does not contribute to one's economic status, land held in a communal area consequently does not qualify as an asset because the ownership of the land rests with the Communal

Trust and traditional leaders are vested with right to administer the land; in light of this, land in communal areas is a valueless resource in that it does not contribute to a person's economic status but rather allows a person to hold for use not ownership. Even though there is access to land in communal area, it was given with limitation to ownership. Which, in this regard, makes it impossible to improve Black people's livelihood if it cannot be used productively to do commercial vast scale farming, eradicate poverty and create opportunities for Black South Africa people to fend for themselves.

#### **1.3.4 The Group Areas Act 41 of 1950 (GAA)**

This GAA was used by the national government to forcibly remove Black, Coloured and Indian people from designated white only areas. According to Kloppers and Pienaar, the objective of the GAA was to establish group areas and regulate the acquirement of immobile property and the occupation of land premises. The GAA established three groups of people, a white group, a native group and a coloured group. The GAA also designated areas for exclusive use for a particular group and disqualified those who were not of the same group as the area group. This, however, is the cause of the division and separation of ethnic groups, because a particular group of people was forced to be confined in a specific area, for example coloured people were confined to the Western Cape Province. This consequently ensured that Africans had no opportunity to interact in harmony or share skills amongst one another, from one ethnic group to another. And as a result, Africans were divided into ethnic groups, and have over the years been in constant conflict of power over one another.

The consequences of these discriminatory laws are not limited to physical dispossession of land, they go beyond the physical. The discriminatory laws have affected South Africans socially, psychologically and economically, in that South Africans are now only loyal to South Africans who belong to their ethnic groups; the standard of classification is by the ethnic groups, and how South Africans interact with each other depends on which ethnic group you belong to. Moreover, the laws have affected the social status and the economic aspect of Black people. Majority of Black people are living in poverty and have no land to farm to combat hunger and starvation. Furthermore, those who are privileged to have found employment they are not in financial positions to buy land unless they loan money from the banks. This, therefore, gives affirms the sentiment that Blacks are moving in a circle of poverty and debts for survival. The psychological aspect is that Black South Africans are

constantly fighting to outlive poverty by trying to enrich themselves with the little they are trusted with in the public and cooperate sectors.

This constant fighting to outlive their direly austere state of seemingly perpetual poverty corruption, a continuous web of dishonesty and theft in an attempt to better their states of livings exacerbated by land dispossession. The level of intensity that these laws have subjected Black people to, is very extreme. Not to mention the complicated land administration system in the former homelands where Black people were confined to. A number of land administration systems play a part in the former homelands. According to Pienaar, "South Africa has two assorted property regimes which exist alongside one another, namely: the system of individualised common law land ownership (predominately based on civil law principles); and the system of communal land tenure (predominately based on shared use of land by communities in terms of indigenous law principles) is a contributory factor to the poverty levels in South Africa".<sup>52</sup>

The different administration systems are as a result of the apartheid legacies particularly the NTLA and the GAA which necessitated the establishment of Bantustans and geographical segregation of Black people according to their tribes. The said establishment of homeland created different land use and administration systems. The whites only area had a different land use system and the homelands had a number of laws applying differently to each category of a rural area. These ununiformed land use systems are the core reason South Africa is experiencing complex land use system and unsecure tenure security even after becoming a democratic republic.

The introduction of the GAA formalised the classification and separation of ethnic groups and paved the way for different land administration policies such as the Proclamations Particularly Proclamation R293 which was aimed at establishing and administering townships for Black people and Proclamation R188 which was designed to regulate rural land tenure. This consequently caused more confusion in the tenure system that applies to former homeland, creating different tenure system despite the enactment of the proclamation with the Town Planning and Townships Ordinance (TPTO) 15 of 1986. The purpose of TPTO is to arrange and harmonise the development of the area concerned in a way that will effectively promote and enhance wealth, health, safety, good order, amenity

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<sup>52</sup> Gerrit Pienaar, Land information as a tool for effective land administration and development, Acta Juridica, 2011, 238-271 (2011).

as well as efficiency and economy through development.<sup>53</sup> The legacy of the previous proclamation is still at play in the rural areas, consequently there is more confusion than difficulty in uniform land administration, which has also contributed to the immense poverty levels in South Africa. Added to this, the land registration system (Deeds registries) did not provide for the registration of communal land rights. The system was adopted from the Dutch land registration procedures which offered the white minority real rights over the land they occupied and deprive blacks living in homelands rights over the land they occupied but created a system of granting permission to occupy. This arrangement made it even more difficult to be practically implemented in the context of South African land. Despite its modification in the 19<sup>th</sup> century, South African land tenure is still fragmented.<sup>54</sup> Black people living in the rural areas (the former homelands) are experiencing insecure tenure rights over land that belonged to their ancestors, whilst white minority in the urban areas (previously referred to as whites only area) enjoys real rights and ownership over the land that was forcefully taken away from Black people. Despite the introduction of legislation such as town planning ordinances, people living in rural areas are still trapped in communal land systems of granting permission to occupy.

### **1.3.5 The Group Areas Act 56 of 1966 (GAA, 1966)**

There is the GAA, the main aim of the Act was “to consolidate the law related to the establishment of group areas and to regulate the control of acquisition of immobile property and the occupation of land and premises.”<sup>55</sup> The significance of this GAA was to ensure that all the law provisions that regulate the different group areas are consolidated in one legislation. Despite the different provisions for each area group thus the GAA sought to create a uniform land use system in areas where there were no secured tenure rights. GAA was an attempt to unify different laws applying to different area groups, however it is not so different from the GAA of 1950 on the aspect of control and access to land by specific group of people, and it merely consolidated different pieces of legislation.

Kloppers and Pienaar also indicated that there are similarities of the two Group Acts-the 1950 and the 1966 Acts.<sup>56</sup> The GAA of 1966 also established groups and those groups were white, Bantu and coloured. Section 20 of the GAA of 1966 created restrictions on the

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<sup>53</sup> Town Planning and Townships Ordinance 15 of 1986.

<sup>54</sup> Pienaar (n52).

<sup>55</sup> The Group Areas Act 56 of 1966.

<sup>56</sup> Kloppers and Pienaar (n18).

occupation of land in the controlled areas.<sup>57</sup> Controlled areas were areas where only white people were allowed to live in and quite a small number of Black people would be given a controlled access to, as domestic workers and gardeners. This, however, did not qualify or grant access to Black people to all the “whites only” locations; at places such as parks. Blacks were not allowed unless on duty. Although the Bantustans have been reintegrated into South Africa, for the 17 million people still residing in these former homelands the fight for full recognition of their rights to land continues.<sup>58</sup> People who were previously residing in Bantustan areas are stuck in unsecured land rights system and as result they lack ownership over the land. Hence, they rely on communal property Act where they are entitled to a permission to occupy than a title over a piece of land they have occupied over a period of time.

The effect of the above-mentioned section was to ensure that a person of different ethnic group does not own land in the different area groups nor occupy premises in a different area group. To a certain extent the implication of this provision has not been entirely eradicated. South Africa is faced with different dynamics of the fragmented tenure systems and as a result it becomes extremely difficult for legislation and policies which are available to cater for each land administrative system without having to apply uninform policies for each system. These defeat the objective of having uniform land administrative system for everyone irrespective of colour or location (urban or rural). The post-1994 administration refers to the former homelands as communal areas where tenure is at play.<sup>59</sup> Although Black South Africans are now allowed to own land in any area in South Africa regardless of their skin colour, the economic status of Black South Africans has not changed; therefore, placing value to land that belongs to Blacks who are not in financial positions to afford to buy land is another way to limit access to land referred to as previously controlled areas.

### **1.3.6 Black interventions to abate land discrimination during Colonial and Apartheid eras**

When Black people were dispossessed of their land and excluded by the discriminatory laws, they began to stand in unity to fight the discriminatory practices. However, in 1959 a new political party representing the interests of Black people was established and called the Pan African Congress. The establishment of this party came as a result of lack of agreement

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<sup>57</sup> See section 20 of the Group Areas Act 56 of 1966.

<sup>58</sup> Kloppers and Pienaar (n18).

<sup>59</sup> Ibid note 58.

and understanding in the Africanists debate with the ANC. In 1960 the Pan African congress launched a historic campaign where members were called to leave their passes at home and to hand themselves over to the police station for arrest. People gathered in large numbers and went to police station in peaceful demonstration of disputing the discriminatory practices. However, the campaign resulted in man slaughter, a notable event of massacre that took place in Sharpeville. A massacre that costed the lives of 84 people and 365 badly injured.<sup>60</sup> According to Lephakga the discriminatory laws and segregations were established to make Black people aliens in their ancestral motherland.<sup>61</sup> Accordingly, Black people were made foreigners on their birth land as a result Black people were forced to carry identification document everywhere they went. However, the white minority were exempted from this regulation, they were all presumed to be South Africans because of their skin colour, unlike Black people who were always suspected of being foreigners and thieves in their own mother land. Black people were forced to stay in overcrowded Bantustan, an approach which was vigorously challenged by the Blacks. Biko opines that the reason for objecting this approach was that it was given by the same people who had put us in this situation.<sup>62</sup> Furthermore' it is driven from the view that "in the land that is ours we find people coming to tell us where to stay and what powers we shall have, without even consulting us", Biko asserts.<sup>63</sup> It is clear from this point that Black people had had enough of the discriminatory practices as they had found themselves being moved from one place to another with intention of being excluded and alienated as the Black nation from the land that natured them from birth. And isolated from their true origin, sense of belonging, their way of livelihood and the resources of the land that belongs to their ancestors. According to Pheko the 1960 Campaign was guerrilla project aimed at uniting Blacks and reclaiming their dignity through political resistance.<sup>64</sup> Although the campaign was not intended to be violent but the ruling party (apartheid government) felt the need to retaliate in a violent manner to curb what they perceived as a threat but Blacks perceived it as a an appeal for liberation from the unjust practices.

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<sup>60</sup> South Africa History, ANC Origins and Background | South African History Online (sahistory.org.za), last accessed 07/06/2021.

<sup>61</sup> Tshupo Lephakga, The history of theologised politics of South Africa, the 1913 Land Act and its impact on the flight from the black self.

<sup>62</sup> Biko, S. 2004. *I write what I like*. Johannesburg: Picador Africa.

<sup>63</sup> Ibid note 62.

<sup>64</sup> Pheko, M. 1984. *Apartheid: The story of a dispossessed people*. London: Marram Books.

### 1.3.7 Formation of the African National Congress in 1912

The ANC was formed as a resistance movement. Before the ANC was formed, there were a number of black resistance movements such as Umkosi Wezintaba which was formed in South Africa between 1890 and 1920. It is pertinent to point out that ANC as an organization was initially founded as the South African Native National Congress (SANNC) in Bloemfontein on 8 January 1912. It was established due to the unsatisfactory services that Black people were receiving, including grievances owing to dissatisfaction with the South Africa Act of 1910, that led to the establishment of the union of South Africa. This includes the bad treatment that Black people began to experience shortly after the South Africa war which took place between 1899-1902.<sup>65</sup> Numerous laws controlled and restricted Black movements and labours. Hence the need for establishment of union of South Africa in 1910.<sup>66</sup>

The conflict was about the latter's independence from the British control. The said independence which was attained in 1852 and 1854 whilst the former remained loyal to the British. However, the conflict led to lengthy discussions and negotiations amongst the four provinces.<sup>67</sup> During the course of the negotiation it then became apparent that the consolidation of the four provinces or rather the proposed unity was aimed at excluding Blacks from participating in a meaningful political activities. Unfortunately, with the Blacks resistance, this resulted into formation of different political movements with a provincial appeal aimed at forging a unified political movement that will stand against the exclusion of Black people. In 1909 a group of Black delegates from the four provinces met to device means to object and challenge the draft of South Africa Act and Union Constitution. The delegation was known as the South Africa Native Convention (SANC).<sup>68</sup> The delegation of nine men were sent to England to attend the convention which was considered a precursor to the South African Native National Congress (SANNC).<sup>69</sup> The delegation did not achieve anything more than a sympathy that was showed on media from the meeting, nothing fruitful ever came out of the convention.

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<sup>65</sup> South African History Online(n60).

<sup>66</sup> Ibid note 65.

<sup>67</sup> South African History Online( n60).

<sup>68</sup> Ibid note 67.

<sup>69</sup> South African History Online (n60).

The SANC continued to be active between the period of 1910 to 1911, objecting and challenging the discriminatory laws and legislation. However, following the activities of SANC a need for a permanent body to represent Blacks on a national level arose. And as a result, SANC was transformed to a more representative and dynamic organisation which was pioneered by the legendary Pixley ka Isaka Seme a brilliant Attorney and Solomon Plaatje an author. The South African Native National Congress was then established, an organisation that is currently known as African National Congress (ANC).

The SANNC continued to challenge discriminatory laws and legislation including the Land Act particularly the NLA which formalised land dispossession and upheld discriminatory practices aimed at excluding Blacks from owning and buying land. The struggle of keeping and retaining the Black people's livelihood and dignity by fighting for the rights of Black people continued to be the mission of SANNC.<sup>70</sup> Despite the unconducive conditions which were created by the white minority by waging violence against Black people resistant of discriminatory practices and laws. The situation soon became very hostile, Blacks were now fighting for survival, whilst the white minority thrived in oppressing the Black nation. The SANNC political movements grew from strength to strength, notwithstanding the endless violence and unlawful arrest that they faced daily. As the resistance was growing stronger and stronger the white minority introduced the NTLA as a measure to abolish individual land holding by Black people, this practice led to the establishment of Group Areas Act 41 of 1950 which followed shortly after the promulgation of the NTLA. The purpose of the GAA was to restrict Blacks, Indians and coloured from residing in white designated areas. The effect of the GAA ensured that Blacks remained in the overcrowded areas where they were forcefully relocated to and not access equal space and opportunities as the white minority. To date, the ANC still strives to redress the historical injustices of the colonial and apartheid era.

#### **1.4 Black intervention to abate land discrimination through The Freedom Charter 1950 (FC):**

In the 1950s a visionary document called the Freedom Charter was espoused by the African National Congress (ANC), which aimed at "putting nationalisation forward as the mechanism necessary to redress decades of dispossession and destruction of black property and

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<sup>70</sup> Ibid note 69.

economic rights”<sup>71</sup>. The main focus of this visionary document was to redress the previous dispossession of property, which are yet to be achieved to date. The FC was adopted during apartheid era and it did not receive the necessary recognition by the apartheid government; it was disregarded because it proposed provisions for equal access to land, provisions that were contradicting to the objectives of the NLA and NTLA.

Despite its non-recognition, the FC was the driving force of the ANC, a Black political party, and it gave hope to Black South Africans, a hope for a better land system and recovery of the dispossessed land. It is rather unfortunate that often the FC that gave Blacks hope for better land delivery systems is reconsidered as a democratic document, with vague qualities stemming from South Africa’s legacy of oppression. And very few times the FC is quoted as the authoritative Charter whose objectives the government seeks to achieve. This is due to the lack of implementation of policies and laws advocating for redressing of previous injustices and inequalities. Moreover, the loss of direction in proper implementation of this visionary document’s objectives. “The people shall govern” clause is one of Charter’s many objectives of progressive redressing of past injustices; however, the failure to implement the FC provisions results in rendering the FC as a campaign document. It is to this end that the FC is seen as a historical visionary document rather than an instrumental Charter on land matters.

The FC made a specific provision that “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”. In light of this, it is clear that the intention or rather the objective of the FC on land matters is to ensure that everyone is afforded land and further advocates for the productive use of the land to eradicate poverty, hunger and starvation. Despite the above-mentioned objectives, Black South Africans are still landless and are living in severe poverty after 27 years of democracy. It is quite evident that the lack or poor implementation of progressive legislation is a new hindrance to eradicating poverty amongst Black people. Furthermore, the FC provided that “the state shall help the peasants with implements, seed, tractors and dams to save the soil and assist the tillers”; the intention of the FC is to ensure that the indigenous Black South Africans whose lands were taken from them and experienced land dispossession are given their land back and, also be assisted to productively use the land to eradicate poverty, hunger and starvation.

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<sup>71</sup> Reconstruction and Development Programme (n13).

The FC was drafted and adopted during apartheid era and it faced resistance during this era, although, Black South Africans were determined to see the objectives of the FC coming to life. It is only normal that one would expect the same Black people who fought for democracy to see to it that the objectives of the FC are upheld. However, the pace at which its implementation is moving is that of a snail despite the urgent need to eradicate poverty amongst Black people by redistributing land back to Black people and equipping them with skills and resources to make substantial living out of the land. It is for this reason, therefore, that the FC cannot be regarded as a pre-democratic instrument but rather a progressive visionary document that the current government should implement its objective.

According to the FC, everyone has the right to occupy land wherever they choose, however, this provision was countered by section 20 of the GAA of 1966 which placed restrictions to controlled areas, ensuring that Black people do not trespass to “whites only” area. It is quite evident in this regard, that section 20 of the GAA was drafted to record in writing that the apartheid government was not ready to afford Black people equal access and ownership of land. Hence, John Dube, the first president of South African Native National Congress, asserted that “if we have no land to live on, we can be no people”. Dube’s statement emphasises the importance of land ownership for Black South Africans; and Dube’s assertion resonates in similar visionary tones on the matter of land as the objective sought to be achieved by the Freedom Charter.<sup>72</sup> Failure to pursue the FC objectives renders its provisions useless and impractical, in that they are very authoritative on paper but have no impact practically, like they were rendered during apartheid era.

The apartheid government had an opportunity to adopt the Charter’s objectives but, chose to continue with the unjust practices and ensured that the discrimination was not only limited to where Black people could reside but extended to where Black people could not go. Additionally, the unjust practices ensured that Black people were confined to one place where they could not farm productively nor have access to rivers or green lands to tend their livestock. The extent of the limitation of access to land had severe consequences on Black’s livelihood and resulted in extreme poverty levels amongst Black people. Consequently, this affected the social and economic status of Black South Africans.

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<sup>72</sup> Harvey M Feinberg, Black South African initiatives and the land, 1913-1948, *Journal for contemporary History*, 34, 39-61 (2009).

To this date the level of poverty amongst Black people is very high. A number of strategic attempts to eradicate poverty in South Africa have been made with very low success rate results, the likes of grants programmes and food parcels, but there are still many families going to bed with hunger. This is because all of these strategic attempts are not sustainable. Furthermore, the strategic attempts are not equipping Black South Africans to independently make living for themselves, but rather they confined the people to rely on grants and food parcels programmes for a living. That on itself does not contribute to the economy of the country but rather it is a costly programme. The state appears not to invest in training and funding land reform beneficiaries as much as it is invested in continuing to spend on programmes which are not necessarily equipping nor preparing individuals to be independent. But rather to rely on a handover system of simple providing to the poor and not grant these individuals opportunities to participate in developmental projects and consequently contribute to the economy.

The negative effects of the land legislation prior to 1994 and the government system of apartheid are not the only problems to land issues; our current democratic government system is also contributing to the continuous poverty levels in the lives of Black South Africans and the landless situation. The current democratic government contribute negatively by failing to implement legislation aimed at redressing previous injustices and inequalities, thereby ensuring that land is properly redistributed to the indigenous owners accompanied with support resources to aid the beneficiaries to productively use the land.

### **1.5 CONVENTION FOR A DEMOCRATIC SOUTH AFRICA (CODESA) 1991**

The Convention for Democratic South Africa ( CODESA) was founded in December 20, 1991, however the first sitting took place in 1990, followed by numerous meetings and the meeting held in October 25<sup>th</sup> 1991, the gathering consisted of the multiparty approximately 92 organisations constituting a negotiation forum.<sup>73</sup> The main purpose of this gathering was to negotiation the principles of the new constitution and the composition of the interim or transitional power to manage the transitional period. The gathering sat and discussed the issues of forging smooth transition from the apartheid era towards democracy. A declaration was drafted from this gathering detailing a joint programme for negotiated transfer of

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<sup>73</sup> South African History Online, The Convention for a Democratic South Africa (CODESA): CODESA 1 | South African History Online (sahistory.org.za), last accessed 07/06/2021.

power.<sup>74</sup> During the process of negotiating there were side meetings which were held by African National Congress (ANC), Pan Africanist Congress (PAC), Azanian People's Organization (AZAPO), the Democratic Party (DP), homeland leaders, Mass Democratic Movement organizations and the National Party (NP), which led to the formulation of Patriotic Front with intention of gaining more power and balance on the negotiation table against the National Party.<sup>75</sup> This arrangement worked in favour of the parties particularly ANC, its interest of having an interim government or rather a transitional government was upheld in the meeting. The bargaining power was beginning to gain strength on the Patriotic Front. According to Ebrahim this was the very first time that the ruling party and government had to come to terms that it may have to give up the ruling power it enjoyed over a period of years.<sup>76</sup> After several meetings the first multiparty constitutional meeting was arranged to take place on the 29-30 November 1991 at Kempton park, Johannesburg. By the end of November there was an establishment of groups which were tasked to prepare for the plenary focusing on Codesa's statement of intent and founding charter, the organization of Codesa, and the broad process of negotiation.<sup>77</sup> One of the groups was tasked to deal with the future of the people living in TBVC states to be included in the drafting of the interim constitution as part of the new democratic Republic. It was during this stage that the processes of reconciling the alienated Black South Africans with the rest of the nation was considered. This initiative indicated the future that Black political parties hoped for and the anticipation of reconciling with the motherland. The place of originality and sacred place of the Black nation's ancestors. CODESA played a huge role in uniting Blacks in one nation and bringing back the spirit of oneness amongst Black people, particularly in the sense of belonging. Furthermore, it ensured smooth transition from apartheid governance towards democracy and inclusion of all people. The interim Constitution bears evidence of the hard work done during the negotiations. South Africa today is enjoying democracy birthed out of the long negotiations of CODESA. Land reform found its way in the heart of the constitution due to the concentrated discussions of redressal emanating from CODESA meetings. South Africa's Independency was not served on a silver platter, but it was birthed from lengthy and uncomfortable discussion which turned violent and resulted in the killing of 15 people 1992,

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<sup>74</sup> Ibid note 73.

<sup>75</sup> South African History Online (n73).

<sup>76</sup> Hassen Ebrahim, *The Soul of a Nation: Constitution-Making in South Africa* (Cape Town: Oxford University Press, 1998), 30.

<sup>77</sup> South African History Online (n73).

however with the help of the current president Cyril Ramaphosa and Roelf Meyer the negotiations were resumed and peace was maintained.

## **1.5 Research problem**

### **1.5.1 Source of the research problem**

In South Africa, “the historical conquest, land dispossession and forced removals and a racially skewed distribution of land and resources left South Africa with a complex and difficult legacy.”<sup>78</sup> This was formalised and validated by the introduction of the NLA,<sup>79</sup> which laid a complete ban and prohibition in law between the Black and non-black landholding together with the NTLA,<sup>80</sup> which was aimed at abolishing the individual land ownership and created an arrangement whereby a person (trustee) held property as its nominal owner for the benefit of others.<sup>81</sup> The legislation had a chief consequence in formalising the racial discrimination in access to land. These Acts effectively ensured that Blacks occupied only about 13% of Land in the rural areas,<sup>82</sup> it was particularly the NTLA which ensured that Blacks were given access to the most remote areas that were set aside for them.

The existing South African land tenure and land development patterns greatly depict the political and economic state of affairs of the apartheid era.<sup>83</sup> These racially orientated land policies were a cause of “insecurity, landlessness and poverty amongst Black people, and a cause of incompetent land administration and land use”.<sup>84</sup> However, since the beginning of the constitutional democracy in South Africa in 1994, legislation and policies aimed at addressing the previous injustices of the apartheid regime were promulgated and various land reforms programmes have been introduced as mechanisms to redistribute the land to those who were previously dispossessed of their land. Nonetheless, the same land reform programmes aimed at redressing the injustices and inequalities of the previous land dispossession are thriving forward with very slow and delayed strides, and it is affecting the realisation of sustainable development, particularly in the rural communities. Moreover, the land reform programme is not adequately coupled with support services to aid land reform

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<sup>78</sup> White Paper (n10).

<sup>79</sup> Act (n17).

<sup>80</sup> Act (n19).

<sup>81</sup> Kloppers and Pienaar (n18).

<sup>82</sup> White Paper (n10).

<sup>83</sup> Ibid note 82.

<sup>84</sup> Kloppers Pienaar (n18).

beneficiaries to develop their land and make meaningful contribution in alleviating poverty in the country. This is one of the major implications that the land reform programme has not succeeded to address. Consequently, it continues to affect the realisation of sustainable land development by failing to encourage and fund developmental projects on the redistributed land and to ensure that land is used productively. Thus, land reform has failed to make a substantial contribution towards the alleviation of poverty, hunger and starvation among the land reform programme beneficiaries.

### **1.5.2 Statement of the research problem**

Since the advent of the Constitutional democracy in 1994, focus and energy have been directed towards land reform that sought mainly to redistribute the land that was illegally seized from the rightful indigenous owners and return it to them as a form of redistribution. Section 10(a) of the Provision of Land and Assistance Act No 126 of 1993 (PLAA), provides that “for the purposes of providing designated land (land set aside by the state for redistribution) to people, it must be done through the application of section 10(b) of this Act”. Section 10(b) provides that “the Minister may grant subsidy to acquire land for residential purposes, agricultural production and small business development and for any development of land to any person; who has no land, wishes to gain additional land, who wish to develop the land or who has been dispossessed of land”.<sup>85</sup> These sections must be read together with Section 25(5) of the Constitution of the Republic of South Africa which provides that “the state must take reasonable and other legislative measures within its available resources to enable people to gain access to land in a just and equitable manner”. Section 25 of the Constitution of the Republic of South Africa provides that “the Minister on behalf of the state may grant the subsidy within the available resources”, meaning that there are cases where the Minister will fail to give subsidy due to lack of resources. However, this does not prohibit people to gain access to land provided that they have resources to acquire the land.

However, while this redistribution mechanism is carried out and have the backing of the law, it is unfortunate that it merely focuses on redistributing the land to the rightful indigenous owners and fails to provide for other necessary measures such as support services such as funding or skills development training programmes to assist and empower land reform beneficiaries to be able to utilise land in a productive manner. Although, a Comprehensive

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<sup>85</sup> Act 126 of 1993.

Rural Development Programme (CRDP) was put forth into practice to aid in accessing land for developmental projects such as farming in rural areas. It mainly aimed at making it possible for people in the rural areas to sufficiently independently regulate their livelihoods, with financial patronage from the state, but failed to empower land reform beneficiaries to acquire skills and resources to be used for redistributed land in a productive manner.

Although the programme aimed at effectively eradication of the impoverishment of the rural areas via the best utilisation and “management of natural resources over an integrated broad-based agrarian transformation and the strategic investment in economic and social infrastructure that will advantage rural communities”<sup>86</sup>, it failed to provide for necessary resources and continuous maintenance and monitoring of those projects.<sup>87</sup> As a result, most of the projects have been abandoned because of the inadequacy of skills, resources and other necessary support services the land reform beneficiaries required. These are some of the challenges that have hindered productive use of redistributed land. Furthermore, the poor implementation of laws and policies that promote land reform and development have contributed greatly to lack of developmental infrastructure.

Hence, the study sought to examine the laws and legislation that promote redistribution of land and land reform that fosters productive use (ensuring that land is used for developmental infrastructure and productive farming) of redistributed land. The study also sought to create a theoretical link between land reform and development as a method to lessen and even eradicate poverty in South Africa, especially in the rural regions. However, it is also pertinent to point out that Blacks were not supposed to buy or rent land from any person including owning or renting a farm in terms of Section 1 of the NLA. It is for this reason that Black people lacked farming skills as they were not exposed to commercial farming. Nonetheless, to a lesser extent, the position has changed since South Africa became a democratic Republic, land reform was introduced and commercial farms were redistributed to the people who were dispossessed of their land and farming has become accessible to Blacks; however, there is still a need for major interventions to improve and strengthen productivity.

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<sup>86</sup> Kloppers and Pienaar (n18).

<sup>87</sup> Hall Ruth, A Political Economy of Land Reform in South Africa, Review of African Political Economy (2004), Vol. 31, No. 100, Two Cheers? South African Democracy's First Decade, pp. 213-227.

Although little has been done as far as promoting and equipping black emergent farmers in the agriculture sector, the little effort does not entirely ensure that redistributed land is used productively by the emergent farmers to reduce poverty among land reform beneficiaries. The majority of Black farmers still do not have the essential skills and resources. Most Black farmers have abandoned farming activities and let out or sold the redistributed land. Some of the redistributed land has been left unattended due to lack of necessary skills and resources to work them. Hence, it is important to point out that redistributed land is not mainly for agricultural purposes; therefore, attention should be towards promoting and equipping land reform beneficiaries to use land for other developmental projects such as industrial development involving maize milling or infrastructure which could be sources of job creation and poverty alleviation in the rural communities.

### **1.5.3 Research question**

Since 1994 the democratic government has embarked on a journey of redressing historical injustices, that include land reform. Particularly redistribution and restitution of previously dispossessed land to historically disadvantaged people. To date a substantial amount of land has been redistributed to black people. However, black people still live in appalling conditions and experiencing outright poverty despite land being restored to them. It is however not clear whether or not this is a question of lack of legislative framework or poor implementation from the state. If not could it be lack of resources that deters land reform beneficiaries from utilising their land productively to improve their livelihood. And if so what can be done to assist land reform beneficiaries to use their land productively and consequently alleviate poverty amongst themselves.

## **1.6 Purpose of the study**

### **1.6.1 Aim of the study**

The aim of the research project was to critically examine the existing legislation and policies that seek not only to redistribute land to the people as espoused in the Constitution and policies, but also to foster the use of the redistributed land possessed by the new owners for productive purposes in order to alleviate poverty, create jobs and combat hunger and starvation in South Africa.

## **1.6.2 Objectives**

The key objective of this research project was to scrutinise the laws and policies that have been put in place to promote the redistribution of land to dispossessed Blacks and how to put the redistributed land to productive use for developmental purposes by creating jobs, alleviating poverty South Africa, especially in the rural parts of the country.

The other objective linked to the key objective was to improve and strengthen the implementation of laws on redistribution of land, through the Department of Land Reform and Rural Development and other organisations associated with land redistribution. The other objective of this study was to highlight the need for cooperate institutions to provide necessary financial assistance to land reform beneficiaries with funds and other necessary resources to execute their developmental projects and ensure that land is utilised productively. The study also sought to showcase the significance of facilitating measures such as giving credit facilities for developmental land projects.

## **1.7 Rationale and justification of the study**

The rationale for this study originates out of the constitutional recognition given to the South Africans after the advent of democracy in 1994 which encompasses the legislation, policies and other frameworks promoting redistribution of land through the land reform programme. It is important to also point out that the government has failed to foster productive use of redistributed land as a mechanism to ensure that poverty is alleviated among the land reform beneficiaries. By failure to afford land reform beneficiaries support services such as skills training programme for farming, resources such as pesticides and continuous mentoring and monitoring of plantations to aid them to use land productively. Lahiff asserts that, “a review of literature counting policy documents make known the lack of a clear theoretical link or argument between land reform and poverty alleviation in the South African context”.<sup>88</sup>

South Africa has well drafted policies for both land reform and poverty alleviation, however these policies are not interlinked in a way that land reform policies can assist in achieving the objectives of poverty alleviation policies in the country. This is clearly showcased by the lack of implementation of support services to aid land reform beneficiaries to utilise the land productively. Accordingly, the utilisation of land productively would ensure that hunger and

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<sup>88</sup> Lahiff Edward, *Redistributive Land Reform and Poverty Reduction in South Africa*, Programme for Land and Agrarian Studies, (2008) University of the Western Cape.

starvation are combated through the income made from selling the food stock produced from tilling the ground and farming. According to Lahiff, the South African land reform has not been planned or applied in a manner that pointedly addresses poverty.<sup>89</sup> Lahiff argues that “this is apparent in the selection of beneficiaries in the design of land reform projects and the general lack of post settlement sustenance”.<sup>90</sup>

In light of this, this study observes that a lot has been said and written with regard to the redistribution of land to those who were previously dispossessed of their land, whereas less, if not none, has been said about utilising redistributed land productively for developmental purposes. Hence, the study sought to highlight the need to afford land reform beneficiaries skills training programme, resources necessary to execute their desired developmental land projects including mentorship programmes for the purposes of utilising redistributed land productively. The study sought to showcase the significance of ensuring that land reform should contribute substantially to developmental transformation and alleviation of poverty for land reform beneficiaries and the society at large.

## **1.8 Conceptual clarifications**

### **1.8.1 Poverty**

According to Latvia, poverty is a lack of what is necessary for material well-being particularly food, but not excluding housing, land and other necessities of life. However, Jensen is of the view that poverty is a lingering and incapacitating condition that is emerge from “various adverse synergistic risk factors and impacts the mind, body and soul”.<sup>91</sup> And further identified six types of poverty, namely situational poverty which is as a result of a sudden predicament or loss and is temporary. Secondly, Generational poverty which arises in families where at least two or more generations have been born in poverty. And such families are not equipped with tools to escape the poverty lifestyle.<sup>92</sup> Thirdly, Absolute poverty which includes a shortage of basics: housing, running water and food. People who are faced with absolute poverty focus on day to day survival. The fourth one is relative poverty refers to the economic status of a family whose income is meagre to be on par with the standard of living in society. The fifth one is Urban poverty refers to complex aggregate

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<sup>89</sup> Ibid note 88.

<sup>90</sup> Lahiff (n88).

<sup>91</sup> Eric Jensen, Teaching with poverty in mind, ASCD 2009/ <http://www.ascd.org/about-ascd.aspx>, last accessed 28/08/2020.

<sup>92</sup> Scribd digital library, <<http://www.scribd.com>>last accessed 28/08/2020.

of chronic and acute stressors including crowding, violence, and noise and are dependent on often-inadequate large city services. And lastly, Rural poverty occurs in rural areas where there are more single-guardian households, and families often have less access to services, support for disabilities, and quality education opportunities.<sup>93</sup> Poverty is a state in which a person lacks essentials and resources for a minimum standard of living, however land poverty means land derogation. Moreover, poverty due to lack of access to land can be described as lack of capacity to participate effectively in human livelihood. For the purposes of this study poverty shall mean poor living conditions, and inability to satisfy the necessary requirements for life such as food, running and clean water, proper sanitation, education, health care and other social services are inaccessible.

### **1.8.2 Development**

Development as define in the Macmillan dictionary, as a process of developing, advancing or progressing.<sup>94</sup> According to Cambridge dictionary, development is the process in which something grows or changes and becomes more advanced However, according to Thomas development is a process of structural societal change.<sup>95</sup> Whilst Development and Facilitation Act 67 of 1995 provides that land development means any procedure aimed at changing the use of land for the purpose of using the land mainly for residential, industrial, business, small-scale farming, community or similar purposes.<sup>96</sup> for the purposes of this study it shall mean a process of making better human well-being with the employment of a reallocation of resources that involves some refinement and amendment of the environment. It also addresses basic needs, equity and the redistribution of wealth, and focuses on the quality of life rather than the quantity of economic activity.

### **1.8.3 Sustainability**

Sustainability as defined in the Oxford lexicon dictionary is the ability to be maintained or sustained or supported at a certain rate or level.<sup>97</sup> According to Asheim, a socially workable system must accomplish equality and balance in distribution and opportunity, proper and

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<sup>93</sup> Jensen (n91).

<sup>94</sup> Macmillan Dictionary, Educational Limited 2009-2020.

<sup>95</sup> Thomas A, The study of development, Paper prepared for DSA Annual Conference, 6 November (2004), Church house, London.

<sup>96</sup> Development and Facilitation Act 67 of 1995.

<sup>97</sup> Oxford dictionary,2020 lexico. com,< <https://www.lexico.com>>, last accessed 27/03/21.

sufficient provision of social services including socio-economic rights.<sup>98</sup> Asheim indicated that sustainability is a necessary need of our generation to properly administer the resource base such that the normal quality of life that we desire for ourselves can be potentially shared by all future generations, therefore development is workable if it covers a non-decreasing average quality of life.<sup>99</sup> However, for the purposes of this study “sustainability” shall be read in the context of sustainable development on land, therefore sustainable development shall mean, a development that operates up to the needs of the present without sacrificing and hindering the possibility of the ability of future generations to satisfy their own needs as defined by the Brundtland Commission of the United Nations.

#### **1.8.4 Land reform**

Land reform is the statutory division of agricultural land and its reallocation to landless people.<sup>100</sup> According to Collins dictionary land reform is a change in systems of land ownership, especially where it includes giving land to people who adequately use it for farming and take away land from people who own large areas for profit.<sup>101</sup> According to White Paper on land policy Land reform is a four-fold redressed programme, aimed at “redressing the injustices of apartheid, to foster national reconciliation and stability, to underpin economic growth; and to improve household welfare and alleviate poverty.”<sup>102</sup> However, for the purposes of this study, it shall mean the altering of laws, procedures, and customs regarding ownership of land in South Africa, as asserted by Batty.<sup>103</sup> Furthermore it shall refer to change of land use system to ensure secure tenure security for people living in rural areas.

#### **1.8.5 Redistribution**

According to Cambridge dictionary redistribution is an act of sharing something out differently from before, especially in a fairer way.<sup>104</sup> Redistribution is an act or instance of distributing a particular object afresh, however, redistribution of land in South African land

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<sup>98</sup> Jonathan M Harris, Sustainability and sustainable development (2003), International Society for Ecological Economics, Pg1.

<sup>99</sup> Geir Asheim, “sustainability” (1994), The World Bank.

<sup>100</sup> Oxford dictionary, <[www.Oxforddictionary.com](http://www.Oxforddictionary.com)>,last accessed 06-04-2020.

<sup>101</sup> Collins English dictionary, <<https://www.Collinsdictionary.com>>, last accessed 06-04-2020.

<sup>102</sup> White Paper (n10).

<sup>103</sup> Batty Fodei Joseph, Pressures from above, below and both directions: The politics of land in reform in South Africa, Brazil and Zimbabwe, (2005) Western Michigan University, p3.

<sup>104</sup> Cambridge Business English Dictionary, <[https:// dictionary.Cambridge.org.za](https://dictionary.Cambridge.org.za)>, Last accessed 06-04-2020.

context mean giving Black people land which was previously dispossessed. However, according to Section 10(1) of the Provision of Certain Land for Settlement Act 28 of 1996, land redistribution is aimed at providing people with land for housing in urban and rural areas as well as land for farming purposes. Moreover, White Paper on Land Policy provides that land redistribution aims to assist the poor, labour tenants, farm workers, women, as well as emergent farmers. Hence for the purposes of this study, it shall mean the distribution of land in a fairer manner to black majority who were dispossessed of their land and forcefully acquired by the white minority.

### **1.8.6 Restitution**

Restitution as defined in the Oxford dictionary as the restoration of a lost object/property or stolen to its owner.<sup>105</sup> But for the purposes of this study, restitution shall refer to the return of the right to land or portion of land dispossessed after 19 June 1913 as a result of past laws or practices of racial discrimination as outlined by Restitution of Land Act 22 of 1994.<sup>106</sup>

### **1.9 Literature Review**

According to Manenzhe *et al.*,<sup>107</sup> the impact of the apartheid era did not only have the effects of bringing about inequality in access to resources, particularly land, but it also had a major effect on the economy and left most of the Black people direly in impoverishment. Manenzhe *et al.*, study was solely based on the advancement of economic growth and the reduction of poverty via the programme of land reform.<sup>108</sup> Its main objective was to identify the dynamics affecting sustainability of land reform projects that are aimed at ensuring that redistributed land is used productively in the Mpumalanga Province. Mpumalanga is one of the largest farming provinces in the country yet very few commercial farms sell to the agricultural market. Most of the farms fail to produce good crops due to reasons that may be associated with lack of skills and resources. Consequently, this affects the sustainability of farming which often fails to contribute to the economy.

Manenzhe *et al.*, were of the view that although the land reform is thought and held to be a crucial strategy for rural economic growth, food security and poverty reduction, in order for

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<sup>105</sup> Oxford dictionary (n100).

<sup>106</sup> Restitution of Land Rights Act 22 of 1994.

<sup>107</sup> Manenzhe Tebogo D, Zwane E.M. and Van Niekerk, J.A, Factors affecting sustainability of land reform projects in Ehlanzeni District Mpumalanga Province, South Africa (2016), South African Journal of Agricultural Extension, 44(2), pp.30-41.

<sup>108</sup> Ibid note 107.

land reform to rise to this occasion, where it will be regarded as a dynamic cause of change in the existence and livelihood of the majority of citizens, the necessary condition is that it must be sustainable for future generations.<sup>109</sup> However, it is pertinent to point out that the sustainability of land reform is affected by factors such as inadequacy of agricultural expertise; the low involvement of the government and its insufficient aid; participants resorting to farming on a temporary basis and being unable to resolve the challenges of farming in their own capacity.<sup>110</sup> Poor implementation of laws and policies promoting land reform and lack of theoretical link between land reform and the productive use of redistributed land also play a major role in the sustainability of land reform.

It was for this reason that the CRDP was introduced to aid in accessing land for developmental projects such as farming in rural areas. CRDP fixated its attention chiefly on making it possible for people in the rural areas to take charge of their lives, with support from government, but failed to empower land reform beneficiaries to acquire skills and resources to utilise their redistributed land in a productive manner. CRDP merely focused on funding the aspirant farmers and failed to equip them with skills to maintain and produce good crops that could also be sold on commercial markets.<sup>111</sup>

Although the programme aimed to effectively positively transform poverty in the rural areas with the optimal use and administration of natural resources through an integrated broad-based agrarian transformation and the strategic investment in economic and social infrastructure that will profit rural communities, it failed to invoke mechanisms such as continuous mentoring and monitoring the process of rehabilitating the soil, planting and nurturing of crops that would sustain production of crops and alleviate poverty among rural communities. Thus, the programme has failed to address the inequalities of the apartheid era. This is due to the fact that the CRDP only focused on giving financial assistance to access land for developmental projects.

Kepe and Cousins assert that rural areas experience severe poverty and inequalities due to the apartheid legacy that has deeply divided economic structure.<sup>112</sup> Furthermore, they are of the view that sustainable rural development should focus on decreasing disproportion

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<sup>109</sup> Manenzhe *et al.* (n107)

<sup>110</sup> Ibid note 109.

<sup>111</sup> Kepe Thembela and Cousins Ben, Radical land reform is a key to sustainable rural development in South Africa (2002), policy brief- PLAAS 3.

<sup>112</sup> Ibid note 111.

in the ownership of land and where operative regulation is instilled in both the productivity of properties and the benefit streams derived from them.<sup>113</sup> They assert that to effectively attain sustainable rural development, a range of complementary measures will have to be put in place.<sup>114</sup> For example, this should involve mechanisms such as empowering the land reform beneficiaries with skills, funds and other resources including introducing them to commercial markets such as the Agricultural Import Market. This could offer assistance to land reform beneficiaries to ensure that their farm products generate income to keep the farm activities operational.

The reason for these radical land reforms is to redistribute productive agricultural land and securing rights to land and other resources.<sup>115</sup> This can be achieved through rigorous implementation of laws and policies promoting land reform and development, and by making sure that land reform beneficiaries are afforded support services including all necessary resources such as insecticides. Herbicides and pesticides are important to control pests and insects on the crops in order to maintain good production and productively use the redistributed land. However, Kepe and Cousins argue that vast areas of land, both in commercial farming and communal regions remain barely used.<sup>116</sup> This may be due to lack of skills and resources to utilise the land productively, which consequently hinders progress on the attempts to expand agricultural production led by poor households.<sup>117</sup>

Kepe and Cousins' study shows that rural people's livelihoods depend on arable farming, livestock husbandry and harvesting including trade in wild resources such as firewood, herbs and animals,<sup>118</sup> which contribute to the wider economy. Moreover, they assert that this is so because land and other natural resources are key assets to the rural people are pursuing a solution for poverty, and that land-based livelihood can play a pivotal part in enhancing the rural livelihoods. However, this can only happen if rural people can have effective support services coupled with their access to redistributed land.<sup>119</sup>

Kepe and Cousins further argue that even though the government is of the view that the South African land reform programme is well positioned and equipped to deal with the

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<sup>113</sup> Kepe *et al.* (n111)

<sup>114</sup> *Ibid* note 113.

<sup>115</sup> Kepe *et al.* (n114)

<sup>116</sup> *Ibid* note 115.

<sup>117</sup> Kepe *et al.* (n116).

<sup>118</sup> *Ibid* note 117.

<sup>119</sup> Kepe *et al.* (n111).

challenging task of decreasing poverty level by employing sustainable development but the implementation of land reform fails to advance the objective of reducing poverty by failing to ensure that redistributed land is used productively to generate income and alleviate poverty. The available approaches such as the Agrarian programme that assists black emergent farmers by educating them about the importance of treating the soil before and after sowing, this approach has proven otherwise.<sup>120</sup>

Educating people without coupling the skills impartation with funds and resources such as pesticides, insecticides, seeds, greenhouses, machinery for irrigation, tractors and many other needed resources for farming, does not entirely equip people for farming, it merely informs them what needs to be done but without the resources with which it can be actually realised. Therefore, the lack of continuous monitoring and provision of the necessary resources to farmers to effectively practise soil rehabilitation has yielded unsatisfactory results in the Agrarian programme. In relation to the tenure reform, Kepe and Cousins assert that very little has been accomplished in terms of providing the greater tenure security to those who are living in the former homelands.<sup>121</sup>

Kepe and Cousins opine that since 2000 to mid-2002 claims which were settled through restitution increased, but towards the end of 2002 an increase in the number of claims escalated and in certain cases more than one claim was represented in a single claim form. This was due to counter claims and the high volume of claims that were made by groups of people claiming the same piece of land jointly. Almost all the settled claims were located in urban areas and they were settled through cash compensation.<sup>122</sup> However, Kepe and Cousins are of the view that the restitution programme has not given much as far as remedying the concentrated and continued imbalance of ownership of productive resources in relation with the redistribution is concerned. They are of the view that its progress with regard to the target of transferring 30% of land in a period of 15 years is very slow.<sup>123</sup>

To date not even half of the 30% target has been reached. Although this study is not concerned about the scale of land that has been redistributed, but the productive use of the redistributed land, it remains imperative to mention clearly that the productive use of land is somehow affected by the availability of land to be utilised productively. Kepe and Cousins

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<sup>120</sup> Ibid note 119.

<sup>121</sup> Kepe *et al.* (n111).

<sup>122</sup> Ibid note 121.

<sup>123</sup> Kepe *et al.* (n111).

further concluded by stating that the land reform and rural development programmes established 1994, have not contributed to make any significant change in the lives of most of the South Africans in rural areas.<sup>124</sup> This is due to the poor implementation of these programmes which consequently fail to contribute to alleviating poverty and giving rural people opportunities to develop their land and contribute to the economy.

Kepe and Cousins state that the programme is evidently supported by land reform policies such as the White Paper on South African Land Policy of 1997 and the Green Paper on Land Reform of 2011 which have not succeeded in bringing about the anticipated and necessary conversion of land holding to date and is most unlikely to do it in future. In addition, Kepe and Cousins are of the view that for the accomplishment of sustainable development, there must be a drastic attack on the structural foundations of poverty and inequality passed down to the current times from three centuries of subjugation and exploitative corruption.<sup>125</sup>

The study submits that a radical approach must be introduced to ensure that laws and policies promoting land reform are rigorously implemented and make certain that there is a theoretical link between land reform and sustainable development. The study further submits that redistribution of land must be coupled with developmental strategies to assist the beneficiaries to productively utilise the redistributed land for developmental purposes and betterment of their lives and as such contribute to the economy.

### **1.9.1 The link between land reform and poverty alleviation**

According to Cousins, ownership of land in South Africa is an extremely heated issue of political and social debates and it is a very controversial and emotional subject.<sup>126</sup> Nonetheless, if land reform was properly and effectively controlled, it could have served as a potential resolution to rural poverty in the country. Land reform could contribute to the reduction of poverty only if there is the transference of the well-designed support programme to help beneficiaries accomplish fruitfulness in the utilisation of land.<sup>127</sup> According to Cousins, the key beneficiaries of the land reform programme should possess a market

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<sup>124</sup> Ibid note 123.

<sup>125</sup> Kepe *et al.* (n111).

<sup>126</sup> Cousins Ben, How to take the process forward (2015), farmers weekly.

<sup>127</sup> Ibid note 126.

orientated attitude and be able to head a small market in order to supply large informal markets.<sup>128</sup>

Land reform beneficiaries should be given skills and resources that will enable them to grow crops of a good quality that can be sold in markets and generate income for them. Cousins further asserts that if the number in this category increased it would help considerably in plummeting rural poverty, as these land reform beneficiaries would be in a position of generating income from their crops and make a living out of it. Cousins recommends that appointment of a capable leadership and the strengthening of capacity in the Department of Land Reform through training and effective performance management would be of better assistance.<sup>129</sup>

In order to ensure proper implementation of the land reform programme, an evaluation of the reasons for failure in the previous attempts should be considered.<sup>130</sup> In addition to this recommendation, promotion of cooperate partnership with the land reform beneficiaries may also be of assistance to fund the industrial projects or farming activities which the beneficiaries may venture into, as this may substantially contribute to effective and productive utilisation of redistributed land. However, Lahiff attempts to situate the debate on land reform and poverty in South Africa within its historical socio-economic and political context.

Lahiff argues that the substantial succour for land reform in South Africa and internationally should not overlook the penetrating contestation regarding the means and objectives of such a programme.<sup>131</sup> According to Lahiff, review of literature including policy documents reveals the lack of a clear theoretical link or argument between land reform and poverty alleviation in the South African context. According to Lahiff, the South African land reform has not been designed or implemented in ways that specifically address poverty.<sup>132</sup> He further argues that this is clearly noticeable in the selection of beneficiaries in the design of land reform projects and the general lack of post settlement support.<sup>133</sup>

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<sup>128</sup> Cousins (n126).

<sup>129</sup> Kepe *et al.* (n111).

<sup>130</sup> Cousins (n126).

<sup>131</sup> Lahiff (n88).

<sup>132</sup> *Ibid* note 131.

<sup>133</sup> Lahiff (n88).

This is made complex by an enduring miscarriage to supervise and observe the profile of the people entering the programme and its impact on the livelihoods of the intended beneficiaries. Hence, it is of paramount importance that the support services offered to the land reform beneficiaries be not limited to funding and once off empowerment on skills but be extended to continuous monitoring and mentoring. However, Lahiff state that this is not to propose the view that some fairly poor people have not profited from the land reform programme and may have discover an escape from poverty,<sup>134</sup> but this is not the envisioned outcome under the current land reform policies.

Apart from asserting that land reform programme has a limited impact on poverty, Lahiff also argues that the land reform programme in South Africa is largely determined by the welfarist subtext (set of attitudes and policies that carry implied message), but the fundamental populists who advocate this stand have not yet advanced economic arguments to back their cause and have not broadly, with few exclusions, dialogued in a technical argument about the design of land reform projects or the provision of post settlement support. Lahiff concludes by stating that the current policy is a messy compromise between the modernist-conservative, neo-liberal and radical populist with many unintended outcomes.<sup>135</sup> It is for this reason that focus should be towards productive use of redistributed land and maintenance of such developmental projects in order to eradicate poverty among beneficiaries.

However, Hall is of the view that the modification in land policy from the emphasis on the rural poor to emergent black commercial farmers is steady with changes in macro-economic policy and reflects shifting class alliance.<sup>136</sup> Hall further argues that the programme now appearing to be after a limited deracialisation of the commercial farming areas than a development of agrarian restructuring. Most importantly, land reform has not yet delivered a strategy to conquer agrarian dualism.<sup>137</sup> Hall points out that the primary focus of the land reform has been redistribution of land through a market led 'willing buyer and willing seller' principle.

Hall further indicates that from 1995 to 1999 the land reform programme gave available Settlement Land Acquisition Grants (SLAG) to poor households to empower them to procure

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<sup>134</sup> Ibid note 133.

<sup>135</sup> Lahiff (n88).

<sup>136</sup> Ibid note 135.

<sup>137</sup> Hall (n87).

land. However, this was mostly influenced by the small amounts of grants allocated *per* household as compared to the price of land as it often required a group of people to gather grants in order to have sufficient funds to purchase the land. Hall further observes that this model was widely criticized for the compound group dynamics that resulted from it. This was so because of the consequent overcrowding and the fact that it did not link the attainment of land to sustenance aid to make it sustainably possible for the people to generate a livelihood off it. Hall further asserts that this was the reason why the Department of Agriculture and Land Affairs instituted a moratorium on land redistribution in 1999, pending an internal policy review, which confirmed the target of 30% transfer of land to be achieved over a period of 15 years.

This objective was intended to be achieved through a new redistribution programme aimed at forming a class of black commercial farmers. Although the new-fangled redistribution programme aimed at focusing on equipping and empowering black farmers, it has failed to put forward mechanisms to maintain and monitor the progress of black commercial farmers. It was for this reason that a number of black commercial farmers abandoned farming activities while some rented out their farms or sold them to white farmers.

Hall argues that the new policy of Land Redistribution for Agricultural Development (LARD) programme is designed for people with funds and assets to invest in farming, and better yet those with agricultural qualifications. The applicants were required to make a contribution to the cost of the land but due to the criticisms that the notion excluded the poor from participating, a new strategy called sweat was adopted to enable poor people to contribute through their labour.<sup>138</sup> However, the increase in grants to enable poor people to partake in acquiring land that is redistributed for developmental projects and fail to couple it with support services that are not limited to funds but also provide for the acquisition of skills and other necessary resources including continued mentoring and monitoring, consequently does not entirely resonate to assisting poor people to nature their own farms productively and alleviate poverty.

According to Kloppers, the South African agricultural landscape was (and to a large degree is still) branded by irregular land ownership, intense and deeply rooted rural poverty and the

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<sup>142</sup> Ibid note 131.

fruitless usage and management of resources.<sup>139</sup> Kloppers asserts that these features are evenly connected to the tactical objectives of rural development, food security and land reform as identified in the Government's 2009-2014 Medium Term Strategic Framework (MTSF). These were *inter alia* aimed at ensuring a more equitable distribution of the benefits of economic growth and decreasing poverty and unemployment by half towards the end of 2014.<sup>140</sup> However, this has not been achieved.

Kloppers highlights that the Government's MTSF had identified 12 outcomes as follows: Sound and corporate governance and service excellence; Reformed policy legislature and Institutional environment by 2014; Effective land planning and administration that is biased towards rural areas; Institutional arrangements for effective cooperative and stakeholders participation; Increased access to and productive use of land; Improved access to affordable and diverse food; Improved rural services to support sustainable livelihoods; lastly, Improved access to sustainable employment and skills development opportunities as a key focus until 2014, of which outcome 7 (Improved rural services to support sustainable livelihoods) requires the Department of Rural Development and Land Reform (DRDLR) to build vibrant, equitable and sustainable rural communities.

Kloppers indicates that in order to achieve this outcome, the DRDLR identified eight strategic goals as follows: Corporate governance and service excellence; Reformed policy, legislative and institutional environment, Spatial equity, Integrated institutional arrangements for effective cooperative governance and stake holder participation by 2014, Sustainable agrarian reform, Improved food production, Rural livelihoods, Job creation and skills development to deal with matters such as optimal access to, fruitful usage of land (agrarian reform), not leaving out the enhanced food production.<sup>141</sup>

The ultimate objective of enhancing access to land and the fruitful usage of land 2014 was pointedly affianced the land reform programme and additionally engages itself to the issue of irregular land distribution through restitution and redistribution. However, the improvement achieved so far with regard to the restitution and redistribution programmes is insufficient to satisfy the great need for more restitution and redistribution of land,<sup>142</sup> and

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<sup>139</sup> Kloppers Henk, Introducing crs- the missing ingredient in the land reform recipe (2014), Potchefstroom Electronic Law Journal, 17, 708-758.

<sup>140</sup> Ibid note 139.

<sup>141</sup> Kloppers (n139).

<sup>142</sup> Ibid note 141.

unless the government takes critical action to upturn the strides of land reform a situation similar to the Zimbabwe-style, land grabs could turn into a reality.<sup>143</sup> It is pertinent, therefore, to mention that any attempt to upturn the strides of land reform has to be tied with measures to secure the certainty that these land reform projects make fruitful and concrete contributions to the national economy.<sup>144</sup> By ensuring that the beneficiaries have a market orientated attitude and do not head the projects by themselves, but do this with the support services from mentors and monitors to ensure that they produce products that can be sold on commercial markets and generate income for the farm or the industrial project.

Lahiff highlights on few of some of the leading pressing issues facing the land reform programme in South Africa by explaining the purpose of each leg of the land reform programme. Lahiff explains that restitution aims at restoring the rights in land for the people who were previously dispossessed, redistribution is mainly aimed at assisting the urban and rural poor, farm workers, labour tenants, as well as emergent farmers to gain access to land and tenure reform aims at developing land rights policies, procedures, and products. Lahiff draws a distinctive challenge each leg of land reform is facing. For instance, he asserts that the drive of restitution is to return land in a way to support reconciliation, recognition and development ensuring historical justice and healing of wounds of apartheid through a rights based programme so as to address poverty through the development aspects of restitution.<sup>145</sup> This means that restitution of land should be combined with mechanisms that may assist the beneficiaries to utilise the land in a manner that will assist them to generate income to sustain them and to reduce poverty.

Lahiff elaborates on the categories which restitution of land is mainly focused on, which involve the renewal of land being claimed, the allowance of substitute and/or financial compensation. Moreover, Lahiff points out that the original targets for the lodging of land claim was 3 years, 5 years for the finalization of claims and 10 years for the implementation of all court orders. This was prior to 1997, before the Restitution of Land Rights Act 22 of 1994 (RLRA) was amended and brought in line with the Constitution. The new arrangement has the effect of enabling claimants to directly approach the courts and seek reliefs of land

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<sup>143</sup> Kloppers (n139).

<sup>144</sup> Ibid note 143.

<sup>145</sup> Lahiff Edward, Policy Brief Debating and Reform and Rural Development: Land Reform in South Africa, is it meeting its challenge, (2001), Programme for land and agrarian studies.

matters, and it also empowers the Minister of Land affairs to resolve land matters through the negotiation process.

The RLRA was enacted by the Restitution Review of 1998. According to Lahiff, these changes on legislation played a substantial part to a commendable acceleration in settling of land claims. Lahiff points out the disadvantages of restitution of land and states that, the impact of restitution is construed by the integration with other programmes of the national, provincial and local government.<sup>146</sup> The charge of restitution is another key trial.<sup>147</sup> This is due to the fact that restoring the original land to claimants is not viable in most urban claims, and a dominating number of these will have to be settled through financial compensation whereby claimants would be given a market value of their land.<sup>148</sup> This is as a result of the fact that most of these land portions in question already have industrial developments and it would be costly for the state to compensate the owners for the industrial development. Hence, the state prefers settling the claimants over the developers.

Another major challenge with restitution is the settlement of rural claims in a way which contributes to the large goals of land reform, and that seeks to redress the racial inequalities in land acquisition and ownership while decreasing poverty and bettering livelihood opportunities.<sup>149</sup> However, this has not been achieved due to failure by the beneficiaries to utilise redistributed land productively. Lahiff is of the view that neither tenure reform nor restitution is probably to make a considerable contribution to remedying the gross inequality in land holding in the country.<sup>150</sup> He further articulates that attention must be rightly focused on the redistribution programme as the principle means of reassigning large areas of land from the privileged minority to the previously oppressed.<sup>151</sup> Lahiff also points out that LARD introduced new elements in the redistribution policy, notably the increase of value of grants in an attempt to remedy the shortfalls already made by previous policies.<sup>152</sup>

However, it failed to avoid repeating some of the mistakes such as failing to address the integration between different legs of land reform tenure, redistribution and restitution and the links between the land reform and wider aspects of rural development.<sup>153</sup> The LARD

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<sup>146</sup> Ibid note 145.

<sup>147</sup> Lahiff (n145).

<sup>148</sup> Ibid note 147.

<sup>149</sup> Lahiff (n145).

<sup>150</sup> Ibid note 149.

<sup>151</sup> Lahiff (n150).

<sup>152</sup> Ibid note 151.

<sup>153</sup> Lahiff (n145).

might have been in the right position to live up to the demands of the emergent minority of black farmers, but it is also improbable to reach near satisfying the needs of the dominating population of impoverished and landless families or transforming racially skewed pattern of land ownership.<sup>154</sup> Therefore, for redistribution to accomplish its targets much bolder steps should be taken such as land adjacent to the former homelands (rural areas) and townships (urban areas). Furthermore, areas acute landlessness need to be targeted and acquired by the government through a mixture of aggressive interventions such as expropriation without compensation that intends to promote productive use of land in the market and selective expropriation such as expropriating fertile land that is unused for farming purposes.<sup>155</sup>

The starting point for remedying the land reform shortfalls will require one to revisit a revised land reform programme in its fundamentals, and that will require a focus on the integral part of the objectives of land reform.<sup>156</sup> More particularly, the general objectives of the policy must be revisited as well as the instruments that can be employed to accomplish them.<sup>157</sup> Such mechanisms must ensure that land reform is not only focused on redistributing land but also on ensuring productive use of the redistributed land to achieve sustainable development.

However, Du Plessis *et al.*, point out that redistribution of land resulted to 2, 5% between the period 1995-2005,<sup>158</sup> and that these results clearly indicate the risk and uncertainty of reaching the target of 30% of commercial agricultural land by 2014. This confirms the general concern that the pace of land reform is too slow.<sup>159</sup> It delays the process of redistributing land to the beneficiaries and prolongs sustainable development to be made on such redistributed land in an attempt to eradicate poverty.

According to Erlank, the Green Paper on Land Reform published in 2011 has not yet filled the legislative gap on the land reform programme. Although it represented the modern developmental movement in a long history of land reform in South Africa, it failed to merge the legislative loophole by not addressing the post redistribution process.<sup>160</sup> Despite all the

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<sup>154</sup> Ibid note 153.

<sup>155</sup> Lahiff (n145).

<sup>156</sup> Ibid note 155.

<sup>157</sup> Lahiff (n145).

<sup>158</sup> Du Plessis Willemien, Olivier Nic and Pienaar Juanita, Land matters: new developments (2005), SA Publikereg, SA Public Law, 20, 435-457.

<sup>159</sup> Ibid note 158.

<sup>160</sup> Erlank Wian, Green paper on land reform: overview and challenges (2014), Potchefstroom Electronic Law Journal, 17, 614-639.

developments and legislative industriousness since 1991, the uneven land ownership system that originates from the era of apartheid has not been that resulted from apartheid has not been effectively redressed.<sup>161</sup> Hence, this study sought to expound on this matter by examining the laws and policies that facilitate not only the redistribution land but also foster the implementation of the productive use of redistributed land.

Smith asserts that since the beginning, the state's goal via land reform was connected to economic progress and the lessening of poverty.<sup>162</sup> Conversely, after years of democracy land reform has been criticised by the prevalence of more complaints than satisfactory successes<sup>163</sup> This is as a result of slow implementation of laws and policies that promote land reform and development by the Department of Land Reform and Rural Development. However, this situation may be rectified by ensuring that these policies and laws are rigorously implemented in a manner that will foster poverty alleviation as the paramount objective of the land reform.

May recommends that stronger policy links be designed between the Department of Land Affairs and both the national and provincial land reform programme. It is without doubt that that South Africa has good legislation on land reform and the easing of poverty, however these policies are not theoretically linked to achieve a common objective and that is to afford Black people land that will ultimately resolve their poverty stricken lifestyle. May observes that the new South African government is faced with vast and deep challenges, and that from the view point of policy formulation the state has reacted in a sound manner.<sup>164</sup> The policies which were promulgated to promote land reform have measures and mechanisms which can resolve the challenges South Africa is facing. However, failure to rigorously implement the policies on land reform results is failure to address poverty alleviation. From implantation view point, the current development does not show any possibility to have either the expectations of policy makers nor of the poor.<sup>165</sup> As putting monitoring and evaluation, the land reform beneficiaries should be interviewed on what developmental projects they intend to do on the redistributed land and be trained. In addition, they must be assisted to get sponsors and partners who will invest on the project before they can be given the land. The land reform programme must further ensure that a continuous monitoring and

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<sup>161</sup> Ibid note 160.

<sup>162</sup> Smith (n5).

<sup>163</sup> Ibid note 162.

<sup>164</sup> May (n7).

<sup>165</sup> Ibid note 164.

mentoring is afforded to the beneficiaries, which will result in land being utilised productively. Failure to do so will continue to render land reform useless to the poor as it will fail to change neither their social nor their economic status.

Therefore, there is a need to examine legislation and policies that seek not only to redistribute the land but also foster implementation of productive use of the redistributed land in order to ensure that poverty is alleviated and people live a dignified life.<sup>166</sup> When the redistributed land is used productively, it will generate income and make the owners to earn a living and thus lead to a life free from poverty. Koopman emphasises that dignity must be actualised with the employment of the provision of opportunities for those persons who were dispossessed of their land, in order to create a culture in which dignity features greatly and is thoroughly actualised.<sup>167</sup> Land needs to be returned and redistributed in the light of the severe violation of dignity, injustice and the oppression of people due to the previous land dispossession in pre 1994 South Africa.<sup>168</sup> More importantly, land stands for the space that brings a life of dignity for all humans and nature.<sup>169</sup> Therefore, for some people restitution of land means that they do not necessarily go back to the original plot of land but they are afforded a particular piece of land which they can use,<sup>170</sup> and have access to opportunities and support to build their life in a dignified manner.<sup>171</sup>

Dignified life means having access to necessities of life such as water, food, shelter, health care and education (socio-economic rights).<sup>172</sup> These are possible, only if the policies and laws that promote redistribution of land are implemented in a manner that would foster implementation of productive use of redistributed land. Thus, government must make sure that redistributed land is converted and utilised productively by conducting developmental projects such as commercial farming, industrial development, and conducting game farms which will generate income. Therefore, reconciling with land would then imply the actualisation of dignity through the implementation, achievement of socio-economic rights and the ecological rights as well as the third-dimension rights to development.<sup>173</sup>

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<sup>166</sup> May (n7).

<sup>167</sup> Koopman Nico, "Inclusive dignity and land reform in South Africa (2014)," *Scriptura: International Journal of Bible, Religion and Theology in Southern Africa* 113.1 (2014): 1-8.

<sup>168</sup> *Ibid* note 167.

<sup>169</sup> Koopman (n167).

<sup>170</sup> *Ibid* note 169.

<sup>171</sup> Koopman (n167).

<sup>172</sup> *Ibid* note 171.

<sup>173</sup> Koopman (n167).

## **1.9.2 The link between land reform and rural development**

Maake is of the view that the movement of land redistribution in South Africa stationary and as a result this static pace limits the lifestyle choices of the targeted beneficiaries of the land reform programme.<sup>174</sup> The priority of the programme within the rural development framework must be scaled and assessed through ways in which the land reform programme will meets the needs and betters the livelihoods, ambitions and objectives of its intended beneficiaries without lessening the quality and quantity of agricultural production and the economy.<sup>175</sup> It has been observed that the slow pace of land reform programme with its implication on the socio-economic transformations of South Africa aggravates poverty levels.<sup>176</sup> Therefore, there is a need for a radical approach towards land reform which will not disrupt agricultural production but should secure support for and coordination from other spheres of government.<sup>177</sup>

In addition, Aries asserts that, access to redistributed land is one of the extremely significant developmental necessities to ensure and maintain democratic stability.<sup>178</sup> The necessity to impart a national identity, shared citizenship and a culture which fosters the autonomy of service delivery is the principal reason why the government must maintain continued investment in the change of land holding in South Africa.<sup>179</sup> Aries posits that the National Development Plan (NDP)'s emphasis on the critical necessity reintegrate rural areas into the mainstream economic development, would allow rural dwellers to share in the disbursements of South Africa's general economic growth and prosperity.<sup>180</sup>

## **1.10 Research Methodology**

The study used qualitative literature review as its methodology which is generally acceptable in legal research studies. This research is library based and relies heavily on scholarly legal literature including but not limited to national and international instruments on land reform, productive use of redistributed land, poverty alleviation and sustainable development, works from other countries, textbooks, articles, case law, legislation, regulations, previous works and the collection of reports dealing with the right to access to land. A legal comparative

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<sup>174</sup> Maake Shadrack, Land reform in South Africa: obstinable spatial distortions (2016), *Africanus*, 46: 20-31.

<sup>175</sup> *Ibid* note 174.

<sup>176</sup> Maake (n174).

<sup>177</sup> *Ibid* note 176.

<sup>178</sup> Maake (n174).

<sup>179</sup> *Ibid* note 178.

<sup>180</sup> Aries Jerry, shaping land reform: taking our services out there (2016), *Agriprobe*, 13: 36-37.

method was applied between Nigeria (which has the most remarkable land use system), Zimbabwe (has successfully redistributed land to the rightful indigenous owners) and Uganda (has the most recommendable farm production) in order to find solutions, particularly an investigation into a way forward for the implementation of productive use of redistributed land.

These countries have the most recommendable land use systems and have successfully redistributed land to the rightful indigenous owners and moreover, they also have the most recommendable farm production and thus productive use of land. The study will focus on what can be learnt from these countries and will extensively examine each legal issue raised in order to form a novel opinion. This study intends to establish a theoretical link between land reform and poverty alleviation within the South African context. And further establish the development of legal rules, the interaction between laws, and proposed solutions to the existing laws based on extensive review of relevant literature, laws, statutes and national and international instruments.

### **1.11 Significance of the study**

The thesis will make the following contributions to the body of knowledge thus:

- It will assist government to improve existing legislation and policies promoting land reform programme to also cater for productive use of redistributed land.
- It emphasises the use of policies or laws to strengthen and foster implementation and productive use of redistributed land in order to ensure that poverty is eradicated.
- The current research project will contribute towards helping the state and stakeholders entrusted with land development land projects to easily achieve their objectives and alleviate poverty in the rural areas.

### **1.12 Conclusion**

The effects of the NLA and NTLA did not only have impact in those years, their legacy is still thriving, and the South African government is still struggling to redistribute the land which was illegally acquired. The poverty level amongst Black people is still rising. The 1913 and 1936 Land Acts further had a major implication on land delivery systems; it created special land delivery procedures for urban areas and for rural areas separately. So there was no

uniform regulation of land ownership. African land ownership was limited to native reserves, with communal land tenure administered by traditional leaders. And as a result, South African land tenure system is still fragmented.

The NLA and NTLA with its successors further ensured that Black people are stripped off ownership of land and are pushed to congested non arable land. Leaving Black people in serve poverty where they could not continue farming for a living. Majority of Black males had to retire to cities to find employment in White owned firms, and women would seek employment as house helpers while children would go to white farms and toil in order to have a meal for the day. This situation led to a generation of illiterate Black people as they were forced to work at an early age to care for the weary elderly and has consequently pushed Black people to the bottom of the food chain. Not only Black people are landless, but they are also poor and illiterate, all these are the fruits of the unjust practices of the discriminatory land Acts.

## CHAPTER TWO

### CRITICAL ANALYSIS OF INTERNATIONAL LAW INSTRUMENTS FORSTERING RIGHT TO ACCESS TO LAND, RESTITUTION AND REDISTRIBUTION

#### 2.1 Introduction

South Africa is one of the nations that suffered oppression under the colonial and apartheid leaderships and consequently lost ownership of land in the process through land dispossession perpetrated by both the colonial and apartheid rulers. An injustice which the democratic republic seeks to redress post-1994 democratic dispensation, through land reform programme. However, the injustices and inequality did not only result in land dispossession, but it also affected the economic status of the Black majority, hence it is difficult if not impossible to address the issue of land dispossession without addressing poverty alleviation. South Africa have policies on both land reform and poverty alleviation; however, these policies have proven to be ineffective in addressing both poverty alleviation and landlessness issues. Considering the complexity pertaining to land, it is pertinent that South Africa draws from international laws which can aid in remedying the culturally and socially diabolic heritage of apartheid era and further assist in policy drafting that will address both land and poverty as a common objective.

Land reform programme in the South African context has several legislative frameworks which are aimed at ensuring that land is transferred back to the indigenous owners, but little to nothing has been done as far as implementation is concerned. Where there is implementation there is no continuous assistance to land reform beneficiaries to utilise the land productively for purposes of alleviating poverty and combatting hunger and starvation. Therefore, the initiatives taken in policy drafting have been limited to making land available to Blacks but there is no sustainable plan to assist Blacks to generate income and make a living from the redistributed land. The focus is mainly on redistributing land rather than ensuring that land beneficiaries are assisted to productively use the land to improve their social and economic conditions. Furthermore, the state initiative of post-settlement support services to land reform beneficiaries, is very limited in terms of the necessary support that land reform beneficiaries requires. Hence there is a need for a comprehensive post-settlement support services that will enable land reform beneficiaries to utilise their land productively.

There are a number of things that can be learnt from international frameworks on issues of land, particularly those that advocate for sustainable development as a tool to alleviate poverty. Land is the wealth of the country, therefore, anyone who owns land has an asset that can generate income provided the land is utilised productively. Hence, it is of paramount importance that South African legislation reforms should be drafted in line with the objective of ensuring that land is utilised productively. It is important to ensure that poverty is alleviated amongst land reform beneficiaries and the society at large and furthermore, ensure that the process of utilising land productively contributes to the economy of the country.

The laws referred to in this section, is the international law instruments that have positive impacts and effects on access to land. These are instruments such as the United Nations Declaration on the Rights of Indigenous Peoples 2007, American Declaration on Human Rights of Indigenous People 2017 and Conventions, such as the Convention 169 on Indigenous and Tribal People 1989, which are aimed at regulating equal access to land and ownership of land without invoking racial discrimination. It is not surprising or rather unexpected that the apartheid government disregarded laws that sought equal access to land. The intention of the apartheid government was to strip ownership of land from the indigenous owners and enrich the white minority.

It should be noted that the international law instrument bears too much relevance on current issues of land and can assist to identify the main problem that South African land reform programme must remedy. Thus, rectifying the injustices and inequalities of the apartheid era introduced by white minority from the early days of land dispossession whereby they captured the country's economy by owning the wealth of South Africa; that is the arable land and the land with minerals. These international law instruments, particularly the Convention 169 on Indigenous and Tribal People 1989, could still assist in linking the land reform policy and poverty alleviation policy by making attempt to compensate for the apartheid era and land dispossession. However, it is pertinent that before discussing how the international law instruments can assist to improve South African land reform system, a clear understanding of right to access land in the international sphere be clearly outlined. According to United Nations Declaration on the Rights of Indigenous Peoples, indigenous people have a right to live, own and use their territories. However, access to land is not limited to indigenous people but member states are mandated to ensure equal access to land amongst all people.

Essentially, previously disadvantaged people should be prioritised in an attempt to remedy the historical injustices of land dispossession.

## **2.2 The causal link between international law and national law (South Africa)**

International law is often referred to as International Conventions and treaties voluntarily entered into by countries. Member states affiliated with the UN are bound by these Conventions, although not all of them are compulsory. South Africa is a member state of the UN and is bound by certain Conventions and treaties. This means that South Africa is required by the UN to legislate and customise certain issues to mimic international laws in order to suit the countries challenges and needs.

According to Article 27 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) member states are given responsibility to draft and implement legislation which will give procedural guidelines to access land. Meaning member states are required to legislate laws that addresses access to land in line with the international laws but customised to suit the needs and challenges of the country (member states). Therefore, international law plays an influential role in land reform legislation. It is for this reason that this study refers to international law with the aim at addressing the lack of theoretical link between access to land and poverty alleviation.

## **2.3 General discussion on land as a subject matter (What is land)**

According to the Office of the United Nations High Commissioner for Human Rights (OHCHR) land is a source of livelihood and is central to the economy.<sup>181</sup> In that people are depended on land for necessities of life, such as food, shelter, water and developmental activities. Land is closely associated with people's identity and tied to people's social, cultural and economic status. Hence land has great impact on the enjoyment on many human rights.<sup>182</sup> Therefore the need for access to land is essential to all people for purposes of maintaining livelihood, realisation of human rights and contribution to the economy. Access to land affects a number of issues regarding human rights, issues such as poverty reduction and development are solely depended on the access and use of land.

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<sup>181</sup> United Nations High Commissioner for Human Rights  
<<https://www.ohchr.org/EN/Issues/LandAndHR/Pages/LandandHumanRightsIndex.aspx#navigation>>,  
last accessed 10/06/2020.

<sup>182</sup> Ibid note 181.

Having highlighted the need for people to gain access to land, it is also of paramount importance to highlight that not only do people need access to land, but people also need to utilise land productively in order to achieve enjoyment of human rights. Historically indigenous people have suffered injustices and inequalities of colonization and invasion of their lands. As a result, indigenous people have been deprived access to arable land and have been living in poverty-stricken lifestyles. Moreover, their source of livelihood was stripped away from them as consequent of landless situation. However, the international community took into consideration the livelihood of indigenous people and adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and introduced the minimum standards of survival, dignity and wellbeing of indigenous people.<sup>183</sup> UNDRIP recognises indigenous people as people with equal rights to others, in terms of Article 2 of UNDRIP.

Indigenous people have been afforded the right to access rights equally to other people. Therefore, indigenous people are now free to access rights which they have been previously denied. Rights such as access to land, which is closely related to their livelihood and also the bases for human rights realisation. Article 2 of UNDRIP captures the core importance of the declaration which is to highlight equality of all people before the law. With the history of discrimination and dispossession of land to indigenous people, there was a great necessity to have a clause that recognises indigenous people same as other people. In order to allow them same privileges and enjoyment of rights as other people. Having realise the need to access land for all people for purposes of survival and other reasons such as economic reasons. It is only befitting that indigenous people be afforded same rights and access to land. For purposes of ensuring that poverty is alleviated, and other social and economic challenges are resolved but, not excluding realisation of human rights.

### **2.3.1 The right to land**

The right to gain access to land is based on the notion that there are people who are landless and those who live in areas where there is no secured tenure system as a result of the past injustices. It is pertinent to also point out that not only does landless people need access to land but also acknowledge that land plays an important role in the livelihoods of all people.

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<sup>183</sup> United Nations Declaration on the Rights of Indigenous Peoples, 2007.

Historically land has been recognised as the source of wealth, social status and power.<sup>184</sup> The basis of socio- economic rights such as food, shelter and economic activities.<sup>185</sup> It is the most significant provider of rural livelihoods, Black people in rural areas are depended on tilling the ground to make a living. Any significant concept of sustainable development is depended on the availability or access to land.

Land has a great economic, cultural and legal significance.<sup>186</sup> On the economic aspect land can be used productively to generate income and profit and consequently upgrade the economic status of the owner and contributes to the economy of the country. Whilst on the cultural aspect, indigenous people observe culture and traditional practices such as burying a new-born umbilical cord in the yard, as a sign to mark the child origin and serves as a lifetime reminder to the child of his origin. Furthermore, land is used as a sign of having elevated status of power in rural areas, for instance when the residents conduct meetings, only people who are residents or have registered land rights can participate in the decision-making process. Authority to participate in the rural community's decision-making committee is afforded to landowners and not extended to people who do not hold ownership of land as they seen to lack status or power.

Ownership of land in rural areas gives the landowner title, respect, value and recognition in the society. Furthermore, land is customarily recognised as a sign of wealth and substance. Hence landowners are perceived to have substance, and legally landowners have valuable property that can be sold or held as collateral in exchange for funding. Land is very closely related to the livelihood of all people and is the basis of socio-economic rights. The UNDRIP declaration entrenches quite a number of socio-economic rights and places a duty on states to actively implement socio-economic rights. However, the socio- economic rights are solely dependent on access to land. Rights such as adequate housing, food, health, education, and water. Realization of these rights depends on the development advanced on land.

However, failure to provide access to land hinders development and it is to the detriment of those who are living in poverty, as it limits opportunities that can assist to alleviate poverty, and these opportunities would emanate from the developmental projects. In this context, access to land is an important tool to advance and accelerate speedy delivery of socio-

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<sup>184</sup> Food and Agriculture Organization (FAO) Land Tenure Studies 4 FAO and Agriculture Organization of the United Nations Rome, 2002.

<sup>185</sup> Ibid note 184.

<sup>186</sup> Food and Agriculture Organization (n184).

economic rights, development and alleviate poverty simultaneously. However, the slow pace of implementation and enforcement of laws and policies at the state's level delays access to land which consequently and adversely affects the delivery of socio-economic rights.

### **2.3.2 Socio-economic rights**

Similar to UNDRIP the South African government-provided a number of socio-economic rights in the Constitution. These socio-economic rights are classified into three categories namely the qualified socio-economic rights, the basic socio-economic rights and prohibition socio-economic rights. The first group of rights requires a positive approach on the state to take reasonable steps, within its available resources to achieve their progressive realization. Whilst the second group of rights are neither drawn up as access rights nor are they subject to the eligibility of reasonableness, available resources or progressive realization. In addition, the last group of rights are rights created as the prohibition of certain forms of conducts.

Section 25(5)<sup>187</sup> place a duty on the state “to take reasonable and other legislative measures” thus in terms of UNDRIP the state has a duty to implement legislative measures which will enable people to access land. Taking into account the above-mentioned, the state implemented the land reform program, which is initiated to ensure that the injustices and inequalities emanating from the previous land dispossession are redressed in a manner that allows everyone to access land on an equitable basis.

The same Constitution placed a constitutional duty on the state to, actively implement socio-economic rights. In light of the above, some of those socio-economic rights are solely dependent on availability and access to land. Rights such as access to adequate housing,<sup>188</sup> access to health care services and sufficient food.<sup>189</sup> However, the Constitutional duty on the state is not limited to the implementation of socio- economic rights, but it encompasses a broad responsibility that requires the state to also respect, protect and promote socio-economic rights. Failure to respect, protect and promote the fulfillment of these socio-economic rights the state will be held accountable.

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<sup>187</sup> See section 25(5) of the Constitution of the Republic of South Africa Act 108 of 1996.

<sup>188</sup> See section 26 of the Constitution of the Republic of South Africa Act 108 of 1996.

<sup>189</sup> See section 27 of the Constitution of the Republic of South Africa Act 108 of 1996.

The courts have showed initiative of ensuring that socio-economic rights are protected by using the engagement requirement as a control measure for approved evictions. In the case of *Abahlali Base Mjondolo Movement of South Africa v Premier of the province of Kwazulu-Natal*,<sup>190</sup> the shack dwellers challenged the constitutionality of the KwaZulu-Natal Elimination and prevention of Slums Act.<sup>191</sup> Arguing that the eviction provisions of section 6 of the Act<sup>192</sup> violated section 26 of the Constitution.<sup>193</sup> The court held that the Act was invalid for its failure to ensure that the residents' rights to adequate housing are not violated without proper notice and consideration of other alternatives.

Pieterse asserts that "South African courts are not only permitted but are also constitutionally obliged to give meaning to socio-economic rights through the interpretation, the evaluation of government compliance with the duties they impose, to pronouncement on the validity of legislation and policy in the socio-economic sphere and the remedy of the state noncompliance with socio-economic rights".<sup>194</sup> The courts have shown efforts in upholding socio-economic rights by its consistency and extreme measures placed in the application of the engagement requirement such as in the case of *Residents of Joe Slovo community Western Cape v Thubelisha Homes*.<sup>195</sup> In this case, the court revisited the engagement requirement and granted an order requiring the city of Cape Town to engage further over the timing and details of eviction. Despite the fact that prior to the court proceedings, the city of Cape Town had already engaged in a meaningful engagement with the residents. This requirement ultimately led the city's decision to postpone the eviction plans and reconsider the *in situ* upgrade the resident had sought.

The application of the engagement requirement in the above-mentioned case ensured that the people's right to adequate housing is protected. Chenwi asserts that "meaningful engagement is an important development in the South African constitutional courts to enforce socio-economic rights and foster effective participation in service provision".<sup>196</sup> However Van der Berg is of the view that the requirement of meaningful engagement can be both praised as an innovative remedy and criticised as a further proceduralisation of

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<sup>190</sup> (CCT12/09) [2009] ZACC 31; 2010 (2) BCLR 99 (CC) (14 October 2009).

<sup>191</sup> Act 6 of 2007.

<sup>192</sup> KwaZulu Natal Elimination and prevention of Slums Act 6 of 2007.

<sup>193</sup> Constitution (n33).

<sup>194</sup> Marius Pieterse, Coming to terms with judicial enforcement of socio-economic rights (2004), *South African Journal on Human Rights*, 20: 383-417.

<sup>195</sup> (CCT 22/08) [2009] ZACC 16; 2009 (9) BCLR 847 (CC) ; 2010 (3) SA 454 (CC) (10 June 2009).

<sup>196</sup> Lilian Chenwi, Meaningful engagement in the realisation of socio-economic rights: the South African experience (2011), *South African public Law*, 26, 128-156.

socio-economic rights adjudication.<sup>197</sup> This is due to its nature of causing delay and opening more rooms for critics and arguments, which is often the reason why many like the respondent in the above mentioned case deviated from it.

The state's duty towards socio-economic rights is not limited to protecting but includes promoting of the socio-economic rights. Section 25(5) of the Constitution<sup>198</sup> requires the state to enable citizens to gain equitable access to land. In order to achieve speedy delivery of socio-economic rights as provided for in section 27 and section 26 of the constitution,<sup>199</sup> the state must actively make available land to people to promote realization of socio-economic rights. This calls for an urgent need for realization of land reform's objectives, which will require rigorous and vigorous implementation and enforcement of land reform programmes.

Taking into account that the state has a constitutional duty to ensure that socio-economic rights are actively implemented or afforded to everyone, it is also pertinent to point out that same will be impossible without gaining access to land. Hence land reform program should not focus only on granting people access to land, but also ensure that land is used productively to alleviate poverty and ensure enjoyment and realisation of socio-economic rights.

Khoza defined "Socio-economic rights as those rights that give people access to certain basic needs necessary for human beings to lead a dignified life",<sup>200</sup> meaning it is the duty of the state to ensure that people live a dignified life. However, the slow pace of land reform programme, defeats the duty of state to ensure that socio-economic rights are actively implemented. Koopman opines that dignity can be actualised "through the provision of opportunities for people whose land had been taken away, to build a life where the features of dignity are actualized".<sup>201</sup> Koopman extensively explained that "land symbolises the space that brings a life of prominence for all living beings and nature." He further opines that land needs to be restored and redistributed to address the severe transgression of dignity, injustices and oppression of people brought about by previous dispossession of land in

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<sup>197</sup> Shanelle Van der Berg, Meaningful engagement: proceduralising socio-economic rights further or infusing administrative law with substance (2013), *South African Journal on Human Rights*, 29:376-398.

<sup>198</sup> Constitution (n33).

<sup>199</sup> Ibid note 198.

<sup>200</sup> Khoza, Sibonile. *Socio-economic rights in South Africa: A resource book*. Community Law Centre, University of the Western Cape, 2007.

<sup>201</sup> Koopman (n167).

South Africa.<sup>202</sup> However, in order to ensure that previous injustices and inequalities of apartheid era are rectified, land redistribution must be reconciled with poverty alleviation strategies such as productive utilisation of land. Which will generate income and maintain livelihood for land reform beneficiaries.

Koopman is of the view that for some people without land, reconciliation with the land means that they do not necessarily go back to the original piece of land, but that they are given a piece of land, where they can enjoy the space, the opportunities and support given to build a life of dignity. That is a life where they have access to the necessities of life such as “water, food, shelter, health care, education, employment, safe environments, and leisure”.<sup>203</sup> Moreover, engage in social, economic, cultural and political life, and the space to actualize their various potentialities and capacities as human beings, potentialities such as freedom, creativity, caring for others, entering into relationships and the taking-up of responsibility.<sup>204</sup> Furthermore, that reunion of people with the land would then suggest the accomplishment of prominence through the implementation and accomplishment of, particularly the second-dimension socio-economic rights and the third-dimension ecological rights, as well as the third-dimension rights to development.<sup>205</sup>

However, Pienaar asserts that it is significant to appreciate that land reform is not an automatic solution to all economic, developmental, social and political challenges. However, one has to be pragmatic and accept that land reform has limits.<sup>206</sup> As stated above, Pienaar further alluded that access to land through land redistribution is not a right. But the state has a duty take ‘reasonable measures’, ‘within its available resources’, to foster conditions enabling equitable access to land,<sup>207</sup> meaning the slow pace of realization of the objectives of land redistribution is strongly projected to the availability of resources. As a result, perspectives of utilizing land reform as a tool to speedy delivery of socio-economic rights, development and alleviate poverty is wholly dependent on the speedy realization of land reform’s objectives. However, De Wet asserts that it is not translucent whether the land reform strategy will be able to follow its goals of distributive justice and reconciliation without in the process adding to the very challenges of inequality, competition, and conflict that it

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<sup>202</sup> Ibid note 201.

<sup>203</sup> Koopman (n167).

<sup>204</sup> Ibid note 203.

<sup>205</sup> Koopman (n167).

<sup>206</sup> Juanita M Pienaar, Land reform as embedded in the Constitution: Legal contextualisation (2015) Vol 144 Scriptura, 5

<sup>207</sup> Ben Cousins. "Land Reform in South Africa is Sinking. Can it be Saved?" (2016).

aspire to overcome.<sup>208</sup> In addition to the submission, the challenges presently encountered evidently proves the shortfalls of land reform program.

According to the Land reform policy discussion document, many South Africans continue to be landless or have insecure land rights. This conclusion may also be drawn from reported and unreported cases of evictions, land invasions, irregular land uses and other activities, The people affected by this are those in poverty traps, welfare-dependent, least educated, resource-poor, inhabiting the poor quality land, and often residing in rural areas.<sup>209</sup>

Some of the land reform issues as enshrined on the Land reform policy discussion document<sup>210</sup> revolve around the question of how the demand for land in South Africa can be advanced to ensure economic development, food security and improved livelihoods. That requires vigorous enforcement of compliance and cooperation of the national and provincial governments to ensure that speedy delivery of the land reform objectives is fully achieved.

Cousins asserts that it has become increasingly impossible to address issues identified by the Land reform policy without having to include social differences and inequalities based on a complex utterance of race, gender and class identities which is the core of unequal distribution of land and insecure rights to land.<sup>211</sup> It is rather unfortunate that land issues in South Africa are tied to racial discrimination and injustices, as a result redress approaches have to address the core issues of racial discrimination in order to address the injustices. Cousins further alluded that land is an invaluable asset to people and for future generations. However, despite the importance of land to the livelihoods of everyone, it is only few Blacks people who can afford land on a free market out of the millions of Black South Africans who were forced into overcrowded and impoverished reserves, homelands and townships during the apartheid era.<sup>212</sup>

From the above discussion it is evident enough that realisation of socio-economic rights is wholly depended on access to land. Furthermore, the slow progress of land reform program adversely affects the use and enjoyment of socio-economic rights of many Black South Africans and if it is not resolved there is a probability that it will also affect generations to come. Hence, it is important to ensure that legislation, laws, and policies promoting land

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<sup>208</sup> Christiaan de Wet, A vehicle to justice and reconciliation (1997).

<sup>209</sup> Land reform policy discussion document 2012, P4.

<sup>210</sup> Ibid note 209.

<sup>211</sup> Cousin (n207).

<sup>212</sup> Ibid note 211.

reform program be rigorously implemented and enforced. Before the right to access to land can be properly implemented to suit the socio-economic rights of people, perhaps it is pertinent that attention be focused on how this right is recognised and how it can be best implemented to alleviate poverty amongst the historically disadvantaged people.

### **2.3.3 Recognition of the right to access land**

The right to access to land is internationally recognised and protected. According to Article 26 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), indigenous people have rights and control over the land which they previously occupied. Moreover, the state is required to recognise and protect lands belonging to indigenous people. Article 14 of the Convention 169 on Indigenous and Tribal people outlines the right to access to land by highlighting the importance of land to people's livelihood particularly indigenous people who have been deprived of their land.

The Convention recognises the need for people who were dispossessed of their land to regain their land. Furthermore, it acknowledges that land is an integral part of people's livelihoods and a necessity to all. Moreover, a number of socio-economic rights depends on the availability of land. Rights such as the right to shelter or adequate housing and right to food etc, Black people have always been depended on land to farm and fend for their families. Tilling the ground for food has been a way of living for blackest people. Hence land is a means of survival and a way to life for Black people.

Despite the importance of the right, the process of acquiring land still posed major as a challenge. Acquiring land, gaining access to land or ownership of land are highly politicised. Article 14 of the ILO 169 Convention highlights the need to safeguard the right to land. Hence the right to access to land is enshrined in the Constitution, which is the supreme law of the country. The South African Constitution guarantees the right to access to land to all South African citizen in terms of Section 25(1) read together with subsection 5. Therefore, in terms of Section 25(1) and (5) the state has the responsibility to ensure that citizens are afforded access to land. However, the right to access to land is limited to available resources. Meaning the state can grant this right subject to availability of resources, despite its importance to human livelihood. Although this does not mean that the state does not have a responsibility of ensuring that all people are afforded this right. The state still has an

obligation to afford citizens access to land in a just and equitable manner, but Section 36 permits the state to perform within its means and thus according to its available resources.

People's livelihood is wholly depended on land, hence the right to access to land is of paramount significance to all people. However, this right is subject to limitation in terms of Section 36 and there are number of provisions to be taken into account when limiting a right. Such as the purpose of the limitation, the nature and extent of the limitation and the relationship between the purpose of the limitation and the limitation. For instance, if the right to access land is limited due to the activities that are carried on the land, such as mining activities. The people who were previously dispossessed of the land in question were deprived access to the land, their right to access the land is limited for health reasons, such that mining site is not conducive for residential or agricultural purposes. However, the people can be compensated for their land. Therefore, the extent of limitation in this scenario is closely related to the purpose of limitation. Thus, the people's right to access land was limited due to the uncopiable status of the land. Article 14 of the ILO 169 Convention highlights that the state must identify the land which people previously occupied and protect the people's rights over the land.

The state is entrusted with responsibility of identifying and making land available to people who were dispossessed of their land. In order for the state to grant access to land for people who were previously dispossessed of their land, However the state can only provide within its means of available resources. Therefore, realisation of access to land for all citizen could be a lengthy process as it is depended on availability of state's resources. Hence the lengthy process of redistributing land to Black people is justified by state lack of resources. The state is further required to promulgate legislation that will regulate the procedure and process to afford people access to land in terms of Article 14 of the ILO 169 Convention which provides that states must make adequate procedures to resolve land claims.

According to the Convention, the state must play an active role in ensuring that people who were dispossessed of their land receive their land back. The responsibility to reform land to accommodate those who were previously disadvantaged, is on the state. The state is entrusted with the duty to introduce land reform, which is customised and well suited to the country, depending on the challenges the country is facing regarding land. Whether they are ownership challenges, access or regulations governing specific areas. A well-suited legislation for the country's land challenges had to be promulgated and implemented with

the objective to grant access to land to all citizens. South Africa introduced its own land reform program with a three-tier system, land restitution, land redistribution and land tenure reform. Land restitution is aimed at compensating and restoring land to those who were previously dispossessed, while land redistribution is generally aimed at facilitating right to access to land for purposes of residential and agricultural purposes. Land tenure system is focused on granting people secure tenure system. According to American declaration on human rights of indigenous people Section 5: Social, Economic, and Property Rights Article XXV indigenous people have a right over the lands and resource which they previously occupied. According to this provision people are entitled to land that they historically possessed. Which in South African land context, Black people possessed all the land within the country. However, upon arrival of the Colonial and the Dutch, Black people were dispossessed of their land. Through the operation of colonial system which created injustices and inequality practices amongst blacks and whites. The colonial system favoured white people over black people. As a result of the discrimination, legacy of landlessness and poverty amongst Black South Africans is still thriving, an injustice which the democratic government is seeking to redress. When Black people were dispossessed of their land, they lost their way of making a living, and had to look for employment from their white oppressors.

Black person's way of making a living was now limited to employment, although the kind of employment was not gainful. They were not remunerated well and as a result Black people lived from hand to mouth, a poverty-stricken lifestyle that become a legacy over the years. Black people's livelihood changed from farming for survival to slaving for survival. They tilled the grounds they previously owned, as slaves. The lands which they laid their ancestors to rest become their slaving grounds. Black people are known for their diverse culture, tradition and customs. Which they practice with pride and understanding; hence it is of paramount importance to them to gain access to lands which they previously owned for purposes of practising their culture and customs. To perform ceremonies such as ancestral worship, ceremonies that are closer to their hearts and way of living.

### **2.3.4 Granting the right to access land**

Access to land is generally regulated by the tenure system, which provides set of guidelines regarding which land can be accessed by who and for what purposes and for how long.<sup>213</sup> According to African (BANJUL) Charter on Human and Peoples Rights of 1986 everyone has access to public property and services in equal measures before the law. The BANJUL charter affords everyone access to land provided they abide by the law. Furthermore, Article 14 makes provision that the right to property is guaranteed and can only be encroached when the interest of public or appropriate laws requires. However, according to Article 27 of UNDRIP<sup>i</sup> access to land should be facilitated by the state in a manner that recognises indigenous peoples laws, traditions, customs and their existing tenure system.

The state is given responsibility to draft and implement legislation which will give procedural guidelines to access land. According to the South African Constitution everyone has a right to access land. Moreover, the state's duty to legislate laws that regulate and provide guidelines to access to land is not limited to enacting laws but is extended to ensure implementation of such laws. Hence it is of importance that state intention in the policy drafts is clearly carried out in the implementation of the policy, in order to achieve the objective of the policy. A causal link that is lacking in the South African land reform legislation. The South African government has enacted a well drafted legislation on land reform, however, the implementation process is poor.

Land reform policies were drafted in a fashion that suggest granting access to those who were previously dispossessed, the landless and finding solution to those living in poverty. However, the implementation process seems to suggest that land reform program is aimed at making land available to those who were denied access. The state is more focused on giving people access to land, which is one part of the apartheid legacy and fail to assist the beneficiaries to overcome the other part of the legacy which is poverty. In order to ensure that the historical injustices and inequalities of apartheid era are redressed, the state need to focus not only on drafting good policy frameworks but also ensure that the intentions of the legislatures meet the expectations of land reform beneficiaries on the implementation process. According to American declaration on human rights of indigenous people Section 5: Social, Economic, and Property Rights

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<sup>213</sup> Food and Agriculture Organization (n184).

Article XXV, the state must recognise and protect the lands and resources of indigenous people. Furthermore, the state duty to have legal recognition of indigenous people rights requires the states to grant equal recognition in the redressal of historic injustices and practices. By affording land reform beneficiaries, holistic land reform program that will address both the landless situation and the poverty lifestyle. A land reform program that seeks to address the tenure system and afford people secured land rights and access to land. Furthermore, facilitate strategies of utilising land productively to generate income and alleviate poverty amongst land reform beneficiaries.

### **2.3.5 Protecting the right to access to land**

Indigenous people across the country have experienced the consequences of colonialization and invasion of their land, hence the international community gave a special consideration and attention to human rights situation of indigenous people by the introduction of UNDRIP. Which focuses mainly on ensuring that indigenous people human rights are protected. According to Article 28 of UNDRIP indigenous people have a right to be afforded redress of historical injustices. In terms of this section people who were dispossessed of their land have a right to have their land resituated to them or compensated. The South African land reform has encompassed this provision; however, the compensation process does not reflect the provision of Article 28(2). The compensation that is granted to land reform beneficiaries does not reflect the market value of the land, however, it reflects a compromise status of getting something instead of nothing. This is due to the notion that the current landowners claim to have contributed to the value of the land through the developments which are done on the land. Therefore, suggest that the appreciation of the value of the land is solely promoted by the developments. Hence, it is unlikely that a claimant be compensated according to the market value of the property. For similar reasons current landowners' demands market value of the property when the state expropriates the land. According to Article 15 of ILO 169 Convention the rights of people over natural resources must be safeguarded.

This provision suggest that people must be compensated for the use of their land. However, in the South African context, when developers utilise land belonging to Black people, they often fail to compensate them. Instead developers exploit Black people and conceal the exploitation by offering them employment. An example is the mining industry, according to the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) the mine

owners who are operating on the land that belongs to the community, they are required to sign Social Labour Plans (SLP) which is aimed at promoting employment and advance the social and economic welfare of all employees and uplift all stakeholders within the communities in which the mining activities are carried out, as agreement to compensate or assist the community. By ensuring development and creating opportunities for people residing within the community. Often Mine owners build schools, or donate stationaries and equipment, offer bursaries, and creates job opportunities for locals. However, this is not always the case, often community members are only promised these opportunities and never given, instead mine owners mine the minerals and pollute the environment and once they have depleted the minerals, they leave the land unrehabilitated. In many cases the mining area get abounded, without conducting proper mine closure procedures and as a result the land is left in a hazardous environmental state.

The American Declaration of Indigenous Human Rights recognises the need to respect and promote rights of indigenous people, especially their rights to their lands and territories and resources.<sup>214</sup> According to this provision people have the right to have their land respected and protected. The development that takes places on the land should not harm the natural existence of the land. In an event where it is unavoidable like mining, the mine owners have the responsibility to rehabilitate the land.

Failure to rehabilitate the land result in environmental dangers which can have drastic impact on the livelihoods of people residing in the area. Moreover, that can interfere with enjoyment of people human rights such as right to safe environment and right to clean water. Rehabilitation of land will not only ensure that the environment is conducive for human inhabitant but will also ensure that indigenous people maintain their religious and cultural practices. Land has a spiritual connection to Black people and a sense of belonging. Hence the need to protect the land is very important to preserve Black people way of living. According to American declaration on human rights of indigenous people Section 5: Social, Economic, and Property Rights Article XXV it provides that indigenous people have a right to maintain their distinctive, cultural and material relationship to their lands.

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<sup>214</sup> American Declaration on The Rights of Indigenous Peoples, 15 June 2016.

According to this provision it is of paramount importance that land be accessible for indigenous people to practice their traditional and cultural beliefs connected to land. However, failure to ensure that land is rehabilitated after use or maintained can infringe indigenous people right to engage in their practices connected to the land.

### **2.3.6 The need to develop land**

It is generally accepted that people's livelihood is depended on land to produce food, shelter and many more necessities of life, hence the need to develop land is a continuous necessity for all humankind. The need to develop the land is derived from people need of survival. Furthermore, any concept of sustainable development is wholly depended on land. Building of industrial firms and commercial facilities including farming relies on use of land. Therefore, it is paramount important that land be utilised productively to maintain people's livelihood and enhance development to better the lives of people.

It is for the same reason that Constitution of Nepal 2015 needed to implement CPA in a narrow sense, that guarantees every farmer the right to access to land for agricultural purposes in terms of Article 42.2. for purposes of ensuring food security which is one of the necessities of lives. Ensuring that there is enough food production in the country through agricultural activities can help alleviate poverty and combat hunger and starvation. Moreover, it can boost the economy of the country, as agriculture is one of the biggest contributing industries of the gross domestic products GDP. Article 51(e)(1) of Nepal constitution makes provision for scientific land reform and to end dual ownership of land in a manner that serves the interest of farmers. Nepal land reform is focused on investing on agriculture to alleviate poverty and consequently boost the economy of the country.

However, the South African land reform particularly the redistribution process is focused on agriculture development and has enacted a policy framework known as Land Redistribution for Agricultural Development sub-programme (LRAD). For purposes of assisting land reform beneficiaries who are interested in the agricultural activities. LARD is specifically designed to provide blacks access to land for agricultural development purposes. The main objective of LARD is to ensure that 30% of the country's agricultural land is redistributed to blacks over the period of 15 years; furthermore, to ensure improve of nutrition and incomes of the rural poor who want to farm at any scale; decongesting over-crowded former homelands area; and increasing opportunities for people staying in rural areas. However, these

objectives over the past years have not been successfully achieved. Despite the flexibility of LARD allowing beneficiaries to use it in ways that are suitable for their objectives and resources. LARD has not satisfactorily met the expectations of beneficiaries, particularly the poor. Beneficiaries are expected to make contributions either in kind or cash but according to their abilities. Beneficiaries can access grant ranging from R20 000 to R100 000, however the amount of grant depends on the amount beneficiaries have contributed. Beneficiaries are expected to at least contribute a minimum of R5000. The grant and contribution are calculated as per individual. In an event where people choose to apply as a group, the required own contribution and the total grant are both calculated by the number of individuals represented in the group.<sup>215</sup>

The approval of the grants is based on the viability of the proposed project, which takes into account total project costs and projected profitability. The requirement of contribution clearly does not cater for poor unskilled Black people, as beneficiaries are expected to design the type of project they want to start, and without extensive knowledge of agricultural projects, such individuals will fail to take part of gaining access to the grant. Although district level staff are ought to assist beneficiaries, but they are not going to do all the work alone, the beneficiaries have to make contribution, since the mode of implementation is decentralised, and beneficiaries are expected to have maximum participation to ensure speedy approval and good outcomes. The initiative to assist emergent farmers with grants has requirements which are not compatible with the intention of the initiative, however it is rather suggestive of the class of people who could be regarded eligible and thus literate and economically stable people. It is for this reason development of agricultural projects in South Africa has not managed to redress the historical injustices of the poor.

#### **2.4 The impact and effect of international law instruments on land equality and inclusivity**

The right to access land is a fundamental right and a necessity to all people. The United Nation together with other international committees have recognised the right to access land as a fundamental right to all humankind. Pursuant to that, the United Nation legislated declarations and conventions aimed at regulating the right to access land. According to the Universal Declaration of Human Rights of 1948 (UDHR) everyone has a right to access land, irrespective of skin colour or race. Hence it is of paramount importance for United

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<sup>215</sup> Southern African Regional Poverty Network, <[www.sarpn.org](http://www.sarpn.org)>, last accessed 01/09/2020.

Nations member states to reform laws and legislations aimed at providing access to land, to be in line with the international declarations. The UDHR is one of the core declarations that advocates for equal access of land and encourage land development to better the lives of those who are less privileged. This chapter discussed UDHR and other international instruments that seek to regulate access to land, and further advocates for recognition of indigenous peoples' rights over land they previously occupied. The chapter reconciled access to land and productive use of land made available to previously dispossessed people.

#### **2.4.1 Universal Declaration of Human Rights 1948 (UDHR)**

Article 17 of the Universal Declaration of Human Rights (UDHR) states that “(1) everyone has the right to own property (inclusive of land) alone as well as in association with others and (2) no one shall be arbitrarily deprived of his property”. According to this provision of the UDHR, every person, regardless of skin colour or race, has a right to own land alone or in association with others. This includes natives as well; thus, the UDHR provision is contrary to section 1 of Native Land Act (NLA) which states that natives are not supposed to enter into any agreement to purchase, hire or acquire land from any person including from a fellow native. This clearly indicates that the UDHR does not advance same objectives as those of the Areas Groups Act together with its predecessors, particularly the NLA. The intention of UDHR is to ensure that every person is afforded the same rights and privileges of ownership of property. The UDHR provision is currently supported by section 25(1) of the Constitution, which provides that “no one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property”.<sup>216</sup>

Article 17 of UDHR is interpreted to suit the current challenges of redressing the previous injustices of land dispossession, particularly the legacy of the NTLA and the GAA of 1966, which fostered poverty and landlessness among Black people. The application thereof would result in allowing people to have ownership of land in communal areas, and it would also increase the value of the land held in communal areas. Furthermore, it would change the economic status of land holders in communal land, placing Black people in a position of owning a valuable asset that can be sold for a substantial price, just like land in urban places previously referred to as controlled areas or whites only areas. Although it may contravene

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<sup>216</sup> Constitution (n33).

a number of policies and regulations such as Communal Land Rights Act 2004, Communal Land Tenure Policy 2014, Communal Land Bill 2016, Traditional Leadership and Governance Framework Act 2003 in support of land held in communal land and administered by traditional leaders, but it would also economically liberate black people.

Dlamini and Ogunnubi assert that the country's land reform programme has been extremely sluggish, and the people are obviously impatient. This could be owing to a number of reasons such as the bureaucracy lengthy process of land claims applications and the availability of state resources to acquire land for redistribution and restitution. As a result, calls for expropriation of land without compensation have been made by a number of sectors in South African society. These calls have invited into the social and political arena of the country apprehensions with regard to land tenure, land usage and land administration, particularly very problematic when it comes to land under traditional leaders. Dlamini and Ogunnubi are of the view that land occupation security is, perhaps, an extremely imperative issue that needs to be engaged for the people who are living in the rural villages.<sup>217</sup> According to Lahiff land reform programme has been criticised for failing to meet its target and consequently deliver on its multiple objectives of historical redressal.<sup>218</sup> Particularly in redistribution of wealth and opportunities and ensuring economic growth through redistribution of land to historically disadvantaged people to afford them an opportunity to use land productively and generate income and better their lives. Hall opines that land reform was met to be a one way in which the new South Africa can redress the injustices of apartheid era, through redistributing land to black South Africans, however land reform has fallen short of both public expectations and official targets.<sup>219</sup>

Tenure security for people living in the countryside could be the only way these people could experience ownership of land, however it does not address the question of alleviating poverty amongst countryside people, it equally gives ownership same as redistribution of land, but fails to cater for the productive use of land in order to eliminate poverty and contribute to the economy of the country. However, the issue of tenure security is not less important as alleviation of poverty, hence the need of theoretical link between land reform

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<sup>217</sup> Siyabonga Dlamini.Olusola Ogunnubi, Land Reform in South Africa: Contending Issues, *Journal of Public Administration* • Volume 53 • Number 2.1 • June 2018.

<sup>218</sup> Edward Lahiff, Land reform in South Africa: A status report 2008, available at:<http://hdl.handle.net/1056614481>.

<sup>219</sup> Ruth Hall, A political economy of land reform in South Africa 13 October 2013, available at: <https://doi.org/10.1080/0305624042000>.

policies and poverty alleviation policies in order to ensure that the need of land ownership is address as much and the need of alleviating poverty is address through utilising land productively.

#### **2.4.2 United Nations Declaration on the Rights of Indigenous Peoples 2007**

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is a resolution adopted by the national assembly in 2007. For the purposes of serving individual and collective rights of indigenous people. However, the resolution was adopted as a non-legal binding resolution. This resolution does not impose legal binding obligations on member states. The provisions of the resolution are aimed at advocating for the rights of indigenous people; however, member states are at liberty to implement certain provisions of this resolution and abandon certain provisions or not apply any at all. Although the resolution is not legally binding to member states, it comprises of well drafted provisions that protects the rights of indigenous people. Some of those provisions are set out in article 10.

Article 10 protects indigenous people from unlawful evictions, which often take place when there is a business opportunity or development regarding the land in question. In most instances' developers make proposals to relocate people to a certain location where they will be given shelter and other benefits as compensation in exchange of their land. However, the developers fail to honour their promises after they have successfully vacated people from their land. The forced relocations referred to in this article relates to the South African land dispossession that took place during the apartheid era. Black people were forcefully removed from arable land and relocated to small overcrowded land without any form of compensation.

The relocations were done in order to make way for development which only benefited the white minority. To date, the legacy of the land dispossession still mirrors the current developments in the ownership of land. Although South Africa has a land reform with three tie system one of the programs is redistribution, which focuses on redistributing large commercial farms. However, the program seems to favour the elite over the poor landless people. Although this could be justified to certain extent, that large commercial farms can only be afforded by few with resources and that there is a need to ensure continuous farming on redistributed land. The need to have continuous productive use of the redistributed land does not necessarily mean that poor people are not suitable candidates for redistribution program. However, this highlights the need for the state to

invest in increasing land grants and source funding to assist poor aspirant farmers to benefit from the redistribution program.

Article 11 of the UNDRIP requires the state to take positive approaches and mechanism to redress historical injustices. The provisions of this section mandates member states to redress land dispossession by adopting effective mechanism such as restitution. Although restitution is not possible in some cases, however other measures such as compensation are more convenient to redress injustices of dispossessed people. Since 1994 South Africa embarked on land reform program which seeks to redress the injustices of the historical land dispossession. The land reform program was developed with intentions of ensuring that land is restored to the historically dispossessed people. However, since the land reform programme was introduced to date, it has not met the expected intentions of policy drafters and the expectations of beneficiaries. Instead the program has encountered numerous challenges in attempt to redress the injustices. Challenges ranging from inadequate support services to land reform beneficiaries to use their land productively, to failure of alleviating poverty amongst land reform beneficiaries through provision of land. Consequently, addressing all social and economic challenges of previously disadvantaged people. However, this redressal can be achieved through provision of comprehensive support services by the state to ensure that restoration and redistribution of land positively impact the lives of land reform beneficiaries. Land reform programme intended to restore more than land to historically disadvantaged people, its main focus was to restore livelihoods and eradicate poverty amongst black people. However, same has not been achieved due to a number of reasons. Ranging from the implementation challenges such as limited of resources from state to acquire and redistribute land, lack of sustainability on support services given to land reform beneficiaries, corrupt practices and the costly programmes such as willing buyer willing seller as an intervention to secure land for redistribution.

#### **2.4.3 Indigenous and Tribal Peoples Convention, 1989 (No. 169)**

The Convention 169 on Indigenous and Tribal People was adopted by the International Labour Organization in 1989. This convention is the only international binding convention instrument in relation to rights of indigenous people. The convention requires the states parties to identify land traditionally occupied by indigenous people and guarantee ownership and protection of rights. In addition, it provides that procedures will be effectively taken to protect the right of the masses with regards to the use of land not solely occupied by them,

albeit lands which they have formerly accessed for the substance and traditional activities undertakings.

Moreover, the Convention also requires the provision of legal measures to resolve land claims, founds rights over natural resources, safeguards against forced removal and establishes a right of return and compensation for lost through either land or at least equal quality and quantity or money. In the South African land reform context, land claims are based on land, which was previously owned by our ancestors, a land claim is made against a particular piece of land in which a certain clan of people previously resided. In many occasions there is more than one claim against the same piece of land and claims such as this usually end at the Land Claims Court. Where the presiding officer has to make a ruling on who is the rightful claimant, it is a lengthy process where the claimants have to prove that their ancestors resided on the land in question. However, Williams asserts that the simplest justification is that land belongs to the people and should be restored to them. Although this may be true, but it does not answer the question of who is to decide which land is restored to which people.<sup>220</sup> Therefore, the question of which land to expropriate for the purposes of redistribution is still problematic, as many of the vast land of the South African land are owned by white individuals and companies and as a result this create another challenge of determining race from a juristic person.

In terms of section 19(1)(a) of the Companies Act 71 of 2008, a juristic person is a separate legal entity with rights to sue and be sued, basically an artificial person who does not possess certain attributes such as race like a natural person, therefore, we cannot determine race of a juristic person. In the case of *Dadoo v Krugersdorp Municipal Council* 1920 AD 530 at 547, a private joint stock company, styled Dadoo was duly registered with share capital of 150 shares. Of these shares, 149 were owned by the appellant Dadoo and one by the appellant Dindar, who are both Asiatics. Dadoo Ltd took transfer of stand 340, in the township of Krugersdorp and again in 1916 the company obtained another transfer of stand 171 in the same township. They were forthwith leased by the company to the appellant Dadoo, who carried on a grocery and general dealer's business on stand 340, upon stand 171 he resided.

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<sup>220</sup> Gavin Williams, Land-ing in trouble, St Peter's College, Oxford University, Indicator SA, Vol 12 N04 spring, 1995.

In October 1919, the Krugersdorp Municipality applied for, and obtained from the Transvaal Provincial Division, an order setting aside both transfers as being contrary to section 2 of Law 3 of 1885 which reads: “The native race of Asia shall not be capable of being owners of fixed property in this Republic, except only in such streets, wards or locations as the government for the purposes sanitation shall assign to them to live”. Dadoo took the matter before the Appeal court, and the court held that a company is a separate legal entity who can acquire and own properties on its own name. Therefore, a juristic person has its own legal personality apart from the shareholders and CEO. This is yet another obstacle that hinders the land reform programme to efficiently and effectively redress the previous injustices of apartheid era. Considering that a number of plots of farms are registered under a company, making it rather impossible to identify which piece of land to expropriate and which not to. It practically slows the pace of realising the objective of restoring land to the indigenous owners.

In terms of the international law, where relocations are being considered for Black communities from traditional lands, the government’s duty is to afford people inclusive decision-making and consent of affected people is marked. International principles and ILO Convention 169 state that “relocation must be an exceptional measure. Where it is considered necessary, such relocation shall only take place with [the community’s] free and informed consent”.<sup>221</sup> Again, the ILO Convention highlights the injustice that Black people experienced during apartheid era. Blacks were never consulted nor informed about their relocation, but they were forcefully removed from their land and placed in non-arable land. Where they could not farm or till the ground to fend for their families like they usually did.

The ILO Convention further states that if consent cannot be attained, removal can only happen with the meeting of the “national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned”.<sup>222</sup> During the apartheid era Black people had no political recognition, therefore they were never favoured with meeting such as public inquiry or public consultation. Blacks were living under the dictatorship governance. Moreover, ILO Convention provides that the grave necessity to obtain the consent of communities affected by evictions and moving is also projected in the guiding principles on development-orientated evictions, where the

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<sup>221</sup> Convention 169 on Indigenous and Tribal People 1989, article 16.

<sup>222</sup> Ibid note 221.

governments are tasked and obligated to guarantee “full and prior informed consent regarding relocation”.<sup>223</sup> Additionally, states are required to provide a solution where evictions are not carried out in compliance with international law.

It is, however, not clear why Blacks who were affected by land dispossession, the forceful relocation was not favoured with remedies during the apartheid era. Such remedy must “provide or ensure fair and just compensation for any losses of personal, real or other property or goods, including rights or interests in property”.<sup>224</sup> In the South African land context, that would mean restitution and redistribution of land to the Black people. Together with necessary mechanism to enable the people to use land productively to regain their social and economic status in the society, and alleviate poverty, hunger and starvation.

According to ILO Convention 169, an assessment of damage to individuals should be “where the home and land also provide a sole livelihood for evicted inhabitants, account for value of land”.<sup>225</sup> With the South African land reform system, restitution and redistribution processes have not been easy to carry out, and as a result most of the land claims are addressed by a way of compensation than redistribution. Due to many reasons such as the land which the claim is brought against has already been developed and it is not feasible that restitution can take place. Furthermore, the conditions connected to forced evictions do not always allow restitution or restoration, but where conditions allow, in awareness of the development tasks, governments are guided to assist returning persons in getting back their possessions and offer them voluntary return.<sup>226</sup>

#### **2.4.5 Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms 1998**

The declaration advocates for the fundamental human rights of people. Moreover, it demands recognition, protection and promotion of fundamental human rights. It is of paramount importance to outline that human rights are necessities of life. People cannot live without their basic human rights; hence it is only fitting that these rights be legally recognised and protected. Article 1 of the Declaration acknowledges that everyone is entitled to human rights, whilst Article 2 mandates member states to implement, protect and

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<sup>223</sup> Basic Principles and Guidelines on Development-Based Evictions and Displacement, article 56.

<sup>224</sup> Ibid note 223.

<sup>225</sup> Basic Principles (n223).

<sup>226</sup> Elisabeth Wickeri and Anil Kalhan, Land rights issues in International Human Rights Law.

promote human rights. This clearly indicates that people's livelihood depends on access to human rights. According to Garibaldi *et al.*, human welfare depends on the amount and stability of agricultural production, as determined by crop yield and cultivated area.<sup>227</sup> Therefore, in order to ensure survival of people there must be some sort of protection and recognition of their basic human rights. People need food, water and shelter for survival, it is within the nature of a person require nourishment for survival. However, Owoeye and Adedeji are of the view that land is of paramount importance to development, growth and housing delivery in any society.<sup>228</sup> It is not only the wellbeing of people that is depended on land, however, even development in this evolving world requires access to land, for building infrastructures that will better the living conditions of all people. Hence Owoeye *et al.* opines that land is of crucial element in property development process.<sup>229</sup> Therefore, its acquisition is vital to achieving official and sustainable housing delivery in urban environment. Having highlighted the need for human rights, it is also pertinent to point out that basic human rights are solely dependent on access to land for realisation. There is a need to have land in order to achieve realisation of basic human rights, rights such as food, shelter and clean water. Land is needed to farm and produce food crops, to tend to animals, to build houses, to drill and bore water, basically human livelihood is closely depended on land. Hence Article 3 of the Declaration emphasises that member states should legislate laws that recognise, protect and actively implement basic human rights.

Within the South African legal context, basic human rights are recognised and protected by the Constitution. However, realisation of some of the basic human rights are hindered by the slow pace of restoring land to Black people. The slow pace of land reform defeats the objective of availing land to everyone. Consequently, affects realisation of basic human rights such as adequate housing and food. Where land reform has managed to restore land, there are no support services to aid the poor land beneficiaries to productively utilise the land to realise their basic human rights. The lack of comprehensive post-settlement support services to land reform beneficiaries does not only result in redistributed land laying fallow, but also fails to alleviate poverty and moreover hinders active realisation of basic human rights. Owoeye *et al.* is of the view that is crucial to note that providing people with access

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<sup>227</sup> Lucas A Gribaldi, Marcelo A Aizen, Alexandra M Klein, Saul A Cunnigham, and Lawrence D Harder, Global growth and stability of agricultural yield decrease with a pollinator dependence.

<sup>228</sup> Owoeye OJ and Adedeji. 2015. YMD, Urban land acquisition for sustainable housing delivery in Akure, Nigeria, 4(1):.10-20, International Journal of developing societies.

<sup>229</sup> Ibid note 228.

to land and empowering them to make effective use of it is central to poverty alleviation.<sup>230</sup> Article 13 of the Declaration read together with article 3 states that people have a right to receive resources to enable them to actively achieve their human rights. In the land context it is only fitting that land reform beneficiaries be afforded post-settlement support in funding and other resources in order to ensure that land reform beneficiaries actively achieve their basic human rights. Through productive use of redistributed land, beneficiaries can combat hunger and starvation and alleviate poverty in their lives.

#### **2.4.6 International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966**

The ICESCR also advocates for the recognition and realisation of basic human rights, outlined in Article 11. Article 11 acknowledges that every person is entitled to a dignified life of adequate standard of living including adequate food, shelter and clothing. According to Boonyabancha land and housing are important assets for the poor which do not necessary only provide shelter but also generate income for the poor.<sup>231</sup> Therefore, people use land for shelter, food and development and for economic purposes. The economic benefit can be driven from productive use of land, such as commercial farming or leasing or even selling land and proceeds thereof used to better the lives of people. Omirin is also of the view that access to land and property rights is a major key element in economic growth and development.<sup>232</sup> The ICESCR mandates member states to ensure that basic human rights are actively realised. However, in order to ensure that basic human rights are actively achieved, the member state must first ensure that there is access to land.<sup>233</sup> Ensuring access to land in the South African land reform context that will require radical implementation of the programme with intention not to only redistribute land but also to ensure that land is used productively to combat hunger and starvation and consequently alleviate poverty.

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<sup>230</sup> Owoeyo note 228.

<sup>231</sup> Bonyabancha S (2009) Land for housing the poor by the poor, experience from the Baan Mankong nation wide slum upgrading programme in Thailand, *environment and urbanization*, 21(2): 309-329.

<sup>232</sup> Omirin MM (2002) Issues in land accessibility in Nigeria, proceedings of national workshop on land management and property, tax reform in Nigeria department of estate and management, University of Lagos, Akoka, Lagos, Nigeria.

<sup>233</sup> Article 11 of International Covenant on Economic, Social and Cultural Rights 1996 (ICESCR)

#### **2.4.7 General discussion on interrelation of declarations promoting access to land and development**

The 2007, Declaration on the Rights of Indigenous Peoples, states that “indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired”.<sup>234</sup> The Declaration, while not binding, states that indigenous people have a right to own and develop resources on their land, a right to legal recognition of indigenous lands by states, and a “right to redress for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged”.<sup>235</sup>

Although the declaration is not binding on states, but it entails provisions if read together with the Convention 169 on Indigenous and Tribal People, would make a great change in ownership of land and land administration systems particularly in the former homelands. Despite the fact that in the South African context the Constitution provides that everyone has a right to own property (inclusive of land) it does not limit access and ownership to indigenous people but extends to every South African citizen. Therefore, the interpretation of the Declaration in the South African context would mean that “Black people have the right to own and develop resources on their land, a right to legal recognition of indigenous lands by states, and a “right to redress for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged”<sup>236</sup> during the apartheid era.

Both the Convention and the Declaration emphasise participatory dialogue and the need for “free, prior, and informed consent with respect to decision-making about lands occupied by native peoples”,<sup>237</sup> especially where the relocation of peoples from land is under consideration within the international bill of human rights namely, the Universal Declaration of Human Rights (UDHR), and the two binding Covenants, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR); a number of articles are directly tied to rights to land.

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<sup>234</sup> United Nations, Declaration on the Rights of Indigenous Peoples, art. 26(1), Sept. 13, 2007, available at <[http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf) [Hereinafter Declaration on the Rights of Indigenous Peoples]. 25, see article 26(2), 26(3) & 28>.

<sup>235</sup> *Ibid* note 234.

<sup>236</sup> United Nations, Declaration on the Rights of Indigenous Peoples, see article. 10, 28, 29, 32.

<sup>237</sup> *Ibid* note 236.

According to Article 10 “Native people shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the Native people concerned and after agreement on just and fair compensation and, where possible, with the option of return”.<sup>238</sup> Although in the South African land context, land was forcefully taken away from Black people without consent nor the option to return, the present initiatives of land reform seek to redress the previous injustices are in line with the provisions of the above mentioned Declaration and Convention. In that the land reform seeks to uphold the rights of Black people by restoring them to the position they would have been in had the land been not forcefully taken away from them.

Land dispossession of Black South Africans is not only a loss of immovable property but also loss of dignity to the black community, in that Black South Africans lost their good economic standing when they lost their land, they lost their means of making a living and, moreover, the only source of generating income and their way to life. The ancestors of Black people relied on farming for food, this was the only way in which Black people fend for their families and as a result land dispossession brought about hunger and starvation in the lives of Black South Africans. Therefore, restoration of land to Black people would not only rehabilitate Blacks economically but it will also combat hunger and starvation. According to Chukwujekwu land is not just only basic to human life but it also contains all necessities for life to exist and tool for obtaining a social prestige, economic security and political power.<sup>239</sup> However, Omirin is of the view that economic development of the country depends on how efficient land redistribution amongst citizens and the system put in place to ensure its productive use.<sup>240</sup> Therefore, availing land without comprehensive support services does not necessarily afford land reform beneficiaries access to all necessities for life neither does it allow the land reform beneficiaries an opportunity to participate in the country’s economy through productive utilisation of their land.

The UDHR and ICESCR protect the right to adequate standard of living; the standard which Black South Africans yearn to achieve in terms of Article 10. However, the poverty level amongst Black South Africans is too stricken. Black people are living in appalling conditions with very little means of living. The right to adequate standard of living will require that Black

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<sup>238</sup> United Nations (n236), see article 10.

<sup>239</sup> Chukwujekwu IE, (2006), Facilitating low cost housing schemes: which way forward? *Journal of the association of housing corporations of Nigeria*:1(10): 45-52.

<sup>240</sup> Omirin note 232.

people be placed on a similar scale as that of the white minority in ownership of land, it will further require land to be made available to Black people to build houses, farm and productively utilise the land. In order to achieve this, land reform must be coupled with support services to aid Black people to utilise land productively.

The agricultural sector presents one of the major opportunities for substantial growth in the country's economy and a concomitant creation of jobs. Blacks should be given opportunities to participate in the agricultural market and consequently contribute to the economy of the country. The UDHR and ICCPR further makes provision for protection of privacy and property rights. Number of economic, social and cultural rights in the UDHR and ICESCR are intimately connected to access to land, including the rights to housing, food, health, and work.<sup>241</sup>

The right to satisfactory shelter is principally relevant and land is a critical element of fulfilling the right. Indeed, land is a major requirement for sufficient condition on which the right to adequate housing is completely contingent for many individuals and even the whole society. It is apparent that the South African government cannot realise some of the constitutional rights such as the right to adequate housing as contemplated in section 26 of the Constitution, without resolving the issues of ownership of land. Most of the human rights (right to food, water, etc.) are directly connected to availability of land or rather access to land. Therefore, failure to make land available will have a negative effect and results to failure to realise the basic human rights. In order of the basic human right of adequate housing to be realised land has to be made available in order to build proper houses befitting human inhabitant. Right to food is also directly linked to availability of land and access thereof, for without land you cannot farm and produce food crops. Therefore, people who have received land through redistribution should be assisted with support services to enable them to till the ground and farm productively and ultimately produce food crops.

International law prohibits forceful removal of people or evictions, and gives exception when eviction is practiced in agreement with international human rights law. Under Article 2(1) of the ICESCR in which, states are obligated to use "all appropriate means"<sup>242</sup> to realise the right to housing, which includes "refraining from forced evictions and ensuring that the law

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<sup>241</sup> United Nations, Universal Declaration of Human Rights (UDHR), art. 23, 25, Dec. 10, 1948, available at <<http://www.un.org/Overview/rights.html#a25>>.

<sup>242</sup> Wickeri *et al.* (n226).

is enforced against its agents or third parties who carry out forced evictions.”<sup>243</sup> Article 17 of the ICCPR compliments the “right not to be forcefully evicted without adequate protection” when it “protects against ‘arbitrary or unlawful interference’ with one’s home”.<sup>244</sup> Article 2(3) of the ICCPR also requires state parties to provide “an effective remedy”<sup>245</sup> for the individuals who have their rights suppressed and violated, which includes “adequate compensation for any property”.<sup>246</sup>

With specific regard to South African land dispossession, the state was supposed to have ensured that people who were previously dispossessed are well compensated or given their land back, but to this date the pace to realise restitution of land to Black people is inevitable due to the great number of in fragmented land administration systems. The South African government is yet to correct all the land administration systems; it is an ongoing process that leaves the society in a complicated situation with regard to how long will it take for the government to redistribute the land back to the owners. Moreover, when will the Black people be in a position of utilising the land productively in order to escape poverty life. Perhaps the proposed land expropriation without compensation could be an answer to these questions, and maybe the government will be able to redistribute the land at no cost and still be able to fund the land reform beneficiaries with the necessary support services needed to aid them to utilise land productively.

## **2.5 The impact of land reform on various states, regarding the livelihoods of land reform beneficiaries**

The South African land reform programme is duly influenced by international laws, treaties and conventions. The development and adjustments made on the land reform programme since its adoption are merely customisation to suit and address present challenges faced by South African land beneficiaries. Generally, land reform in South Africa is perceived as a ticket of escaping poverty for majority of Black people. Black people believe that if they can gain rights of ownership to land, their economic challenges will be resolved. However, since the introduction of land reform programme the expectations of Black people have not been met. Moreover, this is not to state that Black people have not benefited from land reform program. Land reform program has redistributed about 8,2 Million hectares of land

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<sup>243</sup> General Comment 7, article 3, International Covenant on Economic, Social and Cultural Rights.

<sup>244</sup> Article. 17(1), International Covenant on Civil and Political Rights.

<sup>245</sup> Article 2(3), International Covenant on Economic, Social and Cultural Rights.

<sup>246</sup> General Comment 7, article 4, International Covenant on Economic, Social and Cultural Rights .

to Black people. However, not all the land that was redistributed is utilised productively. Although some land reform beneficiaries have managed to utilise their land productively. But most of the redistributed land is laying fallow and not utilised productively. This is owing to number of reasons ranging from lack of post-settlement support services to difficulty in identifying beneficiaries.

The current redistribution policy has taken a huge turn in transferring of rights of ownership to land reform beneficiaries to leasehold system. Which seem to favour the rich and disadvantage the poor. The focus of land redistribution process is mainly on Black emergent farmers as opposed to poor people. Majority of Black people are poor for obvious reasons; they cannot afford to run commercial farms without financial assistance. Where financial assistance is afforded, there's lack of farming skills, training and other necessary resources needed for purposes of farming productively. Consequent to this background, most Black people fail to farm and use their land productively. As a result, Black people continue to live in poverty whilst in possession of redistributed land.

The impact of land reform on social and economic status of Black people has not met the intended expectations, of redressing previous injustices and inequalities of apartheid era and consequently alleviate poverty amongst black people. There is still a lot that needs to be done in order to ensure that land reform meets the expectations of the policy drafters and that of beneficiaries. The current legislation on land reform program is well drafted, however it lacks theoretical link to poverty alleviation strategies. Hence its focus is mainly on equipping land reform beneficiaries with land. Consequently, fail to assist the land reform beneficiaries to utilise land productively to combat hunger and starvation. After this, the implementation of land reform legislation appears to have loopholes in addressing the issue of poverty amongst land reform beneficiaries. It rather focuses on redistributing land to people who can utilise the land productively, meaning the selection criteria of beneficiaries is now based on people who have capacity to farm productively, than poor landless black people.

Although it can be said that the state decision to redistribute agricultural land to people with capacity to farm is owing to the following reason; to ensure that the land which was expropriated continues to carry on the farming business and contributes to the economy as it previously did. The state implemented this strategy in order to ensure that the economy of the country and food production is not negatively affected by its decision to expropriate

and redistribute land. However, this reason negatively affects the poor, in that despite their social status poor Black people are not given a chance to participate in farming projects to better their lives and fend for their families.

The selection criteria are not poverty driven but production driven. Meaning the focus has shifted from assisting Black people alleviate poverty but focuses on maintaining production and generating profit. Although the selection criteria can be justified to some extent but the question of what the state is doing to assist poor Black people to better their lives and escape the poverty-stricken lifestyle remains unattended. Hence there is a need for post-settlement support services to ensure that even poor people are granted an opportunity to participate in farming projects to better their lives. South Africa has well drafted legislation but lacks theoretical link to certain objectives such as poverty alleviation strategies. Hence the study investigated policy drafts and other scholarly writings from other countries and lessons that can be learnt that can assist to close the loophole identified in the South African land reform program.

## **2.6 Conclusion**

Both International law and domestic legislation protect and grant equal access to land to everyone. However, the right to access land equally does not necessarily grant people particularly historically disadvantaged people total redressal of previous injustices. Hence it is of paramount importance that the right to access land be actualised by also providing necessary support to actualise the benefits that are associated with land. Thus, there is a need for land reform legislation to take measures that will assist land reform beneficiaries to use their land productively and alleviate poverty. The right to access land equally has been extended to all people including the historical disadvantaged people. According to the internal instruments discussed above indigenous people have a right to access, live, own and use their territories, and that is land that was previously dispossessed from its original owners. However, access to land is not only limited to indigenous people but it is extended to all people to use and enjoy. Although focus is mainly on previously dispossessed people in an attempt to remedy the previous injustices and place the historical disadvantaged people *at par* with the white minority. Land is associated with peoples' livelihood including realisation of socio-economic rights. Thus, access to land coupled with comprehensive post-settlement support services grants speedy delivery of socio-economic rights. Furthermore, this chapter shows that not only the people's livelihood is depended on land, but also developmental activities are reliant on access to land. Moreover, the need to develop land

is closely associated with improving the livelihoods of people. Hence productively utilising land by developing it, will consequently improve the livelihoods of people living in rural areas, particularly where there are few developments. Moreover, access of other necessities of life will also be improved, necessities such as adequate housing and health institutions. Therefore, it is of paramount importance that land reform programme should prioritise productive use of redistributed land in as much as it prioritises restoring land to the previously dispossessed people. It is of no benefit to redistribute land and fail to ensure that redistributed land is used productively and positively impact the lives of beneficiaries and alleviate poverty. The redressal of land dispossession to poor Black people is much more than land restoration but it includes redressal of both social and economic status of black people. Hence the need to ensure that land redistribution is not only limited to availing land to black people, but it presents developmental opportunities to use land productively and generate income to fend for their families. Land reform program can both restore land and eradicate poverty amongst historically dispossessed people through encouragement of developmental projects on redistributed land.

The UDHR and the Constitution provides that everyone has a right to own land, however ownership of land without any developments does not grant the landowner access to necessities of life and thus basic human rights. Although the right to land can be protected but it would be of no benefit to the owners if it is not utilised productively. Hence the need to both grant access and comprehensive support to ensure that the land made available to people particularly the historically disadvantaged people makes a positive impact in their lives. UNDRIP protects the rights of indigenous people to live, own and use their territories, however without adequate post-settlement support services same cannot be achieved. Therefore, the need for recognition, protection and promotion of fundamental human rights would not be actualised. Due to failure to prioritise productive use of land made available. It is important to note that basic human rights are closely associated with availability of land, however realisation thereof lies with the use of the availed land. Therefore, it is of no benefit to previously disadvantaged people to gain land and not be assisted to gain access to basic human rights such as food, shelter and clean water. Basic human rights are necessities of life that promote a dignified life for all people. Therefore, protection and availing of land to historically disadvantaged people should be weighed with a need to restore dignity and respect to black people, by availing comprehensive post-settlement support services that will ensure delivery of basic human rights through productive use of land.

Land reform is a very difficult and complicated issue particularly in South Africa, the country did not only experience land dispossession but also political oppression that led to many deaths of black people. In this regard, land reform in the South African context cannot be address without having address the political struggle of black South Africans. Black people did not have political recognition and as a result they were treated unfairly even the laws that were enacted only favoured whites and oppressed black people. Despite the knowledge of international legislation on issues of equality and property, land included the apartheid government proceeded with unjust laws and oppressed Black people denying them rights to own land. Consequently, Black people lost their land to whites and lived in overcrowded areas which were not arable.

Blacks were subjected to poverty-stricken lifestyles where they could not till the ground and farm to feed their families. Democratic government of South Africa seeks to redress the previous injustices and inequality by redistributing land to historically dispossessed people. However, the land reform system has not yet met the expected outcome of redistributing land to black South Africans and consequently alleviate poverty amongst black people. This could be owing to a number of reasons, one being failure to advance adequate support services to land reform beneficiaries to aid them to utilise land productively. Or poor implementation of laws and policies advocating for productive use of land and sustainable development in South Africa. According to the international instruments discussed above, right to access to land is not a conclusive solution to redress historical injustices. There is a need to ensure that the right to land does not only provide property to people, but it also fosters realisation of basic human rights through the utilisation of land productively. It is also important to note that poverty alleviation is directly linked to availability or access of land. However, realisation thereof relies on the productive use of the land, therefore in order to afford basic human rights to land reform beneficiaries, the state needs to provide land reform beneficiaries with a comprehensive post-settlement support services that will enable land reform beneficiaries to use their land productively. Land reform is recognised internationally as the tool to bring about change in the livelihoods of the historically disadvantaged people. By affording Black people an opportunity to farm productively and participate in agricultural market. And further advocate for provision of resources to aid in utilise their redistributed land productively.

## CHAPTER THREE

### INTERNATIONAL INSTITUTIONS SUPPORTING LAND FOR DEVELOPMENT

#### 3.1 Introduction

The need to reform laws to enable equal access to land for everyone, has also led to the need to ensure land development to accommodate the needs of all people, particularly those living in underdeveloped areas. However, same could not be achieved without establishing measures to assist underdeveloped countries to optimally redress the historical injustices and its legacies of underdevelopment. It was for this reason that the international committee (UN) invested in financial institutions to aid underdeveloped countries to improve the lives of all people. By ensuring that people are afforded better living conditions and access to other necessities of life such as health facilities and educational institutions despite the land tenure system used in their respective areas.

Land development will not only grant access to fundamental human rights services; however, it will also contribute to productive use of land made available through redistribution. The much-needed developments particularly in rural areas will require land reform beneficiaries to utilise their land to realise development. Land could be used for agricultural purposes or even industrial purposes, but it will still serve the need to avail fundamental rights services. If land is used for agricultural purposes, it will provide food that will nature the lives of people and generate income for the farmers. And if land is used for industrial purposes it will also provide employment opportunities and ensure that people earn a living to fend their families. However, if the land is left unused it will neither provide food nor avail essential services to the people. Notwithstanding the need to utilise land productively to improve the lives of beneficiaries, same must be appreciated that the member state may not have enough budget to ensure that land is used productively by affording support services to everyone who has been given access to land. Hence the international committee established financial institutions to support and assist member states to develop their countries by utilising land productively to promote and improve better living conditions for all citizens. This chapter discussed the institutions that promote and finance land development.

### 3.2 World land bank

World land bank is a financial institution aimed at “providing loans and grants to developing states with the aim of alleviating poverty by promoting economic growth”.<sup>247</sup>The bank receives funding from member states and maintains its liquidity through interest of loans it makes available to borrowing states. However, the target projects for World Land Bank are those that private companies or firms would not necessarily take interest of and such projects do not necessarily generate income, however they contribute in improving the lives of people. Projects such as building of a health facility in rural areas which does not necessarily generate income to the developers, but it provides access to fundamental human rights services and it has a positive impact on the lives of the rural dwellers. Moreover, it creates employment opportunities to the local people and consequently improve the social and economic status of the rural dwellers. Furthermore, developmental projects attract investors to partner with the local people and establish new developments ventures as the developmental area would have pose as a new market for other developmental projects.

The World Bank is an international intermediary funded by 184 member states. The purpose of World Bank is to “provide loans and grants to developing states with the aim of alleviating poverty by promoting economic growth”.<sup>248</sup> Gilbert and Vines are of the view that the purpose of World Bank is dedicated to promoting sustainable economic development and to assist in alleviating poverty throughout the developing world.<sup>249</sup> However, Pincus and Winters are of the view that the World Bank has since developed and is no longer confined to promoting sustainable economy and alleviating poverty but it has develop to a state of being a state aid agency, antipoverty crusader, and a leading proponent of state retrenchment under the rubric of structural adjustment.<sup>250</sup> According to Pincus *et al.* the World bank has taken on issues as diverse as post conflict reconstruction, biodiversity, crime, governance, and public participation in development planning.<sup>251</sup> Therefore, the purpose of World Bank is not solely confined on economic

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<sup>247</sup> Michel Chossudovsky, World bank international organization, World Bank | Definition, History, Organization, & Facts | Britannica , last accessed 01/09/2020.

<sup>248</sup> Ibid note 247.

<sup>249</sup> Christopher L Gilbert and David Vines, The world Bank structure and policies, Cambridge University press,2006.

<sup>250</sup> Jonathan R Pincus and Jeffrey A Winters, Reinventing the world bank, Cornell University press, Ithaca and London.

<sup>251</sup> Ibid note 250.

development and poverty eradication but it has since gained interest in assisting developing states in other issues such as crimes and reconstruction of post conflict reconstruction. The World Bank receives funding from developed countries which are member states and also acquire its funds from borrowing on international capital markets. The World Bank operates in a similar fashion as the bank an individual may approach for a loan, except that it only borrows national governments. The World bank often fund projects that promotes infrastructure, health, education, alleviation of poverty and so forth. Projects like this may have social benefits but not enough to benefit private firms, hence they are not considered much but private firms. Building a bridge in a rural area is not a type of a project a private firm would associate with for profit. Hence projects like this are left to be attended by the government, which in most cases has limited resources and that is where World Bank is able to lend a helping hand to the government to ensure that projects of that nature are attended to timeously. South Africa is a developing country, which has suffered a lot of underdevelopment particularly in the rural areas where Black people were relocated to. The apartheid government did not only dispossess land belonging to Black people, but it ensured that rural areas remain undeveloped. Infrastructures such as schools, libraries, clinics and other necessary institutions are still lacking in rural areas, even after land has been redistributed to black people. This is owing to lack of development which is resultant from lack of resources and skills from land reform beneficiaries. Perhaps, institutions like world bank aimed at assisting developing countries with funds to improve the lives of the citizens could be the missing link to the solution on issues of lack of funds, if they were approached by the state to lend funds that will focus on assisting land reform beneficiaries to utilise their land productively and develop their areas.

### **3.3 The International Monetary Fund**

The International Monetary Fund (IMF) was established for the purposes of providing short-term support for countries facing financial challenges. This is clearly stated in the IMF's Articles of Agreement as follows: "To give confidence to members by making the general resources of the Fund temporarily available to them under adequate safeguards, thus providing them with opportunity to correct maladjustments in their balance of

payments without resorting to measures destructive of national or international prosperity.”<sup>252</sup>

The IMF’s mode of operation is based on the phrase “under adequate safeguards” meaning as part of the agreement to provide resources to the country in need, the IMF makes certain demands about the government fiscal and monetary policies. This is referred to as “conditionality” as is described as follows; When a country borrows from the IMF, its government agrees to adjust its economic policies to overcome the problems that led it to seek financial aid from the international community. These loan conditions also serve to ensure that the country will be able to repay the Fund so that the resources can be made available to other members in need. However, Edwards opines that the IMF is perceived as a mysterious and often feared institution by most states.<sup>253</sup> Edwards further asserts that this observation is brought about the myth that the IMF staff travels around the world imposing unnecessary harsh adjustments policies to developing countries. Although such assertions are not necessarily true, the IMF cannot impose any policies, although a state may be required to agree to follow a given set of microeconomic policies aimed at assisting the state to improve from its current state of economy. The state will be required to sign this condition before the IMF release funding, and this is to ensure that the state does not fall into the same financial challenges it has found itself in. In recent years, the IMF has streamlined conditionality in order to promote national ownership of strong and effective policies.<sup>254</sup>

A country’s balance of payments consists of two components. The first is the trade balance, which is the distinction between the value of a country's imports and exports for a particular period and is the largest component of a country's balance of payments. Accordingly, it means that the country that imports more goods and services than it exports in terms of value has a trade deficit as opposed to a country that exports more goods and services than it imports has a trade surplus. Therefore, in terms of the IMF balance of payment “maladjustment” means that a country is running persistent trade

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<sup>252</sup> Articles of Agreement of the International Monetary Fund,” International Monetary Fund, February 22, 2010.

<sup>253</sup> Sebastian Edwards, *The International Monetary Fund and the developing countries a critical evaluation*, University of California, Los Angeles and the National Bureau of Economic Research, Carnegie-Rochester Conference Series on Public Policy, vol 31, Autumn 1989, pages 7-68.

<sup>254</sup> IMF Conditionality,” International Monetary Fund, March 18, 2011.

deficits. Consequently, this means that the country is borrowing more from other countries and is building up its external debt.<sup>255</sup>

The second component of the balance of payments is the interest that a country must pay on its “existing external debt” (the debt that is accumulated when a country imports more than it exports). This means that the debt accumulated in the past lead to worse debt in the present. This consequently mean that a country that received funding or loan from IMF which also have previously imported more goods than it exported has a higher interest rate to pay. As a result of the previously accumulated debt. However, the country’s external debt does not grow forever, at a certain point of indebtedness the country may be exempted from accumulating more debt through the application of default on understanding debt.<sup>256</sup>

In order to have a positive account on external debt, South Africa can rely on manufacturing and producing goods locally to export to other countries. This will not only ensure that South Africa maintains a positive external account, but it will also improve the lives of South African citizens, particularly those living in poverty. The state can explore other alternatives to improve the lives of beneficiaries, alternatives such as investing on land reform beneficiaries by providing adequate support services such as funds, resources and skills training to utilise their land productively and consequently participate in producing goods locally that will be sold on international market. This will not only improve the livelihoods of beneficiaries, but it will also improve the economy of the country and consequently ensures a positive external account on IMF. Therefore, South Africa can rely on productive use of land to strengthen the country’s economy and consequently improve the living conditions of all citizens.

### **3.4 The World Trade Organisations**

The World Trade Organisation (WTO) is an international body that regulates trade operations between member states. The WTO set out rules and regulation for international trade and resolves trade disputes between member states through negotiation process. Furthermore, WTO presides over matters emanating from trade agreements between countries, most notable the General Agreement on Tariffs and

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<sup>255</sup> Articles of Agreement (n252).

<sup>256</sup> Ibid note 255.

Trade (GATT). The WTO is generally known for its speciality in negotiation proceeding and has a recommendable history of assisting countries which have faced trade barriers and have them lowered, the negotiations have immensely helped to liberalize international trade. Hall opines that WTO is about trade above everything and promoting of market opening.<sup>257</sup>

Therefore, WTO will be very instrumental in assisting South Africa to forge more trade relations with other countries, in order to open more international market for the land reform beneficiaries who will be producing goods locally. Creating market for land reform beneficiaries will ensure continuity of developmental projects carried on from their lands. Moreover, it will ensure sustainability of developments and reduce the number of developmental projects which are often abandon due to lack of funds for continuity.

However, apart from WTO being for development and opening of market to developing countries, there are challenges that WTO presents to small farmers, challenges such as not granting sufficient support to small farmers to withstand the international trade rules and standards. According to Hall the current trade rules and negotiations in the international markets generates inequitable terms for small farmers worldwide, particularly those in developing countries.<sup>258</sup> Local markets are being overwhelmed with subsidized imports and subsistence farmers are most likely no longer able to sell their products on local markets. These trade deals often lead to unstable food security, resulting to hunger and increased violence or farm crimes where the communities have leased or sold land to government or transnational companies to grow crops to export. Therefore, the increase of international market is not only beneficial economically, but it poses risk and stability on local markets and food security. Hence it would be prudent to balance the trading on international markets for purposes of promoting economy and trading on local markets to ensure food security within the state whilst generating income on international markets.

### **3.5 New Development Bank**

The New Development Bank (NDB) is a development bank established with the objective of financing infrastructure and sustainable development projects in Brazil, Russia, India,

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<sup>257</sup> Ronnie Hall, Trade Liberalization, Natural Resources and Poverty, Development 2006, 49(3), (49-55).

<sup>258</sup> Ibid note 257.

China, and South Africa (BRICS) and other emerging economies and developing countries. The development bank supports public or private projects through loans, guarantees, equity participation and other financial instruments.<sup>259</sup> NDB is a financial institution which promotes development and provides financial support to ensure that development is realised in underdeveloped countries. According to Jones, the purpose of NDB, what is also referred to as BRICS development bank is focused on the major needs in infrastructure and more sustainable development.<sup>260</sup> The reason for this according to Bhattacharya and Romani is that the increase of infrastructure investment could accelerate economic growth and development.<sup>261</sup> Therefore, in order to achieve increase in investment in infrastructure and more sustainable development, based on the need for growth, structural change, inclusion as well as sustainability and resilience the countries need to increase in infrastructure investment to accelerate economic growth and development Jones opines.<sup>262</sup> Mwase and Yang are also of the view that indeed there is an empirical evidence that infrastructure development can increase economic growth and reduce inequalities.<sup>263</sup> It is for this reason that the NDB would be a suitable institution to break barriers to development in South Africa by investing in infrastructures that will enable historical disadvantage people to utilise their land productively. Hence Jones opines that lack of infrastructure results in hindrance of development.<sup>264</sup> Therefore, South Africa cannot achieve full development cycle without investing in infrastructure that would necessitate to using land productively and gainfully to the land reform beneficiaries.

However, the financial support made available by NDB is not given freely or rather donated. NDB makes available loans, guarantees and other financial instruments` in exchange of interest and repayment of the principal amount. This practice ensures the liquidity of the institution. Partnered states can borrow and repay the money from the institution, however the process of securing funds must be coupled with the undertaking of using the funds for developmental purposes.

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<sup>259</sup> New Development Bank, <https://www.ndb.int>, last accessed 27/03021.

<sup>260</sup> Stephany Griffith Jones, ABRICS development bank: a dream coming true, No 215, March 2014.

<sup>261</sup> Bhattacharya A and Romani M, (2013) Meeting the infrastructure challenge, the case for new development bank, EGI, G-24 and LSE, available at: <http://www.g24.org/TGM/Bhattacharya.pdf>.

<sup>262</sup> Jones (n260).

<sup>263</sup> Mwase N and Yang Y, BRICS philosophies for development financing and their implications for LIC's, IMF working paper WP/12/74, available at: <https://www.imf.org/external/pubs/ft/wp/2012/wp1274.pdf>.

<sup>264</sup> Jones (n260).

### 3.6 International Bank for Reconstruction and Development

The International Bank for Reconstruction and Development (IBRD) is a global development cooperative owned by 189 member states. It is one of the largest development bank in the world, it supports the World Bank Group's mission by providing loans, guarantees, risk management products, and advisory services to middle-income and creditworthy low-income countries, as well as by coordinating responses to regional and global challenges.<sup>265</sup> The IBRD is invested in ensuring that developing countries are afforded financial support to improve the lives of the people and consequently contribute to sustainable development of the country. A countries economy is deepened on the industrial activities of the country. Hence the need to ensure that states use their natural resources to improve the lives of the people and ensure that there is sustainability in their developments to positively impact the economy. IBRD provides financial relief to states in need to improve their social and economic status through developmental projects. According to Barsch, the IBRD has a unique feature of providing opportunities for participation of lenders and borrowers alike in drafting borrowing and lending policies.<sup>266</sup> This feature ensures that both the lender and borrower have a much deeper understanding of what is expected of them and also presents an opportunity of developing suitable policies for all participants. This feature is derived from the main purpose of the IBRD, which is to promote and facilitate foreign investment, by assisting the reconstruction and development of territories of member states by facilitating investment of capital for productive purposes. In essence IBRD requires member states to invest a certain amount to be trade on international trade markets and profits thereof are made available to member state as funding aimed at reconstructing and developing the member states territories. However, the funding can only be made available in equal considerations to reconstruction and development. This is in terms of article 3, section 1 (a) which provides that resources and facilities of the bank shall be used with equitable considerations to projects for development and projects for reconciliation. However, according to Bretten many countries expressed fears of what would be left for development if the bank allocates too large of a share of its resources to reconstruction.<sup>267</sup> However, Keynes argued that should the amounts be equally divided

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<sup>265</sup> International Bank for Reconstruction and Development, < <https://openknowledge.worldbank.org> >, last accessed 27/03/21.

<sup>266</sup> Antonin Barsch, International Bank for Reconstruction and development, 1994-1949, a review.

<sup>267</sup> International Bank for Reconstruction and development, 1994-1949, a review.

between reconstruction and development loans, there would not be enough development loans after the reconstruction is completed.<sup>268</sup>

### **3.7 International Fund for Agricultural Development**

The International Fund for Agricultural Development (IFAD), is an international organization whose objective is to improve agricultural development and livelihoods in developing countries. Its mandate is carried out in projects and programmes are focused to remote and environmentally fragile locations, including least developed countries and small island developing States. The main objective of IFAD is to assist the most vulnerable groups such as smallholder farmers, pastoralists, foresters, fishers and small-scale entrepreneurs in rural areas by providing, among others, access to weather information, disaster preparedness, social learning and technology transfer that enables farmers to feed growing populations and increase the climate resilience of rural farming systems. The expertise and services provided by IFAD are solely aimed to ensure that the emergent and non-skilled farmers are adequately assisted to ensure production in their farming activities. The programmes provided by IFAD contribute to knowledge transfer programmes to venerable farmers and also serve as a farming guidance programme to the beginners.

### **3.8 United Nations Industrial Development Organisation**

UNIDO is the specialized agency of the United Nations that promotes industrial development for poverty reduction, inclusive globalization and environmental sustainability. The core objective of UNIDO is to ensure that development plays a role in eradicating poverty of all citizens of developing countries. UNIDO promotes use of natural resources to create sustainable development for all. However, for most states to make a meaningful developmental project, it requires financial assistance, hence the UNIDO promotes industries developments to improve the economy of the country. The state may loan money from other international financial institution for developmental purposes, UNIDO will then make available services to such borrowing states to advise and assist in executing industrial developments which will generate income for the state and also ensure that the state is liquidated to repay the loan and continue to use the development

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<sup>268</sup> Ibid note 267.

to improve the lives of all people. Moreover, ensure that such development is sustainable to continue to positively impact the lives of all citizens. Therefore, the duty of UNIDO in developing countries is to assist and ensure that such countries take part in industrial developmental projects that are both sustainable and gainful to all people. Despite all the innovations that financial institutions such as UNIDO can offer to states, if the state is not discipline in distributing the funds and ensuring that the funds are used for the intended purpose of eradicating poverty amongst historically disadvantaged people such financial help will bear no fruits to the poor neither will it achieve the objectives of the funder. Sarker *et al.* is of the view that accountability, transparency, participation and predictability are the indicators of governance which are directly related to any strategy aimed at alleviating poverty.<sup>269</sup> However, in a case of South Africa the state has a lot to rectify before coming to terms with the four identified indicators of good governance that could aid in ensuring that poverty alleviation strategies are effective. The state will have to deal with the issues of corruption and enforce accountability to ensure that funds aimed at assisting land reform beneficiaries are not necessarily looted for reasons not known to the public. According to Sarker *et al.*, access of the poor to basic services of government, budget transparency and expenditure, verdicts of courts, responsive local government, grassroots democracy and anti-corruption are effective instruments for every sector development which can alleviate poverty in terms of any dimension.<sup>270</sup> Therefore, in order for the funding to make a positive impact in the lives of emergent farmers it will require some level of transparency on the part of state in its dealing with the beneficiaries.

### **3.9 The link between International and domestic financial institutions**

International institutions and agencies that promote development both by finances or other related services are of paramount importance to local or domestic institutions. The international institutions serve as financial reservoirs for financial struggling countries in need of development. However, gaining access to the funds and services requires a state intervention. For local institutions and agencies to gain access to funds held in international financial institutions, the state must request financial support and make an undertaking to repay the loaned money. After the state has borrowed money, such money

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<sup>269</sup> Md Nzirul Islam Sarker, Md Altab Hossin, Wu Min, Md Aktaruzzamman, Poverty alleviation of rural people through good governance in Bangladesh, the journal of social sciences research, academic research publishing group; vol 4(12): 547-55, 12-2018.

<sup>270</sup> Ibid note 269.

will be released to the state in question and allocated to relevant institutions for the intended development. Once the funds have been allocated to the local institutions it is then made available to the locals to apply for funding to execute their developmental projects. However, the application thereof requires borrowing individuals to furnish security and to repay the money in a specified period, with interest. whilst the state is making available funds for development, the international financial institution affords such state repayment holiday. In order to afford such state a reasonable time to execute developmental projects and generate income to repay the loan.

In South Africa Land Bank is one of the local financial institutions aimed at providing financial assistance to individuals intending to develop land. Land Bank is the national financial institution with the competencies of acquiring finances on international institutions. Such funds are aimed at assisting land reform agencies and councils aimed at improving the lives of people through farming and other industrial activities that contributes to development which is sustainable. Accordingly, Land Bank plays a role of intermediary of land reform agencies and beneficiaries on international markets.

### **3.10 The Land Bank**

Agriculture Development bank, which is commonly known as the Land bank, is aimed at assisting emergent farmers who require capital and financial support to fund their agricultural projects. The Land bank is an independent institution created by the state to assist emergent farmers. However, it is not funded by the state, its liquidity relies on loans from foreign financial institution. Recently the land bank signed a R900million long term loan facility in 2018 with German Development Bank KfW. The loan facility is to be payable in 10 years' period with a 2-year payment holiday. However, this is not the only funding the land bank has received, in 2017 the land bank secured funding through the World Bank and its Multilateral Investment Guarantee Agency (MIGA) of an amount of R3.5billion loan facility with a 10-year maturity period, in support of a long-term commercial loan from Standard Chartered Bank and DZ Bank. The land bank further signed a similar facility with the European Investment Bank (EIB) to the amount of R50million. All these funds were secured for purposes of supporting the much-needed boost in agricultural development in South Africa.

The reason why land bank relies on loan facility to ensure liquidity of the bank for the benefit of the agricultural sector is owed to the fact that the state does not fund the land bank, however it provides guarantees and the bank is expected to raise all funds dispersed to farmers on the capital and debt market. This could be a very strainers and lengthy process to acquire funding for purposes of supporting black emergent farmers. As a result, not all the time land bank is in a liquid position of funding black emergent farmers particularly those who are just beginning. The land bank awaits loan repayment from funded farmers in order to secure funding for other farmers and also relies much on loan facility from foreign funders (banks) in order to maintain long term liquidity.

The loan repayments instalments from funded farmers are not guaranteed and the land bank is expected to pay back the loan within a specified period of time and as a result it cannot risk funding beginners who are not well conversant with the agriculture industry. When farmers are granted the loan or funding by the land bank to conduct their agriculture activities, they are expected to repay the loan from the profits made from their sale of products. Meaning farmers are expected to have good production in order to make sales and generate income to repay the loan, however, it is unfortunate for farmers who are not vested with the practices of conducting agriculture activities such as poor unskilled land reform beneficiaries, as there is no room for fail crop production, funded farmers are expected to be productive in their farming activities. According to Business link, Farms run by poorly trained personnel are not immune from unsustainable practices and they often collapse without fulfilling their objectives.<sup>271</sup> Hence it is of paramount importance that emergent farmers be given the necessary support in training and transferring of skills and knowledge programmes through post-settlement support services programme. Matsuzuka opines that Training is essential to curb poor production planning, managerial ability, coordination, technology, low level of technical knowledge and wastage.<sup>272</sup> Groenewald is also of the view that skills development plays a role in influencing the success of the emergent farmers.<sup>273</sup> However, access thereof is limited to those who are already in farming business since the state has institutionalized skills development

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<sup>271</sup> Business Link, Fit for training your needs: Impact of training on business performance, (2010), available at:<http://www.bussinesslink.qa.uk>.

<sup>272</sup> Matsuzuka Y (2008), Sustainability for profit post-secondary institutions for non-profit purposes: the case of corporate universities in the U.S. *Hit. J. Soc. stud*,40:111-124.

<sup>273</sup> Groenewald J (2004), Conditions for successful land reform in Africa, *South African Journal Economy Management and Science* 7(4): 673-682.

programme. Therefore, in order for emergent farmers to apply for the skills development programme they have to fund their studies unless they belong to a certain organisation that can apply for funding from the relevant Systems Engineering and Technical Assistance (SETA) for skills development training. Nzimande opines that development through training has been reported as one of the most important factors in building capacity to succeed. Therefore, the lack of comprehensive support services to emergent farmers is a cause of poor production in farming practices.<sup>274</sup>

This is another weakness on the land reform program regarding post-settlement support services to land reform beneficiaries, in order to ensure that redistributed land is productively utilised. Another challenge is that most land reform beneficiaries lack collateral property in which the loan can be bonded against as security. Since the state no longer transfers rights of ownership of redistributed land to land reform beneficiaries, and as a result the land reform beneficiaries do not hold title over the land. However, they are lease holders and cannot register the land as security for loan.

Perhaps the requirements for land reform beneficiaries to gain access to funds should be revisited, in order to ensure accessibility of funds to utilise land productively, particularly for agricultural purposes. Revisiting the requirements does not necessarily mean that the requirements should be weakened but be realistic to the challenges faced by land reform beneficiaries. Challenges such as lack of ownership rights over the land they possess, and as a result they fail to furnish security for the funds they require. However, it should be noted that there are risks associated with loaning and lending money, therefore there must be some sort of security to safeguard the interests of the bank should a land reform beneficiary fail to repay the funds. Therefore, the state should furnish security on behalf of land reform beneficiaries as a surety and further take initiatives to ensure that land reform beneficiaries are mentored, monitored and assisted by experienced farmers to farm productively and generate income to fend for their families and also repay the funds.

Moreover, Land Bank should forge a workable relationship with land reform agencies and councils, in order ensure effective service to land reform beneficiaries. Agencies such as the National African Farmer's Union of South Africa (NAFU) provides services to black

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<sup>274</sup> Nzimande B (2010), Bridges to a better life: Skills development FET and SETAS, supplement to mail and Gaurdian newspaper. 3 September 4.

farmers who have been excluded from mainstream agriculture, the purpose of NAFU is to provide access to resources such as land, credit, information, and other related support services. African Farmers Association (AFASA) is aimed to promote successful commercial farming and ensure sustainability of the agricultural developments. Agricultural Research Council (ARC) is focused on providing agricultural research and development to ensure effective method transformation in the agricultural activities. Whilst Agri South Africa (Agri SA) Promotes development, profitability and sustainability of agricultural activities. Last but not least Agricultural Business Chamber (ABC) is focused on creating and negotiating favourable agricultural business environment to encourage healthy competition and open market for all agricultural farmers to participate in.

A collaboration of Land Bank and the above-mentioned Unions and farmers' association would ensure speedy realisation of land reform objectives. Particularly optimal use of redistributed land in agricultural activities to generate income and alleviate poverty amongst land reform beneficiaries. However, such partnership will need to have clear objectives on how to assist land reform beneficiaries to productively use their land and also contribute to the economy. Not only will the partnership assist land reform beneficiaries with funds, but it will also create a platform for exchange knowledge, skills and information necessary to farm productively. It will further create opportunities for emergent farmers to participate in the agricultural market. Consequently, this partnership will ensure that emergent farmers farm productively and sustainably. Therefore, the impact of social cohesion between financial institutions and land reform unions and associates would successfully contribute to sustainable development of the country. By ensuring that no land is left fallow or abandoned due to lack of resources, information and knowledge.

### **3.11 The impact of law on land development**

According to Article 32 of UNDRIP the indigenous people have a right to determine and develop strategies for development and use their land productively. The provisions of Article 32 read together with the provisions of Section 5 of the Social, Economic and Property Rights Article XXV provides that indigenous people have a right to own, control, use and develop their lands. The provisions of these two statutes implies that indigenous people are allowed to make strategies that can assist them to use and develop their land and

consequently alleviate poverty. In the South African land context, when developers want to develop the land that belongs to indigenous people or land held in communal. That is land held in trust by the traditional leader for the benefit of the community. The developers have to approach the traditional leader to seek his permission to utilise the land. The traditional leader will therefore convene a meeting with the community and request the community's comments and interest on the proposed development. After such community engagement, the traditional leader will take a decision having considered the concerns and comments of the community.

In an event where the traditional leader would have granted permission to the developers, the developers will in return be required to compensate the community whether in monetary value or by affording community members employment opportunities or doing some community services to assist the community. However, in circumstances where the developers were already in possession of the land and had performed developmental activities on the land, before the land claim in favour of the community was lodged. The developers will have to compensate the community or in an event where land can be occupiable, return the land. Through the process of expropriation conducted by the state on behalf of beneficiaries and reconstitute or redistribute the land to land reform beneficiaries (community).

However, this does not necessarily mean that development is not encouraged and accepted in rural areas, but proper procedures of initiating development ought to be followed. Furthermore, laws ought to be complied with, legislation governing and regulating rural development. Legislation such as Development and Facilitation Act (DFA), which is aimed at supporting rural development and providing procedures to be undertaken and institutions to lodge relevant documentation with. According to Section 27 of the Development and Facilitation Act the Local Government body is entrusted with the duty to set land development objectives, and in any event they fail to do so, the Minister of Executive Council (MEC) will be responsible to set out the land development objectives. Consequently, the responsibility to ensure that land development objectives are set lies with the Local government and the MEC, therefore developers and investors are encouraged to conduct developmental projects, however such projects must be in line with the outlined land development objectives.

South Africa should invest in ensuring that redistributed land is used productively to combat hunger and starvation like the Uganda land reform system. Which is focused on improving the lives of land reform beneficiaries both socially and economically. This is a land reform programme that is aimed at alleviating poverty through productive use of redistributed land to ensure food and income for land reform beneficiaries. In order to achieve this, South African land reform programme should consider redefining post-settlement support services, by ensuring that land reform beneficiaries are afforded a comprehensive post-settlement support service to enable them to farm productively and contribute to the economy of the country. Lastly South African land reform programme should also encourage new ways of farming to ensure good production. Farming strategies such as the Mexican's which focuses on technological innovation such as crop shifting and multiple crop system. This is the practice of growing two or more crops on the same land during one growing season, this will ensure productive production and allow intensive cultivation throughout the year seasons and consequently ensure food security and contributed to the country's economy. With this type of production hunger and starvation will be combatted amongst land reform beneficiaries, furthermore this type of farming strategy would ensure continuous use of redistributed land and consequently contribute to sustainable development. This would be another measure that South African land reform programme could consider together with a comprehensive support services to ensure that land reform beneficiaries do not abandon farming and leave land to lay fallow.

### **3.12 Conclusion**

This chapter discusses the institutions that promote and finance development in developing countries. Institutions such as the World bank that is known for providing funding to developing states for purposes of alleviating poverty and consequently improve the economy of the country. The types of developments that institutions such as the World bank fund, are projects that are aimed at enhancing development whilst making contribution to the country's economy. Therefore, the main purpose of funding developmental projects that generate income or improve the livelihoods of poor people is based on capacitating the poor with means of making a living. It is for this reason that basic human rights of people in developing countries is actualised through developmental projects that improves their living conditions and alleviate poverty. However, there are other types of funding that are solely aimed at assisting the country during its time of financial challenges and that is short term funding. These are funding's sourced from institutions such as the IMF, whereby the

institution plays an active role in assisting the state that is in financial challenges and provide microeconomic policies that will assist the state not to run into the same challenge in future. The support from these types of institutions ensure that not only the state is bailed out from financial challenges but also assisted in financial policy developments that will positively impact the use of finances and boost stability of economy of the country. However, the growth of the country's economy is dependent on the developments made and productive use of land. Hence institutions such as IBIRD are for ensuring that developing countries are afforded financial support to improve the lives of the people through developmental activities, which will necessarily need utilisation of land. Therefore, in order to ensure that development is actualised, land that is made available to people must be productively used to achieve this objective of development. Although use of land productively in agricultural practices may be challenging to the owners, due to lack of access to agricultural markets. The WTO makes available services that create an international market for developing countries to trade. Therefore, it is the responsibility of the national government to ensure that citizens are assisted to gain access to such services.

Providing financial support to member states to ensure that the member states are liquidated to improve the lives of the citizens is a good initiative. However, the objective it is defeated when member states establish national or domestic financial institutions that impose strict requirements towards accessibility of funds to utilise land productively. Although one may argue that the strict requirements guard against liquidity of the institution, mismanagement of funds by officials and creates accountability to the institution, whilst ensuring that land developers are able to repay the funds. However, the strict lending requirements are often hindrances to development in that people who are in possession of redistributed land are often not in possession of ownership rights as a result they cannot furnish security to the financial institution.

Furthermore, there is a need to reconcile developmental laws with the prerequisite requirements of financial institutions aimed at assisting land reform beneficiaries to utilise their land productively. It is of no benefit to have laws that advocate for development whilst the measures put in place to ensure realisation are not practicable to the target market (land reform beneficiaries) social and economic status.

## CHAPTER FOUR

### TRANSFORMATIVE CONSTITUTION AND LEGISLATION FOSTERING ACCESS TO LAND IN SOUTH AFRICA

#### 4.1 Introduction

The apartheid era in South Africa had an adverse impact on the issue of access to land. The government system at the time promulgated policies and laws that legalised land dispossession from the indigenous owners. As a result, Black South Africans were dispossessed of their land and forced to relocate to non-arable land. Black people could no longer farm nor grow crops in the areas which they were relocated to, and consequently lost their source of living. For a number of years, Black people suffered hunger and starvation while living in the overcrowded non-arable land. Due to the level of poverty, Black people had to go and look for jobs at the white people's farms, mines and residences in order to fend for their families. Although a substantial number of Black people were employed at the white farms and firms, they were not making enough money to properly fend for their families nor to take their children to school. The reality was that Black people were living from hand to mouth, a poverty-stricken lifestyle.

The dispossession of land did not only mean physical removal from possession of land belonging to black people, but it also meant change in social and economic status. Black people began to experience poverty after they were dispossessed of their land, and accordingly, their means to make a living were also striped off with the dispossession of land. Hence when South Africa became a Constitutional democratic Republic in 1994, land restitution and land redistribution become the main focus for Black South Africans, in an attempt to place Black people in an equal social and economic status as the whites and eradicate poverty amongst black people. Redressing the previous injustices became a focus point of the ruling party the ANC and necessitated the adoption of land reform programme such as restitution, land tenure and redistribution of land. But prior to the adoption of the land reform programme a number of legislative frameworks had to be promulgated to abolish the pre-existing legislative frameworks of apartheid era. Hence, the Abolition of Racial Based Land Measures Act 108 of 1991 was promulgated to do away with the provisions of NLA, NTLA and its successors GAA, because now South Africa was a democratic republic, a Constitution was promulgated as a supreme law of the country in 1996. An introduction of a new era governed by a Transformative Constitution that aims to

drastically restructure the country in an orderly and governable manner. According to Rapatsa Transformative Constitutionalism is an idea of redressing the past injustices whilst cementing a foundation of law for the future of the society.<sup>275</sup> Having taken into consideration the principal mandate of redressing the past injustices and the tools of addressing societal challenges, the South African Constitution embodies and negates transformational change within the societal behaviour, mannerism and practices of law. The constitution aims to forge and create a harmonious society that affords equal opportunities to all citizens. It against this backdrop that the provisions of the constitution are ought to be upheld and regarded as the supreme law of the country.

The Constitution contained provisions addressing the issue of land (Section 25). A number of progressive legislation on issues of land redistribution were also promulgated in line with the Constitution. These frameworks include policy such as the Reconstruction and Development programme that is aimed at paving a way for the land reform programme. These legislative measures are discussed below and their effects on the current issues of alleviating poverty amongst historically disadvantaged Black South Africans. The discussion below will showcase how these progressive legislative measures can be utilised to promote productive use of redistributed land and ensure that there is sustainable development that can aid in alleviating poverty amongst the land beneficiaries and society at large.

#### **4.2 The Constitution of the Republic of South Africa of 1996**

The South African government has shown obligation and action to eliminate the inequalities and injustices that find their origins in the historical periods by initiating a wide-ranging land reform programmes with a strong constitutional back up.<sup>276</sup> A programme consisting of three pillars namely: restitution, land redistribution and tenure security.<sup>277</sup> This was backed up by the provisions of section 25 of the Constitution<sup>278</sup> which provides that, the state is under the constitutional duty to take "reasonable and other legislative measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis" and thus land redistribution.<sup>279</sup>

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<sup>275</sup> Mashele Rapatsa, Transformative Constitutionalism in South Africa: 20 Years of Democracy. *Mediterranean Journal of Social Sciences*, 5(27 P2), 887, 2014. Retrieved from <https://www.richtmann.org/journal/index.php/mjss/article/view/5158>.

<sup>276</sup> Kloppers *et al.* (n18).

<sup>277</sup> Ibid note 276.

<sup>278</sup> Constitution(n33).

<sup>279</sup> Kloppers *et al.* (n18).

Whilst Section 25(1) of the Constitution provides that “no one may be deprived of property except in terms of the law of general application (this refers to policies and Acts promulgated for purposes for protecting land held by state for the benefit of the public), and no law may permit arbitrary deprivation of property” (this refers to unjust denial of access to land, therefore the law of general application cannot unjustly deprive people access to land). These subsections (1) and (2) read together clearly highlight the state’s intentions to equal redistribution of land to the previously dispossessed owners. In instances where the land in question or claimed land is held for a better purpose or public interest, restitution in a form of monetary compensation will be given to the claimant, because the land in question is used for public interest and or the developments on such land serve a better purpose. However, that does not mean the rights of people to have their land returned or restored is superseded by the developments made on the land. However, it means that such developments are positively contributing to sustainable development needed to better the lives of Black people.

It further entails that property may be expropriated only in terms of the law of general application and that such expropriation must be for the purposes of public interest. The aim for expropriation is to ensure that land is retrieved from the white minority and made available to the previously dispossessed owners and the public as a whole. The said public interest includes among others the nations commitment to land reform, which will bring into existence an impartial access to all South African’s natural resources. Although the provisions of these sections are under parliament’s debate for purposes of amendment in a way that expropriation would not be subject to compensation, such amendments would not have any effect on the initial purpose of expropriation and that means expropriation will still be for the purposes of public interest, that is making land available to everyone and that includes land reform (redistribution, restitution and land tenure) ensuring that everyone has access to land.

Moreover, it will inevitably ensure that the provisions of Section 25(7) as provided for in the Constitution are actively achieved. This will however be achieved as a result of state making land available for redistribution to the people through expropriation without compensation and without incurring any expenses. Therefore, the provision of Section 25(5) that provides that “the state must take reasonable and other legislative measures within its available resources, to foster conditions which will enable citizens to gain access to land on equitable

basis”, would be effectively implemented by the proposed amendment of section 25 of the Constitution. By ensuring that land is made available to historically disadvantaged people without incurring unnecessary costs of compensating land holders for land that was illegally taken away from black people. This will consequently ensure that funds and resources that are set aside for compensation be saved for only compensating developments not the value of land to be expropriated. As a result, the state can be at a better position to increase funds aimed for redistribution process and providing adequate post-settlement support services to land reform beneficiaries. Therefore, in this fashion the state resources will be optimally used for the purposes of ensuring productive use of redistributed land and consequently alleviate poverty amongst beneficiaries. This will not change the status of land reform in the Constitution but will ensure that land for redistribution is made available in order to achieve the objectives of land reform. And further ensures that there are enough resources to fund support services of land reform beneficiaries to embark on projects that will generate income and consequently contribute to the economy.

However, Sihlobo and Kirsten are of the view that expropriation without compensation which includes land for housing, retail and industrial use will not only impact food and agricultural production but, will destroy the asset value of a large portion of South African land.<sup>280</sup> With regard to food and agricultural production expropriation without compensation can both have positives and negatives. The positives are that the state can save resources from acquiring land and divert such resources to assist land reform beneficiaries to farm productively. Whilst the negatives could be that the expropriation without compensation can threaten investors’ confidence and further negatively impact production of food crops by changing farmers from experienced white minority to inexperienced land reform beneficiaries. Sihlobo *et al* further asserts that about 70 per cent of residential property transactions in South Africa involves freehold property (property that is inheritable, transferable and there are no restrictions on the rights of property).<sup>281</sup> This generally means that majority of housing transactions include direct acquisition of private land. Therefore, the proposal of state acquiring ownership rights of all land without compensation would mean that consumers will lose the land component of the acquisition, while retaining ownership of the building structures.<sup>282</sup> However, this is impractical considering the current property law

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<sup>280</sup> Wandile Sihlobo and Johann Kirsten, Economic Freedom Fighters strategy will destroy the asset value of a large portion of South Africa’s land, 30 July 2018 (Finding common ground,2020).

<sup>281</sup> Ibid note 280.

<sup>282</sup> Sihlobo *et al.* (280).

which provides that the land portion cannot be separated from the immovable asset such as building or a house, hence even the immovable property's value is depended on the appreciation value of the land. In essence the implementation of expropriation without compensation will not only disrupt the asset value but will also create fragmentation in current existing property laws, particularly the provision of attaching immovable property to the land which the structure or building is situated on. Moreover, immovable property represents a largest investment for an average house hold in South Africa of which wealth is derived from.<sup>283</sup> In as much as the state wants to speedily acquire and redistribute land to land reform beneficiaries, expropriation without compensation could remedy certain challenges such as limited resources aimed at acquiring land for redistribution but can also create more challenges such as disruption of asset value, if not properly legislated. Hence the need to invest in legislative drafting of policies that can merge a gap between the posed threats of food security, agricultural production and disruption of asset value in South Africa's land reform.

Pieterse asserts that the inclusion of land reform programme in the Constitution necessitated an assortment of obligations upon the state regarding the essential and justifiable procedures it observes to effectively activate/set in motion land reform.<sup>284</sup> Pieterse further alluded that the state cannot abandon land reform as it is constitutionally obliged to meticulously attend to it. He further made a notable reference that Constitution does not only provide responsibilities but also make provision of broad parameters of various programme's necessary for the attainment of a holistic land reform.<sup>285</sup> Consequently this implies that the adjustment and changes to land reform cannot take place outside the broad parameters of the Constitution. Hence, the proposed changes of expropriation without compensation have to start by the amendment of the Constitution (Section 25 of the constitution) before the said notion can be applied as a change within the land reform programme.

Expropriation of land requires that state must compensate the landowner for expropriating the land. This requires that state must advance monetary compensation in exchange of land to make available for the public. The compensation element limits the extent in which the state can make land available for redistribution, due to limited resources. Consequently, this

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<sup>283</sup> Ibid note 282.

<sup>284</sup> Pienaar (n206).

<sup>285</sup> Ibid note 284.

leads to slow pace of redistributing land and failure to implement support services to the few land beneficiaries who have received land. In order to accelerate delivery of land and ensure that there are enough resources to assist land reform beneficiaries with support services to aid them to use land productively, the state must cut down some costs. The state can start by reducing costs of compensating land holders when expropriating land. This can be actualized by ensuring that costs of compensating land holders when land is expropriated is clearly outlined in detail as to what exactly is the state compensating for. This can be achieved by ensuring that provision of compensation in Section 25 of the Constitution is amended first to give effect to new policies that will be drafted in line with the amendment to ensure that land is expropriated at no costs. Whereby compensation will be aimed at the improvements made on the land in question, not for the land that was forcefully taken from the indigenous owners.

Pieterse further asserts that having land reform embedded in the Constitution underscores or connects the links between Section 25 (property clause) and other related rights. He pointed out in detail that in this manner Section 9 (equality clause), Section 10 (right to dignity), Section 26 (right to adequate housing) and Section 30 and 31 (the right to culture and the right to belong in a cultural community) they also reverberate with actual operation of land reform programme. Thus, the realisation of these rights solely depends on successful implementation and enforcement of land reform programme.<sup>286</sup> Therefore, it is of paramount importance that in application of land reform programme the provisions of the Constitution be upheld as they embed the core objectives of the initial purpose of the land reform programme and that is to redress the historical injustices and inequalities amongst Black people and restore their dispossessed land.

#### **4.3 The Abolition of Racial Based Land Measures Act 108 Of 1991 (ARBLA)**

The ARBLA was promulgated to bring an end to discriminatory land Acts (NTLA and NLA together with its successors). The ARBLA was aimed at repealing or amending discriminatory sections, such as Section 1 of the NLA, Section 2 of the NTLA and many more discriminatory provisions contained in the NLA, NTLA and GAA of 1966. This was done to abolish certain restrictions or discrimination based on race in access to land and ownership thereof. Consequently, do away with giving of rights to people depending on the race group they belong to; this was done by classification of people by colour and confining

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<sup>286</sup> Pienaar(n206).

them to a specific population group and consequently denying certain population group rights to acquire and utilise land. Pursuant to this Section 1 of the ARBLA repealed the NLA,<sup>287</sup> while Section 11 repealed NTLA.<sup>288</sup> In addition Section 48 repealed the GAA of 1996, enabling South Africans regardless of race to occupy and own the land in any part of the country without fear of prosecution.<sup>289</sup>

Despite the legislative changes, Dhlamini and Ogunnubi observe that the skewed patterns of landholding in South Africa is evident of the previous distributive regimes, the discriminatory allocation of land. Even after twenty-six years of democratic government this clearly indicate that despite the legislative frameworks put in place to redress the previous injustices of land distribution in South Africa the patterns of the previous injustices are yet to be rectified.<sup>290</sup> This could be owing to the slow pace of implementation of land reform policies or poor enforcement of polices, including the exorbitant amounts the state has to pay in order to acquire land to make available for redistribution and the great number of claimants and counterclaims against same land. Corrigan is of the view that this could be owing to the views that South African land reform programme is viewed by many sectors in the society “as an ambitious (if not over ambitious) initiative”.<sup>291</sup> According to Corrigan’s assertion South African land reform is aimed at achieving a lot in a very short period of time and a result it fails to be realistic to the available resources aimed at assisting people to gain access to their land and consequently ensures productive use of land. Therefore, there is a need for land reform to develop and focus on one objective at the time to ensure positive and satisfactory results of redressal of historical injustices. Furthermore, the pace in which land reform programme is moving at, is not promising that South African historical injustices will be soon resolved, unless a radical approach is adopted in the implementation and enforcement of land reform programme. One would suggest that expropriation without compensation could be a solution to speedily acquire land for redistribution purposes. Although in the process of acquiring land without compensating the land holder for land, but for developments made on the land, would still raise the question of property rights. And that is how is the immovable property going to be evaluated, since its value depends on the

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<sup>287</sup> See section 1 of the Abolition of Racial Based Land Measures Act 108 of 1991.

<sup>288</sup> See section 11 of the Abolition of Racial Based Land Measures Act 108 of 1991.

<sup>289</sup> See section 48 of the Abolition of Racial Based Land Measures Act 108 of 1991.

<sup>290</sup> Dhlamini *et al.* (n217).

<sup>291</sup> Corrigan T, Expropriation without compensation: There is a better way, provided we alter our assumptions, South African Institute of Race Relations, Pretoria. Available at <https://irr.org.za/campaigns/defend-your-property-rights/files/terence-corrigan-berlin-address-28-june-2018.pdf>.

appreciation value of the land. The white minority who are in possession of the land that was forcefully taken from indigenous owners, have developed the land to some extent. Some of the developments are residential structures that are built in farms. And in terms of property rights, he who owns the land owns the developments made on the land in question. Moreover, structures such as houses and other immovable property its appreciation of value is attached to land concerned. Therefore, expropriation of land in terms of the proposed expropriation bill, it will essentially disturb the value of the property, since the developments will be evaluated apart from the land despite its value dependence on the land in question. One would suggest that this would amount to infringement Section 25(1) of the Constitution which provides that “no one may be deprived of property except in terms of the law of general application”. Separating the value of the immovable developments from the land which such developments is situated will result in destruction of asset value. That will consequently affect the investment of the land holder and that can be equated to deprivation of property, since the original value of the property would be distorted by separation of land and developments made thereof. Although same could be justified under section 36 of the constitution which places a limitation of rights that are afforded by the constitution. According to Section 36 of the Constitution rights can be limited in terms of law of general application to an extent that the limitation is reasonable and justifiable in an open democratic society. However, such limitation is based on human dignity, equality and freedom but not excluding other factors such as (a) the nature of the right (this relate to the importance of the realisation of the right concerned). (b) the importance of the purpose of limitation (this will refer to the need to redress historical injustices amongst previously disadvantaged people). (c) the nature and extent of the limitation (the right to own property or to have such property compensated equivalent to its appreciation value evaluated against the land its situated in). (d) the relation between the limitation and its purpose (this will be for the purposes of ensuring that the white minority are not overly compensated even for the land that was illegally acquired. Hence the limitation would ensure a just redressal of historical injustices by not compensating where compensation is not due). (e) less restrictive means to achieve the purpose (this relates to ensuring historical redressal whilst protecting the property rights of the white minority over the developments made on the land). Therefore, expropriation without compensation does not necessarily mean that the land holders will not be compensated for developments made on the land, however such compensation will be calculated in evaluation of developments separate from the land in question. However, on the same note expropriation without compensation poses a lot more challenges than it can

resolve. For instance, the implementation of expropriation without compensation would mean a destruction to the agricultural debt held against commercial banks including Land and Agricultural Development Bank of South Africa commonly known as Land Bank. In that the land bank accounts for a majority of agricultural debt, to be specific an estimation of third of the agricultural debts, whilst the rest is accounted for by the commercial banks, agricultural co-operatives and private persons and institutions.<sup>292</sup> These financial institutions would lose a huge amount of money that is loaned to farmers if land is to be expropriated without compensation, unless if the state is going to carry over the debt bonded against the land that is expropriated without compensation. Ideally this scenario would not save costs for the state but will create an over burdening financial challenges to the system that already has very limited resources to assist land reform beneficiaries to both gain access to land and utilise it productively. According to Bosman, the Banking Association of South Africa (BASA) has made comments on the draft bill of Property Evaluation before it was adopted.<sup>293</sup> The comments of the BASA highlighted the fact that the regulations to the Banks Act, which are reliant on a global regulatory framework, requires the security value of loans to be derived from the market value of the property. However, if the value of the property is determined separately from the source i.e. land, such value will be less than the market value since the property value is depended on the appreciation value of the land. This will however lead to banks adopting more stringent requirements for lending money, and this will consequently affect the chances of land reform beneficiaries to qualify for loans. Therefore, lack of funding will add to the existing challenges of underutilised land due to lack of finances. Hence the need to implement a radical approach on land reform programme has to start with what is available to achieve positive results. The state can start by empowering land reform beneficiaries who are in possession of land to farm productively to generate income, that can also contribute a certain percentage to the land reform programme as an initiative to raise funds to acquire more land for redistribution. Therefore, a systematic programme of assisting land reform beneficiaries would consequently ensure that the state both assist land reform beneficiaries to farm productively and improve their lives and also create a mechanism that derives a certain percentage of financial boosts from the gainful activities conducted on redistributed land.

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<sup>292</sup> Sihlobo *et al.* (n280).

<sup>293</sup> Karen Bosman, South Africa: Trading international investment for policy space, Stellenbosch Economic Working Papers: 04/16.

#### **4.4 Restitution of Land Rights Act 22 Of 1994 (RLA)**

Government adopted the RLA<sup>294</sup> with the aim to provide restitution of rights to communities and persons who have been dispossessed of their land. To achieve this, the government established a commission consisting of three commissioners (Chief Land Claims Commissioner, Deputy Land Claims Commissioner and Regional Land Claims Commissioner) and land claims court to assist in resolving land conflicts. The commissioners are responsible for assisting the claimants to prepare and submit their claims, investigate the merits of each claim, advise the claimants of the progress of their claims and to mediate to settle the disputes arising from such claims.<sup>295</sup>

In terms of Section 10 of the RLA, any person who is eligible to claim restitution of right in land may lodge their application, which is inclusive of the description of the land in question, the nature of the right in land which he was dispossessed of and the nature of the right that is being claimed. If the commissioner is satisfied that the claim was lodged in the prescribed manner, he will publish a notice in the government gazette calling upon any person who in their opinion have an interest in the claim to show the course of their objection.<sup>296</sup>

In instances where there are two or more competing claims in respect of the same land, the commissioner will direct such people involved to try out settling their differences over land through the process of mediation and negotiation.<sup>297</sup> The mediation and negotiation process unfold as follows: the first step is planning whereby the Mediator assists the parties to decide where they should meet and who should be present. Followed by the introduction phase where the mediator introduces all parties, explains the process and lay down ground rules. After the introduction, the parties are given the opportunity to present their view of the dispute without interruption.

A joint discussion takes place after the parties have presented their views; the opponent and mediator may ask questions for clarity with the intention of arriving at a better understanding of each party' concerns. If parties' emotions run high during the joint discussion, the mediator might separate the parties and have private meetings with them, this phase is called caucusing. Negotiation will then follow whereby the mediator accepts proposals and suggestion of how the matter should be resolved; if the parties agree to the

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<sup>294</sup> Restitution of Land Rights Act 22 of 1994.

<sup>295</sup> Ibid note 294.

<sup>296</sup> See section 10 of the Restitution of Land Rights Act 22 of 1994.

<sup>297</sup> See section13 of the Restitution of Land Rights Act 22 of 1994.

certain proposal made, the parties will then have a settlement agreement based on the suitable proposal. After the mediation process, if the commissioner is of the opinion that it is not feasible that the claim may be resolved by mediation or with the consent of the parties, the commissioner certify accordingly and refers the matter to Land Claims Court for adjudication.<sup>298</sup>

However, the land claims court does not necessarily have inherent jurisdiction to hear all land disputes, the land claims court jurisdiction is not extended to land matters in which disputes arise from the administration of monetary compensation by claimants, administration and functioning of CPA's. The court jurisdiction is limited to the disputes arising from land claims and counter claims.

In the case of *Saziso Mndiyataand and Others vs Umgungundlovu Communal Property Association and Others* (LCC10/2018) the community of Mgungundlovu (the claimant community) which is situated at Bizana Administrative District in the Eastern Cape Province, was forcefully removed from their ancestral land in the 1980's after the former Transkei homeland government signed a lease agreement over their land with Transkei Sun International Limited (Transun) for a development of a resort, casino and a golf course.

The claimant community instituted a claim with the regional commissioner on the 25<sup>th</sup> of September 1995, in terms of the Restitution of land Act, 22 of 1994. The land being claimed was saved for the wild coast sun, largely undeveloped. The claim was referred to Land claims court in terms of Section 38B of the Restitution of Land Act in 2011. After the exchange of pleadings, the parties eventually entered into a settlement agreement. The settlement agreement was made an order of the court on the 10<sup>th</sup> November 2014. The claimant was paid a sum of R50 million by the Minister as part of their settlement.

In 2015 the claimant community (Umgungundlovu community) registered the CPA on the 26<sup>th</sup> September 2015 in accordance with the CPA Act, subsequent to that the claimant community had an election for appointment of the CPA's management committee; twelve people were elected. Prior to the election, there were other two committees that represented the claimant community in the land claim matter. An urgent application seeking to interdict the respondent from utilising funds held in the CPA was brought before the Land claims court. The application alluded issues relating to misusing of the CPA's funds and other

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<sup>298</sup> See section 13 of the Restitution of Land Rights Act 22 of 1994.

governance related issues. It was held that the Land claims court has no jurisdiction to hear matters related to CPA's governance conduct. The matter was dismissed with no order to costs.<sup>299</sup>

The scope and jurisdiction of Land claims court is in relation with determining the following: person entitled to the title to land, endorsement of reimbursement allocated with regard to land owned by or in possession of the private person upon expropriation and whether compensation received by a person at the time of dispossession of right in the land was just and equitable.<sup>300</sup> When determining whether the compensation was just and equitable at the time of dispossession, the court will check the market value of the land at the time and the actual compensation made in respect of that land in order to arrive at the conclusion whether the compensation was just and equitable or not. In determining what is just and equitable in expropriation, a balance must realise between the interest of the private owner and that of the public interest, thus, to weigh the interest of the private owner and that of the public and decide which interest is more significant. Hence, compensation that is below market value can be compliant to the constitution if it qualifies as just and equitable.

However, the question of just and equitable compensation as contemplated in Section 25(3) may no longer be interpreted to mean compensation that is equivalent to property that is expropriated, taking into account the state's intention to expropriate land without compensation. and the proposed amendment of Section 25 of the Constitution. The effect of the proposed expropriation will do away with the question of determining a just and equitable compensation in terms of the appreciation value of the property to be expropriated, that is inclusive of land in question. This will consequently ensure balance of just compensation for developments made and expropriation without compensation of the land that was forcefully taken away from black people. This will instead lead to state not wasting money in expropriating land. However, the state would expropriate land without spending money for compensating the private owner, although the state will not unduly enrich itself with developments made on the land in question. Instead, the state will compensate for developments made on the land and such development evaluation would not be calculated with the value of the land in question. This will ensure a speedy acquisition of land by state. Ultimately it will ensure speedy process of redistributing land to the people. However, it may

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<sup>299</sup> *Saziso Mndiyataand and Others vs Umgungundlovu Communal Property Association and Others (LCC10/2018)*.

<sup>300</sup> See section 22 of the Restitution of Land Rights Act 22 of 1994.

have a negative impact on food security, expropriation of land that is used productively; it will stop or slow the pace of production and this will have a great impact on the gross domestic products (GDP), unless measures of securing food security are taken before hand.

South Africa depends on domestic products for food; farming for agricultural purposes is the main source of food for South Africans. Tempering, or rather slowing the pace of agricultural activities would have an adverse effect on the supply of food within the country. When land that is used for agricultural purposes is expropriated there must be a way of continuing business on that land or the expropriation will serve no purpose in alleviating poverty amongst black people. Hence, the need to have policy drafts in place prior to expropriating land without compensation to address the threatened food security, agricultural activities and investors' confidence. Furthermore, ensure that the expropriation without compensation does not have a negative effect on the food security, agricultural activities and other developmental activities from continuing their normal business.

#### **4.4.1 Land redistribution**

The purpose of the land redistribution programme is to “provide people with land for housing in urban and rural areas as well as land for farming purposes”.<sup>301</sup> This is in terms of Section 10 (1) of the Provision of Certain Land for Settlement Act 28 of 1996. The state identified that the normal or market value prices for land are not accommodating to poor people. Hence, the state opted to assist less privilege people to buy land using the land grants provided for by the state as a quicker way to facilitate land reform. The state has made land brought from willing buyer and willing seller initiative available to people, however such land was brought with a hefty price by the state. Costing the state, a lot of money which resulted in state failing to balance availing land for redistribution and providing post-settlement support services to land reform beneficiaries. This regrettable initiative has extorted a lot of money from the state and consequently failed to meet the needs of land reform beneficiaries and thus possession of land and economic status that enables land reform beneficiaries to fund their projects and utilise the land productively. The willing buyer and willing seller (is a principle where by state bought land from willing sellers on market value price for purposes of redistribution) is different from expropriation yet have almost similar outcomes of costing hefty amounts. Expropriation is, where the state obliges the owner to sell or cede their

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<sup>301</sup>Wandile Sihlobo and Tinashe Kapuya, Special report the truth about Land ownership in South Africa.23 July 2018.

property for the benefit of the public. Expropriation is applicable as the last option.<sup>302</sup> Where land is obtained for land reform by purchasing or expropriating, the state is duty-bound by the Constitution to pay for a fair compensation.<sup>303</sup> As a result, those who have their land expropriated have the states guarantee for compensation. However, this position may not be relevant in the near future as per the state proposed expropriation without compensation.

Land redistribution programme is focused on providing landless people with land to better themselves. This is in terms of Section 10 of the Provision of Land and Assistance Act 126 of 1993. Thus, to actively utilise land to generate income and combat hunger and starvation. The standard procedure for any person who wishes to acquire land under the Land Redistribution Programme is that the applicant must communicate his intentions with the office of the Department of Land Affairs within the province concerned. The applicant must provide personal information including, where the applicant is looking for land and clarify of what the land is to be used for. If the request for assistance is made in accordance with the required information and appropriate, the applicant will be required to complete a Registration-of-Interest Form. A request for a Settlement Planning Grant will then be prepared, on their behalf, by the official concerned and submitted to the relevant Provincial Director.<sup>304</sup>

The grant may be obtained by under-resourced, poor or rural local authorities for use in preparing Land Development Objectives in terms of the Development Facilitation Act (DFA).<sup>305</sup> This required local authorities to outline a development vision for their respective areas and to engage with local stakeholders and other relevant parties in the preparation of the application. In order to ensure that the proposed developments are in line with the needs of the community. When the Department of Land Affairs funded the preparation of Land Development Objectives, a condition of the grant was that land reform planning was undertaken as part of the exercise. Therefore, it necessitated for proper compliance with the DFA provisions. This initiative was intended to encourage a harmonised land reform programme with the development plans.<sup>306</sup>

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<sup>302</sup> Paralegal Manual 2016, <paralegal.org.za>last accessed 27/03/21.

<sup>303</sup> White Paper (n10).

<sup>304</sup> Ibid note 303.

<sup>305</sup> White Paper (n10).

<sup>306</sup> Ibid note 305.

The sustainability of the land reform programme in both rural and urban areas requires support services such as skills and training programmes, funds, mentoring and monitoring programmes and infrastructure such as industrial firms that allow people to use the land productively. Land reform also exerts additional pressure for the provision of water services, sanitation, infrastructure, housing, agricultural extension and so on.<sup>307</sup> The long-term success of land reform is closely linked with the degree at which it is a pivotal part of regional and provincial level planning.<sup>308</sup> Land reform is intended to make available land to blacks and ensure that tenure security systems of communal land is updated to the expected policy requirements as per by laws and regulations of local and provincial government.

The land financial allowance is to help extremely poor communities to plan of the acquirement, usage and improvement of acquired land and the deployment of resources needed to achieve this. The grant could also be utilised to empower reform initiatives assumed by other institutions; for instance: local or traditional leadership, NGOs (such as churches) who desire to utilise their land but do not have adequate resources to achieve implementation of land reform projects. Moreover, the grant makes it possible for those operating in land reform initiatives to select and assign Department of Land Affairs accredited planners and other professional planners from private firms and NGOs, with whom they will collaborate with on a strategy for land reform. The services that the grand can cover include financial and legal planning assistance, infrastructure planning, land usage planning, land valuation and assistance with land procurement deliberations, which also includes legal entity formation.<sup>309</sup>

#### **4.4.2 Land restitution**

Land claims were generally lodged against the state. In light of this, any community or any person that was formerly deprived of a right to land after 19 June 1913 as a result of the discriminatory practices on basis of race, and who were not offered any fair and equitable compensation at the time they were dispossessed, were advised to lodge a claim for the restoration of such a right, or equitable redress. Individuals who have lodge a claim before, however have not as yet received any compensation, can follow up their claims by issuing

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<sup>307</sup> White Paper (n10).

<sup>308</sup> Ibid note 307.

<sup>309</sup> White Paper (n10).

inquiries with their respective provincial departments to confirm that the offices have their first claim, before another claim, before relodging a claim.<sup>310</sup>

There were 14 lodgement offices situated across the nine provinces in the country. Claims were lodged at a designated lodgement office on a prescribed form, which is captured electronically during lodgement. A Commission on Restitution of Land Rights official assists the claimants to complete the claim form. Claim forms are not distributed to the public. Hence, prospective claimants visit the offices of lodgement and physically submit their claim. Once all required documents have been submitted, the Commission investigates the merits of each claim. If there are disputes, the Commissioner conducts an arbitration to resolve disputes and inform the claimants about the progress on the claim at regular intervals or on request.<sup>311</sup> Should the matter still not be resolved, the Commissioner was required to direct the matter to land claims court for hearing. However, claims against specific portions of land are no longer filed, this was the position before end of 1998. Recently, people rely on application of grants to buy land on market; although, the grant amount is usually not enough to buy land. Hence, most of the people would be required to add on grant amount in order to satisfy the purchase price. But with the new proposed expropriation without compensation, perhaps acquisition of land could be of affordable price to everyone. The proposed expropriation without compensation could positively contribute to speedy delivery of land to land reform beneficiaries. Consequently, assist the state to use the funds budgeted for compensation to increase the grant amount and enable Black people to buy land on market individually than in groups, simply because they had no choice but to partner due to insufficient grant amounts.

Restitution of land to Black people does not only mean restoration of land or compensation where restoration of land is not feasible, but it also means restoration of livelihoods. Before land was dispossessed from Black people it was their only source of livelihood. Black people relied on farming for food crops, however when Black people were forced to relocate from arable land to non-arable, they could no longer farm but had to find other means to fend for their families. Hence restoration of arable land to Black people will encourage continuation of farming and restoration of way of living to black people. Therefore, the need for restoring

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<sup>310</sup> Department of rural development and land reform, <[http://www.ruraldevelopment.gov.za/component/content/article/347-land-claim/re-opening/771-faq#.VaisNo6\\_TK8](http://www.ruraldevelopment.gov.za/component/content/article/347-land-claim/re-opening/771-faq#.VaisNo6_TK8)>, last accessed 26/03/2021.

<sup>311</sup> Ibid note 310.

land to Black people is closely associated with the need for Black people finding their ways of living, and thus restoring Black people to their stable social and economic status. However, this will require the state to support land reform beneficiaries to utilise their land productively. In order to achieve this the state will need to provide comprehensive post-settlement support services, and thus support service that takes into consideration the lack of funds, skills, Knowledge and resources for the current modernised farming. However, in as much as land reform beneficiaries need state assistance to utilise their land productively, the state is also experiencing challenges regarding available resources to assist land reform beneficiaries. The state needs to try other alternatives of minimising cost whilst providing satisfying services to land reform beneficiaries. One of the alternatives that the state is exploring currently is Expropriation without compensation. Although the process does not come with solutions only but have its fair share of notable challenges that can affect food security. However, with a well drafted policies challenges such as food security and other agriculture related problems could be avoided whilst expropriation without compensation relieves the state from financial burdens of acquiring land. Consequently, reserve such funds for a comprehensive post-settlement support services to land reform beneficiaries.

#### **4.4.3 Land tenure reform**

The vision of a land policy and land reform programme contributes to reconciliation, stability, growth and development in an equitable and sustainable way. It is suggestive of an active land market underpinned by an effective and attainable institutional framework.<sup>312</sup> If in an urban context this was be applicable, the poor would have secured access to well-located land for the provision of shelter. The focus of land reform programme on poverty is targeted at accomplishing a better quality of life for the extremely poor citizens. Accordingly, land reform targets to make meaningful contribution to economic advancement, by giving families the opportunity to get involved in profitable usage of land and by generating more employment opportunities by encouraging greater investment. White Paper envisages a land reform which creates a rural landscape consisting of small, medium and large farms; one which promotes efficiency and equity through a conclusive agrarian and industrial plan in which land reform is the core of economic and development growth.<sup>313</sup>

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<sup>312</sup> Department of Rural Development and Land Reform, [www.ruraldevelopment.gov.za](http://www.ruraldevelopment.gov.za), last accessed 01/09/2020.

<sup>313</sup> White Paper (n10).

The productive and residential land usage in rural areas is included in the governmental vision.<sup>314</sup> This includes a well-balanced mix of farming systems and rural enterprises (livestock, annual and perennial crops as well as farm-forestry) with land held under a different systems of landowning by persons, communities and organisations.<sup>315</sup> The objectives are to establish prosperous rural landscapes consisting of large, medium and small farms and enterprises created by full-time and part-time farmers. An equitable balance allocation of land and resources, partnerships between farm workers and farm owners aimed at increasing productivity, as well as the provision of secure tenure for all rural people are all part of the state vision of progressive land reform programme.<sup>316</sup>

#### **4.4.4 Insecurity of tenure**

People residing in communal areas experience insecure land rights as a result of several issues. Firstly, the differences in the application of the land rights in communities across the Republic, the legal interpretations which are interchangeably used concerning land ownership and the conflicting conceptual understandings thereof, cause confusion around land rights.<sup>317</sup> Secondly, the challenge of undemocratic land governance, lack of clarity and the disputes surrounding the land rights that cause weakness in the land rights which are held under the conflicting local land administration institutions such as Trusts, Communal Property Associations (CPAs) and traditional leadership structures.<sup>318</sup> The misconception that the public has about the responsibilities of the land administrator results in the hindrance of development in rural areas. Such as the conflicting duties and responsibilities of local government and traditional leaders and the lack of clarity if which tenure system applies to which land classification. This results in people failing to acquire access to land due to uncertainty of the information they have pertaining access to such land.

In the case of *Herber N.O and Others vs Senqu Municipality and others* (CCT 308/18) [2019] ZACC 31 (22 August 2019), in 2016 Teba Property Trust approached High court alleging to be the holder of a small piece of land in Sterkpruit, but only through “permission to occupy” (PTO) which was granted to its predecessor in 1949. The Trust sought to convert the permission to take occupancy into a full landowning. However, the Municipality argued that

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<sup>314</sup> Ibid note 313.

<sup>315</sup> White Paper (n10).

<sup>316</sup> Ibid note 315.

<sup>317</sup> White Paper (n10).

<sup>318</sup> Ibid note 317.

Section 3 of the Upgrading of Land Tenure Rights Act 112 of 1991 which the Trust relied on was not applicable to the suburb in question.<sup>319</sup>

Previously when the Upgrading of Land Tenure Rights Act 112 of 1991 was introduced, South Africa was divided into what used to be known as Transkei, Bophuthatswana, Venda and Ciskei (TBVC) states. After the merge of the states in 1994, the Act only applied to certain parts of the country such as Transkei; a few years later it was extended to other parts of the country. Despite the extension of ULTRA, Black people living in what used to be called “land reserved for blacks” continued to be governed by a Proclamation that only offered permission to occupy and not ownership of land. Hence, the Teba Property Trust made an application to court to seek endorsement of ownership over the land which they have right to occupy or rather enforcement of the right to own land as conferred in ULTRA.

The Trust then challenged the validity of Section 1 of the Land Affairs General Amendment Act 61 of 1998 and Section 25A of the Upgrading of Land Tenure Rights Act 112 of 1991, which excludes Section 3 from extending to the whole of South Africa. The High Court held that Section 25A should be read as not making any reference to Section 3. The matter was then referred to Constitutional Court, which upheld the decision of the High Court and consequently rendered the provision of Section 25A unconstitutional. And held that “those who were denied the benefits of Section 3 should not be made to wait much longer before they may convert their insecure tenure rights”.<sup>320</sup>

Land tenure system has not yet reached the expected outcomes of making a uniform system that allows Black people to enjoy secured tenure security by having ownership of land rather than permission to occupy. The implementation and enforcement of this land reform component is still challenging in that many of the policies aimed at changing tenure system have not been interpreted to cater for former homelands in redressing the inequality of ownership of land. This is owing to apartheid land classifications such as communal land (previously referred to as homelands) which was established by the introduction of Group Areas Act that sought to separate Black people by tribes and enforced administration of land by traditional leaders titled trustees of communal land (people who are given control over the administration of property for the benefit of others). Failure to rectify land use system in communal areas will continuously render communal land worthless on the market. There is

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<sup>319</sup> *Herber N.O and Others vs Senqu Municipality and others (CCT 308/18) [2019] ZACC 31 (22 August 2019).*

<sup>320</sup> *Ibid* note 319.

a need to ensure that rural people have ownership rights over the land they occupy and consequently hold title deeds for such land. This will also encourage asset value of land in rural areas and can assist land reform beneficiaries to secure loans to utilise their land productively, using land as a security.

#### **4.4.5 Communal tenure**

Landholding development in regions where customary landholding is the rule will logically be in the form of individual land titling. Hence, the Constitution in Section 25(6) refers to a tenure which is legally secured. According to white Paper secured tenure system should be a priority in communal areas particularly on the issues of development.<sup>321</sup>

Previously an attempt to address the land tenure system in communal areas was made through the Communal Land Rights Act<sup>322</sup> (CLARA). Read together with Section 151(1) of the Constitution<sup>323</sup> which makes provision for local sphere of government which consists of all municipalities of the Republic with important land administration authority to form part of the municipal planning authority, the institutional design of an appropriate land governance model in the communal/customary areas acquire critical importance. By providing much needed services of rectifying the insecure tenure system of the communal areas.<sup>324</sup>

The land tenure system in communal land is critical, Black people in these areas experience unsecured tenure system where many Proclamations and Regulations are at play. People's right to own land is regulated by many complicated laws which shed no clarity on changing the tenure system to uniform rules and regulations that will ensure secured tenure system to all people living in the rural areas. Whatever suggestions made to improve the tenure system must be able to address the issues of accountability and efficiency. The previous policy propositions were not sufficiently attended to by the underlying scheme of the Communal Land Rights Act.<sup>325</sup> However, the recent policies on land tenure such as rezoning policies if interpreted to serve the objective of forming uniform rules and regulations can have a positive effect on securing tenure system for people living in rural areas. A clear

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<sup>321</sup> White Paper (n10).

<sup>322</sup> Act 11 of 2004.

<sup>323</sup> White Paper (n10).

<sup>324</sup> Ibid note 323.

<sup>325</sup> Communal Land Right Act 11 of 2004

demarcation of land zoning can shed clarity of type of tenure system that applies to that particular area and the rights of occupants.

#### **4.5 Expropriation Act 63 of 1975 (EA)**

EA was promulgated during the apartheid era, but it has since been enacted and given more legislative meaning in the context of land reform by the Constitution under Section 25. The Constitution<sup>326</sup> further places a positive obligation on the state to “take reasonable legislative and other measures, within its available resources” to effect land redistribution. In addition, the state is allowed to expropriate property forcibly if need be to achieve this purpose; this is in terms of Section 25(3) of the Constitution. This means that the state may validly expropriate property (even in cases where the owners of that property are not willing to cede their property or are not willing to cede their property at the price offered), when the expropriation is intended for redistribution of land to address the effects of widespread colonial and apartheid-era land dispossession.<sup>327</sup>

Section 3 of the EA<sup>328</sup> provides that the Minister has the authority to expropriate any property for the purposes of public interest subject to the compensation outlined in Section 25 of the Constitution.<sup>329</sup> Section 4 provides that if the juristic person satisfies the Minister that the property which is to be expropriated is for the benefit of the public, the Minister may expropriate property on behalf of the juristic person. Every regional office has an advisory board, which when requested gives counsel to all organs of state on the issues of fair price of immovable property and rights when organs of state acquire property, other than through expropriation or dispose of property.<sup>330</sup> The Advisory Board investigates and identifies suitable property and the prices for land intended for expropriation.

An expropriation authority investigates the possible expropriation property required for the public purpose. In doing so, the expropriation authority must gather enough information with regard to the existence of registered or unregistered rights to the property from the municipality in whose area the land is situated; information about any occupier of the land and the landowner. The expropriation authority will, before commencement of the

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<sup>326</sup> Constitution (n33).

<sup>327</sup> Piere De Vos, constitutionally speaking (2013)

<sup>328</sup> Expropriation Act 63 of 1975.

<sup>329</sup> See section 3 of Expropriation Act 63 of 1975.

<sup>330</sup> See section 4 of Expropriation Act 63 of 1975.

expropriation in writing, call upon the Regional Land Claims Commissioner in whose area the property is situated and the Director-General of the Department of Land Affairs to make submission in writing within 30 days of delivery of the notice the personal details including addresses of all persons holding unregistered rights in respect of the property and particulars of the rights held by them in the property.<sup>331</sup>

The Advisory Board will in 60 days of the delivery of the notice investigate the said information given to them. The expropriating authority must publish a notice of intention to expropriate and “serve a copy of that notice on all persons, including holders of unregistered rights, of whom it is aware and whose rights or interests may be materially and adversely affected by the intended expropriation and also deliver a copy of the notice to the Director-General”.<sup>332</sup> Objections with regard to expropriation must be lodged within 21 days of the receipt of the notice of intention to expropriate.<sup>333</sup>

If objection is made, “the expropriation authority must immediately after receiving an objection from any person notify that person in writing that the objection has been received, and within 14 days of notifying that person, that his or her objection has been received, invite that person in writing to enter into negotiations regarding the intended expropriation”.<sup>334</sup> If no agreement could be reached in the negotiation, the expropriating authority must within 21 days make a decision whether to expropriate or not. In order to expropriate property, the expropriation authority must serve a notice of expropriation on the owner of the property in question and must publish it within seven days of such service.<sup>335</sup>

A copy of the notice of expropriation must be made available and delivered to the Registrar of Deeds or the Registrar of Mining Titles or any government office in which rights in respect of the expropriated property are registered or recorded for public record and also to the Director-General. The notice of expropriation must include other documents an offer of compensation and must also provide a clear and full description of the property concerned.<sup>336</sup> Section 25(2) of the Constitution read together with section 12 of the EA provides the mechanisms of expropriation and calculation of compensation thereof.

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<sup>331</sup> Expropriation Act (n328).

<sup>332</sup> Ibid note 331.

<sup>333</sup> Section 4 of Expropriation Act 63 of 1975.

<sup>334</sup> Expropriation Act (n328).

<sup>335</sup> Ibid note 334.

<sup>336</sup> Expropriation Act (n328).

The interpretation of section 25(2) is very broad, in most instances parties to expropriation had to involve the court to assist in determining a just and equitable compensation for expropriation. In *Du Toit vs Minister of Transport* (CCT 22/ 04) [2005] ZACC9; 2005 (11) BCLR 1053 (CC);2006 (1) SA 297 (CC) (08 September 2005). The Roads Board removed about 80 000 cubic metres of gravel of Mr Du Toit's land for purposes of upgrading a road close to his farm in the Western Cape. Mr Du Toit believed that the amount of compensation paid to him was not properly calculated and should have been calculated based on market value of his gravel and not only on the financial loss he suffered, due to the use of his land by the Roads Board. He claimed that he should have been paid R801 980 as compensation.

However, the High Court awarded Mr Du Toit compensation in the amount of R257 623 and held that this was a just and equitable estimate. The Minister appealed the decision of the High Court and took the matter to Supreme Court of Appeal. Where the SCA held that the evidence of the market value provided by Mr Du Toit was unreliable and further that the possibility that Mr Du Toit would suffer financial loss from the expropriation was highly speculative and consequently reduced the compensation amount to R6060, which was calculated based on the actual loss.

Mr Du Toit took the matter to Constitutional Court contending that he was entitled to R801 980 compensation based on market value and not R6060 which was based on the actual loss. The Constitutional Court upheld the decision of the SCA and held that Mr Du Toit was entitled to R6060, the actual loss suffered.<sup>337</sup>

Determination of compensation amount has always been a contentious issue in expropriation processes. However, the provision of Section 25(2)(b) will no longer be applicable in the near future due to the proposed expropriation without compensation approach. The state is in the process of amending Section 25 of the Constitution to ensure that land is expropriated without compensation. Therefore, the process of gaining consensus from the holder of the land and granting just and equitable compensation together with the process of filling objections to expropriation will no longer be relevant. Land will be expropriated without compensation.

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<sup>337</sup> *Du Toit vs Minister of Transport* (CCT 22/ 04) [2005] ZACC9; 2005 (11) BCLR 1053 (CC);2006 (1) SA 297 (CC) (08 September 2005).

Although it is quite unclear on how the expropriation is going to be carried out. The ambiguity of this approach has created concerns for the public, such as whether the approach will negatively affect food security and threaten the country's economy by creating doubt to investor's confidence, or whether the state has a counter policy or strategy to the possible challenges. It is also not clear how the state is going to ensure continuous production on expropriated land, as currently there is no legislation that obliges the state to provide institutional and financial support to land beneficiaries. The proposed land expropriation without compensation approach will require more policies to ensure that land is not only redistributed to the indigenous owners but is also productively utilised to combat hunger and starvation amongst black people.

Sihlobo and Kristen are of the view that expropriation without compensation will negatively affect the asset value of land, particularly financial institutions which have loaned the white minority (landowners) funds to productively utilise their land.<sup>338</sup> The question is the state going to carry over the debts held against land that is expropriated without compensation or the current land owners will continue to be liable for the debts as the surety. Should the state carry over the outstanding debts against the land, it will be of no difference than when the state bought land through willing buyer and willing seller principle which costed the state a lot of money, neither will it be different from compensating the current landowners. The state will still be spending a lot of money in a process of acquiring land, the only difference is that the current landowners will not benefit from the process. With regard to food security the state must invest in comprehensive post-settlement support services that will aid land reform beneficiaries to farm productively and generate income. Moreover, the state must encourage investors' confidence by putting policies in place that protects investors interest. Furthermore, the state should encourage partnership between experienced farmers and emergent farmers to ensure transfer of skills and knowledge and continuation of farming activities on expropriated land.

#### **4.5.1 How is expropriation without compensation expected to work**

According to the expropriation bill submitted to parliament in October 2020, Expropriation is a "compulsory acquisition of property", however such compulsory acquisition is limited to public purpose or public interest in terms of Section 25 of the Constitution. The term compulsory is to the exclusion of other purposes that are not related to public use or public

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<sup>338</sup> Sihlobo *et al.* (n280).

interest, there expropriation in terms of the bill is limited to land reform, public use, or interest. And as such public purpose is defined by the bill to include any administration of provisions of any law by an organ of state, whilst public interest is defined to include the state commitment to land reform and other reforms that bring about an equitable change to historical disadvantaged people and consequently redress the historical injustices.

Accelerating delivery of land and ensuring that there are enough resources to assist land reform beneficiaries with support services to aid them to use land productively, is one of the objectives of proposed expropriation without compensation. Which in principle seeks to amend Section 25 of the Constitution particularly the provision of granting just and equitable compensation for expropriated property. However, the Expropriation bill that was brought before parliament last year, seems to seek to regulate the circumstances in which a landowner or holder is eligible for compensation. Ideally the bill intends to deny landowners or land holders compensation for the value of the land but compensate for the developments made on the land in question. Although this proposition could be very challenging to landowners who have loaned money and used the land as security. The state is not clear or rather not explicit on the issues of carrying land debt, however it has made it clear that there is no obligation on the expropriating authority to pay compensation to landowner or holder. Furthermore, the bill outlines the circumstances in which it deems fit for state to pay nil compensation to landowner or holder. Such circumstances are outlined as instances where land is not used and the owner's intention is not to develop nor use the land to generate income, but rather benefit from the appreciation of the land market value. Also, in instances where an organ of state holds land that is not used for its intended or core purpose nor does the organ of state intends to use it for such purpose in future. Including in the event where a landowner has abandoned the land or either failed to exercise control over it. However, this could mean an end to the underutilised, abandoned redistributed land. The state focus is to ensure that land is used productively to both remedy the historical injustices of the past and to contribute to the economy of the country. The bill further states that compensation will not be payable where the market value of the land is equal to or less than the present value of direct investment or subsidy in the acquisition and beneficial capital improvement of land. Lastly where the condition of the property poses danger to persons or other property. However, propitiation without compensation is not limited to the above-mentioned circumstances, the state may equate nil payment where circumstances deems fit. According to Boshoff and Sihlobo, the state will not ordinarily equate nil compensation

under the above-mentioned circumstances.<sup>339</sup> However, Section 12(3) of the bill should be read to interpret that such circumstances will be considered for a nil compensation should the court find it just and equitable to do so. Therefore, the nil compensation is not automatic to the above- mentioned circumstances, but it is subject to court findings.

The bill sets out the procedure in which the expropriation will be carried out, firstly the designated officials will investigate the land and appoint a valuator to evaluate the land and developments thereon. The expropriation authority will then give a notice of intention to expropriate to the landowner, who has to respond to it within 30 days from the date of receipt. The landowner's response must include amount claimed for developments and any restrictions may be available regarding the land in question. The expropriating authority will be equally required to respond to the landowner within 20 days of receipt of landowner's response. The expropriating authority's response must indicate whether the claim is accepted or rejected, and if rejected an offer must be made. If both the owner and the expropriating authority cannot agree within a period of 40 days from the date of the owner's response. The parties may either employ the provisions of Section 21 of the bill and approach the competent court of law for a relief or the expropriating authority may elect to proceed with the expropriation, continue to negotiate or not. In an event where the expropriation authority proceeds with the expropriation, a notice in terms of the expropriation bill must be furnished. Also, in an event where the expropriation authority elects not to continue with the expropriation, same must be made known to the owner and also advertised on the government gazette, furthermore an expropriation authority may either elect to continue negotiating with the land owner, until a suitable decision or compromise is reached.

Although this approach of compensating for developments not the market value of the land could lead to unending civil claims against the state. Since it is in contravention of the Property Valuation Act, which provides that the value of the property "must reflect an equitable balance between the public interest and the interests of those affected by the acquisition, having regard to all the relevant circumstances, including..."<sup>340</sup> the factors set out in section 25(3) of the Constitution. However, Pocock is of the view that the legislators of the Bill appear to have promoted "public interest" as the overarching factor underpinning

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<sup>339</sup> Theo Boshoff and Wandile Sihlobo, Policy brief: Expropriation Bill 2020, Agbiz.

<sup>340</sup> Property Evaluation Act 17 of 2014.

an amount of “just and equitable compensation”.<sup>341</sup> Pocock view is supported by the view that if public interest is a method of evaluation, then how do you value or calculate public interest in the commercial world. Therefore, determining the balance of interest, it will require a specialised tribunal to clearly interpret the legislation to give effect to the objective of equitable balance of interest between the public and the land holders. Hence the need to increase capacity of land claim court or perhaps a separate land court as per Minister Lamola’s media statement of the 1<sup>st</sup> of March 2021. According to the Minister of correctional services there might be a soon to be submitted land court bill to parliament. The bill proposes an independent law tribunal that will deal only with land related matters particularly matters emanating from expropriation without compensation and that of land claims. Essentially the land court will deal with the “systematic challenges faced by land claims court and ensure speedy precipitation of land claims court by ensuring that permanent judges are appointed”. Perhaps an additional specialised court could be an answer to unwiring challenges of land claims that are left unattended by the state, due to lack of capacity to legally address the issues. Acquiring of land is equally challenging as redistributing it, the state needs to prepare both legislation and judicially to deal decisively with land matters.

#### **4.5.2 What measures have been put in place to ensure its successful implementation**

The introduction of expropriation without compensation ought to be coupled with new policy drafts that will merge a gap between the historical injustices and the current land reform challenges to better serve the needs of land reform beneficiaries. Currently the state has proposed a Land Court Bill before the parliament to ensure that land challenges particularly land claims challenges which could not be otherwise proven by any documents, to be heard before court with the admissibility of hearsay evidence. Furthermore, the land court will be responsible for providing clear guidelines for compensation for land claimants. The introduction of land court will therefore necessitate to land claimants to require legal representation. In order to ensure that the interests of the land reform beneficiaries are protected and compensated in a just and equitable manner, where compensation is applicable. Hence the land court bill makes provision of free legal services through the services of Legal Aid. Which is an independent body funded by state to provide free legal services to indigent people.

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<sup>341</sup> Wayne Pocock, The expropriation Bill: The cost of everything, the value of nothing, Property law, Without prejudice June 2017.

Perhaps the establishment of land court could be the answer for the notable challenges of negotiating compensation amount and of justifying nil compensation to current land holders. Although the land court bill will not solve all the land reform challenges, but according to Minister Didiza, the land court bill will ensure speedy resolution of land disputes some of which could not be resolved since 1998. Minister Lamola in his address he acknowledged that “the bill on its own may not be a silver bullet which can help undo the effects of colonialism, however it is an important step which can enable land reform”. Essentially having a land court will ensure that land matters are dealt with in a competent court that possess the necessary knowledge and expertise to address land issues. Land issues are complicated by nature coupled with the complexity of land reform processes of acquiring land. However, in order for the land court to be effective in its practice there’s a need to have policies that clearly address land reform issues. Policies which will set out the applicable procedure for the court to enforce and that requires the legislature to draft policies that with deal with all aspects of land reform. From the acquisition of land, clearly outline the process in which the state will undertake to acquire the land and set out the formula and criteria to be used to calculate compensation. Although this procedure has been highlighted in the proposed expropriation without compensation bill, but there is a need to have a much-detailed procedure in order to give guidance to land court to effectively implement and enforce the provision of the proposed bill. Policies that will set out procedure to equally redistribute land to land reform beneficiaries, this will ensure that corruption in redistribution of land is eliminated. Furthermore, it will enforce compliance of laws and promote efficiency of the land reform programme. Moreover, it will ensure that the intentions of the legislatures are optimally implemented and consequently address the expectations of the land reform beneficiaries. Thus, the interest of land reform beneficiaries will be protected and upheld through the enforcement of policies and laws in the land court.

The introduction land court will not only assist in addressing land reform disputes, but it will also foster development in the judicial system regarding land laws. Finally, the progressive laws and policies of land reform programme will have much positive impact to land reform beneficiaries. Policies and laws that are aimed at improving the lives of land reform beneficiaries, be it through redistribution of land or through productive use of land will have a meaningful impact on the lives of land reform beneficiaries, if they are enforceable in a court of law. Consequently, the functioning of land court will also foster policy development which will inextricably ensure progressive developments of land reform programme that will

promote rural development and address the socio-economic challenges that plague the black community. By ensuring that the intentions of the legislatures meet the expectations of the land reform beneficiaries through the enforcement tribunal (land court). Therefore, land reform legislative drafting will have a much deeper meaning to both the legislatures and the society.

During the 2021, budget speech Minister of Finance, Minister Mboweni alluded that the state has allocated a budget of R896.7 million to the Department of Agriculture, Land Reform and Rural Development for post settlement support services. The state has taken a positive approach in ensuring that land is used productively to ensure that lives of land reform beneficiaries are improved. However, this initiative of investing in post-settlement support services will not only address the social status of land reform beneficiaries but it will also eliminate prospective challenges that could come with expropriation without compensation land reform approach. Ensuring that land reform beneficiaries are afforded adequate support services to productively use their land will ensure stability of food security and consequently instil confidence to investors. The investors' confidence in the agricultural trade is improved by productive utilisation of land which yields gainful outcome to their investments. Production made from farming need to be of good quality to be sellable on the market and generate profit. Therefore, utilisation of land productively is not sufficient to generate income, however there is a need to ensure that production is of good quality to be sellable on agricultural market.

Hence the need to have adequate post-settlement support services that encompasses both resources and knowledge and skills transfer programmes but not excluding mentoring and monitoring programmes. A comprehensive post-settlement support services that is sought to achieve both productive use of land and quality products that can generate income on markets.

#### **4.6 Development Facilitation Act 67 of 1995 (DFA)**

The DFA<sup>342</sup> aimed to overcome bottlenecks in existing regulations such as Spatial Planning and Land Use Management White Paper speed and development, particularly the delivery of allocated land for low income residential.<sup>343</sup> It further introduced provisions such as Section 67 to facilitate and expedite land for development projects. The purpose of the DFA

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<sup>342</sup> Development Facilitation Act (n96).

<sup>343</sup> White Paper (n10).

is to ensure that land is utilised productively to ensure that there is sustainable development. It is quite evident that sustainable development cannot be achieved by mere availability of land, it requires more than vacant land. There is need for support programmes to land beneficiaries, and such support programmes should not be limited to funding and giving of machinery equipment but extended to skills development and mentoring programmes. The DFA has shown great commitment to speed up development particularly in rural areas, by making provision for creation of land development objectives including measures to track performances of such development in terms of Section 27,28 and 29.<sup>344</sup>

This also implies that provincial government can assess the intention and performance of the local government to ensure that development is fast tracked, particularly in the rural regions. The importance of land development objectives is to provide guidance for land development decisions regarding the intended goals and development in a particular area, taking into account the availability of resources in that area.<sup>345</sup> In order to avoid delays in decision making, support must be given to local authorities, especially in rural institutions, in the formulation of these objectives. The process of setting land development objectives needs to be consistent with the Integrated Development Plans mandatory in local government legislation.<sup>346</sup>

The role of local government in developmental projects is guided by the annual Integrated Development Plan known as IDP. The IDP sets out the annual developmental plans of the local government. The local government confines itself in achieving these developmental plans. And if the land objectives are included in the IDP, the local government will task itself to realise these objectives as part of the annual developmental plans. In this manner, proposed developments in rural areas will be speedily approved because local government is well vested with the developmental needs of the area and is well orientated about the day to day challenges face by members of the community because of the inadequacy of developmental infrastructures.

The DFA has established the National Development and Planning Commission, which investigates a new legislative and policy framework for land development and planning in South Africa. Its purpose is to provide counsel to the national government and, if so

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<sup>344</sup> See Section 27,28 and 29 of Development Facilitation Act 67 of 1995.

<sup>345</sup> Development Facilitation Act (n96).

<sup>346</sup> White Paper (n10).

requested, provincial government on future policies and laws regarding land development procedures.<sup>347</sup> Section 31(1) of the DFA lays out the procedure to be followed by land development applicant when applying for establishment of land development.

The DFA further requires the application to be submitted to the relevant Development Facilitation Tribunal (DFT) of the province in which the property is situated. Section 33 of the DFA lays out the consideration in which the DFT will consider when approving the application for development establishment. However, in some extent an applicant may apply for development establishment on a property that was designated for a different development establishment. And in such instances the applicant will be required not to only comply with the provisions of the DFA but also with Section 60(2) of Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA) and apply for change of land use with the relevant municipality.

In *Albert Dykema vs Bela Bela Local Municipality and Arthur Malebane* (91319/15) ZACPPHC/ 2017/ 227 the applicant in this matter brought an urgent application to court on the 11<sup>th</sup> November 2015, seeking interim relief interdicting the first respondent, the Municipality from considering the application of the second respondent or any other adjacent property owner for change in land use from farming to that designated for a filling station.

The applicant owns a farm in the jurisdiction of the municipality and in order for him to develop a filling station and a resort on his property, it requires the approval of the Development Facilitation Tribunal for Limpopo. The applicant made an application for land use rights from that of the resort and agricultural farming to special for the purposes of one stop facilities in terms of the DFT for Limpopo Province on 7 August 2012. Objections were made by other oil companies and other filling stations operators but there was a considerable support from SANRAL as well as Waterbeg District Municipality. In November 2012 the applicant was advised of the approval of his application in terms of the DFA by the DFT.

The applicant's concern was the municipality's failure to finalise conversion as contemplated in the DFA read together with Section 60(2) of the Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA). Moreover, the municipality accepted an identical

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<sup>347</sup> Ibid note 346.

application for land use change lodged by the second respondent in respect of the latter's property located 19 Km from the applicant's property.

The applicant sought a mandamus against the first respondent to compel it to complete the remaining statutory functions to finalise the approval process of land use rights by the DFT. The court held that the first respondent is directed to process the applicants' land use change and dispose thereof in accordance with the provisions of Section 60(2)(a) of the Spatial Planning Land Use Management Act 16 of 2013. And that such a process must commence within 60 Days from the date of order being brought to the notice of the Municipal Manager or other appropriate official of the municipality.<sup>348</sup>

In instances where applicants experience counter claims or delays in their application of change of land use due to local government's poor administration and implementation of the provisions, the court will interpret the provisions of Section 31(1) of the DFA together with Section 60(2) of SPLUMA to enforce compliance with the provisions. As stated in the case of *Albert Dykema vs Bela Bela Local Municipality and Arthur Malebane*.

DFA is very instrumental in accelerating development such as industrial infrastructures in rural areas, however, the challenge is availability of resources to fund the development. Government is committed to ensure that people living in rural areas, experiencing upright poverty are given speedy approvals for development projects such as the change in land usage from commercial to farming projects. But the challenge is that people living in rural areas have no funds nor skills to productively utilise the land with developmental projects, they need funds, resources and skills to run developmental projects which will be sustainable and also helps alleviate poverty amongst black people. The focus of Government should be on providing support services not on continuous availing land that will not be utilised at all due to lack of resources and skills. The continuous availing of non-utilised land will have a negative effect on the economy, when land that is used productively is expropriated and redistributed to Black people with no support services to continue the business with the land, the revenue that was contributed to the economy by the land in question will cease.

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<sup>348</sup> *Albert Dykema vs Bela Bela Local Municipality and Arthur Malebane* (91319/15) ZACPPHC/ 2017/ 227.

#### **4.7 Interim Protection of Informal Land Rights Act 31 of 1996 (IPILRA)**

The IPILRA is aimed at protecting those individuals with insecure landholding from losing their rights to land while land reform is being introduced. Section 2 of the IPILRA provides that land that is held in commonage will be deprived to anyone who is subject to the provisions of subsection (4), unless such persons have familiarised themselves with the customs and usage of the community concerned.

This implies that people could not easily get access to the land in communal areas, they had to first comply with the customs and usage of that community. People who are not well acquainted with the customs of the community would be deprived of access to land, merely because they did not comply with the customs or usage of that community. This section prohibits non-residents or people who are not learned in the customs of the community from acquiring land or developing the land simply because they are not accustomed to the ways of the community. Although Section 2 of the IPILRA makes provision for deprivation of land rights, Section 3 of IPILRA provides if the deprivation is as a result of disposal of land by the community, the state shall pay compensation to any person deprived of such informal right to occupy land.

The Communal Land Rights Act of 2004 (CLRA) elaborates more on provisions set out in the IPILRA. The main objectives of this CLRA is to make provision of secured tenure security in transferring communal land.<sup>349</sup>

It further makes provision for the co-operative performance of municipal functions on communal lands. Section 37 of the CLRA makes provision for municipal services and development infrastructure on communal land. It provides that no law may prohibit municipal office to perform their duties of developing communal land irrespective of how the land rights are registered.

This clearly states that a municipality has undisturbed rights to develop communal land despite of the overlapping functions it has with other institutions with regards to land administration in rural areas. Therefore, a company or developers who are not accustomed to the tradition of the community can be given access to develop the land by the local

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<sup>349</sup> Communal Land Rights Act (n325).

government despite the required compliance of being learned about the customs of the community, provided such development will be for the benefit of the community. *In Baleni and Others v Minister of Mineral Resources and Others* Case No 73768/2016 the court handed down the *Baleni* judgment on 22 November 2018, following a long-standing dispute between the community in the Eastern Cape and an Australian mining company, Transworld Energy and Mineral Resources (SA) (Pty) Ltd (TEM).

The dispute centred around the competition between the informal land rights held by the community in terms of the Interim Protection of Informal Land Rights Act, No 31 of 1996 (IPILRA) and the legal requirements to grant a mining right under the MPRDA. The court took into cognisance the relationship between the IPILRA and the MPRDA in respect of the level of engagement that is to be achieved prior to the granting of a mining right. The Argument is that “the IPILRA requires the informed consent of a community which has informal rights in land before the community may be deprived of such rights, whereas the MPRDA requires only that a community be fully consulted prior to the granting of a mining right”.<sup>350</sup>

The court found that “because these two pieces of legislation have a similar purpose, which is to redress historic economic and territorial dispossession, they should be read together”.<sup>351</sup> The court considered the elevated status that customary law enjoys under the constitutional dispensation and the special protection afforded to traditional communities under the IPILRA. The court also noted that the “MPRDA does not specifically outline that the MPRDA prevails in the event of an inconsistency with customary law, and that, in addition to requiring consultation with interested and affected parties, the MPRDA makes specific reference to promoting the rights and interests of communities”. Given these factors, the court was satisfied that the Minister had additional obligations under the IPILRA to obtain the community’s consent prior to granting TEM’s mining right.

The court’s interpretation of the provisions of IPILRA is in line with Section 211(3) of the Constitution which states that “the courts must apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with

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<sup>350</sup> Interim Protection of Informal Land Rights Act 31 of 1996, read together with Mineral and Petroleum Resources Development Act No. 28 of 2002, < [www.cliffedekker.com](http://www.cliffedekker.com) >, last accessed 01/09/2020.

<sup>351</sup> *Baleni and Others v Minister of Mineral Resources and Others* Case No 73768/2016.

customary law”.<sup>352</sup> Hence, the court upheld the provisions of IPILRA over the provisions of MPRDA of merely conducting a consultation with the community. *In the case of Maledu and Others v Itereleng Bakgatla Mineral Resources Pty Ltd and Another* [2018] ZACC 41 the court echoed the sentiments that the IPILRA seeks to “protect traditional communities by ensuring that communities have a right to decide what should happen to the land in which they have an interest; that it offers communities legal protection to assume control over and deal with their land according to customary law and usages practised by them; and most significantly, that the IPILRA provides that no person may be deprived of any informal right to land without their consent”.<sup>353</sup>

Furthermore, it was held that “the implication of the *Baleni* judgment is that when a community has informal land rights, the Minister will lack the lawful authority to grant a mining right in terms of the MPRDA unless the provisions of the IPILRA have been complied with. Furthermore, if the IPILRA is not complied with, a court may be willing to grant a declaratory order to uphold the informal land rights of a community”.<sup>354</sup>

#### **4.8 Communal Property Associations Act 28 of 1996 (CPAA)**

The CPAA affords provision for communities or groups of people to obtain and administer property under a written constitution. Section 7 of the CPAA sets out the procedure for the adoption of a constitution by a community. Section 8 of the CPAA deals with the registration of communal property associations. Section 8(1) provides that the Director-General shall consider an application for registration of a communal property association together with, *inter alia*, the constitution adopted by the association. In order to qualify for registration as a CPA in terms of the Act, the community has to conform to the requirements of Section 8(2) of the Act.

One of the requirements is that prescribed in Section 8(2)(d) of the Act, which is that “the constitution adopted by it deals with the matters referred to in the Schedule”. The Schedule to the CPAA lists 22 matters which have to be addressed in a CPA’s constitution. The first is its name. The second one is the address of the association. The principal address of the association is the address in which the association is registered under, even if the address is a vacant land, all legal notices and services must be served at that address.

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<sup>352</sup> Ibid note 351.

<sup>353</sup> *Maledu and Others v Itereleng Bakgatla Mineral Resources Pty Ltd and Another* [2018] ZACC 41.

<sup>354</sup> *Baleni and Others v Minister of Mineral Resources and Others* (n297).

In *Etindziweni Communal Property Association v Carfarm Close Corporation* (A459/2014) [2015] ZAGPPHC 489 (23 June 2015) The applicant in this matter is Etindziweni Communal Property Association, a CPA registered in terms of the CPA Act. The applicant made an application for rescission of judgement granted against the CPA. The CPA chairman alleged that he only became aware of the judgement taken against the CPA upon receipt of writ of execution. Whilst the respondent alleged that the sheriff served the summons personally on the Chairman of the CPA. The applicant contended that such service was not in accordance with Rule 4(1)(a)(v) which requires that service of documents must be effected at the principal place of business of the juristic person, as the Etindziweni Communal Property Association is a juristic person and that is in terms of Section 8(6)(a) of the CPAA.

The court held that the service of the summons on the applicant was irregular and that the judgement which was granted against the CPA was accordingly erroneously sought and granted. Consequently, the court rescinded the judgement and held that the respondent should have served the applicant at the principal business place as the address of the CPA is accordingly afforded to any member of public upon their request and that is in terms of Section 8(3)(c).<sup>355</sup>

The distinction between independency of the members of the CPA and the CPA as a legal entity is still a problematic issue, when it comes to dealing with the business of the CPA. Often it is assumed that the members of the CPA are liable for the CPA business while in actual fact CPA is an independent entity administered by the members. This confusion often leads to the impression that CPA is non-effective due to the complex issue of failure to identify its independency apart from its members as administrators.

Jacobs is of the view that CPAA established communal property associates which “are generally ineffective, and a number of theoretical problems support this opinion”.<sup>356</sup> The details are inclusive of uncertainty concerning the status of members, inappropriate assigning of practical rights and maladministration of the land. Failure to enforce compliance of proper administration of CPA to the members, results in mismanagement of the land and funds. However, this situation can be avoided if court’s jurisdiction over CPA’s was extended

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<sup>355</sup> *Etindziweni Communal Property Association v Carfarm Close Corporation* (A459/2014) [2015] ZAGPPHC 489 (23 June 2015).

<sup>356</sup> Petrus Jacobus Jacobs, Tenure security under the communal property association Act 28 of 1996: an analysis and establishment of management procedures with comparative reference to Sectional Titles Act 95 of 1986, 2011.

to monitor strict compliance of proper management of a CPA. According to Jacobs CPA's do not necessarily adhere to the democratic laws of CPAA as outlined. Thus, the constitutional reasoning of a most equal access to land and natural resources without compromising the tenure security. It is for this reason that the state credibility to deliver on its promises is questionable.<sup>357</sup>

The above is however, supported by the allegation made by the respondent in the above mentioned case, that the registered place of businesses of the CPA was a vacant land and as such the CPA was not necessarily carrying its business at the registered place of business. And consequently, the sheriff could not make an effective service. This however, renders difficulties in executing an action against a CPAs and creating a complex procedure of dealing with CPAs. Moreover, on the issue of insecure tenure rights the establishment of CPA's does not necessarily address the issue of creating a secure tenure system for people living in rural areas. Due to its structure of granting administration powers to traditional leaders and withholding of transfer of ownership rights over the land that is made available to beneficiaries. This practice has resulted in hindering land reform beneficiaries from acquiring funding from financial institutions due to lack of security to bond their loan against. This is caused by the valueless asset of land held in CPA and the lack of ownership rights over the land. Therefore, the beneficiaries are granted land through permission to occupy titles that limits chances of land reform beneficiaries to gain access to funds or even attract investors and donors. As a result, land made available through CPA is rarely used productively due to lack of resources and the obstacle of land title that hinders any prospect of acquiring funding from financial institutions.

#### **4.9 Land Reform (Labour Tenants) Act 3 of 1996 (LRLT)**

The LRLT protects the rights of labour tenants and gives them the ability to obtain permanent land to work and live on. Section 3(1) of the LRLT provides that any person who was a labour tenant after June 1995 shall have a right to occupy and use part of the farm with his family.<sup>358</sup> This right does not necessarily imply ownership to the portion of the farm, but it provides protection and enjoyment of occupants privileges and such privileges can only be terminated in terms of the LRLT. The rights of occupants to occupy and use a piece

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<sup>357</sup> Ibid note 356.

<sup>358</sup> Land Reform Act no 3 of 1996

of the farm does not impose rights to develop the land in question, hence the occupants do not have ownership rights, however the occupants can erect temporary buildings necessary for their daily use. Labour tenants in terms of the LRLT often refuses to relocate when the owner wants to use the land for development and require that an alternative place for residing be provided for by the owner. Failure to meets such demands, the tenants are highly likely to vacate the land in question and will often rely on the provisions of LRLT which provides that the labour tenants occupation can only be terminated by LRLT. However, this negatively affects the use of land productively and the progress of development on such land. Therefore, the provision of Section 3(1) should be subjected to limitations which will entail the exceptional circumstances whereby LRLT tenants could be speedily vacated the land for purposes of developmental projects. However, this will require the state interventions to assist LRLT tenants with alternative place to occupy. Instead of expecting a landowner to make available alternative accommodation for the LRLT tenants on his costs. This consequently deter landowners and developers to engage in developmental projects on land occupied by LRLT tenants due to fear of being financially liable for relocation of LRLT tenants. Notwithstanding the fundamental rights for LRLT tenants to be afforded adequate housing but there is a need for state to encourage productive use of land for purposes of alleviating poverty and create sustainable development particularly in rural areas. Furthermore, the state must take consideration of the financial status of landowners and avoid shifting responsibility of availing land and adequate housing to LRLT tenants to landowners. As this deters the progress of developmental projects on land occupied by LRLT tenants.

#### **4.10 Extension of Security of Tenure Act 62 of 1997 (ESTA)**

The ESTA makes provision for people who occupied someone else's land on or after 4 February 1997 with permission from the landowner, to secure legal right to continue living on and using that land in terms of Section 6(1). Section 8(1) specifies clearly on which grounds the landlord may evict an occupier and Section 10(1) provides grounds on which an order of eviction may be granted. The Act also specifies what the landlord needs to comply with before evicting the tenant. The consequences of living on a land owned by another person is that every improvement made, if allowed belongs to the owner of the land. Therefore, the occupiers are limited to make sustainable improvements on the land because of lack of ownership. In *Cosmopolitan projects Johannesburg (pty) Ltd vs Leoa and Others*

(LCC 174/2016). The applicant bought portion 44 of the farm Waterval 150, registration division IR, in Gauteng. The applicant bought the land in question in 2014 for purposes of development. After the applicant purchased the land, he entered into negotiations with the respondents who are ESTA occupants. In an attempt to secure their agreement to vacate the land in order to make a way for the development, however not all the respondents agreed to the applicant's propositions.

The respondents were legally represented, when the applicant proposed that the respondents relocate to an alternative land which the applicant purchased and become joint owners of the land through a Communal Property Association (CPA) to be established. Majority of the respondents signed consent forms to relocate and waive their rights under ESTA. Amongst the respondents, only 34 respondents agreed to relocate whilst the others refused. The applicant made an application to court to have the 1<sup>st</sup> to 34<sup>th</sup> respondent's settlement agreement be made an order of the court, and further requested an order of a court to evict the rest of the respondents in terms of ESTA.

When the matter was brought to court, the 1<sup>st</sup> to 34<sup>th</sup> respondents changed their minds and contended that the alternative land is not fit for human inhabitant and that there are no structures. Whilst the rest of the respondents held that the applicant did not comply with the requirements of Section 8 of ESTA, and as a result the applicant is not entitled to an eviction order. However, the applicant argued that the respondents who entered into a settlement agreement are bound by the agreement they consented to; therefore, the court should order the respondents to vacate the land.

The court held that the applicant has not established that the requirements of Section 8 of ESTA have been met and is accordingly not entitled to an eviction order. And moreover, considering the above it would serve no purpose to make the settlement agreement and an order of court. In *Snyders and Others vs De Jager and Others* 2017(3) SA 545 (CC). The Constitutional Court held that, "if a person has a right of residence on someone else's land under ESTA, that person may not be evicted from that land before that right has been terminated".<sup>359</sup> In other words, the owner of the land must terminate the rights of the occupant to reside before seeking an order to evict that occupant. Although, it must be

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<sup>359</sup> *Snyders and Others vs De Jager and Others* 2017(3) SA 545 (CC).

observed that the termination of the right of residence is required to be just and equitable in terms of Section 8 of ESTA.<sup>360</sup>

The provisions of the ESTA have been flaunted by many landowners. They rather preferred to evict the tenants based on their terms, without fully complying with the procedures set out in the ESTA. However, landowners are experiencing delays in their intended development or land use as a result of the strict requirement of terminating the right of ESTA occupants before initiating an eviction. In essence, that means a landowner has strict limitation of developing land that is occupied by ESTA occupants. To some extent, the requirement to terminate ESTA occupants' rights is a hindrance to development. The likelihood of ESTA occupants to accept alternative place to occupy is very low. In many instances, ESTA occupants are reluctant to relocate from their familiar place of residence to a new place. As a result, landowners are unable to utilise their land productively. Therefore, not only is productive use of land hindered by lack of adequate post-settlement support services but it is also limited by provisions such as Section 8 and Section 10 of ESTA. These Sections requires a landowner to evict ESTA occupants after complying with the outlined procedure in Section 8 particularly terminating of occupants rights and making available alternative place. However, the process does not always go according to the procedure, due to challenges such as refusal of occupants to waive their rights in terms of ESTA and relocate. Coupled with a process of applying for eviction and meeting the grounds as per Section 10. This consequently deters landowners to productively use their land and contribute to sustainable development, particularly in rural areas. This is consequent to a lengthy procedure of vacating ESTA occupants.

#### **4.11 Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE)**

This Act sets out clearly how land can be occupied in an orderly manner. It further explains when and how illegal tenants can be evicted and how to forbid illegal eviction. PIE repeals the Prevention of Illegal Squatting Act of 1951. Section 4 of the PIE provides that “a notice must be given to unlawful occupiers, at least in fourteen (14) days before the hearing”.<sup>361</sup> PIE requires that before evicting people a land owner must give them a notice which will

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<sup>360</sup> Ibid note 359.

<sup>361</sup> Section 4 of the Prevention of Illegal Eviction from Unlawful Occupation of Land Act 19 of 1998.

give the people an opportunity to get a legal representative if needs be and defend them before the court. The time period given for the notice affords the people a reasonable time to vacate the land.

Improvements or developments made on land illegally occupied are forfeited when the unlawful occupiers are evicted. It is commonly done by a way of demolishing of structures built on the land in question. Lack of land is usually the reason why many developmental structures are demolished because the land which the structures are built on is illegally acquired or occupied. On the 4<sup>th</sup> of November 2019, the Polokwane Local Municipality demolished rental houses built on ERF 815 at Unit E in Mankweng. The demolishing followed a court case of 2016 between the Municipality and the Illegal occupants. In 2016 the Municipality made an inspection and made a finding that a certain person was building structures on ERF 815-unit E, a site designated for the Department of Education to build a school. The municipality informed the respondents about the position of the ERF in question.

The respondents indicated that they will not refrain from erecting structures on the site. The municipality sought for an order in High Court and was granted an order interdicting and restraining the respondents or any other person from occupying the land and further ordered the respondents to demolish and remove all buildings and other removable property from the ERF within 14 days of the court order. In the event the respondents do not comply with the order, the sheriff was authorised to demolish and remove all property or structures on the ERF. The court order was stayed by the municipality for a period of 2 years, during which the municipality engaged in several communications with the respondents and failed to reach an understanding. And consequently, the sheriff was instructed to demolish as per the court order.

It is rather unfortunate that developments made on land that was illegally acquired are forfeited. This slows down the pace of developing land which is not utilised. There are lengthy procedures of acquiring land, whilst there are quite a number of plots that are not utilised productively. The formalities and procedures thereof are quite complex and as a result developer are hindered from erecting their developmental structures due to complex and conflicting procedures of acquiring land that is not used. The people who are in possession of land are either procrastinating about using the land productively or they do not have financial resources. Perhaps the state need to invest in mechanism of ensuring that developments made on land that is illegally occupied are not necessarily demolished

but rather put in good use that will generate income and ensure that illegal occupants do not lose their investment but are compensated accordingly. Therefore, the money generated from developments made on the land illegally occupied could serve as costs suffered by state when compensating the illegal occupant. However, this should not encourage illegal occupants to develop land that does not belong to them with a hope of recovering their investment when evicted. This measure should be used as a means for redressal. Furthermore, a land that is demarcated and set aside for a specific purpose by the state or an individual should be clearly marked and indicate the intended purpose. This will assist illegal occupant to be informed of the owners of the land in question, therefore it will place the illegal occupant in mora and render such occupying of land as trespass. Moreover, land set aside for a specific purpose should be timeously utilised to avoid land to lay fallow for a very long time and create an opportunity for illegal occupants to take advantage of. Evicting legal occupiers is a lengthy process that needs to be duly complied with, however there are circumstances where the process itself becomes a hindrance to a landowner to timeously evict illegal occupants and consequently utilise their land productively. Such as in the case of *Khauhelo v Mosupa and Another* (A252/2014) [2015] ZAFSHC 69 (19 March 2015). The appellant was evicted on the 14 august 2014 after being served with notice of motion. The appellant brought the matter before court alleging that "the notice of motion did not comply with Rule 55(1)(e)(iii) of the Magistrate's Court rules in that, according to the said rule, an applicant should set forth a day in its Notice of Motion, not less than five (5) days after service of the application on the respondent which requires of the respondent to notify the applicant whether the application would be opposed, and furthermore, a date should be stated not less than ten (10) days after the lapse of the five (5) day period when the application will be heard. The appellant pointed out that no such dates were set out in the Notice of Motion".<sup>362</sup> The appellant further urged that the respondent should have used Form "1A" of the Magistrate's Court rule and that there was no request for condonation for the use of the wrong form.

The court held that "there was agreement with the Act and that the purpose of the said Act has been achieved. Nowhere in the said notice, is the date stated whereon the proceedings would be heard as contemplated in Sections 4(2) and 4(5)(b). however, the order declared that the respondents must appear before the court on the 12 November 2013, same was

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<sup>362</sup> *Khauhelo v Mosupa and Another* (A252/2014) [2015] ZAFSHC 69 (19 March 2015), [saflii.austlii.edu.au](http://saflii.austlii.edu.au).

only to stipulate whether they would use their right to conduct their own cases, alternatively to get an attorney and/or to apply for legal aid. Nowhere is the date of the hearing indicated. Accordingly, the municipality would never have known when this application was to proceed. No effective notice was therefore given to them. This is with the exception of the fact that notice had not be offered less than a period of fourteen (14) days”.<sup>363</sup>

The court further held that “the Magistrate in the circumstances should not have granted the order. The Magistrate should have found that there was improper agreement with the provisions of the Act and could not in the absence thereof have granted an order of eviction”.<sup>364</sup> And that the Magistrate should merely have removed the application from the roll. Accordingly, the appeal succeeded with costs. Application of eviction must be properly done following the required procedure, in order to afford the respondent a reasonable time to respond to the application. Failure to follow proper procedure will render the application unsuccessful regardless of your right of ownership of the land.

#### **4.12 The Transformation of Certain Rural Areas Act 94 of 1998 (TCRAA)**

This Act aimed at effecting the transfer of 1.7 million hectares of land to the communities consisting of 70 000 people in the former 'coloured reserves' in the Western Cape, Northern Cape, Eastern Cape and Free State.<sup>365</sup> The 1.7 million hectares was successfully transferred to the rightful indigenous owners, till to date half of the land that was redistributed is not productively utilised due to lack of resources and skills. Poverty in this area is still stricken, the social and economic status of the people living in these areas have not changed nor positively impacted by the redistributed land. Apart from people receiving land back, they were not offered anything to assist them to utilise the land productively and generate an income. People remained in the same financial position they were in before land was redistributed to them. There is need to have support programmes for land reform beneficiaries to aid them in utilising the land productively and eradicate poverty. The transfer of land only played a role of change of tenure system but failed to contribute to the livelihood of the people living in these areas. The people living in rural areas are still experiencing the same social challenges that come with poverty even after receiving their land back. The

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<sup>363</sup> Ibid note 362.

<sup>364</sup> *Khauhelo v Mosupa and Another* (n362).

<sup>365</sup> White Paper (n10).

land which was redistributed to them was not coupled with adequate support services to improve their life in utilising land productively.

Previously when the Upgrading of Land Tenure Rights Act 112 of 1991 was introduced, South Africa was divided into what used to be known as TBVC states. And consequently, after the merge of the states in 1994, the Act only applied to certain parts of the country, a few years later it was extended to the other parts of the country. However, land reserved for Black people still did not amount to ownership as access to land was governed by proclamations which afforded Black people land rights. Moreover, the rights did not amount to ownership but amounted only to permission to occupy.

Land tenure is the conditions under which a land is held. In 1996 the Parliament passed or issued two most important pieces of legislations to the tenure. These legislations are: Interim Protection of Informal Land Rights Act 31 of 1996 and the Communal Property Associations Act 28 of 1996. The first is a “holding mechanism that prevents violation of existing interests in land until new long-term legislation is in place. The latter provides a means through which people wanting to hold land jointly and in groups can organise their tenure. In addition, the Upgrading of Land Tenure Rights Act 112 of 1991, was amended to bring it in line with tenure policy”.<sup>366</sup>

The latter’s provision of Section 3 was recently given a practicable emphasis in case of *Herber N.O and Others vs Senqu Municipality and others* (CCT 308/18) [2019] ZACC 31 (22 August 2019). Whereby the Teba Trust challenged the validity of section 1 of the Land Affairs General Amendment Act 61 of 1998 and Section 25A of the Upgrading of Land Tenure Rights Act 112 of 1991, which excludes Section 3 from extending to the whole of South Africa. The High Court held that Section 25A should be read as not making any reference to Section 3.

The matter was then referred to Constitutional Court, which upheld the decision of the High Court and consequently rendered the provision of Section 25A unconstitutional. And held that “those who were denied the benefits of Section 3 should not be made to wait much longer before they may convert their insecure tenure rights”.<sup>367</sup>

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<sup>366</sup> Ibid note 365.

<sup>367</sup> Justice Jafta, Constitutional Court, *Herber N.O and Others vs Senqu Municipality and others* (n298).

A number of legislation enacted after 1994 have made massive contributions to access of land, even for the purposes of sustainable development. However, there are a number of aspects limiting access to land, where access is given, ownership is limited. Moreover, some of the legislation have less impact due to poor implementation. Such as the issue of change of tenure, most of the land that is reserved for Black people is held under permission to occupy. Black people still lack ownership of the land they are occupying, regardless of the legislation put in place to advocate for equal ownership of land for everyone. Such as the Upgrading of Land Tenure Rights Act 112 of 1991, which is intended to ensure that black people's tenure is improved, the same legislation was limited by provisions of Section 25A ULTRA. And consequently, denied Black people ownership of land.

Despite the provision of Section 25 of the Constitution which provides that “no law may permit arbitrary deprivation of property” and this includes land, hence the provision of this section entitles people to have a right to access land. However, this is subject to law of general application. This does not necessarily mean that the law of general application should be contrary to Section 25 of the Constitution. Section 2 of the Constitution requires every law to be consistent with the Constitution. However, section 36 of the Constitution makes provision that rights can be limited in terms of law of general application to an extent that is reasonable and justifiable in an open democratic society. Therefore, deprivation of property as a measure of limitation in terms of Section 36 must be both reasonable and justifiable based on human dignity, equality and freedom, but not excluding other relevant factors. However, if such deprivation of property cannot be justified under the provisions of Section 36 of the Constitution, such deprivation is undue. Hence, the recent constitutional judgement in the case of *Herber N.O and Others vs Senqu Municipality and others* (CCT 308/18) [2019] ZACC 31 (22 August 2019) declaring Section 25A of ULTRA unconstitutional. Which excluded Section 3 ULTRA from extending to the whole of South Africa, that is allowing areas that holds permission to occupy to convert their rights of permission to occupy to ownership rights through change of land holding in terms of section 3 of ULTRA.

Provisions such as these have contributed in the number of unutilised land by depriving land reform beneficiaries of ownership rights over the land and consequently renders such land valueless to be held as security for loans. Therefore, the land hold system that deprives transfer of ownership to land reform beneficiaries does not encourage productive use of land, however it leaves land reform beneficiaries at the mercy of state support services

which are not adequately provided to assist land reform beneficiaries to farm or use their land productively and generate income.

#### **4.12.1 Development Facilitation Act 67 of 1995**

The main objective of DFA is “to introduce extraordinary measures to facilitate and speed up the implementation of reconstruction and development programmes and projects in relation to land”.<sup>368</sup> And to lay down general principles governing land development throughout the Republic. According to Section 27 of the DFA the Local Government body has the responsibility to set land development objectives, and in any event they fail to do so, the MEC will be entitled to set out the land development objectives. Consequently, the responsibility to ensure that land development objectives are set lies before the Local government and the MEC, therefore developers and investors will have to rely on the outline of land development objectives. Moreover, Section 28 of the DFA provides that “the land development objectives shall relate to: the objectives of the relevant authority in relation to access to and standard of services for land development, including public transport and water, health and education facilities”.<sup>369</sup> Therefore, it is not any proposed land development project that can be approved except if it is in line with the outlined land development objectives.

The purpose of the DFA is to ensure that land is utilised productively for the purpose of sustainable development. Section 67 of the DFA makes provision to facilitate and expedite land for development projects. Moreover, the DFA promotes development and shows great commitment in fast tracking development to the extent that it makes provision for the “formulation of 'land development objectives', or development performance measures, at local government level, as a fast track alternative to current time consuming procedures”.<sup>370</sup> This also implies that provincial government can assess the intention and performance of the local government. The importance of land development objectives is to “guide land development decisions with regard to goals and development in a particular area, taking into account the availability of resources in that area”.<sup>371</sup> In order to avoid delays in decision making, support must be given to local authorities, particularly in rural institutions, in the formulation of these objectives. The process of setting land development objectives

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<sup>368</sup> Development Facilitation Act(n96).

<sup>369</sup> See section 28 of the Development Facilitation Act 67 of 1995.

<sup>370</sup> See Section 27,28 and 29 of Development Facilitation Act 67 of 1995.

<sup>371</sup> White Paper (n10).

need to be linked with the Integrated Development Plans required in local government legislation.<sup>372</sup> In this manner, proposed developments in rural areas will be speedily approved because local authorities reside in the area and they are well orientated about the needs of the area.

The commitment of DFA to speedily deliver development in rural areas is in line with the provisions of Section 10 (1) of PALA that is intended to ensure agricultural development by making available land through redistribution. However, most of the redistributed land have not been used productively due to a number of reasons closely associated with poor support services made available to land reform beneficiaries. Although the challenges of utilising land productively are not only the provision of inadequate support services but also include a complicated bureaucratic change of land use system.

The DFA operates hand in hand with existing land development and planning legislation such as Spatial Planning and Land Use Management Act No 16 of 2013. The main objective of the DFA is to “establish the provincial development tribunals which are responsible for government approvals of land development”.<sup>373</sup> This will also “quicken development decision-making, assist as a conflict resolution mechanism between stakeholders and foster greater community involvement in land development”.<sup>374</sup>

The DFA has established the National Development and Planning Commission, which investigated a new legislative and policy framework for land development and planning in South Africa. Its purpose is to “advise national government and, if so requested, provincial government on future policies and laws dealing with land development procedures”.<sup>375</sup> The DFA is very instrumental in accelerating development in rural areas, the challenge is availability of resources to fund the development. Government is committed to ensure that people living in rural areas, experiencing upright poverty are given speedy approvals for development projects. But the challenge is that people living in rural areas have no funds nor skills to productively utilise the land with developmental projects, they need funds, resources and skills to run developmental projects which will be sustainable and also helps alleviate poverty amongst black people. The focus of Government should be on providing

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<sup>372</sup> Ibid note 371.

<sup>373</sup> White Paper (n10).

<sup>374</sup> Ibid note 373.

<sup>375</sup> White Paper (n10).

support systems not on continuous availing land that will not be utilised at all due to lack of resources and skills.

#### **4.12.2 Spatial Planning and Land Use Management Act 16 of 2013**

The purpose of SPLUMA is to provide a framework for spatial planning and land use management in the Republic, therefore the responsibility of SPLUMA is closely associated to the need to utilise land productively to ensure development within the country, particularly in the rural areas ; Hence SPLUMA is responsible for the following; to specify the relations between the spatial planning and the land use management system and other kinds of planning, by clearly categorising the type of development as per the needs of a specific area; Moreover, to make provision of inclusive, developmental, equal and effective spatial planning at the different spheres of government, this is meant to safeguard against power abuse and corruption. It consequently ensures that every organ of state participate in developmental projects associated to their mandate. However, it could also be a stumbling block to land reform beneficiaries when it comes to access of support services, as each sphere of government has its own procedures of accessing services which are often coupled with lengthy bureaucratic procedures. Moreover, the different land use as per each sphere of government may limit the type of projects which land reform beneficiaries may conduct on specific areas by simply confining development to the objectives associated with its mandate. Hence the need to have one land use system that will consider developments as *per* the area needs not as per governmental strategies is necessary. Another purpose of SPLUMA is to make provision for a framework that is focused on monitoring, coordination and review of the spatial planning and land use management system, the need to monitor land use system is closely associated with the need to ensure secure tenure system for sustainability of land use and thus ensuring continuity of projects conducted on land. Not only it is necessary to have sustainable projects but it is also of paramount importance to have projects that are continuously, positively impacts the livelihoods of people and the economy of the country and consequently eradicate poverty amongst historically disadvantaged people; SPLUMA further makes provision for framework regarding policies, rules, norms and customs including standards for spatial development planning and land use management; to address past spatial and regulatory imbalances and particularly the injustices of the apartheid era, SPLUMA is very instrumental in changing or rather redressing the historical inequalities of land use system that left South Africa with a legacy of insecure tenure security, particularly for people living in rural areas. Not only are these

people facing different land use system, but they also suffer prejudice particularly in finding funding for developmental projects they intend to do on their land. This is resultant to insecure tenure system that deprives land reform beneficiaries' ownership rights of the land they possess but instead make it available through systems of permission to occupy. System which does not only withhold ownership from land reform beneficiaries but also ensures that such land does not appreciate in value as oppose to land held on freehold system which allows owners to transfer and deal with land as they please whilst it appreciate in value to add wealth to the owners. The insecure tenure system at play in rural areas distort value asset from the land and render it worthless to even serve as security bond when land reform beneficiaries loan money from financial institutions. As a result this hinders land reform beneficiaries to access funds and resources to farm productively but instead rely on inadequate post-settlement support services made available by the state. ; Although SPLUMA is responsible for encouraging immense continuous and uniform application of the procedures and the decision-making by the responsible authorities particularly decisions for land use and development applications, However the implementation thereof proves to be rather difficult with challenges such as lack of capacity which often results in poor implementation and corrupt practices that often renders the process ineffective by favouring certain applicants and declining certain applications of individuals who refuse to pay bribe for their application to be approved. These corrupt practices distort and fragment a system that is meant to assist land reform beneficiaries to enjoy and participate in productive use of land which will improve their livelihoods. ; Another responsibility of SPLUMA is to provide for creation and performance of the functions and operations of Municipal Planning Tribunals, this relate to municipal planning of land use which is outlined in Integrated Development Plan (IDP) which sets out the most important needs of the local community by identifying the most impoverished areas which the municipal funds can be optimally used to improve the lives of historically disadvantaged people. Last but not least SPLUMA makes provision for the facilitation and enforcement of land use and development measures and make necessary provision for matters connected therewith.<sup>376</sup>

Chapter 2 of SPLUMA contains general principles for the implementation of legislation regulating the use and development of land. And guide the sustainable use and development of land and the compilation, implementation and administration of any land usage arrangement or other regulatory apparatus for the administration of the usage of land.

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<sup>376</sup> Spatial planning and land use management Act 16 of 2013.

SPLUMA seeks to deal with the inclusion of peoples and regions that were formerly excluded, with a concentration and focus on squatter areas, former homeland areas and areas marked by widespread poverty and deprivation. Furthermore, it makes provision that land developmental dealings effectively covers provisions that considers access to land occupation and the incremental upgrading of informal areas. SPLUMA further provides the standard of spatial sustainability, whereby spatial planning and land usage administrative systems necessarily foster land development that is within the fiscal, institutional and managerial means of the Republic and make certain that exclusive consideration is afforded to the security of principal and exceptional land for farming.<sup>377</sup>

#### **4.12.3 Agricultural Development Fund Act 175 of 1993**

This Act provides for the creation of and control over an agricultural development fund for the accountability of money received for development.<sup>378</sup> The Directorate of Finance is responsible for the application of the ADFA. The purpose of the ADFA is to regulate funds purported for agricultural development. The development in agriculture is not only limited to increasing and managing farming production of crops but also extends to animal farming. Therefore, the funds are basically intended for improving the already initiated farming activities. This is to the exclusion of upcoming farmers let alone land reform beneficiaries who lack resources to start their farming activities.

The lack of financial assistance to land reform beneficiaries defeats the entire purpose of eradicating apartheid injustices. Giving Black people ownership of land is intended to improve their economic status and eradicate poverty which is the legacy of apartheid era. But failure to assist land reform beneficiaries to utilise redistributed land productively and in a sustainable manner, consequently, renders the whole land reform programme unfruitful.

#### **4.12.4 Land and Agricultural Development Bank Act 15 of 2002 (LADBA)**

The purpose of the Act is to provide for a juristic person known as the Land and Agricultural Development Bank. According to Section 3 of the LADBA, the objective of the bank is to promote, facilitate and support programmes established to kindle the growth of the farming fraternity and the productive usage of land. The bank's mandate is to offer farming and rural monetary amenities in maintenance of the objects of the bank contemplated in Section 3,

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<sup>377</sup> Ibid note 376.

<sup>378</sup> Agricultural Development Fund Act 175 of 1993.

against security or such alternative conditions as the board may from time to time determine, or in such other manner may be provided for by the LADBA. The bank achieves its objective by providing financial services to promote and facilitate access to ownership of land for development of farming enterprises and for agricultural purposes by the historical disadvantaged persons.<sup>379</sup>

Applicants are required to make a formal application, thus application in writing and security must be provided. The Land and Agricultural Development Bank will have a mortgage bond against the land of the applicant which will be endorsed on the title deed. As per the agreement between the applicant and the LAD Bank, the applicant will be required to sign a contract of loan and be liable to pay the loan amount in a specified period of time with interest. The applicant will have to make sure that the production of crops on his farming activities brings profit in order to satisfy the debt. This could be a challenge for a land reform beneficiary who has less to nothing experience and knowledge about farming. Despite this initiative being open to any land reform beneficiaries who can satisfy the LAD Bank with all the necessary information and documents needed to approve the loan, land reform beneficiaries stand to encounter another obstacle of how to actually farm productively and produce crops that can be sold in an agricultural market.

#### **4.12.5 Designated Areas Development Act 87 of 1979**

This Act provides for means that encourage the density of population and of farming projects in certain areas set aside by the Minister for such purposes.<sup>380</sup> The Directorate of Financial Assistance is responsible for the application of the DADA. The Act makes provision for the number of populations required as per designated agricultural farming activities. It is not any land that is arable furthermore, each land differs from one depending on the type of soil and what could be farmed on that soil and what cannot be farmed. The DADA regulates the density of farming activities approved for the specific area. Therefore, compliance with DADA helps farmers to actually farm relevant mass of crops in a suitable soil for the crops. But this does not guarantee good production of crops, for it still requires a farmer to follow proper agricultural procedures for planting, pest controlling and nurturing, harvesting and rehabilitating procedures. This measure requires a farmer to be learned in farming or rather have a practical understanding of farming, this is what most of land reform beneficiaries

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<sup>379</sup> See section 3 of the Land and Agricultural Development Bank Act 15 of 2002.

<sup>380</sup> Designated Areas Development Act 87 of 1979.

lack. This is the most important element of ensuring sustainability in farming; therefore, it is of paramount importance that the support services should be coupled with skills transfer programme in order to ensure sustainability in the initiated farming activities by land reform beneficiaries.

#### **4.12.6 Agricultural Products Standards Act 119 of 1990**

This APSA Act provides proper management and control of the sale and export of a selected agricultural goods and other associated goods, with a view of upholding certain standards regarding the quality of products and the packing, marking and labelling thereof. The Directorate of Plant and Quality Control is responsible for the enforcement thereof.<sup>381</sup>

The purpose of the APSA is to ensure that the agricultural products are up to the expected standards, thus, to say they must have passed the test of expected good product standard. These are the crops or rather goods farmed and nurtured with extreme delicacy and that requires knowledge of farming. The productive use of land is not only aimed at land beneficiaries producing crops but rather producing market accepted crops that can be sold to make profit. That is the whole point of utilising land productively by farming to make a living and alleviate poverty. By producing crops that can be sold in agricultural market, having met the expected standard of goods.

#### **4.12.7 Marketing Act No. 59 of 1968 (MA)**

The MA provides for the presentation of a system of control and regulation over the marketing of agricultural products and regulates the quantitative control over the import or export of these products. The Directorate of Marketing Administration is responsible for the enforcement thereof.<sup>382</sup>

The purpose of the MA is to regulate the agricultural market, products which meet the acceptable SABS standards are sold on agricultural market. The amount of goods that can be exported out of the country is also regulated by the MA, including the amount of goods that can be imported. The MA ensures that the country does not import more than it could to other countries, and this ensure that the food security of the country is not shaken by scarce products within the country, due to excessive exporting of those goods. Goods which

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<sup>381</sup> Agricultural Products Standards Act 119 of 1990.

<sup>382</sup> Marketing Act. 59 of 1968.

are imported to the country are also controlled by the degree of demand in the country. The food security of the country depends on the agricultural production and the market; therefore, it is of great importance that as much as crops can be produced in the country, the number of products exported should not threaten scarcity within the country.

#### **4.12.8 Perishable Products Export Control Act 9 of 1983 (PPECA)**

The Act here referred to gives provision for the regulation of consumable goods intended for export from South Africa and for sustained existence of a statutory board to bring about orderly and well-organised export of consumable goods from South Africa.<sup>383</sup> The hereto referred as the Perishable Products Export Control Board, bears the duty to enforce the Act thereof.

The PPECA ensures that the country's perishable products are not excessively exported to the extent that the country will face scarcity therefore, it controls and regulates and further ensures that these perishable products are not extinct. As much as farmers need to make profit and share to the economy of the country, it is also of the same degree that food security in the country must be protected. Hence the need to assist land reform beneficiaries to utilise their land productively by availing comprehensive support services. That will ensure that land reform beneficiaries farm productively and further participate on international market to boost the economy of the country. Productive farming is not only limited to ensuring food security and elevating poverty amongst land reform beneficiaries, but it can have a positive impact on the economy of the country. When food crops which are farmed by land reform beneficiaries are sold on international market by means of exporting it will improve the external debt of the country. That means should the country loan money on International Monetary Fund it will pay less interests as the external debt of the country will be on positive. Which ideally mean that the economic state of the country is doing well. This is all influenced by the amount of goods a country exports and the amount of goods the country imports. The more goods are exported the more stable the economy of the country becomes, whilst the more the country imports the more the country's economy depreciates. Hence it is of paramount importance that land reform beneficiaries utilise their land productively and participate on international markets to improve their livelihoods and better the country's economy.

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<sup>383</sup> Perishable Products Export Control Act 9 of 1983, <Southafrica-newyork.net>, last accessed 01/09/2020.

#### **4.13 Conclusion**

South Africa in its historical context has suffered land dispossession followed by the unjust and devastating discriminatory practices of the apartheid government. A period where Black people were forced to leave in overcrowded areas and deprived access to own or buy a piece of land. It was during this era that Black people lost their way of live, their livelihood was destructed by the forced removals. Black people had to quickly adjust from tilling the ground for food to working in farms for the benefit of the white minority in exchange for their freedom. The means of survival for Black people were redefined to serving masters (white minority). Not only were Black people dispossessed of their land, but they had also fallen into oppression traps that benefited the white minority. Black people started experiencing poverty from this period exclusion and deprivation of certain privileges. However, in 1994 South Africa gained its independency and the historical legislation that were put in place to oppress Black people had to be annulled. The abolition of racial based measures was introduced to deal away with the previous discriminatory laws. This was the dawn of the new era, the democratic government which upon its commencement took initiatives to eliminate historical injustices through the introduction of land reform.

This chapter highlights the notable legislation that fostered transformation of laws promoting equitable access to land for everyone. These are laws that are aimed at redressing the historical injustices of apartheid era, particularly the land dispossession. Both the Constitution and the Act's discussed in this chapter are aimed at ensuring that land is restored to Black people and further ensure that Black people are not only given access to land but they are also presented with opportunities of using the land productively to improve their lives. The aim of land reform programme is to restore land to Black people and improve the social and economic status of black people. However, same is not achievable without state intervention of ensuring that redistributed land is utilised productively by providing a comprehensive support services to land reform beneficiaries.

However, the need to provide adequate post-settlement support services to land reform beneficiaries, does not mean that the state has not done a notable work in drafting legislation that are both progressive and encourage land development to ensure that the lives of people are positively impacted. But the implementation thereof, seem to suggest that state does not have sufficient capacity to realise the objectives of land reform programme, hence the proposed expropriation without compensation to save costs in land acquisition and invest

funds in land development projects. Perhaps expropriation without compensation could be the answer for equitable redressal of historical injustices.

Although the state has shown commitment in ensuring that historical injustices are redressed by introducing the proposed expropriation without compensation. An initiative that is aimed at amending the provisions of Section 25 of the Constitution, particularly the compensation clause. However, from the expropriation bill that was submitted to parliament in October 2020, it appears that the state is neither sure nor ready to make deletions of the provisions of Section 25 of the Constitution. And consequently, confront the compensation clause in section 25 to make necessary amendments that will give effect to the proposed expropriation without compensation. However, the bill is keen in adding sections that highlights circumstances in which the state will compensate the land holder and circumstances which nil compensation will be equated. This contradictory practice exposes the complexity of redressing historical injustices whilst confronted with the complicated legacy of apartheid era. In as much as it is important to have well drafted legislation to redress historical injustices, it is equally important to have practicable legislation that promotes equality and inclusivity of all people. That is a system that will be equally beneficial to historical disadvantaged people and considerate of the white minority interest.

## **CHAPTER FIVE**

### **TRANSFORMATIVE POLICIES; MEASURES, STRATEGIES AND INITIATIVES FOSTERING ACCESS TO LAND IN SOUTH AFRICA**

#### **5.1 Introduction**

Apart from progressive laws, the state has also invested in policy drafting to ensure that land is made available to everyone. The state in consultation with the public has managed to capture the societies expectation and needs of land reform programme and included it in policy drafting. To ensure legislation development addresses the needs and expectations of land reform beneficiaries. The policy framework which were drafted post 1994 are aimed at ensuring that the intentions of the legislatures and the expectations of land reform beneficiaries are met. This chapter will discuss the policies that promote access to land through redistribution, restitution of land and change of tenure system to people living in rural areas. It will further reconcile access to land with the need to use land productively to improve the lives of land reform beneficiaries and consequently eradicate poverty amongst historically dispossessed people.

#### **5.2 The Reconstruction and Development Programme 1994 (RDP)**

The RDP introduces the integrated socio-economic policy framework aimed at exterminating the legacies of the past inequalities and building vibrant and democratic South Africa. According to Kloppers and Pienaar, the introduction of RDP was influenced by extreme poverty and inequalities. Furthermore, to deal with impoverishment and intense dispassion from land, the programme RDP identified challenges such as lack of adequate houses, landlessness, hunger and starvation that needed to be addressed and many more challenges that affects blacks were also addressed. This included the provision of land and housing, as well as access to safe water and sanitation. It is apparent that land dispossession did not only deprive Black people of land, but it also deprived them of their basic human rights, rights to adequate housing without access to land it is impossible to achieve and enjoy this right, including right to safe water and sanitation while living in overcrowded nonarable land. Poverty was an ultimate outcome for blacks, and it could not have been avoided, considering that their only means of living was taken away from them.

According to RDP, land is the most basic need for rural dwellers,<sup>384</sup> resulting from their forced removal and forced confinement to overcrowded and impoverished reserves, homelands and townships.<sup>385</sup> The RDP made further provisions that there is a need to implement a fundamental land reform programme. A programme that is demand-driven and aims to source out land for housing and fruitful land to the rural area that comprise of the extremely poor and emergent farmers.<sup>386</sup> As part of a comprehensive rural development programme, to increase profits and fruitful usage of land, and further promote the usage of land for agricultural, industrial and many other profitable and fruitful developmental activities, or residential purposes.<sup>387</sup> However, the current challenges Black people are facing are not only the legacy of historical injustices or dispossession but a non-effective land reform programme aimed at redressing historical injustices. Land reform programme is creating more challenges than it is resolving. The core objective of land reform programme is to restore the social and economic status of Black people through restitution, secure tenure and redistribution of their dispossessed land. However, redistribution of land without adequate support services does not necessarily address the beneficiaries social and economic status, but merely gives beneficiaries possession of land with very limited resources to farm productively.

Kloppers and Pienaar assert that the RDP recognised that land signifies and is the source of the most basic needs for rural people, and there is a need to redress the racial discriminatory operations of the apartheid government. As a way to successfully deal with the problems: inequality, poverty, landlessness that resulted from the unjust and forced removals and the historical deprivation to access land, Kloppers *et al.* recommended the need for the establishment of a comprehensive national land reform programme.<sup>388</sup> A land reform programme that seeks not only to redistribute, restore and change tenure security for the previously dispossessed people, but which also seeks to address the socio-economic status, welfare and basic human rights of black people. This ultimately means that land reform must be inter-linked with the objectives of alleviating poverty; this can be achieved through the productive use of land.

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<sup>384</sup> Reconstruction Development Programme, 1994, Chapter 2 Land Reform, pg 23.

<sup>385</sup> Ibid note 384.

<sup>386</sup> Reconstruction Development Programme, 1994, Chapter 2 Land Reform, pg 24.

<sup>387</sup> Ibid note 386.

<sup>388</sup> Kloppers *et al.* (n18).

According to RDP, the land redistribution programme is intended to accomplish its goal in numerous ways, inclusive of consolidating tightly property rights of communities already occupying land, combining market and non-market mechanisms to provide land, and using vacant government land to ensure that land is afforded to Black people particularly rural dwellers. The RDP makes further provisions that the democratic government bears the obligation to supply satisfactory financing for land redistribution.<sup>389</sup> In addition, beneficiaries must pay in accordance with their means. Moreover, a land tax on rural land must be based on clear criteria: the contributions made annually by residents to the traditional leader for purposes of administration of land matters must be reasonably proportional to the work done; must help release underused land; must generate incomes for rural infrastructural development through collection of tax; and must promote the productive use of land through support services to aid beneficiaries to use land productively.<sup>390</sup> However, these objectives are not necessarily achieved, due to unbalanced separation of powers of traditional leaders in administration of communal land. Traditional leaders are regarded as custodians of communal land and the only authoritative voice to issues regarding communal land. Therefore, the lack of separation of powers hinders progressive developments in communal areas, unless approved by the traditional leader.

However, according to RDP, the land reform programme must cater for rural infrastructure such as industrial firms, support services such as transfer of skills, resources, funds mentoring, monitoring to land reform beneficiaries and training at all levels to make certain that land is used productively. Included in this, adequate water supply must occupy top position of the list of services provided, and the health care services should follow.<sup>391</sup> Water is the basic need for humankind, and according to RDP, the provision of water should be made a priority; thus, the government should ensure installation of boreholes and pipes to all rural areas. Further ensure the building of clinics and hospitals to ensure access to health care to all. As a result, a safe rural water supply programme was intended to commence in the first year of the RDP.<sup>392</sup> Boreholes and pipes were installed in almost all the rural communities, however, very few of those pipes and boreholes are still supplying the communities with water. This could be owing to poor maintenance of the boreholes or the

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<sup>389</sup> Reconstruction Development Programme (n384).

<sup>390</sup> Ibid note 389.

<sup>391</sup> Reconstruction Development Programme, 1994, Chapter 2 Land Reform, pg 25.

<sup>392</sup> Ibid note 391.

water shortage which is a national crisis. Till to date, a number of communities are without safe water and people rely on water from rivers and wells.

The RDP further advocates for democratic regime to provide for the security of landowning rights for all South Africans by adopting a tenure policy that recognises the sundry systems of landowning that are there in South Africa. And further ensure that the land reform programme includes the provision of services such as skills transfer, funding and mentoring to land reform beneficiaries so that they can use their land as productively as possible.<sup>393</sup> And furthermore, assistance must include support for local institution building by ensuring that all necessary institutions have satellite offices within the reach of local communities, so that communities can create reasonable and operative ways to assign and manage land.<sup>394</sup>

The land restitution is intended to compensate the suffering instigated by the policy of forced removals; hence the RDP tasked the democratic government to return land to South Africans dispossessed by discriminatory legislation since 1913, through the mechanism of a land claims court.<sup>395</sup> The core functions of the land claims court is to adjudicate land matters and make a ruling regarding the matter before court. And ensure that there is compliance of laws regarding procedure and process of claims.

### **5.3 The Development of Land Reform Policies**

The RDP established a set of guiding principles that are guidance to the preliminary development of establishing the land reform policy and programme (redistribution, restitution and Tenure security). This was the commencement of the public consultation regarding land policy issues. Different stakeholders such as farmers' associations, NGOs, government departments and concerned individuals, commented to the Framework Document (White paper).<sup>396</sup> At the same time, a number of task teams of experts with knowledge in the different areas of land policy worked to refine and develop the different issues such as the inequitable distribution of land ownership.<sup>397</sup> The experts' work, together with the comments from different stakeholders, were consolidated into a Draft Statement of

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<sup>393</sup> Reconstruction Development Programme (n384).

<sup>394</sup> Ibid note 393.

<sup>395</sup> Reconstruction Development Programme (n384).

<sup>396</sup> White Paper (n10).

<sup>397</sup> Ibid note 396.

Land Policy and Principles that was the basic document addressed at the National Land Policy Conference held on 31 August and 1 September 1995.<sup>398</sup>

All participants<sup>399</sup> in drafting land reform expressed their views of improving the tenure system, particularly in the rural areas, among other views as a way forward for reform of the land policy. These views, along with report of the process of implementation, were again considered in formulating the Green Paper on Land Policy.<sup>400</sup> In February 1996, the Green Paper which contained several valid suggestions on policy issues was distributed. About 50 written responses were received from the public. Several workshops were held in all the nine provinces, where the Green Paper was brought before all stakeholders and communities. More than 30 of these workshops were conducted in rural areas. When reviewing policies and programmes, public concerns regarding land matters were considered. The Department of Land Affairs in its endeavours has been significantly guided by the inputs of this process, which ensured that the land policy contained in the White Paper reflected the deepest concerns of the public.<sup>401</sup>

From 1994,, the Department of Land Affairs developed a complete and wide-reaching land reform policy and programme (Green Paper on Land policy and White Paper) based on the contribution made to the national reconciliation, growth and development initiatives.<sup>402</sup> The final stage of the process of development, consultation and implementation which took about two and a half years resulted in the White Paper on Land Policy 1997 which aimed to redress the injustices of apartheid. Through redistributing land to Black people and initiatives to empower black farmers. The White Paper highlights key objectives which are based on establishing new ways to speed up and sustain the delivery of services, especially to the poor people.<sup>403</sup>

#### **5.4 The White Paper on Land Policy 1997 (WPLP)**

The WPLP was responsible for the establishing of the overall land reform policy and addressing the injustices caused by the apartheid era and previous land dispossession, by assisting to create circumstances of balance and assurance both at household level and

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<sup>398</sup> White Paper (n10).

<sup>399</sup> Farmers, associations, NGO'S, government departments and concerned individuals.

<sup>400</sup> Green Paper on South African Land Reform Policy 1996.

<sup>401</sup> White Paper (n10).

<sup>402</sup> Ibid note 401.

<sup>403</sup> White Paper (n10).

national level. Land reform is significant for workable growth and development in South Africa. It is a prerequisite for the triumph of government's growth, employment and redistribution strategy.<sup>404</sup>

The government's land reform programme comprises of these primary components: Redistribution, Restitution and Land Tenure Reform. Redistribution of land's objectives are: to afford the poor and the disadvantaged with adequate and rightful access to for housing purposes, developmental and profitable usage of the land. Its capacity of scope embraces farm workers, emergent farmers, labour tenants and the urban and rural areas' poor.<sup>405</sup> Land restitution covers cases of forced removals which took place after 1913 are dealt with by a Land claims court and Commission, established under the Restitution of Land Rights Act.<sup>406</sup> A review of the present land policy is employed to address land tenure, which takes along the administration and legislation so as to advance the landowning security of all the people of South Africa and to embrace the various systems of landholding, taking along as well forms of communal land tenure.<sup>407</sup>

With regard to redistribution, the state has transferred approximately 17,439 Million hectares which is about 21% of the 82.759 million hectares of farmland in freehold in South Africa.<sup>408</sup> The process of redistribution is not fast, however, it has managed to redistribute land to a substantial number of Black people, whom most are unable to utilise the land productively due to lack of skills, funds and resources. In respect of the restitution component, a huge number of applicants (in the neighbourhood of 80 000 persons, households and community groups) opted for compensation in the form of money, there was no transfer of land. Minority got their land back about 2.6 million hectares by the end of 2009. Land reform programme has ceased to accept applications for legal claims against specific portions of land (restitution), the process was only open for implementation from 1994 to 1998.<sup>409</sup> However, people still apply for allowances to equip them to purchase land on the market, and thus redistribution.

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<sup>404</sup> Ibid note 403, para 1, pg 4.

<sup>405</sup> White paper (n10).

<sup>406</sup> Act 22 of 1994

<sup>407</sup> Sihlobo *et al.* (n280).

<sup>408</sup> Ibid note 407.

<sup>409</sup> Sihlobo *et al.* (n280).

## 5.5 White Paper on Land Policy 1997

According to WPLP, the current tenure and land development forms clearly projects forth the economic and political state of the apartheid era.<sup>410</sup> Racially based land policies such as Proclamation R293 of 1962 and Proclamation R188 1969 which were aimed at dealing differently with land held in rural areas than land held in urban areas. These practices of different land use system were a cause of insecurity, landlessness and poverty amongst black people, and a cause of disorganised land administration and land use.<sup>411</sup> Therefore, the landholding policy should address the following in both urban and rural settings: the injustices and inequalities of land dispossession; the unequal distribution of land ownership; the need for security of tenure for people living in rural areas; the need for productive use of land; the need for expeditious release of land for development; the need to have all property rights registered and recorded; and the need to regulate public land in an constructive way.<sup>412</sup>

Taking in to account that, the case for state land reform policy is thus four-fold: to redress the injustices and inequalities of apartheid era; to encourage national reconciliation and stability; to promote economic growth; and to improve household well-being and consequently alleviate poverty. The WPLP, as stated above, holds the vision of a land policy and tenure reform programme that contributes to the stability, reconciliation and growth and development in an equitable and sustainable manner. Additionally, it assumes an operative and effective land market promoted by an actual and accessible institutional framework. In urban setting, the WPLP vision is of a nature where those who are poor have secure access to efficiently allocated land for the provision of housing.<sup>413</sup> The land reform programme's poverty focus is intended to achieve a better quality of life for the most disadvantaged Blacks.<sup>414</sup> Through redistribution of land that would enable Black people to farm productively and generate income.

Land reform bears the determination to contribute to economic development through giving families the opportunity to participate in fruitful usage of land, and also by creating more

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<sup>410</sup> White paper (n10).

<sup>411</sup> Ibid note 410, para 1, pg3.

<sup>412</sup> White paper (n10).

<sup>413</sup> Ibid note 412.

<sup>414</sup> White paper (n10).

employment opportunities through promoting more investments. WPLP envisages a land reform which would result in a rural landscape consisting of small, medium and large farms; one that encourages both efficiency and equity through a combined agrarian and industrial strategy in which land reform is a spark to the engine of growth.<sup>415</sup>

According to WPLP if these goals are to be realised, major constraints such as lack of skills must be overcome. The means by which government intends to achieve this is not clearly outlined. Land reform is an important key for redressing injustices of apartheid, reducing rural poverty and contributing to the government's growth, employment and redistribution strategy.<sup>416</sup> The current budget allocations of R3.3 billion for land restitution indicates that the money set forth for land reform "makes up less than a half of 1% of the national budget, excluding interest payments".<sup>417</sup> Furthermore, Land reform has been assigned roughly one twentieth of the proposed spending budget on rural infrastructure. In light of this, these figures serve to demonstrate that the finance of land reform is not equitable to its purported significance.<sup>418</sup> Taking into account the funds set aside for realisation of land reform objectives and the pace at which land reform objectives are realised clearly highlights the state failure to balance budget with the intended objectives.

According to Kloppers and Pienaar, the government's dedication to land reform programme led to its direct involvement in the purchasing of land for redistribution through the process of willing buyer and willing seller. The government was committed to the principle of 'willing buyer and willing seller'; however, it has been recently discovered that this principle was actually an obstacle to the redistribution programme. The state was at the mercy of the willing sellers who charged exorbitant prices for the land. Consequently, the principle ensured that land was sold on its market value and that was a very costly process for the state taking into account the small budget that was set aside to achieve all land reform objectives. Therefore, the misallocation of funds to buy land on willing buyer and willing seller principle has added to the existing small budget challenges for achieving land reform objectives.

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<sup>415</sup> Ibid note 414.

<sup>416</sup> White paper (n10).

<sup>417</sup> Ibid note 416.

<sup>418</sup> White paper (n10).

## 5.6 Green Paper on Land Reform 2011 (GPLR)

The GPLR was intended to bring about a four-tier system of land tenure that would make sure that the people of South Africa, especially Black people living in the rural areas, would have equitable access to land with secure land rights. In order to meet their necessary needs for shelter and fruitful livelihoods.<sup>419</sup> However, the poor capacity of organs of state to implement has rendered this objective unsuccessful. Kepe and Cousins are also off the same view that Green Paper on Land Reform has not be successful to accomplish the expected transformation of land holding till to date and is doubtful to achieve such a milestone in the future, unless a rigorous and radical approach is employed.<sup>420</sup>

According to GPLR principles Underlying Land Reform are: de-racialising the rural economy; ensure democratic and equal land allocation including use across different race, gender and class; moreover a sustained production discipline for food security.<sup>421</sup> GPLR has identified poor capacity of organs of state to implement policies as the main constraint for the land reform programme to proceed rapidly and succeed. The implementation challenges are not limited to capacity of the organs of state but extended to fragmented bureaucratic processes.

## 5.7 Promoting productive use of redistributed land

Land redistribution is the focus point of the democratic government, and it is the dream of every Black South African to own a piece of land. Therefore, it is of great importance that land redistribution should not be limited to giving back the land but extended to ensuring that the land given back is used productively in order to secure food production, improve the lives of land reform beneficiaries and combat hunger and starvation. Additionally, this must be coupled with adequate support services that will ensure that the productive use of land is sustained for the purposes of rectifying the previous injustices legacy of landlessness and poverty amongst Black South Africans. A number of policy frameworks such as the White paper on land policy which is aimed at to ensuring development in rural areas to encourage economic growth and improve household welfare have been drafted to this end, but little has been done as far as implementation is concerned. Thus, to say from 1994 till to date the government's focus has been on redistributing land to the rightful indigenous owners

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<sup>419</sup> Green paper on Land Reform 2011.

<sup>420</sup> Kepe *et al.* (n111).

<sup>421</sup> Green paper on land reform 2011, chapter 4, page 2.

more than the use of redistributed land in the hands of black South Africans. The state must balance redistribution of land with the provision of comprehensive support services to enable land reform beneficiaries to utilise their land productively. Although the balancing of redistribution of land and productive use of redistributed land could prove to be difficult with state limited resources, however same could be balance with the introduction of a systematic post settlement support services. That will ensure that beneficiaries who are assisted to farm productively equally contribute to the programme by assisting other beneficiaries with skills transfer programmes and mentorship programmes coupled with progress monitoring programme to ensure that emergent farmers farm productively.

Although, to some extent the government gave financial support to land beneficiaries who wanted to run some projects on their piece of land, but the criteria used for support services was only limited to funding and to some extent to the giving of farming equipment. Instances such as the case of Thulamela local municipality, Vhembe district in Limpopo where emergent farmers were funded by the government and other institutions such as Labour, Agricultural Research Council, British Embassy, Land Bank, ABSA, Eskom, and Equal Opportunity Foundation.<sup>422</sup> The farmers were provided with funding, infrastructure, training, and advice, however they failed to make satisfactory production and consequently failed to continue farming. This was due to lack of progress monitoring programmes by the funders and lack of managerial skills and marketing problems. Consequently, the farming projects resulted in to failed projects as farmers abandoned farming. What Black people with land need are skills transfer programme coupled with continuous mentoring and monitoring but not excluding funding. Therefore, the support services rendered by the government were not sufficient or rather efficient to ensure that projects which were initiated are sustained. This is quite evident from the Thulamela case, that post-settlement support services are not efficient if not couple with supporting programmes such as skills transfer and progress monitoring programmes. Hence there is a need for state to create a comprehensive post-settlement support service that encompass all the necessary programmes, resources and services needed for land reform beneficiaries to farm productively. Land reform beneficiaries need skills transfer programmes which will assist them to continuously use land productively not once off resources without knowledge of how to utilise the resources to ensure

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<sup>422</sup> Oni SA , Maliwichi LL and Obadire OS, Socio-economic factors affecting smallholder farming and household food security: A case of Thulamela local municipality in Vhembe District of Limpopo Province, South Africa, African Journal of Agricultural Research Vol. 5(17), pp. 2289-2296, 4 September, 2010.

production in the initiated programmes. Sustainability of farming projects is not only depended on crops production but also on the marketable the goods are on agricultural market, either locally or internationally. Therefore, farmers need to farm crops which are marketable and are on demand in order to make profit and farm gainfully.

Although there are number of programmes offered for people who are interested in growing crops, none of these programmes are offered for free. Programmes such as theoretical knowledge base in agricultural technology, Competency based practical skills training, training in farm business management, these programmes are offered in private institutions and requires a farmer to pay fees. Moreover, these programmes are mostly based on theory and majority of land beneficiaries are elderly people who are not literate, but they are physically fit and can be good candidates to learn farming skills practically. What land beneficiaries need is an opportunity to be taught how to farm and manage continuous production of goods on their farms. This is a process which cannot be achieved over night, but continuous monitoring and mentoring will help substantially.

Productive use of land is not only limited to farming, there are a number of other projects which land beneficiaries can do, such as partnering with developers or investors to develop the land with infrastructures such as building of firms such as manufacturing industries of paper, sugar, beverage, food, metals and many other goods which will create job opportunities for other Black South Africans. But mostly focus is on farming because it is the fastest way to combat hunger and starvation, which are the common elements amongst poor South Africans. The government showed initiative to combat hunger and starvation but introducing food parcels programme such as Zero hunger programmes, empowered by the RDP and implemented by the Department of Social Development, consequently this programme is not sustainable. The programme does not empower Black South Africans but makes them to be too dependent on handouts, rendering poor people as a liability to the state. According to Koch food parcels as a form of social services to historical disadvantaged people is necessitated by the legacy of apartheid regime which deprived Black people land, livestock and denying Black people opportunities to develop, access to markets, infrastructure and human capital.<sup>423</sup> However, it does not necessarily have to be the only programme historical disadvantaged people are afforded as a form of poverty redressal.

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<sup>423</sup> Koch Josee (2011). The food security policy context in South Africa, Country Study, No. 21, International Policy Centre for Inclusive Growth (IPC-IG), Brasilia.

There's a need to have a progressive strategy of equipping and capacitating Black people to fend for themselves. Hence continuous focus on provision of food parcels alone will render the government to be working towards regression with if no other interventions are introduced to capacitate Black people to fend for themselves. More focus should be put in programmes which are equipping poor people to continuously make a living from. Programmes such as providing a comprehensive post-settlement support services to land reform beneficiaries to utilise redistributed land productively and generate income. Programmes which will not only encourage productive use of land but also equip land reform beneficiaries with knowledge through as skills transfer programmes and make provision of resources to start businesses and further make available continuous mentoring and monitoring programmes. This approach would ensure sustainability in projects managed by land beneficiaries by providing land reform beneficiaries with all necessary knowledge, skills, resources and support needed to farm productively and consequently eradicate poverty amongst black people.

## **5.8 Reconstruction and Development Programme 1994**

The RDP is an integrated, coherent socio-economic policy framework, which seeks to “mobilise all South Africans and the country’s resources toward the final eradication of apartheid and the building of a democratic, non-racial and non-sexist future”.<sup>424</sup> The main focus of RDP programme is to afford black South Africans a secured socio-economic rights. According to Khoza, socio-economic rights are those rights that give people access to certain basic needs necessary for human beings to lead a dignified life.<sup>425</sup> The socio-economic rights are contained in the constitution and are divided into three groups.

The first group is identified as the qualified socio-economic rights: (Section 24 – “a right to safe and healthy environment”; Section 25 (5) requires the state to enable citizens to gain “equitable access to land”; Section 26(1) – “right to access to adequate housing”; and Section 27(1) – “right to have access to health care services including reproductive health care services, food, water and social security assistance”.<sup>426</sup> Thus, these rights rest a positive obligation on government to take judicious steps, within its available resources to achieve their progressive realisation. The second group consist of: Section 29(1) – “right to

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<sup>424</sup> Reconstruction and Development Programme (n13).

<sup>425</sup> Sibonile Khoza, Socio-economic rights in South Africa,2007.

<sup>426</sup> Financial Sector Development Programme, Fsdp.fs.gov.za, last accessed 01/09/2020.

basic education, including adult basic education”; Section 28(1)(c) – “right to children basic nutrition, shelter, basic health care services and social services”; and Section 35(2)(e) – “right of detained persons to the provision at state expense of adequate accommodation nutrition, reading material and medical treatment”.<sup>427</sup>

These rights are not access rights or subjected to qualifications of reasonableness available resources for progressive realisation, they are guaranteed rights. The third group are the rights contained in Section 26(3) which prohibits arbitrary evictions and section 27(3) which prohibits the refusal of medical treatment. These rights are formed as prohibitions of certain forms of conduct. Failure to protect, respect and promote the fulfilment of these socio-economic rights, especially to disadvantaged groups in society, the state can be held accountable. Pursuant to that the RDP was drafted in line with the Constitution to facilitate needs of the historical disadvantage South Africans and eradicate the legacy of apartheid that led black South Africans to severe poverty. According to RDP the economy was built on racial systematic design.

Towns and cities have been divided into townships without proper basic infrastructure for blacks and well-resourced suburbs for whites.<sup>428</sup> Proper demarcations of residential area and business area within these townships is not clearly established. Hence, we have taverns on the main road opposite to a school or church, a clear indication of lack of town planning within the townships. These are the injustices that were left as legacy for the democratic government to redress.

The RDP is founded on six basic principles one being the integrated and sustainable programme, seeking to bring together strategies to eradicate the apartheid legacy and harness all the country’s resources in a coherent and purposeful effort that can be sustained into the future. The RDP further sought to integrate reconstruction and development and is of the view that development should be portrayed as a marginal effort of redistribution to areas of urban and rural poverty. Owing to this, RDP further provided a set of guidelines and principles that gave direction to the initiative process of formulating the land reform policy and programme.

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<sup>427</sup> Ibid note 426.

<sup>428</sup> Reconstruction and Development Programme (n13).

The RDP implemented a fundamental land reform programme. According to RDP, the land reform programme should be focused on demand-driven that is aimed at supplying residential and arable land to the poorest class of people, residing in rural areas and to aspirant farmers. As part of a comprehensive rural development programme, it must make means of raising incomes and productivity, and must promote the use of land for agricultural, other productive, or residential purposes.<sup>429</sup>

The land reform programme has two aspects: redistribution of residential and productive land to those who need it but cannot afford it, and restitution for those who lost land because of apartheid laws. According to RDP, the redistribution programme should firstly focus on making use of land already on sale and land acquired by corrupt means from the apartheid state or mortgaged to state and parastatal bodies. And where it is deemed reasonable, the programme will rely on expropriation and pay the necessary compensation as the Constitution stipulates. Land obtained from the apartheid state through illegal means must be reclaimed after a thorough due process of investigation has been conducted. Furthermore, the land reform programme must not be limited to historically black areas but include all South African land that has been illegally obtained. All legal provisions which may promote the planning and affordability of a land reform programme must be reviewed and if necessary revised.<sup>430</sup>

Moreover, the democratic ruling party should offer extensive financial services for land redistribution. Additionally, beneficiaries should make payment in relation to their financial capacity. A land tax on rural land must be based on unblemished conditions; should also assist to free underused land, and generate profits for rural infrastructural advancement, and should ultimately foster the fruitful usage of land. Support facilities, rural infrastructural development and training services encompassing all the levels must be provided to achieve the standard of productive and effective usage of land. Included in this arrangement, the provision of water must take top position of the priority list, followed by the efficient provision of basic health care services. In light of the preceding view, in the beginning of the RDP programme, a water provision programme was established to usher in the RDP programme.

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<sup>429</sup> Ibid note 428.

<sup>430</sup> Reconstruction and Development Programme (n13).

## **5.9 The Land Redistribution for Agricultural Development sub-programme (LRAD) 2001**

The purpose of LRAD is to give financial aid to black South African citizens to access land, especially land to be used for farming purposes. All beneficiaries must make a contribution (in kind or cash), according to their abilities. LRAD is demand directed, meaning that beneficiaries define the project type and size. It further empowers beneficiaries to plan designs that work efficiently and effectively for them. In this regard, beneficiaries can be awarded with funding ranging from R20 000 to R100 000; this will depend of how much the beneficiaries contributed (this could in in the form of labour and/or money). To qualify and receive the grant, beneficiaries must contribute at least R5 000. The beneficiaries' contribution and the grand are calculated on an individual basis (person aged 18 and older). People can also apply as a group, and their being a group scales up their contribution and the grant – each member of the group is counted individually. Since applicants propose a project as part of the application for the grant, the approval of the grant it is therefore founded on the feasibility of the proposed project; the proposal must take into account the total costs of the proposed project, this includes the projection of profitability<sup>431</sup>

LRAD assists people who have intentions to access land for purposes of farming, but it does not make provision for people who have land but lack resources to farm. Land reform beneficiaries are often encouraged to use land productively, but little has been done to assist them to actually execute farming activities, let alone to be taught how to manage production on farms. Yet land reform beneficiaries are expected to change their economic status by utilising the land to eradicate poverty. The mere possession of land does not necessary entail that the beneficiaries are now fully capacitated to utilise the land productively. The government need to ensure that land reform beneficiaries are not abounded with land that they cannot utilise productively, but they are given the necessary support services to utilise the land productively and also contribute to the economy of the country.

## **5.10 Recapitalization and Development Programme Policy**

The purpose of Recapitalization and Development Programme Policy (RADP) is to provide support to all farmers, particularly the emergent farmers, who most are land reform

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<sup>431</sup> Land Redistribution for Agricultural Development (LRAD) June 2001.

beneficiaries. According to RADP the support that the policy offers is for emerging farming particularly the deserving and future land reform beneficiaries. The RADP has also extended its scope of providing support to all categories of land reform programme. However, the emergent farmers or rather agricultural activities takes priority. The farmers who are qualified to gain access to RADP support are farmers who have acquired or rather purchased farms with loans from different institutions. These farmers are the individuals who have not received any assistance from state to acquire land, however they have managed to secure loans from other different financial institutions. And as a result, these farmers are unable to repay the financial institutions due to fail production or no sale of produced goods. The RADP assist by providing a specialised agricultural financing in a form of financial guarantees to the financial institutions which the farmers secured loans from. The financial guarantees are for both mortgage bond and production loan. RADP requires that applicants provide a business plan that outlines the total debt over the farm and the resources needed to continue production. Once the farm production and business stabilise the farmer will have to make repayments of the loan he took from the different financial institutions. As the role of RADP support is that of a surety, hence it only provides financial guarantees that should the said debtor fail to pay, the Department through RADP programme will take liability. Whilst at the same time RADP ensures that it provides support to the farmers to ensure that farmers are able to recover and continue production to generate income and repay the loan.

RADP also focuses on providing mentorship to land reform beneficiaries as a strategy to ensure growth and progress of the farming enterprises. Furthermore, it fosters strategic partnership either on farm capacity or building initiatives and infrastructure development. However, in order to achieve this the services of DAFF are needed, as it is the custodian of agriculture sector responsible for controlling extension services. Sihlobo asserts that the separate Departmental responsibilities towards assisting land reform beneficiaries is a weakness to the land reform programme, in that resources are scattered in different department which are not strategically aligned in providing access to these resources. Therefore, consolidation of land reform resources in one department or institution will create a synchronised procedure of acquiring support services to utilise redistributed land productively.

### **5.11 State Land lease and disposal policy 25 July 2013**

The State Land lease and disposal policy (SLDP) replaced all existing policies on leasing of immovable assets of the Department of Rural Development and Land Reform. The SLDP policy sought to promote conditions which enables previously disadvantaged people to gain access to land on equitable basis. Moreover, it promotes agricultural production on capital investment particularly in rural areas. The objective SLDP policy is to ensure that all redistributed land is used productively by enforcing short lease agreements with an option of transfer of ownership rights. This will however, force land reform beneficiary to productively use the land to gain ownership rights. Failure to showcase that land is used productively on continues basis will disqualify the beneficiaries from acquiring land rights. Although in as much as this notion could be progressive in coercing use of land productively, it is not without challenges. Withholding of land rights limits the chances of land reform beneficiaries to qualify for loan from financial institutions aimed at assisting land reform beneficiaries to use their land productively. Although, one may argue that land reform beneficiaries are afforded post-settlement support services by the state, however such post settlement support services have proven not to be adequate in assisting land reform beneficiaries farm productively and sustainably.

### **5.12 National Development Plan 2012**

The aim of National Development Plan (NDP) is to ensure economic growth and foster facilitation integration as the intended outcomes of land reform programme. According to NDP, poverty alleviation and job creation is the yardstick measure for land reform success. According NDP land reform success can only be measured by how much poverty has it eradicated amongst previously dispossessed people. Alleviating poverty amongst land reform people, will require utilisation of redistributed land. Hence it is of paramount importance to ensure that land reform beneficiaries are afforded comprehensive support services that will enable them to farm productively and generate income to fend their families. NDP objectives are closely associated with the Medium-Term Strategic Framework (2014-2019) on the following aspects; sustainable land reform, Improved food security, and Small holder farmer development and support. NDP focus on improving food security is in line with the need to advance and strengthen use of redistributed land to ensure sustainability of food production in the country.

### **5.13 Rural Development Framework Policy 24 July 2013**

This policy introduced the Council of Stakeholders (COS) which is made up by government and various stakeholders, such as traditional leaders, community development workers, organs of civil society and other interested parties. The purpose of COS is to foster social cohesion and development. However, this approach has proven to be less effective in assisting land reform beneficiaries to utilise their land productively and generate income. The COS focus is mainly on establishing business ventures for developers and the elite. People with resources take advantage of this approach and request access to redistributed land held in communal land property to use for developmental projects, whilst promising to employ and improve the lives of people living in these areas. Once the development project takes off, most of the promises to improve the community are not honoured. Consequent to this type of practice rural people benefit little to nothing from these types of development approach. In an attempt to assist rural people, the department of land reform and rural development made a proposition of establishing Rural Investment and Development Financing Facility (RIDFF). The financing facility was aimed at realising community interest, including households and the basic units of production and consumption and its critical core component. However, the implementation thereof, was not effective due to lack of sustainability on the developmental projects. As a result of lack of knowledge, skills, and other resources necessary to ensure continuous production on the farm, Consequent to this lots of farming projects were abandoned. Hence there is a need for state to invest in comprehensive post-settlement support services which will ensure sustainability of farming projects.

### **5.14 Restitution Approved Policy April 2016**

This policy applies in the processing of land claims where a community is entitled to restitution and has opted for restoration of a right in land or granting of an appropriate right in alternative state-owned land. The policy is aimed at providing guidance and procedure for land reform beneficiaries who have a right against certain piece of land, which for some reason cannot be restored to the claimants, or the claimants prefers a monetary compensation instead of restoration of land. The compensation thereof must be equivalent to redressal of historic injustices. According to Section 25(3) such compensation must be just and equitable to redress the land dispossession. However according to Mphela Constitutional Judgement such calculations of just and equitable compensation is not a

mathematical exercise, nor it is founded on mathematical formula, however it must resonate to the prejudice the claimant suffered due to the dispossession. Furthermore, the compensation must be in line with the provisions of Financial Compensation Policy.

### **5.15 Financial Compensation Policy**

The purpose of this policy is to standardize the manner in which financial compensation to claimants that are entitled to restitution and have opted for financial compensation in terms of the restitution Act. The calculation of the compensation as per Section 25(3) of the Constitution must be just and equitable. However, the Constitutional court judgement on the matter of Mphela revealed that the compensation calculation is not a mathematical exercise. But the Policy uses the following criteria to determine redressal that is just and equitable, the policy indicates that where compensation amount payable for any right in land is less than the housing subsidy, the housing subsidy shall be payable to each qualifying household. Therefore, if the land claim was for a group of 10 households, each household will be entitled to the current house subsidy as a just and equitable compensation.

### **5.16 Conclusion**

Post 1994 the democratic government took an initiative to redress historical injustices by introducing legislations and policies that are aimed at affording historical disadvantaged people equitable justice of their land dispossession. Pursuant to state abolishing discriminatory Acts and Policies of the apartheid era, the state enacted progressive legislation comprising of both Acts and policies. But prior to the current development of Acts, the democratic government starting point was the introduction of the Reconstruction and Development Programme. A policy document that paved a way for land reform in South Africa together with the White paper which necessitated an establishment of overall land reform policy. Both the RDP and WPLP played an important role in coining the land reform policies and identifying the three pillars of land reform, thus restitution, redistribution and land tenure. The three identified pillars of land reform programme are the key principles of restoring land to the previous dispossessed people. Although, the land reform pillars appear to be more focused on restoring and redistributing land to people, more than ensuring that the poverty legacy of historical injustices that prevails amongst land reform beneficiaries is redressed. More often land reform programme appears to be more concerned about availing land to land reform beneficiaries than actually assisting land reform beneficiaries to use the land productively to better their living conditions and eradicating poverty. Despite the well

written policies that are aimed at assisting Black people to gain access to land, there are no adequate support services that are afforded to these land reform beneficiaries to escape poverty stricken lifestyle that was introduced by the colonist and continued to be practiced by the apartheid government. Although the state has introduced initiatives such as LRAD to assist land reform beneficiaries with finances to utilise their land productively, the procedure of acquiring funds in terms of this initiatives is complicated and close to impossible. Taking into account the complicated and beuristic process of acquiring funding from initiatives such as LRAD, land reform beneficiaries opt to request funding from financial institution. Which also in turn places almost impossible requirement such as furnishing of security of which most land reform beneficiaries who hold land in communal areas are unable to meet. Not only is the post-settlement support services a hindrance to land reform beneficiaries utilising their land productively. The land reform itself is presents challenges to the beneficiaries, in terms of providing ownership rights to land reform beneficiaries. Further ensuring that people who live in rural areas have secured tenure rights. Initiatives such as RADP aimed at rescuing land reform beneficiaries who are unable to meet their loan obligations and production on their farming activities are the after math of the real challenge. Which is failure to provide comprehensive support services to land reform beneficiaries to ensure that they farm or use their land productively. Developmental projects are solely depended on productive use of land. Therefore, the need to ensure that land reform beneficiaries are not only given financial support, but they are afforded other necessary support such as skills training programs, mentoring and monitoring programmes to ensure good production of their use of land. This will consequently ensure that developmental projects are sustainable and farming activities are not abandoned.

The chapter discusses the need of making land available to Black people for sustainable development such as commercial farming and building of industrial firms particularly in rural areas and further advocate progressive measures to farm productively and alleviate poverty. However, the provisions of White Paper on Land Policy, which specifically the provides that the state land reform policy is four-fold, it aims to redress the injustices and inequalities of apartheid era; to encourage national reconciliation and stability; to promote economic growth; and to improve household well-being and consequently alleviate poverty, have not been fully achieved. Due to lack of practical link between provision of land thus redistribution and productive use of redistributed land as a measure for poverty alleviation, land reform programme consequently has not met the intentions of the legislators nor the expectations

and needs of land reform beneficiaries. And thus, a complete redressal of historical injustices, restoration of land and livelihoods. This is so despite the legislation having the common goal which is to redress the historical injustices and inequalities of apartheid era that came about through land dispossession. Landlessness, poverty and lack of sustainable developmental infrastructures commercial farms are prevalent due to lack of access to arable land. Which the democratic government has made a priority to redress through land reform programme by making available land through redistribution programme. However, availing land to Black people without adequate support services strategies to assist Black people to utilise land productively will not address the social and economic status of Black people but fosters a-stricken poverty lifestyle.

Farming activities are the closest elements to eradicate poverty, hunger and starvation amongst land reform beneficiaries. The need to farm productively is closely related to the survival of humankind. The government should support and encourage land reform beneficiaries to utilise their land productively in farming activities to speedily eradicate poverty, hunger and starvation amongst black people. The level of poverty in South Africa is very high, and it is tied with the hiking number of unemployed graduates. However, there are quite a number of developmental and industrial activities which Black people can engage in and generate income and consequently make a living from. Through using their redistributed land productively. The government has to be cognisant of the appalling conditions land reform beneficiaries are living in despite being in possession of land. And therefore, assist with support services to aid land reform beneficiaries to use their land productively and make a living.

## CHAPTER SIX

### CRITICAL ANALYSIS OF BARRIERS TO LAND REFORM IN SOUTH AFRICA

#### 6.1 Introduction

Post-1994 the democratic government of South Africa has shown commitment in eradicating previous injustices and inequalities of the apartheid era, particularly on land issues. A number of progressive legislation such as the RDP was enacted in order to address the previous land dispossession and redistribute land back to the indigenous landowners. This is realised through the concept of land reform, which was adopted and founded from the Constitution in terms of Section 25, and further promoted by the RDP. According to RDP on paragraph 1.4.2 the first priority of RDP is to meet the basic needs of people and thus jobs, land, housing, water, electricity, telecommunications, transport, a clean and healthy environment, nutrition, health care and social welfare. Hence land reform programme remains a priority to the democratic government to ensure that the basic needs of historical disadvantage people are met. Land to Black people signifies a source of livelihood, Black people relied on tilling the land for food and further relies on access of land to acquire adequate housing in a clean and safe environment with access to clean water and other developmental infrastructures such as clinics, complex, schools and libraries. The need for access to land is closely associated with the need for people to survive, hence most of the basic needs of people are dependent on availability of land.

The RDP laid a foundation for the enactment of more policies such as the White Paper on Land Policy and the Green Paper was enacted to customise the land reform programme to suit South African land context. The White paper outlined the three guiding principles for land reform in South Africa and thus Restitution (which is aimed at restoring land) Redistribution (aimed at providing land for residential and agricultural purposes) Land Tenure (aimed at changing the insecure tenure system particularly of people living in rural areas and townships to that of secured tenure possible with one uniform land administration system). Upon the introduction of these two policies, commissioners were appointed by the Minister of Rural Development and Land Reform, and the Land Claims Court was established to address the grievances of land claimants. A number of matters were brought before the Land Claims Court owing to a number of issues such as competing claims over

a plot of land. Since its inception, the land reform programme was greeted by number of challenges starting from identifying the true or right beneficiaries of the land in question, to the number of claims brought before the commission, and the bureaucracy of the process and the ubiquity of required support document to prove previous ownership of the land in question.

The overall process of redistributing land to the Black people was made very difficult by the number of challenges it faced from implementation. Policies such as the Proactive Land Acquisition Strategy (with an aim to speedily acquire land for purposes of redistribution through a leasehold system to avoid land laying fallow in the hands of land reform beneficiaries. However, not affording land reform beneficiaries ownership rights consequently hinders them from acquiring financial assistance from financial institutions due to lack of security were enacted to address these issues/challenges, but despite the well drafted policies to aid the process of redistributing land more challenges were experienced. Ranging from the difficulty in identifying the rightful claimant to the difficulty of acquiring enough land by the state, due to the exorbitant amount of money the state had to pay for expropriation of land under 'willing buyer, willing seller' principle. Consequent to that, the land reform programme costed the government a lot of money (R39,2 billion) in its attempts to acquire land for redistribution through expropriation with compensation.<sup>432</sup> This has resulted in slowing the pace of realising land reform objectives, and that is to optimally redistribute land to Black people and redress the previous injustices and inequalities. Moreover, to ensure secured tenure particularly for rural dwellers by ensuring that the tenure system used in rural areas recognises and protects the rights of Black people to use and enjoy access to land.

The slow pace of redistributing land to Black people affects the social and economic status of Black people in the country. Black people are continuing to live in poverty with no means of generating income. One of the objectives of land reform is to eradicate poverty and combat hunger amongst black people. However, this objective has not yet been optimally achieved, even where land has been successfully redistributed to Black people. This is so because land that was redistributed to Black people has not been productively utilised. And where land reform beneficiaries have managed to utilise land productively continuation of

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<sup>432</sup> Budget Estimates of National Expenditure, Rural Development and Land Reform, National Treasury, Republic of South Africa 2018.

production has ceased due to lack of resources, with very few exceptional cases where land reform beneficiaries are still carrying on the business.

This is as a result of failure of the Department of Rural Development and Land Affairs to couple redistribution of land with support services such as provision of funds, resources, mentorship, training and monitoring programmes. Furthermore, to eradicate poverty and combat hunger and starvation amongst Black people will require a radical approach of utilising what Black people have in possession to improve their livelihoods. And that is land; using land in farming productively and engaging in other industrial developments will enhance the livelihood of Black people by generating an income for them. However, the state has failed to couple redistribution with support services; and this could be owing to the reason that the state is charged exorbitant prices when expropriating land.

Despite the challenges of acquiring land and budget constraint, the government has managed to acquire and redistribute (8,2m ha by 2018)<sup>433</sup> a substantial amount of land to Black people; however, most of the redistributed land is not utilised productively. This may be owing to a number of challenges that land reform beneficiaries are facing. Challenges such as lack of resources, skills and support programmes to utilise the land productively. Moreover, failure to utilise land productively does not address poverty alleviation amongst land reform beneficiaries, despite being in possession of land, Black people are still living in appalling conditions under severe poverty-stricken lifestyle. Therefore, this chapter seeks to discuss the challenges and pitfalls of land reform which ought to be used to foster redistribution for productivity but unable to due to poor implementation.

## **6.2 Redistribution of Land**

Since the advent of the democratic governance in 1994, the South African government's main focus is to redistribute land to Blacks who were previously dispossessed of their land. The democratic governance adopted new policies in line with land reform to ensure that redistribution of land is achieved. Policies such as the Green Paper on land policy, which contributed immensely in the drafting of White Paper on land policy, which sheds more light in detail about the redistribution of land. According to the White Paper policy, the redistribution of land to historically dispossessed Blacks means redressing injustices and inequalities of the past.

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<sup>433</sup> Ibid note 432.

Therefore, the process of redistributing land to Black people is more than giving ownership or possession of land but rather a change in social and economic status of black people. Redistributing land to Black people means a break from the poverty cycle; however, the manner in which the redistribution process is carried out does not seem to adequately cater for the social and economic status of Black people. The process seems to be more focused on the giving of ownership than a satisfactory change in the social and economic status of Black people. This is due to the failure of coupling redistribution of land with support services that can aid Black people to utilise the land productively.

Availing land to poor Black people without any resources, without training and without funding to use land productively, does not play an active role in alleviating poverty amongst Blacks. Instead, the land redistribution disturbs and affects the economy by expropriating land that is used productively and contributes to the economy, since land is redistributed to Black people with no resources to utilise it productively. And consequently, redistribution of land fails to have positive effect on the lives of black people. Blacks are still living in poverty-stricken lifestyle even after land has been redistributed to them.

This clearly indicates that there is a lack of theoretical link between land reform and poverty alleviation policies. The need to reconcile land reform with poverty alleviation is a matter of urgency that could resolve the poverty level amongst Black people. Furthermore, the state has entrusted the Department of Rural Development and Land Reform with responsibility to carry on developmental projects – particularly in rural areas – that will sustainably aid Black people to alleviate poverty and combat hunger and starvation. An example of these developmental projects is: an agricultural farming that will aid Black people to plough and produce food crops to sell and generate income to fend for their families. However, failure to assist Black people with support services negatively affects the intended use of redistributed land. Moreover, failure to transfer ownership of land acquired through redistribution to land reform beneficiaries' limits land reform beneficiaries' rights to partner with investors and acquire financial support to productively use the land.

The land reform introduced policies to regulate redistribution of land, policies such as State Land Lease and Disposal policy (SLDP) which classifies farmers as small scale and large scale; however, it is alleged that it favours large-scale farmers in practice. As a result, land reform beneficiaries who lack resources becomes marginalised under PLAS, which is aimed at equipping and ushering black emergent farmers to commercial agricultural class.

However, farmers who succeed under PLAS policy are farmers who already had knowledge and skills of the farming industry but only lack resources. Recapitalisation and Development Programme Policy (RDPP) is another policy that aims at ushering black emergent farmers into agricultural productivity chain very fast.

The RDPP provides funding to CPA's to buy necessary resources and equipment necessary to implement agricultural activities. However, the RDPP creates a dependency relationship of PLAS farmers, in that without the operation of the RDPP PLAS farmers have no means of accessing funds and farm productively. However, this can also be related to the provision of lease hold system introduced by the SLAG. The effects of SLAG on capacity of farmers to gain access to loan and funds is very negative, in that it withholds ownership rights, and this consequently affects land reform beneficiary's ability to have land bonded as security for loan. In order to ensure that emergent farmers are productive, there must be some sort of a balance between state assisting emergent farmers with necessary resources and outmost diligence of farmers ensuring that resources are utilised for intended agricultural projects.

Furthermore, farmers must show maximum participation in the agricultural practices and ensure that they equip themselves with well-set knowledge and skills to continue farming productively without depending on state resources. The Agricultural Landholding Policy Framework (ALPF) was introduced to ensure higher levels of efficiency of land use to optimise total factor productivity. The aim of ALPF is to "facilitate participation of small-scale farmers to mainstream agriculture and further to facilitate redistribution of land and agricultural landholdings to co-operatives and family-owned landholdings".<sup>434</sup>

Accordingly, ALPF suggest that functions of productivity and profitability in redistribution can be achieve through creation of relationship between private sector and land reform beneficiaries. Strategic partnership is perceived as a way to ensure productivity of farmers, in terms of the ALPF. However, that is not the case in practice, farmers are generally discontent of these partnerships as they lack transparency and good intentions of transferring knowledge but often used as platforms to cheat others, particularly where a partnership is between a PLAS and LRAD farmer.

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<sup>434</sup> Rural Development and Land Reform, 2013.

Mbokazi opines that the land redistribution policies which have been implemented, policies such as SLAG, LRAD and PLAS have serious shortcomings, as they lack useful relevance to the people who are directly affected. In essence the intentions of the legislators lack practical relevance to the challenges experienced by land reform beneficiaries.<sup>435</sup>

### **6.3 Poverty-stricken lifestyles amongst land reform beneficiaries**

Poverty is one of the problems Black people are facing, particularly those who are living in the rural areas (former homelands). It is an inalienable fact that Black people are experiencing poverty, hunger and starvation. Majority of Black people's households depend on social grants and or a salary of one individual. According to May, "South Africa is an upper middle-income country, but most South African households experience severe poverty and the vulnerability to being poor".<sup>436</sup> Moreover, the balance in the distribution of income and wealth in South Africa is among the most unequal in the world and that many families still have unsatisfactory or no access to necessities of life such as clean water, energy, health care and education.<sup>437</sup>

This is due to lack of developmental infrastructures, particularly in rural areas where most Black inhabitant, which resulted from lack of access and ownership of land due to the legacy of the apartheid era, that striped Black people of ownership of land and consequently rendered Black people poor. May also asserts that the impact of apartheid which stripped people of their asserts, especially land is another cause of poverty and it has distorted economic markets and social institutions through racial discrimination and resulted in violence and destabilization. However, since the democratic government introduced land reform programme Black people have been given back the land although not all, but a number of Black people have benefited from the land reform programme but majority have not benefited to date as promised by the government.

The government has redistributed about 8,2m hectares of land to Black people, however, despite being afforded land through the process of redistribution, Black people are still living a poverty-stricken lifestyle. Most of the Black people are not utilising their land due to lack of resources and skills and as a result Black people survive on doing odd jobs and live from

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<sup>435</sup> Nonzuzo Mbokazi, Understanding Land Redistribution Policy-making and policy-implementation: case studies from Eastern Cape.

<sup>436</sup> Julian May and Juby Govender, "Poverty and inequality in South Africa," Indicator South Africa 15 (1998), 53-58.

<sup>437</sup> Ibid note 436.

hand to month, with no gainful achievements from their respective short-term employment. Consequently, a lot of Black people still live in poverty, depended on social grants and odd jobs for survival. The lack of support services to fund and train land reform beneficiaries to utilise their land productively consequently ensures that Black people remain in poverty trap lifestyles - this reason will be reiterated throughout the study it seems, since it is a predominating findings in most research studies on the land issue topic.

Historically Black people have been deprived opportunities to own land and participate in other cooperate and commercial trading's such as commercial farming and generate income. Consequently, over the time Black people have not made money nor kept up to date with commercial farming skills. Hence Black people still suffer poverty even whilst in possession of land, as a result majority of Black people survive on odd jobs, grants and informal trading. However, they still do not make enough money to fend for their families. According to Stats SA, "about 7.5 million households in major metros (approximately 28% of the South African population) are living on less than R2,500 a month".<sup>438</sup> Majority of Black people are unemployed and rely mainly on farming activities and tilling the ground to grow food crops, however they do not possess the necessary skills to farm productively and sell their food crops on agricultural markets, and neither do they have necessary resources to farm productively or invest in any gainful developmental activities. This may as well be as a result of several issues flowing from the land reform programme, one being failure to provide support services for land reform beneficiaries to utilise their land productively and alleviate poverty, hunger and starvation.

Of course there are few cases where the Department of Rural Development and Land Reform have offered support services in a form of funding, however the department has failed to provide continues monitoring and mentoring services to ensure that land beneficiaries are afforded the necessary training and assistance they need to farm productively and sustainably. In order for the Land reform beneficiaries to farm productively they must be afforded enough time to learn and master farming activities through programmes such as skills transfer programmes, continuous mentoring and monitoring of farming activities. Confining support services to funding only does not necessarily assist land reform beneficiaries to farm productively, however it only grants land reform

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<sup>438</sup> Business Tech, How much money the poorest are living on each month in South Africa, <<https://businesstech.co.za/news/finance/332553/this-is-how-much-money-the-poorest-are-living-on-each-month-in-south-africa/>>,last accessed on 26.03.2020.

beneficiaries one attempt to engage in farming activities with no experience and no strategy of ensuring production or sustainability of the farming project. Therefore, the neglected crucial aspect of consistency in granting a holistic post settlement support services to land reform beneficiaries in the process of land redistribution, has resulted in land reform beneficiaries failing to perform as expected; and this is a continuous practice which will remain a pitfall for land reform programme if not remedied accordingly.

Another challenge is the limited or rather lack of skills amongst land reform beneficiaries and limited knowledge about where and how to find partners who can develop the land and consequently use it for a gainful purpose that can aid in alleviating poverty in their lives. The majority of the land reform beneficiaries are people residing in rural areas with little to non-existence exposure to commercial industry. It therefore becomes difficult for such beneficiaries to source funding on their own without proper guidance and help on whom to contact or where to go to sell their products-thus making profit that will in turn make it possible for the beneficiaries to maintain and sustain their farming business.

In many occasions the unknowing land reform beneficiaries become victims of robbery, where developers pose as investors and consequently transfer land to their company names. However, according to the State Land Lease and Disposal Policy, farm land that has been acquired by the state in terms of Proactive Land Acquisition Strategy (PLAS), the state is not supposed to transfer the land rights to land reform beneficiaries who receive land through redistribution process, but instead leases land to the beneficiaries. According to Kepe and Cousins, rural areas experience severe poverty and inequalities due to the apartheid legacy that has deeply divided the economic structure. Manenzhe, *et al.*, assert that the impact of apartheid era did not only have the effects of bringing about inequality with regard to access to resources particularly land, but it also had a major effect on the economy and left majority of people in poverty.<sup>439</sup>

Manenzhe, *et al.* further argue that the effects of the apartheid era has a severe effect on the promotion of economic growth and poverty reduction through land reform in that the legacy of apartheid era is still prevailing on land policies. Therefore, to entirely eradicate or redress the previous injustices it will require a more radical approach on the implementation of policies and legislation by enforcing the intentions of the legislatures and further ensuring compliance thereof. However, Kepe *et al.* are of the view that sustainable rural development

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<sup>439</sup> Manenzhe *et al.* (n107).

is a key to eradicate poverty and it must be focused on reducing inequality in the ownership of land and that effective control should be instilled in both the productivity of assets and the benefit streams derived from them.<sup>440</sup> This can be achieved through instilling of measures such as mentoring programmes by experience farmers to land reform beneficiaries to keep a closer track of ensuring productivity of goods. Furthermore, make available services such as skills transfer programmes and assist beneficiaries to take part in agricultural market to generate income and consequently alleviate poverty. However, in as much as mentoring programmes can be afforded to beneficiaries there is a need to ensure that not only land reform beneficiaries are assisted to farm productively but also granted other opportunities to continue farming productively and thus continuous monitoring of the land reform beneficiaries progress on farming activities.

Redistribution of land without support services such as skills training, funds, mentoring and monitoring programmes, does not address poverty alleviation and consequently there will not be any sustainable development without well-structured support services that promotes development of redistributed land. The focus of land reform should not only be on ownership aspect, but it should also be on utilisation of the redistributed land for the purposes of alleviating poverty amongst land reform beneficiaries and also on changing the social and economic status of historically disadvantaged South Africans and contribute to the economy of the country.

According to Cousins, ownership of land in South Africa is highly politicised (land dispossession took place under the governance of apartheid regime and since 1994 the democratic government seeks to redress the injustices of land dispossession by redistributing land back to black people) and it is an emotive issue (land dispossession deprived Black people ownership of their land and consequently deprived them of their means of make a living). However, if land reform was better administered, it could have served as a possible solution to rural poverty in the country. Cousins further argues that land reform could contribute to the reduction poverty only if the state transferred land along with a well-designed support programme to help beneficiaries become productive. Hence there is a need for the state to revisit the land reform policies to ensure that land redistribution is coupled with support services that are aimed at bringing capacity and efficiency to land reform beneficiaries to farm productively. In a nutshell, the government

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<sup>440</sup> Kepe *et al.* (n111)

should invest in training and mentoring land reform beneficiaries to be able to utilise land productively and generate income.

According to Lahiff, “the South African land reform programme has not be designed or implemented in ways that specifically address poverty”.<sup>441</sup> The intended objective of the South African land reform is to redistribute land to previously dispossessed people, regardless of their social and economic status. However, the land reform programme is not designed to cater for the land reform beneficiary’s economic status. Accordingly, as a method to mend this pitfall, the state should provide support services such as funding, skills transfer programmes, mentoring and monitoring programmes to aid land reform beneficiaries to use the land productively and consequently alleviate poverty.

Lahiff further argues that “this is evident in the selection of beneficiaries in the design of land reform projects and the general lack of post-settlement support to aid land reform beneficiaries to productively use their land”.<sup>442</sup> And it is compounded with too much bureaucratic process of continuing failure to monitor the profile of the people entering the programme and impact on the livelihoods of intended beneficiaries.<sup>443</sup> May is also of the view that there must be an increase of resources (such grants made available for people who want to buy land from state through redistribution programme) available for programmes such as redistribution of asserts, particularly resources aimed for land reform programme should be increased and measures should be investigated by which other forms of asserts can be redistributed.

Cousins further asserts that the key beneficiaries of land reform programme should possess a market orientated attitude and be able to head a small market in order to supply large informal markets.<sup>444</sup> According to Cousins, Black emergent farmers must farm with the intention to supply food crops to the agricultural market. Although this is subject to available resources to assist land reform beneficiaries, without any support services redistributed land will continue to lay fallow. This is evident from the prevailing reality, very few land reform beneficiaries have utilised their land productively. Land obtained through redistribution continue to lay fallow such as the Magoeba land located in Limpopo province, which used

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<sup>441</sup> Lahiff (n88).

<sup>442</sup> Ibid note 441.

<sup>443</sup> Lahiff (n88).

<sup>444</sup> Cousins (n126).

to be a tea plantation before it was redistributed in 2000 to the beneficiaries, since the redistribution to date the land has not been used productively.

However, Lahiff is of the view that this is not to suggest that some relatively poor people have not benefited from the land reform programme and they may have found a way out of poverty.<sup>445</sup> A small percentage of land reform beneficiaries have managed to get support from investors and donors to utilise their land productively. And they have successfully managed to escape poverty through the use of their land productively.<sup>446</sup> However, it is not the usual outcome for every land reform beneficiary, given the historical injustices and disadvantages, most of the land reform beneficiaries are still living in poverty due to lack of resources to utilise their land productively and generate income. Furthermore, it is unlikely to become so under the current policies of land reform programme which seem not to encourage post settlement support services as much as it encourages redistribution of land, policies such as expropriation with compensation, which is a costly exercise for the state. Expropriation is focused on acquiring land for redistribution purposes, however the process thereof cost the state a lot of money due to exorbitant amount of money that is to be paid to the current owners of land as compensation. The compensation amount is either calculated on the loss suffered by the owner or what is term a just and equitable compensation in terms of section 25 of the constitution, which encompasses factors such as market value of the land amongst other factors. Consequent to this, the state spends a lot of money in acquiring land for redistribution than investing in post-settlement support services for land reform beneficiaries to utilise their land productively and combat hunger and starvation.

Apart from asserting that land reform programme has limited impact on poverty. Lahiff also argues that “land reform programme in South Africa is largely driven by the welfarist subtext (policies seeking distinct state of contentment in social and economic conditions particularly for the previously disadvantaged people), but the radical populists (politicians who sought to advocate for the injustices of black people) who espouse this position have not yet developed economic arguments to support their cause and have not with few exceptions engaged in a technical argument around the design of land reform projects or the provision of post-settlement support”.<sup>447</sup> And Lahiff further states that the current policy of Proactive Land Acquisition is a messy compromise between the modernist-conservative (new age

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<sup>445</sup> Lahiff (n88).

<sup>446</sup> Ibid note 445.

<sup>447</sup> Lahiff (n88).

leaders who are averse to change and hold traditional values), neo-liberal (advocators of free-market capitalism, deregulation, and reduction in government spending) and radical populist (politicians who strives to appeal to ordinary people who feel that their concerns are disregarded by established elite groups) with many unintended outcomes.<sup>448</sup> One of the objectives of the land reform programme is to redress the previous injustices and inequalities in land ownership, however the injustices that occurred gave rise to other compelling issues such as poverty, lack of skills, knowledge, education, development in rural areas and unemployment amongst black people.

Therefore, in order to address the injustices and inequalities of the apartheid era, land reform programme has been structured in a way that was supposed to addresses all the issues that emanated from the inequalities and injustices of apartheid era. However, the implementation of land reform programme seems to focus on only redistributing land to Black people and fails to address the other elements such as poverty alleviation through productive use of land and ensure that there are sustainable developments in rural areas.

Kepe and Cousins also assert that in order to achieve sustainable rural development, a range of complementary measures (such as encourage of collaboration of land reform beneficiaries and investors, transfer of skills from experienced farmers to non-experienced farmers should be a continuous practice, including mentorship and monitoring programmes to ensure that land reform beneficiaries do not abandon farming due to lack of knowledge or skills to farm, provision of implements to those in need in order to farm productively despite their lack of resources) should be implemented. But focus should be on radical land reform by the state aiming at redistributing productive agricultural land and securing rights to land (ownership of land) and other resources such as funds.<sup>449</sup> A radical land reform that will focus on both restoring land and capacitating land reform beneficiaries to utilise their land productively. Kepe *et al.* further argues that large areas of land both in commercial farming and communal areas remains underused. This is due to lack of skills and resources amongst the land reform beneficiaries. Hence the need for the state to prioritise post-settlement support services to land reform beneficiaries to ensure that redistributed land is used productively to improve the lives of beneficiaries and alleviate poverty.

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<sup>448</sup> Ibid note 447.

<sup>449</sup> Kepe *et al.* (n111).

Inadequate support services to land reform beneficiaries is consequently hindering progress on the attempts of expanding agricultural production led by poor households.<sup>450</sup> Although, according to research conducted by Kepe *et al.*, it has been indicated by the scholars that rural people's livelihoods depend on arable farming, livestock husbandry and harvesting but not excluding trade in wild resources. It must be noted that the participation of rural people in agriculture market contributes to the wider economy. Kepe *et al.* asserts that this is so because land and other natural resources are a key asset to rural people seeking an escape from poverty. And that land-based livelihood can play a central role in enhancing the rural livelihood of people, but only if rural people can gain access to land and have effective support services.<sup>451</sup> Black people would finally be reconciled to their farming but in mechanised and advanced ways to fend for their families and generate income. And thusly make a meaningful contribution to the economy by engaging in commercial agriculture markets.

Kepe and Cousins argue that even though government is of the view that South African land reform programme is well set to address the challenge of poverty reduction through sustainable development, such as the building of industrial firms, the available approaches of land reform programme fixing focus on only redistributing land indicate otherwise. In relation to the tenure reform, Kepe and Cousins assert that very little has been achieved in terms of providing the greater tenure security to those who are living in the former homelands such as Bushbuckridge. This is evident from the tenure security that is at play particularly in communal areas whereby land reform beneficiaries do not hold land ownership rights over the land but are given permission to occupy, whilst land rights are held in custodian by the traditional leader for the benefit of the community. As a result, land held in communal land and rural areas does not appreciate in value due to different land tenure system is still at play in rural areas. Kepe *et al.* indicated that since 2000 to mid-2002 claims which were settled through restitution increased to 8.2m ha in late 2018. But towards the end of 2002, an increase in the number of claims escalated and, in some case, more than one claim was represented in a single claim form.<sup>452</sup>

Although, most of the settled claims were in urban areas and they were settled through cash compensation. However, Kepe and Cousins are of the view that the restitution

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<sup>450</sup> Ibid note 449.

<sup>451</sup> Kepe *et al.* (n111).

<sup>452</sup> Ibid note 451.

programme has not contributed much as far as rectifying the extreme imbalance of ownership of productive resources in relation with the redistribution. Moreover, they are of the view that the progress of land redistribution with regard to the target of transferring 30% of land in a period of 15 years is very slow. Since the democratic government embarked on the land reform programme sought to redistribute land to black people, the programme was greeted with a number of challenging issues ranging from insufficient resources to pay compensation amount for expropriation to strict budget to allow land reform beneficiaries to buy land under redistribution programme; this consequently contributed to the slow pace of realising the objective of redistributing 30% of land within a period of 15 years.

The slow pace of redistributing land is also another obstacle adding the issue of poverty amongst black people. Black people wait for a very long time before they could receive their land back, and even after they have received the land back, the support services available to aid land reform to utilise the land productively are inadequate in that they do not necessarily give a holistic support needed for land reform beneficiary to farm productively. Therefore, to ensure that land reform beneficiaries eradicate poverty and combat hunger and starvation in their lives, a holistic and appropriately distributed post-settlement support services is needed to assist land reform beneficiaries to productively use their land and generate income. Support services which comprises of provision of funds, resources, implements, pesticides, equipment, skills transfer programmes, mentorship, monitoring programmes which will not only focus on making available resources but will engage beneficiaries in programmes that will ensure that they have sustainability in their farming activities. However due to inadequate support services and poorly implemented post-settlement support services a little to nothing has been done adequately assist land reform beneficiaries who have redistributed land, instead redistributed land continue to lie fallow whilst other farms are being abandoned due to lack of sufficient support services. The Department of Rural Development and Land Reform is entrusted with the responsibility to develop rural areas through the use of land reform and provide rural people with opportunities to be part of the developed society. Accordingly, in order to achieve sustainable rural development, the department must ensure that land is utilised productively. And further ensure that land reform beneficiaries are engaged in developmental projects with the help of the department ensuring that the land reform beneficiaries have the necessary resources to carry on their developmental projects. Furthermore, the Department must encourage developers to invest and donate funds and resources necessary for land

reform beneficiaries to utilise their land productively in rural areas and consequently assist the rural people to have access to all services that urban areas have access to such as: libraries, parks, clinics and commercial farms through the attraction of developmental projects which will be carried out by land reform beneficiaries when utilising their land productively. When land reform beneficiaries utilise and develop their land, it will also attract more investors to do business in rural areas, business such as shopping complexes, building of industrial firms and many other developmental projects that can improve the status of rural areas.

Kepe *et al.* are of the view that, the land reform and rural development programs put in place since 1994 have not made a significant difference in the lives of most rural South Africans. This is evidently supported by land reform policies such as the White Paper on land policy 1997, which has not satisfactory bring about the expected transformation of land holding to date, and it is most unlikely to do it in future if the implementation thereof is not improved or strengthened. However, one may argue that land reform policies have made progress in defining land reform in South Africa and redistributing land to Black South Africans, although the programme has not redistributed land to all beneficiaries and has not completely met the expectations of land reform beneficiaries on provision of post-settlement support services. In addition, Kepe *et al.* are of the view that, for sustainable development such as farming continuity in redistributed land, to be achieved there must be a radical assault on the structure underpinnings of poverty and inequality inherited from three centuries of oppression and exploitation.<sup>453</sup> In this regard, alleviation of poverty should be prioritised by ensuring that redistribution of land is coupled with the necessary support services to aid land reform beneficiaries utilise land productively and escape the poverty stricken lifestyle. Furthermore, the government should implement policies and Act's such as Development Facilitation Act to foster the use of redistributed land productively together with a strategy of assisting land reform beneficiaries carry out the developmental projects.

However, May recommends that stronger policy links be developed between the department of land affairs and both national and provincial land reform. Policy links such as Proactive Land Acquisition Strategy (PLAS) which is aimed at acquiring agricultural land (farms) for redistribution purposes and State Land Lease and Disposal (SLDP) which is aimed at granting lease agreements of 5 -30 years to land reform beneficiaries with an option of

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<sup>453</sup> Kepe *et al.* (n111).

transfer of ownership rights. However, withholding ownership rights from land reform beneficiaries does not assist them to farm productively as it affects their eligibility of securing funds from financial institutions such as land bank which requires security that is equivalent to funds required. However, one may argue that ownership rights is withheld to ensure that land is not transferred to beneficiaries who have no intentions of utilising land productively. This could be a measure to guard against non-utilisation of redistributed land and encourages gainful use of land to qualify for transfer of ownership rights. In order for the two policies PLAS and SLDP to be efficient, the different departments vested with responsibility to render services of post-settlement support to land reform beneficiaries should be work together in creating accessible process to acquire holistic post-settlement support services necessary for utilisation of land productively. May further asserts that the new South African government is faced with immense challenges of acquiring land for purposes of redistribution. This relates to the challenges experiencing in expropriation programme that requires the state to compensate the owner and as a result the process of acquiring land for redistribution becomes costly to the state. The state is required to tender the costs of acquiring land for redistribution and also make available post-settlement support services with very limited resources, hence the currently the state has been more focused on redistributing land than offering post-settlement support services to land reform beneficiaries. Hence from the perspective of implementation the current progress does not appear to have either the expectations of policy makers nor of the poor. The focus of land reform is currently fixated on acquiring land for redistribution than ensuring that redistributed land is utilised productively to improve the lives of beneficiaries both socially and economically and combat hunger and starvation. This could be owing to that the implication that the policies are poorly implemented instead of finding balance between redistribution of land and ensuring that redistributed land is used productively to combat hunger and starvation and also contribute to the economy, focus is granting to continues availing of land that is left laying fallow in the hands of poor land reform beneficiaries. Land reform beneficiaries continue to live-in poverty-stricken lifestyle, despite their acquisition of land, this does not resonate to redressal of historical injustices if it fails to liberate land reform beneficiaries from poverty.

Therefore, the objective of land reform programme to redress the previous injustices and inequalities of apartheid era are not entirely achieved if the land reform beneficiaries are still living in the same poverty lifestyle despite being in possession of the redistributed land. The

key point to achieve total redress of apartheid injustices is to ensure that the land that is redistributed to previously denied blacks is productively utilised to address both their social and economic status.

Manezhe *et al.* are of the view that “although the land reform is believed to be an important strategy of rural economic growth, food security and poverty reduction, but in order for land reform to rise to its occasion, where it will be regarded as a force of change in the lives of many people, it needs to be sustainable for future generations”.<sup>454</sup> Sustainable development in this regard will refer to the need for continuity of productive use of land by land reform beneficiaries, be it in agricultural projects to ensure sustainability of the developmental projects which will also benefit future generations. Hence development that is sustainable is not only beneficial to the land reform beneficiaries but is it very instrumental securing a better future for generations to come, hence sustainable development is an important aspect that has to be taken into consideration in ensuring that poverty amongst land reform beneficiaries and generations to come is entirely eradicated. And still, the use of redistributed land for development should not only be limited to development but to sustainable development and thus developments that continues to serve a purpose and improve the livelihoods of land reform beneficiaries, developmental projects such as commercial farming that can continue to ensure that land beneficiaries make a living out of it, and consequently contribute to the economy of the country.

Manezel *et al.* further assert that the sustainability of land reform is however affected by factors such as “lack of farming skills, lack of government support, participants resorting to farming on temporary basis and participants in ability to resolve farming challenges on their own”.<sup>455</sup> Hence the need to have a comprehensive post-settlement support services to aid land reform beneficiaries to farm productively, with access to necessary resources to deal with farming challenges. Including programmes such as skills transfer programme, mentorship and monitoring programmes, which will ensure that beneficiaries get the necessary guidance to farm productively and sustainably.

### **6.3.1 The state of poverty in South Africa before the introduction of land reform**

Black people lived and survived by farming and tilling the ground, until when they were forcefully dispossessed of their land during the apartheid era by white minority. When Blacks

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<sup>454</sup> Manenzhe *et al.* (n107).

<sup>455</sup> Ibid note 454.

were dispossessed of their land they were therefore introduced to poverty, as land was their only means of living and was taken away from them. Black people were forced to look for jobs to fend for their families. The white minority did not only forcefully take land from black people, they also took the sense of living and dignity from black people. Black people were stripped of their dignity of providing for their families and reduced to begging for employment to fend for their families.

Blacks were subjected to hard labour and ill-treatment by the white employers. And as a result, Black people slaved under white employers who paid them meagre salaries for their hard labour. This was the dire reality of Black people under the apartheid regime: the subjecting of Black people to an economic status where the family's income was insufficient to meet the society's standard of living. Black people grew in population and continued to live in poverty in overcrowded places, where they could not farm or till the ground but were depended on working for white people. Children were born in poverty and grew in poverty, in families that were not equipped with tools to escape poverty lifestyle. Living in absolute poverty with lack of necessities of life such as adequate shelter, food and running water where their only focus was day to day survival.<sup>456</sup> In light of this, Modise opines that "poverty remains one of the major challenges facing South Africa today. New estimates of poverty show that affected households have sunk deeper into poverty and the gap between rich and poor has widened".<sup>457</sup> Accordingly poor people, mostly previously disadvantaged people continue to live in poverty despite innervations of historical redressal such as land reform. Aimed at eradicating historical injustices, however the implementation thereof seems to suggest that land reform is focus on restoring land more than equipping land reform beneficiaries to make a living out of utilising the land that is redistributed to them.

### **6.3.2 The Level of Poverty after introduction of land reform**

In 1994 the democratic government took an initiative to redress the historical injustices and inequalities of apartheid era by introducing land reform programme. The land reform programme was intended to redistribute land to Black people and consequently ensure that the social and economic livelihood of Black people is positively affected. However, since the introduction of land reform the poverty statistic in South Africa grew massively. Black people

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<sup>456</sup> Jensen (n91).

<sup>457</sup> Mapula Modise, Understanding the National Poverty Alleviation System, Science Scope March 2008, Art and Science Modelling and Simulation, and behavioural modelling, 2008, pg 74.

continue to live in poverty despite being in possession of redistributed land. The land reform programme was designed in a way that it mainly focused on redistributing land to black people, but unfortunately not designed to ensure that such distribution is coupled with adequate post-settlement support services that will enable land reform beneficiaries to utilise land productively and generate income for their families.

Where post-settlement support services were afforded to land reform beneficiaries the support services were not coupled with sustainable plan such as insurance over the crops and implements including continuous monitoring and mentoring to land reform beneficiaries. Hence such developmental projects particularly commercial farming by land reform beneficiaries were not sustainable due to lack of continuous mentoring and monitoring to land reform beneficiaries. Some projects were only afforded funding without any skills training programme and such projects of utilising land productively have failed. Others were afforded resources, but with resources in the hands of people without skills or experience to farm productively it is very unlikely that such farming project could yield positive outcomes in the production of crops. Hence these failures necessitated to the introduction of Recapitalisation and Development Programme (RADP) which was established to ensure that land reform beneficiaries particularly farmers were given full support and assistance as most of land reform projects were not productive and others were too indebted to financial institutions due to lack of adequate post-settlement support. This had resulted in some land reform projects being auctioned and put for sale or needing bail out. RADP was put in place to ensure that before land reform beneficiaries approach financial institutions, they are given start-up support and skills training. However, due to limited resources and poor implementation of the programme not all land reform beneficiaries have benefited from the programme. There are still quite a number of farms that have been abandoned due to lack of skills and resources.

Farming and other trades like mining requires skills, experience and knowledge to conduct, hence the need to ensure that people are equipped with necessary knowledge and resources to manage and sustain the projects. Availing land to Black people without post-settlement services does not resolve the economic status of black people, instead it renders more land to lay fallow in the hands of poor black people. Black people continue to live in poverty with land in their possession. Furthermore, Black people cannot sell their land acquired through redistribution as such land is made available through leasehold system

introduced by Proactive Land Acquisition Strategy (PLAS) which was established aiming at acquiring farmland for purposes of redistributing it to land reform beneficiaries and put in operation by the State Land Lease and Disposal Policy (SLDP) of 2013 which is responsible for making provision of granting lease holds to land reform beneficiaries with an option of transfer whilst withholding ownership rights.

The state no longer transfers ownership of rights to land reform beneficiaries, but SLDP identifies different priority groups that can lease agricultural land. The process of beneficiary targeting and selection, however, continues to favour commercially orientated farmers, ahead of rural poor people. Andries asserts that the reason fertile land is given to elite capture is owed to a legislation weakness.<sup>458</sup> Such as the various social division which include wealth and economic status, gender, generation and political affiliation. Andries further opines that too much discretionary power of allocation and spending of grants for land redistribution that Provision of Land and Assistance Act 126 of 1993 affords to Minister could be another legislative weakness.<sup>459</sup> It was for this reason that Proactive Land Acquisition Strategy was introduced, to do away with individual and group acquisition of land in free market. PLAS was intended to acquire and nationalise farmland, to make it available through redistribution for purposes of farming and other related matters through the application of SLDP lease hold systems to land reform beneficiaries. However, the introduction of PLAS did not entirely deal away with the “elite capture” in terms of the SLDP land is leased to land reform beneficiaries or individuals who will productively utilise it, hence transfer of ownership is not granted immediately to lease holders, however, it is an option that will be considered depending on the conduct or use of land in question. Considering the conditions of acquiring ownership rights over land acquired in terms of PLAS, land reform beneficiaries have little to no probability of successfully utilising land productively and sustainably to qualify for transfer of ownership rights without a comprehensive post-settlement support service. Consequently, this opens a room for the elite with enough resources to farm continuously to gain access to ownership rights.

Land redistribution policies have changed remarkably in terms of beneficiary targeting and selection, previously the SLAG was largely for pro-poor as beneficiaries were means-tested such only the neediest and the poor households qualified for land purchase grants. The

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<sup>458</sup> Andries, Ferai Mtero: Elite capture in land distribution: winners and losers, December 03, 2019.

<sup>459</sup> Ibid note 458.

means-test was abandoned as a key criterion for beneficiary selection when policy changes were introduced through the Land Acquisition for Agricultural Development (LRAD) Grant, which is based on leasehold system through Proactive Land Acquisition Strategy (PLAS). And consequently, the state no longer transfers ownership rights to land reform beneficiaries.<sup>460</sup> The injustices of under representation of poor people in land redistribution are largely caused by the biasness of the policy such as SLDP favouring the large scale of commercial farming model, with the intention of ensuring that land reform beneficiaries who are granted lease agreement have capacity to farm productively and sustainably despite the lack of adequate support services to assist land reform beneficiaries to farm productively.<sup>461</sup> Despite the biasness of policies, poor implementation and inadequate support services to land reform beneficiaries, Land reform programme has made some progress in eradicating poverty amongst land reform beneficiaries. Although not satisfactory but some positive contribution towards the livelihoods of historical disadvantaged people has been made. Kumar opines that “since 1994 the state has made great progress with regard to the huge service delivery backlogs, unemployment, inequality and dire poverty that the government inherited from the apartheid regime.”<sup>462</sup>

According to Kumar, there is significant progress that has been made in transforming the country’s economy and society since 1994. In this regard, Kumar highlights the following as the few of numerous improvements that the democratic government has done since the advent 1994: “From 1994 to 2003 the economy grew at an average of 3% to 5% per annum; the country’s investment as a share of GDP rose from 15% in 2002 to more than 22% by 2008”.<sup>463</sup> Recently the economy has displayed average annual growth of a mere “1.1% over the past four years, while at 1.6% per year and the population is growing faster than this”.<sup>464</sup>

However, the current global economic recession has led to negative growth in GDP over the past two quarters. “Unemployment has decreased from 31% in 2003 to 23% in 2007, and during the fourth quarter of 2019 it was sitting at 29,1% using the official narrow definition”.<sup>465</sup> This has resulted into “500,000 new jobs being created annually since 2004”.<sup>466</sup> However, unemployment remains unacceptably high. Furthermore, the South

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<sup>460</sup> Mtero(n458).

<sup>461</sup> Ibid note 460.

<sup>462</sup> Krish Kumar, Poverty Alleviation by Local Government: are we doing enough, IMFO Conference 2009.

<sup>463</sup> Ibid note 462.

<sup>464</sup> Statistics South Africa (National Statistical Service), [www.statssa.gov.za](http://www.statssa.gov.za), last accessed 13/05/2020.

<sup>465</sup> Ibid note 464.

<sup>466</sup> Statistics South Africa (n464).

African labour market appears to be more favourable to men than it is to women, and men are more likely to be remunerated accordingly than women, regardless of race.<sup>467</sup> Despite the fact that majority of South African households are women headed, this relatively indicates that most poor households are child headed or women headed as the market is not favourable for both. However, they are often taken advantage of in the workplace.

In the second quarter of 2018 “women accounted for 43,8% total employment”.<sup>468</sup> Only 32% of managers in South Africa were women.<sup>469</sup> Women dominated the domestic worker and clerk or technician occupations, with men dominating the rest. Majority of the poor households are depended on one-person salary for survival, a salary that does not meet the all their needs. Woman or child headed households suffers more severity of poverty-stricken lifestyle as opposed to man headed households, this is owing to the type or category of jobs they are most likely to get, which in most cases pays below the basic salary. “Only 3,0% of domestic worker jobs were occupied by men while 10,9% of craft and related trade jobs were occupied by women”.<sup>470</sup> According to the Quarterly Labour Force Survey released by Statistics South Africa, “the official unemployment rate has been relatively high since 2008.”<sup>471</sup>

In the last decade, the rate has increased from 23,2% in the first quarter of 2008 to 27,2% in the second quarter of 2018.<sup>472</sup> However, currently since the Covid-19 pandemic started the Unemployment rate has drastically increased and according to Mogajane, the National Treasury’s director-general, the country’s unemployment rate could reach as high as 40%. In essence it is estimated that about 5million jobs could be lost. Although “Unemployment Insurance Fund (UIF) coverage has been expanded to include nearly a million domestic workers and farm workers”<sup>473</sup> including providing relief funds to people who have lost their jobs irrespective of whether they were registered or not. This initiative is however, lambasted by a number of unfounded or rather corrupt claims, therefore due to fraudulent activities it ceases to be effective in address the much-needed support to people in need of the fund. Currently, UIF has covered more than 1,6 million South Africans.<sup>474</sup>

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<sup>467</sup> Ibid note 466.

<sup>468</sup> Statistics South Africa (n464).

<sup>469</sup> Ibid note 468.

<sup>470</sup> Statistics South Africa (n464).

<sup>471</sup> Ibid note 470.

<sup>472</sup> Statistics South Africa (n464).

<sup>473</sup> Ibid note 472.

<sup>474</sup> Statistics South Africa (n464).

Access to social grants has” massively increased from 3 million people in 1997 to 12.5 million in 2008, 8 million of whom are children under 14 years”.<sup>475</sup> The number has since increased to 45,5% as recorded by STATS 2015. As of June 2020, about 61,596 increase of people receiving social grant has been recorded. About “3.1 million subsidized houses were built, including 2.7 million houses, giving shelter to an additional 14 million people. In 2007 over 70% of South Africans lived in formal houses, 18.7 million people have access to clean water and 10.9 million provided with sanitation”.<sup>476</sup> The number has since increased to 92,5% of households that have access to improved drinking water sources.<sup>477</sup> The number of households with the bucket system reduced from 605 675 in 1994 to 113 085 in 2007.

According to STATSSA, the national percentage of people who used the bucket toilet system decreased from 12,6% to 3,1% between 2002 and 2017.<sup>478</sup> The expansion of electricity has reached 80% of the population.<sup>479</sup> There is an increase of 84% since the last General Household Survey, conducted in 2002.<sup>480</sup> “In health, progress has been recorded through the expansion of free primary health care. The state has expanded health infrastructure, including the building and upgrading of 1,600 clinics and 18 new hospitals”.<sup>481</sup> Many public hospitals have been revitalized and refurbished, Kumar reports.<sup>482</sup> Kumar further opines that education is closely linked to the issue of employment and poverty.

Black people were historically denied access to schools where white people attended, and the education curriculum was based in the Afrikaner language. Moreover, higher institutions were not all open to black people; a few institutions were for Black people and the rest for white people with variety of options degrees. However, since the beginning of the democratic governance, the state has sought to redress the issue by allowing access to education to everyone regardless of race. In this regard, “access to primary and secondary schooling has reached near-universal enrolment, with the participation of girls being the highest in the world. A total of 98% of children aged from 7 to 15 years are enrolled in schools, 88% for 6 years old; and participation rate for children in early childhood

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<sup>475</sup> Ibid note 474.

<sup>476</sup> Statistics South Africa (n464).

<sup>477</sup> Ibid note 476.

<sup>478</sup> Statistics South Africa (n464).

<sup>479</sup> Ibid note 478.

<sup>480</sup> Statistics South Africa (n464).

<sup>481</sup> Kumar (n462).

<sup>482</sup> Ibid note 481.

development aged 4 and 5 (Grade R) has reached 70%.<sup>483</sup> Pupil-to-teacher ratios have improved from 43:1 in 1996 to 32:1 in 2006”.<sup>484</sup>

However, the current statistics indicates that literacy rates for youth females is currently at 96,88% and for males is at 93,76 and the overall literacy rate of youth is at 95,32.<sup>485</sup> The mass literacy campaign has managed to cover more than 500,000 people who could not read and write.<sup>486</sup> However, notwithstanding the abovementioned achievements, it is undoubtedly that much more needs to be done. The state cannot rest on their laurels, whilst the nation still has a poverty level of 56,8%. It is rather unfortunate that South Africa has more people living in poverty and majority of them are black people. According to STATSSA, “females are more impoverished than males in South Africa, with poverty headcount of 58,6% as compared to 54,9% for males”,<sup>487</sup> Moreover, there are more household headed by single mothers, meaning majority of poor people in South Africa are black female headed households. Land redistribution to Black people mean a restoration of livelihoods, hence the need to ensure that support services which are made available to land reform beneficiaries are a comprehensive support that will holistically assist land reform beneficiaries to farm productively and generate income to fend their families. Land redistribution could be a solution to poverty alleviation if coupled with a comprehensive post-settlement support service.

Therefore, it is of paramount importance that land redistributed to Black people be utilised productively in order to alleviate poverty amongst black people. Since even education is not curbing the rising number of unemployed black South Africans, the state should utilise what people already have to assist them to escape poverty-stricken lifestyle, and thus land. The need to improve the livelihoods of Black people has always been the state’s priority. However, the state may not have enough resources to fund all land reform beneficiaries. But with the limited resources the state could make a difference if funds were to be invested in training and mentoring land reform beneficiaries. And the state should further mediate for investors to invest and donate to project which are led by land reform beneficiaries.

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<sup>483</sup> Kumar (n462).

<sup>484</sup> Statistics South Africa (n464).

<sup>485</sup> Trading Economics, <<https://tradingeconomics.com/south-africa/school-enrollment-primary-percent-gross-wb-data.html>>. Last accessed 15/05/2020.

<sup>486</sup> Kumar (n462).

<sup>487</sup> Statistics South Africa (n464).

## 6.4 Conclusion

When land reform was introduced it was aimed to redress historical injustices of apartheid era and that is inclusive of poverty amongst historical disadvantaged people. Ideally land reform was aimed at bettering the lives of Black people and putting blacks at par with the white minority. However, the implementation of the land reform policies appears to be focused mostly on restoring and availing land to historically disadvantaged people. Than ensuring that Black people are afforded holistic redressal of injustices that includes poverty alleviation and opportunities of participating in the economic market. This can only be achieved through fostering productive use of redistributed land to generate income and better the living conditions of land reform beneficiaries. However, for this objective to be actualised the state must invest in fostering both theoretical and practical link of land reform objectives and poverty alleviation strategies. Ensuring that the land that is made available to land reform beneficiaries positively impact their lives by bettering their living conditions and affording them an opportunity to make a living, would be one of the ways that the state can ensure that poverty is alleviated. By capacitating land reform beneficiaries to work with what they have together with the support of the state of providing necessary resources and support to ensure that land reform beneficiaries utilise their land productively. Black people were introduced to poverty-stricken lifestyle by the government of apartheid, however even after the country has gained its independence as a democratic republic, Black people are still living in appalling conditions. Land reform programme was introduced to redress the historical injustices; however, it was met with challenges that appears to be defeating its objective.

Land reform programme has encountered a lot of challenges since its inception. Challenges such as difficulty in acquiring land for redistribution and provision of adequate post-settlement support services. However, it has managed to redistribute about 3.36 million hectares of land. Although not all redistributed land is used productively. Often land reform beneficiaries who were granted access to redistributed land are unable to use their land productively, due to lack of resources and skills. Despite the state provision of post-settlement support services, however such support services have proven not to be adequate. As it fails to encompass a comprehensive support to land reform beneficiaries. Support that will consist of skills and knowledge transfer programmes, Provision of resources, implements, inputs, Mentorship and production monitoring programmes. Although one may argue that the state has limited resources to make available land and

adequate support services to land reform beneficiaries. Hence the provision of Section 25 of the Constitution permits the state to make available land to all citizens within its available resources. It was for this reason that an initiative to reduce state financial responsibility and speedily acquire land for purposes of redistribution was introduced, and thus expropriation without compensation. However, the proposition of expropriation without compensation necessitate to amendment of Section 25 of the Constitution. Which provides that expropriation of land must be coupled with a just and equitable compensation.

Pursuit to this proposition an Expropriation bill was submitted to parliament on the 2<sup>nd</sup> of October 2020. Detailing the events in which expropriation without compensation will take place in. Furthermore, highlining where a landowner or holder will be deemed to be entitled to compensation depending on the developments made on such a land and the evaluation thereof. Despite the notable challenges that will come with the proposed expropriation without compensation, a question on how will the proposed expropriation redress the current land reform challenges such as underutilised redistributed land and the prevailing poverty stricken lifestyle amongst land reform beneficiaries still stands.

## **CHAPTER SEVEN**

### **ACCENTUATING THE NEED FOR LAND REFORM TO FOSTER PRODUCTIVE USE OF LAND**

#### **7.1 Introduction**

Many industries, if not all, depend on the use of land to carry out their businesses, industries such as mining, tourism and agriculture. These industries are generally part of the biggest contributing industries to the economy of South Africa. The business activities carried on by these industries require land use to optimally reach production to participate in the economic market. Therefore, use of land is very significant to welfare of the country generally. Hence the need to ensure that land is used productively to ensure that the economy of the country is well balanced, and that poverty is alleviated amongst black South Africans. A well-balanced economy would enable the state to participate in projects of assisting poor people to break out of poverty and live a more dignified life. This dignified life must be vested with opportunities for the poor people (black people) to make a proper living through the use of redistributed land and consequently fend for their families. A dignified life for Black people means a life of no lack of the necessary amenities of life.

#### **7.2 Productive use of land before land reform**

Dating back before colonisation took place, Black people used their land productively by farming and planting food crops. And they solely depended on tilling the ground and animal farming for a living. Land for Black people meant wealth, a means of survival and a tool to make a living from. Black people raised their kids surviving and living on farming and other natural resources, and as a result, a way of life for Black people was closely related to tilling of the ground for survival. Use of land for Black people meant a way of living; however Black people were dispossessed of their land by the colonial powers. And things took a downturn in the way of living for black people. Black people were forced to live on overcrowded and non-arable land, where they could not farm productively. As a result, Black people began to live in poverty and worked for the white minority for survival, while white people gained continued to gain power and control over black people.

The white minority used the land in their possession mainly for farming, mining, industrial development and for residential purposes. Ensuring that the arable land is used for farming purposes and hiring Black people as slaves to till the ground they once owned. Black people

were paid very low salaries not enough to take care of their families. And as a result, children would also try to find employment in order to assist their parents to put a bread on the table. This led to child labour, which mainly occurred in the farming industry as compared to the other industries such as mining which was largely dominated by male adults. Whites continued to prosper in utilising land productively through hard labour of black people, while Black people continued to strive for survival in poverty.

### **7.3 Productive use of land after introduction of land reform**

Post-1994 South Africa gained its democratic freedom, and a new era of democratic governance began. Laws and policies of the apartheid era were enacted to be in line with the new Constitution. Policies and laws which regulated land were also enacted by the Abolition of Land Acts 108 of 1991, which aimed at abolishing discrimination laws and policies that caused injustices and inequality amongst Black people and the white minority. This was the beginning of the redressal of previous injustices and inequalities of land dispossession during the apartheid era. The democratic government embarked on a journey of ensuring that land is redistributed back to black people.

This administered was by introducing land reform programme which was aimed at ensuring that Black people are granted equal access and ownership of land that they were previously dispossessed of. The introduction of land reform programme did not terminate the projects and activities which were carried on by white minority on land which they forcefully took from black people. White people continued to carry on their business and use land productively to generate wealth whilst disadvantaging black people. The democratic government took an initiation of expropriating land to gain access to land which was illegally acquired by the white minority. Expropriation is a process of state exercising authority to take property from its owner for public use or public benefit.

Section 3 of the Expropriation Act provides that the Minister has the authority to expropriate any property for the purposes of public interest subject to the compensation criteria outlined in Section 25 of the Constitution of South Africa. The democratic government expropriated land from white minority although not all but a substantial number of plots, and some plots were productively used whilst few were not yet put into good use. The expropriation of land was in exchange of monetary compensation, based on the provisions outlined in Section 25 of the Constitution of South Africa. Although not all plots of land which were expropriated

were in good use, majority of the plots were utilised for farming projects and consequently contributing to the economy of the country.

However, as outlined in Section 3 of EA, expropriation is for public interest, despite how the land was productively utilised the benefit of the public remains a priority to the state. Hence the state expropriated the land and compensated the owners using the scale of just and equitable manner taking into account the loss the owner may suffer as a result of expropriation. In terms Section 25 of the Constitution of South Africa, compensation has to be just and equitable, however this provision may not be applicable in the near future, as it is under consideration for amendment. The land which is expropriated by the state is for public benefit, and consequently is redistributed to black majority who were dispossessed of their land through the redistribution process of transferring land to land reform beneficiaries. According to the White Paper on land policy, “the purpose of 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”.<sup>488</sup> The programme is “intended to assist the poor, labour tenants, farm workers, women, as well as emergent farmers”.<sup>489</sup>

However, the land that is redistributed to Black people is coupled with support services that is inadequate to assist Black people to productively use the land. Historically, Black people are economically challenged due to the bias and discriminative and oppressive practices of apartheid era that striped Black people of their most supreme token of wealth, which is land and other privileges. Therefore, redistributing land, to land reform beneficiaries with minimal support services that are not easily accessible due to poor implementation of policies does not entirely solve the social and economic status of Black people. Instead Black people fail to utilise land productively, redistributed land continue to lay fallow in the hands of black people. This affects the economy of the country and also the type of trade which was previously carried on the land. In order to ensure sustainability in farming projects even after land has been redistributed to land reform beneficiary, the state must make available a comprehensive support services that will not only make available funds, but will also cater for other support services such as mentorship programmes, skills training and provision of other necessary resources needed to farm productively.

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<sup>488</sup> White Paper (n10).

<sup>489</sup> Ibid note 488.

Predominately, the state spend money to acquire land that is utilised productively by the white minority, for the sole purpose of redistributing it to Black people to continue using the land productively. However, the support services aimed at assisting land reform beneficiaries to continue utilising land productively are not adequately structured to attend to all land reform beneficiaries challenges, more over the implementation thereof is poorly carried out. Van der Elst opines that “the government has been ineffective in facilitating post-settlement support to land reform beneficiaries”.<sup>490</sup> And further asserts that in most cases poverty and underdevelopment remain after land has been returned.<sup>491</sup> To remedy the inadequate post-settlement support services, the state must consult the land reform beneficiaries to gather information and the type of support the beneficiaries requires to farm productively. Furthermore, the state may need to revisit the accessibility strategy of the post-settlement support services and devise a single procedure that will enable land reform beneficiaries to gain access to a comprehensive post-settlement support services without having to struggle with the lengthy bureaucratic processes of different departments tasked with different support service required by land reform beneficiaries. Van Der Elst further observes that “as a result of the absence of effective management arrangements for post-settlement support, the South African land reform programme has been unsuccessful in terms of sustainable development and improving the quality of life of land reform beneficiaries, especially in rural areas”.<sup>492</sup> This is the unfortunate outcome of post-settlement support services that does not encompass future plans for beneficiaries and thus programmes aimed at safeguarding continuity of the project. These are programmes such as skills transfer programmes that will equip land reform beneficiaries with knowledge of farming and managing the farm, including mentorship programmes that will ensure that land reform beneficiaries are given necessary skills, advice and guidance in their day to day farming activities including crop production and harvesting techniques. Therefore there is a need to have a comprehensive post-settlement support services that are designed to suit the needs of land reform beneficiaries to continuously farm productively.

The social and economic status of Black people in rural areas have remained the same despite their possession of redistributed land. Black people are still living in dire state of poverty and redistributed land continues to lay fallow in the hands of poor black people. The

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<sup>490</sup> H.J Van der Elst, post-settlement support as key contributor to the success of the South African land reform programme(1994-2007), 2007.

<sup>491</sup> Ibid note 490.

<sup>492</sup> Van der Elst (n490).

intentions of land reform programme redistributing land to assist Black people to change their social and economic status by utilising land productively to alleviate poverty has not been optimally reached. This is due to challenges such as poor implementation of the policies, biasness of the policies and unsustainable support programmes aimed at assisting land reform beneficiaries farm productively. Terblanche asserts that land reform programme is a priority programme in South Africa to redress the matter of land ownership and ensure that there is sustainable development.

However, the number of failures of projects implemented is alarmingly high and the majority of projects are not sustainable.<sup>493</sup> And this is due to the lack of support services such as mentoring and monitoring programmes. However, Zimmerman is of the view that “the poor have less inclination to move distances demanded by the redistribution, they have less labour available for farming”, and furthermore, they are less able to afford the programme’s up-front costs.<sup>494</sup> Moreover blacks have fewer farming-specific skills, and have less capacity to cope with agricultural risks.<sup>495</sup> In order to ensure that Black people are at standard to run a well-managed and productive farm or any agricultural project, Black people should be afforded training such as skills transfer programmes, mentorship programmes, progress monitoring programmes and other necessary support they may need.

These are some of the primary elements of the support that land reform beneficiaries need: funding and other resources, mentorship and progress monitoring programmes together with assistance of partnering with investors and donors. Cliffe opines that “one would think that a policy rethink during 1999 would have led changes in emphasis to speed up the redistribution of land, provide more back-up to those resettled, and prioritise future grants for more productive agricultural use”.<sup>496</sup> However, the current policies have failed to resolve the previous policy challenges. Instead the current policy developments focused on changing strategy of availing land to Black people, and introduced the leasehold system. Whereby rights of ownership to redistributed land is no longer transferred to land reform beneficiary, however it is leased to the beneficiary in terms of the Proactive Land Acquisition Strategy (PLAS) which was introduced by the Land Lease and Disposal Policy of 2013.

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<sup>493</sup> Terblanche S.E, South African Journal of Agricultural Extension, 39, 55-74, (2011).

<sup>494</sup> Frederick J. Zimmerman, Barriers to Participation of the Poor in South Africa’s Land Redistribution, World Development Vol. 28, No. 8, pp. 1439±1460, 2000.

<sup>495</sup> Ibid note 494.

<sup>496</sup> Lionel Cliffe (2000) Land reform in South Africa, Review of African Political Economy, 27:84, 273-286, DOI: 10.1080/03056240008704459.

Despite the current policy industries it must be borne in mind that the core objective of redistribution of land is aimed at changing the social and economic status of poor people, and consequently alleviate poverty. Although this objective does not override the main objective of land reform programme, which is to redress the previous injustices and inequalities of access and ownership of land in South Africa, by making land available to everyone in a just and equitable manner. Cousins also opines that “land redistribution seeks not only to address the gross racial inequalities in land ownership inherited from the past, but also has a potential to address an underlying cause of rural poverty”.<sup>497</sup>

However, Zimmerman is of the opinion that the poor are likely to be rationed out of participation in the redistribution programme.<sup>498</sup> This may be due to poor people’s lack of knowledge, training, skills and resources to engage in productive agriculture projects. Zimmerman further asserts that “the redistribution programme will have little effect on rural poverty, unless demand-led targeting is dropped and ancillary programmes are employed to make land redistribution attractive for the poor”.<sup>499</sup> Introduction of post-settlement support services such as training programmes and provision of funds and other resources including the partnerships of investors and developers could spark interest and encourage land reform beneficiaries to utilise their land productively.

Although lack of post-settlement services is not the only challenge that hinders land reform beneficiaries to use their land productively. Cousins is of the view that “the lack of access to productive or land suitable for settlement, together with secure rights to such land” is another underlying challenge of land reform.<sup>500</sup> Although this is a recurring challenge within the land reform legislation, the new directives seem to fail to take into account the lessons from implementation of previous policies. The initial mechanism plan for redistribution of land was to make available grants to land reform beneficiaries to purchase land and develop the land. However, the initiative of assisting land reform beneficiaries develop the land was not successfully implemented. According to McCusker, land is abandoned or used less productively after redistribution.<sup>501</sup>

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<sup>497</sup> Ben Cousins, Land Redistribution, Populism and Elite Capture: New Land Reform Policy Proposals under the Microscope, The Journal of the Helen Suzman foundation, Issue 70, October 2013.

<sup>498</sup> Zimmerman (n494).

<sup>499</sup> Ibid note 498.

<sup>500</sup> Cousins ( n497).

<sup>501</sup> McCusker, B. Land Use and Cover Change as an Indicator of Transformation on Recently Redistributed Farms in Limpopo Province, South Africa. *Human Ecology* **32**, 49–75 (2004). <https://doi.org/10.1023/B:HUEC.0000015220.22795.27>.

Majority of land reform beneficiaries who benefited from the initiative have failed to sustain the developmental projects which they started. This could be owing to the flaw in the initiative's failure to provide training, mentorship and monitoring to the land reform beneficiaries. However, McCusker opines that the primary reason for lack of productive use of redistributed land could be that land distribution policy is not sufficiently sensitive to the diversity of rural livelihoods.<sup>502</sup> McCusker further asserts that other reasons may include farm-level general disorganization, lack of capital and labour, gender inequalities, and age distribution.<sup>503</sup>

There are possibilities that challenges of production on farms could be based on the poor management of the farm, but it is most likely that production is affected by lack of funding or resources. Cousins asserts that legal entities such as communal property associations, trusts and business planning were formed to try and ensure that that projects were viable.<sup>504</sup> However, the system of legal entities also failed to sustain developmental projects.<sup>505</sup> Lack of capital and ineffective post-settlement support measures have hindered the ability of beneficiaries to participate in production, and in the absence of effective area-based planning, land acquisitions have lacked any spatial logic.<sup>506</sup>

Moreover, "South Africa's land reform has thus combined the least effective aspects of both state and market-driven approaches, and it is unsurprising that beneficiaries aiming to farm have struggled to achieve high levels of productivity" Cousins opines.<sup>507</sup>

Since the start of Covid-19 pandemic, the need to secure food security for purposes of maintaining people's livelihoods, has been one of the pressing issues for the state apart from saving lives. The agriculture industry is one of the biggest contributing industry to the economy of the country, and with the current pandemic it has proven to be the core supporting industry to people's livelihood. Hence the need to ensure that agricultural activities are given priority and funding in order to secure food security and people's livelihood. Therefore, it is prevalent that redistributed land be productively utilised to ensure

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<sup>502</sup> Ibid note 501.

<sup>503</sup> McCusker (n502).

<sup>504</sup> Cousins (n497).

<sup>505</sup> Ibid note 504.

<sup>506</sup> Cousins (n497).

<sup>507</sup> Ibid note 506.

enough local food production during the reign of this pandemic and to secure employment of many South Africans.

A number of businesses and industries have been negatively affected by this pandemic, however in the midst of this uncertainties and pressure to restore the economy of the country, agriculture is one of the major industries that could revive the economy of the country if given necessary attention. The state needs to invest in agricultural activities by funding agricultural projects and ensuring that redistributed land is utilised productively and consequently increase food production. This will also lift the burden and pressure of providing social grants by ensuring that people gain employment and create more job opportunities for others by utilising their redistributed land for agricultural projects. It is of paramount importance that South Africa invest on local food production and lessen import of food crops, this will also reduce the country's external debt on international trades, and consequently lessen the country's debt repayment interest on funds loaned from international institutions.

According to Development and Facilitation Act land, land development means change in use of land for the betterment of the livelihoods of people residing in that particular area and the society at large. Land development is generally a change of use of land for a meaningful expansion purpose. Therefore, sustainable land development shall mean: a continuous meaningful expansion of land use for purposes of bettering the lives of poor people. Sustainable development is a necessary change needed in rural areas for the purposes alleviating poverty amongst black people. Hence introduction of developmental projects in rural areas will increase opportunities of employment. And further ensure that people living in rural areas are exposed to new ways of using their skills to generate income for their families. Particularly in agricultural farming projects, whereby people would have an opportunity to learn how to farm productively and sell the food crops.

A number of households in rural areas depend on farming for survival. Although the type of farming is limited to small-scale farming due to a number of challenges such as lack of resources, funds and necessary farming skills to ensure that the quality of crops produced meet the standards of South African National Standard (SANS) that is in terms of Standard Act 29 of 2008. Small-scale farmers are only limited to selling food crops on informal markets and consequently do not make enough money to fend for their families. In light of this, it can therefore be said that there is a great need to support black emergent farmers running small-

scale farms in order to ensure that black emergent farmers farm productively. And consequently, alleviate poverty amongst fellow Black people and contribute to the economy at large.

These can only be achieved if the Department of Rural Development and land reform could integrate support services for land reform beneficiaries with the objective of DFA of ensuring that rural areas are sustainably developed. The DFA advocates for development in rural areas and also makes provision of applying for developmental projects, however the challenge is lack of funds, skills and resources to land reform beneficiaries who are in possession of redistributed land. Furthermore, the *lacuna* between land reform policies and DFA's lack of theoretical link of ensuring that redistributed land is used productively affects notion of alleviating poverty through the use of land reform programme.

The core objective of the DFA is to ensure that there is sustainable development particularly in rural areas, however it fails to advocate for support services to aid land reform beneficiaries to use redistributed land productively. The DFA merely lays out procedures and processes to follow when one applies for developmental projects, neglecting the financing and other support services applicants may need. Chapter VI of DFA sets out the procedure to follow when applying for developmental projects including procedures relating to the development of small-scale farming. Section 49 of DFA provides that an owner of the land or any person acting with the consent of the owner can apply establishment of a land development area.

Therefore, land reform beneficiaries can apply for establishment of land development on their own or they can be assisted. Section 49(2) of DFA requires that an application for land development be lodged with the designated officer accompanied by prescribed documents necessary to support the application. In terms of Subsection 3 of Section 49 the applicant is further required to "serve a notice of a land development application to the prescribed persons or bodies, calling upon any person or body to whom or which the notice has been given to provide the designated officer with comments in writing on the land development application within the period of time prescribed and specified in the notice".<sup>508</sup>

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<sup>508</sup> See section 49 of Development Facilitation Act 67 of 1995.

According to Section 33, the Tribunal shall consider an application for land development in the circumstances stipulated in the DFA. Section 33 of the DFA sets out the procedure to follow when applying for a developmental site. The DFA further outlines circumstances in which land development projects are approved. However, for purposes of developmental projects which are related to Restitution of Land Act 22 of 1994 the DFA has specific regulations relating to approval of developmental projects. And such specific regulations are the exception from the condition of applicability of law as required by Section 33 (2)(j). This is supported by Section 67<sup>ii</sup> of the DFA which provides that the DFA will exempt land development applicant from complying with its provisions, provided it is satisfied that the applicant have complied with similar law provisions.<sup>509</sup>

Therefore, land reform beneficiaries are excepted from complying with the provision of 33 (2)(j) of the DFA, which makes it a little easier for land reform beneficiaries to apply for developmental site in order to manage their developmental projects wherever their redistributed land is located. Having followed the right procedure to apply for a developmental site, land reform beneficiaries still face challenges such as lack of resources, funding, training, skills and mentorship to execute the intended project. However, this may not be the only challenge land reform beneficiaries are facing but it is one of the major challenges which most land reform beneficiaries are facing. Other challenges range from investor's demands to challenges of entering the relevant market in order to generate income and make profit in whichever trade land reformer may have chosen.

The DFA further sets out the relevant bodies who are responsible for development projects. According to Section 27 of the DFA, the local municipality is responsible to set land development projects plan, and such development project plans must be done within the prescribed time set by the MEC. Furthermore, the local government must consult the members of the public and interested parties about the setting of development objectives. Moreover, "it must be co-ordinated with the functions of any department of state or other authority responsible for the administration or formulation of any plan dealing with the subject matter which is the same subject matter"<sup>510</sup> set out in Section 28 of the DFA. However, the progressive interventions of DFA of clearly categorising needed development per area and making available change of land use systems to aid land reform beneficiaries

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<sup>509</sup> See Section 67 (1)(b) of Development Facilitation Act 67 of 1995.

<sup>510</sup> Department of Transport Province of KwaZulu Natal, < [www.kzntransport.gov.za](http://www.kzntransport.gov.za) >, last accessed 01/09/2020.

to productively use their land for any intended project, irrespective of the initial purported purpose of their redistributed land. This intervention is hindered by a lengthy bureaucratic process caused by separation of responsibilities (aimed at changing land use system) amongst different organs of states.

According to Section 28 of the DFA, sustainable use of land is one of the objectives of land development. Furthermore, optimum use of natural resources is encouraged. However, in order to practically implement these objectives a lot has to be done with regard to assisting people who are in possession of land. There is a crucial need for support services to encourage productive use of land amongst land reform beneficiaries – this is of paramount importance is land reform and the objectives of the DFA are to be a successful policy in changing the lives of the poor people of South Africa. Not only will the support services ensure that the objectives of DFA as set out in Section 28 are achieved. But the services will also assist land reform beneficiaries to escape poverty-stricken lifestyle and consequently contribute to the economy of the country through profits made in the trades carried on the redistributed land. To the majority of Black people land reform is the only answer to their social and economic challenges – land is tied to wealth and provision for black people. Hence Black people believe that ownership of land or possession of land can change their economic status in a way that will better their lives. However, lack of resources, skills, funding and mentoring can be a hindrance to black people's opportunity of making a living through utilising their land productively.

## **7.4 Institutions that support land development particularly in rural areas**

### **7.4.1 Development bank of South Africa**

The DBSA is one of the development finance institutions in South Africa. Its main Purpose is to ensure speedy delivery of sustainable socio-economic development by funding physical, social and economic infrastructure. DBSA's main goal is to encourage the quality of life of the people of the region through implementation of sustainable developments in their respective areas.<sup>511</sup> The DBSA's have supports initiatives such as "green initiatives" which makes substantial contributions towards the transition of South Africa to "a low carbon economy, resource efficient and climate resilient development pathway, delivering high impact economic, environmental and social benefits". Initiatives of this nature plays an

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<sup>511</sup> Louis Dreyfus, Leading Merchant and Food Processor, <[www ldc co za](http://www ldc co za)>, last accessed 01/09/2020.

important role in the agriculture industry, as farming and production of crops is very much depended on climate change and other issues involving environment.

It is prevalent that measures be put in place to control emission of harmful substances that pollute and have negative impact on climate change. South Africa is already having water supply challenges and as a result it affects production and the running of agricultural activities, hence it is of great importance that issues such as climate change be well addressed in order to avoid great losses of production in farming and other agricultural projects due to unfavourable weather conditions. Institutions such as DBSA plays an integral part in funding initiatives that curb loss of production in agricultural activities and consequently ensure sustainability of agricultural projects.

According to Aydinalp and Cresser, climate change is of primary factor on agricultural production.<sup>512</sup> Climate change is caused by a realisation of greenhouse gases into the atmosphere, after the gases have accumulated in the sky they cause global warming. Which results in drought that has a negative impact on agricultural production including livestock farming.<sup>513</sup> Wheeler and Van Braun asserts that global patterns are seen on the impact of climate change on crop productivity that could have consequences for food availability.<sup>514</sup> Hence the need for state to consider investing more in assisting land reform beneficiaries to farm productively. Using different farming methods such as multiple cropping, crop shifting and genetic modification of seed that will be tolerant to all seasonal changes to guard against production destruction such as climate change. Moreover, consider acquiring funding from institutions such as DBSA to guard against crop derogation caused by change of seasons by providing suitable implements such as green house, water reservoir to land reform beneficiaries. To secure their production and consequently ensure stability of food security in the country. Notwithstanding, the need for comprehensive post-settlement support services for land reform beneficiaries to ensure sustainability of farming by land reform beneficiaries.

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<sup>512</sup> Cumhur Aydinalp and Malcolm S. Cresser, The Effects of Global Climate Change on Agriculture, *American-Eurasian J. Agric. & Environ. Sci.*, 3 (5): 672-676, 2008.

<sup>513</sup> *Ibid* note 512.

<sup>514</sup> Tim Wheeler and Joachim von Braun, Climate Change Impacts on Global Food Security, 341(6145): 508-513, 02 August 2013.

#### **7.4.2 Industrial Development Corporation (IDC), South Africa**

IDC is a “self-financing, state-owned national development finance institution that provides financing to entrepreneurs and businesses engaged in competitive industries”.<sup>515</sup> Industries such as agriculture, and provide funds for industrial development projects, playing an active role in accelerating and promoting partnerships across industries within and outside South African borders, promoting regional economic growth. However, for land reform beneficiaries to generally benefit from institutions such as IDC land reform beneficiaries have to be already participating in farming activities. Moreover, be in possession of property that can be held as collateral or security the finance institution will require. Furthermore, there must be an assurance that the land reform beneficiaries will be able to repay the loan, often land reform beneficiaries would be required to sign as surety to be responsible for the debt in an event where the farm does not manage to repay the loan. However, the lack of ownership rights hinders land reform beneficiaries from acquiring funding from financial institutions and consequently renders land reform beneficiaries to be dependent on inadequate support services provided by the state. However, one may argue that the state may not be able to meet every land reform beneficiary needs, if it had to provide a comprehensive post-settlement support services with very limited resources. Hence the Constitution in Section 25, has mandated the state to make available land to all citizens on equitable basis within available resources. Therefore, the state provision of land and all related matters such as post settlement support services should be done within the state available resources.

#### **7.4.3 Land and Agricultural Development Bank of South Africa**

Land bank is government owned development finance institution regulated by the Land and Agricultural Development Bank Act 15 of 2002. The land bank grants financial services to the commercial farming sector and to agri-business. The lending business of land bank is based on the following core objectives;

- “To provide finance for emerging farmers in pursuit of the equitable ownership of land, agrarian reform and land distribution.
- To remove the legacy of past racial and gender discrimination.

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<sup>515</sup> Industrial Development Corporation (IDC), South Africa ,[www.sadc.dfr.org](http://www.sadc.dfr.org), last accessed 01/09/2020.

- And to promote food security and support commercial agriculture”.

The main aim of land bank is to merge the financial gap of emergent farmers and consequently create equitable participation in commercial farming. Furthermore, ensure eradication of historical injustices against blacks and secure food security by promoting extensive participation on agricultural activities. The land bank has variety of options to assist emergent farmers, options ranging from; “Farm purchases; Capital financing for machinery and farm equipment, Production Loans, Farm Improvements, Infrastructure development (both primary and agro-processing)”.

However, like other financial institutions, the land bank has requirements for clients to access funding from Land bank. Such requirements include; “Being a South African citizen or a permanent resident holder; having a clean credit record, a detailed business plan, have enough security equivalent to the amount being borrowed; and be able to afford the repayments on a loan”. One of the requirements to qualify for funding, is that the applicant must have enough property that can be held as security, taking into account the economic and social status of majority of land reform beneficiaries, it is clear that they do not meet the minimum requirements for loan. Hence it is of paramount importance that funds meant for post-settlement support for agricultural development be revised in a fashion that it will suit the intended beneficiaries. By making standard requirements to qualify for the funds be feasible for land reform beneficiaries and thus being realistic to the capacity of land reform beneficiaries.

Despite the availability of financial institutions aimed at assisting emergent farmers, land reform beneficiaries are still unable to meet the requirements of furnishing security. Even to the few that may be able to furnish security they still lack skills and training to farm productively and properly conduct a commercial farm activity. In this regard the state can assist land reform beneficiaries with furnishing security by undertaking to be surety in an event where land reform beneficiary fails to repay the funds or provide guarantee to the financial institutions on behalf of the land reform beneficiaries. Further make available mentorship and progress monitoring programmes to ensure that land reform beneficiaries make good production and foster access to agricultural market to assist beneficiaries with platform to trade and make profit and consequently repay their loan.

Availing financial institutions to fund land reform beneficiaries without proper training and guidance will not ensure good production that can bring profit; however, it leads to many

abandon farms and consequently contributes to the mismanagement of funds aimed for agricultural development. Land reform beneficiary should receive training of how to farm be it in a form of skills transfer programme or knowledge transfer programme which ever is relevant depending on the type of beneficiary (literate or illiterate), before a land reform beneficiary can be granted funds and other resources to farm. Many agricultural projects have closed up due to lack of knowledge and skills to grow suitable crops on the suitable soil, season and lack of skills to nurture crops to reach full recycle of harvest in good quality. A continuous mentoring programme should be provided to land reform beneficiaries from the beginning of their projects thus till the harvesting period, moreover during the process of ploughing and nurturing crops there must be a progress monitoring programme that will assist land reform beneficiary to track their progress in implementing the skills, knowledge and advises of their mentors. Although lack of funding, skills and knowledge of farming is not the only challenge that land reform beneficiaries are facing, the issue of insecure tenure rights is also another hindrance of utilising land productively. Most of the land reform beneficiaries are reluctant to invest and develop their redistributed land due to reasons such as lack ownership rights to land. Developing land that you do not entirely own may pose risks of losing the land and developments thereof, in an event where lease agreement is not renewed, or ownership rights are not transferred. Although renewal or transfer of ownership right in terms of SLDP policy is dependent on the productive utilisation of land. Therefore, land reform beneficiaries are ought to undertake developmental projects on their redistributed land to secure renewal and transfer of ownership rights, despite the risks associated with the process.

Most of the redistributed land is held in CPA's administered by traditional leaders, who offers the community permission to occupy (PTO) although PTO is not a right of ownership but serves as a right to possess subject to administration by traditional leader. The overlapping customary laws and legislated principles regulating land in rural areas are some of the challenges that hinders development and utilisation of redistributed land. In terms of customary laws there are lands which are traditionally set aside for customary practices, such as ancestral worship and as such that land cannot be utilised for any development due to its historical and sentimental value to the local people. If developments were made on such lands, it will be perceived as disturbance of ancestral peace on the land than development that will have a positive impact on the lives of the locals. There is a great need to legislate uniform land use system in rural areas in order to ensure and instil confidence

in land reform beneficiaries to develop and utilise their land productively. Uniform laws that will secure the tenure rights of the rural people and also instil confidence in investors to partner with rural people to utilise land productively and generate income. This will require a change in tenure system to form a uniform land use system that applies to all rural areas subject to supervision of local municipalities.

## **7.5 Conclusion**

Considering the historical context of the previous land dispossession in South Africa, there is a great need to redress the injustices and also ensure that all people are afforded same opportunities. This will begin by ensuring that land that is restored and redistributed to Black people is used productively to enhance development and contribute to the lives of the beneficiaries. With the history of the dispossession it is quite clear that areas that are occupied by Black people particularly the former homelands, are underdeveloped. Therefore, in order to grant people who are living in rural areas with same opportunities as the white minority, development of their area is ought to take place to better their living conditions. Hence there is a need to ensure that land that is redistributed to Black people is used productively in developmental projects that have a potential of improving the lives of beneficiaries and the society at large. Pursuant to this the state has made available support services to land reform beneficiaries, however such support is not adequate to meet the necessary support that land reform beneficiaries need to use their land productively. Although one may argue that there are other organisations and institutions such as IDC and DBSA that are aimed at financing projects purported to speedy delivery of sustainable socio-economic development. However, for a land reform beneficiary to qualify for the funding they must have ownership rights over the land they intend to develop to furnish as security for the funds they require. Which is yet another stumbling block for land reform beneficiaries who do not have ownership rights over the land they possess that is people living in rural areas. This is another challenge that land tenure security has to rectify.

Although one may argue that the current land reform challenges in South Africa are by-products of a legislation of the apartheid era, coupled with partial implementation of progressive legislation. With regard to this, the current legislation aimed at addressing the apartheid injustices and inequalities is poorly implemented. In that it fails to address the core challenge inherited from the apartheid era which is poverty interactively within the legislation aimed at addressing landlessness and other past injustices. For instance, one of land reform

objectives is to redistribute land to Black people and consequently change the social and economic status of black people. In other words, redistribution of land is purported at alleviating poverty amongst black people. But failure to thoroughly implement policies that gives drive to programmes such as comprehensive post-settlement support services which are aimed at assisting land reform beneficiaries to utilise land productively, results in complete failure to adequately assist land reform beneficiaries escape poverty-stricken lifestyle. Not only is the poor implementation a challenge to land reform beneficiaries, but the provision of a post-settlement support services that are inadequate to holistically assist land reform beneficiary to farm productively. In that such post-settlement support services do not comprise of all necessary resources, funds and programmes needed to aid land reform beneficiary to farm productively. However, this challenge is closely associated to the state limited resources to assist land reform beneficiaries. Hence the need to develop a systematic post-settlement support services to aid land reform beneficiaries. A systematic support services that will require land reform beneficiaries to work together with other experienced farmers, whereby the state will undertake to make provision of resources and funds whilst experienced funded farmers mentor and monitor the progress of emerging farmers. The system can provide relief to state resources and also ensure personal development growth amongst land reform beneficiaries who will be empowered and capacitated to also empower other emergent farmers.

Furthermore, failure to create a practical link between land reform legislation and poverty alleviation legislation fails to resolve the general concern amongst Black people which is poverty. Perhaps the focus of land reform programme should be shared equally in redistributing land and ensuring that land is used productively to improve the lives of beneficiaries. This will require land reform programme to invest in a systematic comprehensive support services to land reform beneficiaries. Consequent to the legislative implementation challenges, the overall result of progressive legislation is not seen except the loopholes and challenges which are still affecting land reform beneficiaries even after redistribution. The persistent loopholes of land reform legislation can be seen on the use of land redistributed to black people. A number of redistributed lands are not utilised productively owing to poor or inadequate support services and other implementation challenges. As a result, the social and economic status of Black people who have received redistributed land have not been positively affected or changed

## CHAPTER EIGHT

### LAND REFORM IN ZIMBABWE; NIGERIA; UGANDA AND SOUTH KOREA: LESSONS TO BE LEARNT BY SOUTH AFRICA

#### 8.1 Introduction

The South African land reform programme is mainly focused on redressing the historical injustices through redistributing and restoring land to those who were previously dispossessed. However, the land that is redistributed back to Black people is often not utilised productively. This is owing to a number of challenges ranging from limited resources such as funds available to enable land reform beneficiaries to utilise land productively. The department of land and rural development has financial institutions such as Land and Agriculture Development Bank of South Africa (Land Bank) which are aimed at assisting land reform beneficiaries to optimally use their land productively. However, in order for a person to qualify for loan the person must meet the requirements outlined in terms of the Agriculture Development Bank Act 15 of 2002, one of the requirements is that the borrower (land reform beneficiary) must have sufficient security that is equivalent to the amount borrowed. Which often becomes a challenge to most land reform beneficiaries due to their lack of ownership rights over the land they possess. Land redistributed to land reform beneficiaries held in Communal Property Act does not impose ownership rights over the beneficiaries, however such rights are held in custodian by the traditional leader. Whilst the implementation of Proactive Land Acquisition Strategy (PLAS) 2006 has necessitated to introduction of State Land Lease and Disposal Policy. Which is aimed at redistributing land to people without transferring ownership rights but furnish an option to transfer ownership after a certain period of time. Although this could be argued that is necessary to ensure that redistributed land is used productively and if not, lease can be terminated. However, the lease approach doesn't help land reform beneficiaries to secure fund but instead disadvantages land reform beneficiaries from securing loans due to lack of security.

However, gaining access to such funds is yet another complicated and lengthy process which seems to defeat the purpose of such fund's allocation. The process of gaining financial support from the financial institutions aimed at assisting land reform beneficiaries to engage in meaningful economical activities by using their land productively, is often referred to as non-effective. Due to the nature of the process to acquire funding which is not

only complicated but also impractical. In a sense that it fails to cater for the very own target beneficiaries, by imposing requirements which are can only be met by the elite or people who have property that can be held as collateral property. Unlike land reform beneficiaries who only have permission to occupy (PTO) for land held under communal property Association (CPA) or lease against land acquired through redistribution process. The criteria to require security for loans or funds sought by land reform beneficiaries to develop and utilise their land productively, defeats the purpose of providing post-settlement support services to land reform beneficiaries.

The focus of the South African land reform programme is not a holistic approach that is sought to redress all the historical injustices that Black people suffered. However, its focus is mainly on availing land to land reform beneficiaries who are not further assisted to utilise their land productively, to combat hunger and starvation and consequently alleviate poverty. When land reform beneficiaries are duly assisted not only will they alleviate poverty, but their economic activities will contribute to the economy of the country and also reduces social dependency on government grants.

Furthermore, ensuring that land reform beneficiaries utilise their land productively by engaging in projects like commercial farming, would encourage local promotion of food products produced locally. A country that exports more goods than it imports, is perceived as economically stable and possess a good credit profile internationally.<sup>516</sup> As a result, should the country borrow money in one of the international institutions the interest rate on the repayment amount will be less compared to a country that imports more than it exports.<sup>517</sup> Therefore, the economic status of the country is solely dependent on the economic activities that the country is continuously engaged in. Hence the need to ensure that redistributed land is utilised productively to produce goods that can be exported to other counties. This will improve the country's economy and also make a positive impact in the lives of land reform beneficiaries as they will consequently generate income from the international markets and fend their families.

Not only it is important that land be utilised productively to contribute in the country economy but also ensure that peoples livelihoods are maintained by ensuring that goods produced by land reform beneficiaries are sold both on local and international markets to generate

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<sup>516</sup> IMF Conditionality," International Monetary Fund, March 18, 2011.

<sup>517</sup> Ibid note 516.

income to land reform beneficiaries to fend their families. People's livelihood depends on meaningful use of land, for food to be available there must be tilling of ground and farming, and so is many other necessities of life such as adequate housing, clean water. Including development projects are solely dependent on utilisation of land. However, despite the importance of land to people, ensuring that land is utilised productively is yet another challenge that hinders realisation of historical redressal in South Africa. The democratic government vision of democratic South Africa of equal access to land and poverty free society is a blurry sight for black South Africans. Since the introduction of the new democratic republic, historical disadvantaged people have not yet receive holistic redressed of the apartheid injustices, thus restoration of land and opportunities to participate in other sectors of corporate and commercial industries such as game farming, animal husbandry, mining, agricultural activities particularly commercial farming. Despite the well drafted policies aimed at addressing landless issues and poverty amongst Black South Africans, the lack of theoretical and practical link between redistribution of land and poverty alleviation strategies, creates a gap in actualising these two objectives through land reform programme.

## **8.2 Financial institutions aimed at promoting development**

Financial institutions such as the land bank were created solely to support land development projects, and for that reason criteria of requirements needed for a person to qualify for the grant must be drafted in a manner that will afford the intended beneficiaries' access. Thus, the requirements should be realistic and achievable to the intended beneficiaries. Furthermore, a clear assessment of the project that beneficiary is intending to engage in must be conducted in order to determine the funds needed to carry out the project. The financial support does not necessarily need to be in monetary, the Financial institutions can grant a beneficiary credit guarantees to pay the purchase price or costs of whatever resources the beneficiary needs to engage in the developmental project. Moreover, financial institutions can share profit on percentage basis with the beneficiary instead of requiring property as collaterals security for the funds. There is a need to have a practical way of assisting the land reform beneficiaries to utilise land productively and also contribute to the economy. Practical measures such as providing land reform beneficiaries with necessary resources such as seeds, pesticides, and equipment to farm productively and recover the costs from the proceeds of good produced. It is well understood from the land reform policies that financial institutions aimed at advancing land reform programmes objectives are not

funded by the state, however they rely on donations and loans. Therefore, it is of paramount importance that beneficiaries are able to repay the money they were loaned. In order to ensure continuously liquidity of the institution. Hence the need to use the funds in a gainful investment projects such as commercial farming is very important.

Farmers who are loaned money are expected to make gainful profit for purposes of repaying the loan amount. In an event where profit was not made either due to fail production or natural disasters such as hail or draught or occurrence of other farming associated risks such as theft, the short-term land bank life insurance will pay out. The short-term insurance is divided into two categories the first one is assert insurance and the second one is crops insurance. The insurance is undertaken when a beneficiary borrows money to safeguard against risks associated with farming activities. Should a beneficiary not have an insurance, the beneficiaries' property held as security will be sold by the bank to recover its costs. One can argue that is it for this reason why the requirements of gaining access to the funds requires one to have collateral property as security for the purposes of ensuring continues liquidity of the bank, in an event where a person fails to repay the loan. However, in as much as there are risks associated with loaning funds to farmers or entrepreneurs in general particularly the beginners, there is a need to be realistic in the target market of people who need financial assistance particularly the land reform beneficiaries. These financial institutions have secured funds for the purposes of assisting emergent farmers or farmers in general, accordingly the land bank signed a R900million long term loan facility in 2018 with German Development Bank KFW. This is not the only funding the land bank has received, in 2017 the land bank secured funding through the World Bank and its Multilateral Investment Guarantee Agency (MIGA) of an amount of R3.5billion loan facility. The land bank further gained access to a similar facility with the European Investment Bank (EIB) to the amount of R50million. All these funds were secured for purposes of supporting the much-needed boost in agricultural development in South Africa. As a result, financial institutions such as land bank cannot resign themselves from the risks associated with their target market. However, it must be borne in mind that strict requirements do not necessary guarantee repayment but denies potential farmers a chance to make a living through agricultural activities. Perhaps the requirements standard is not necessary based on capacity to repay the loan, but the need and surety to continue rendering services to those in need. Therefore, the need to continue business may outweigh the need to cater for every

applicant irrespective of the high risk they pose to the liquidity of the bank. However, the financial institutions can ensure continuity of business by also actively participating in ensuring that land reform beneficiaries farm productively. The financial institutions can encourage mentorship program by experienced farmers who have been assisted with funding from the institution to assist the emergent farmers in order to ensure production that will be sellable on the market and generate income.

### **8.2.1 Discussion on process of acquiring agricultural funding**

Despite the challenges of acquiring funds for agricultural projects, the South African government has financial institutions and structures that are designed to assist people to gain capital for their agricultural projects. The department of Agriculture, Forestry and Fisheries (DAFF) has been entrusted with state funds for purposes of facilitating a Comprehensive Agricultural Support Programme (CASP), however if the funds held in this department could be merged with other funds such as the Ilima/Letsema conditional grant which is aimed at assisting vulnerable black communities particularly land reform beneficiaries to actively participate in agricultural production, and funds allocated for land acquisition, land reform and post settlement support held at the Department of Rural Development and Land Reform (DRDLR) to form a single Land reform Fund.<sup>518</sup> A Financial body aimed at ensuring that objectives of land reform are speedily achieved. This could create an easily accessible procedure to access funds for any purposes relating to land reform. According to Sihlobo, there is an estimation of about R20 billions of funds which are distributed across the above institutions, this clearly indicates that there are funds aimed at accelerating land reform objectives.<sup>519</sup> However, the funds are scattered in different institutions namely Department of Agriculture, Forestry and Fisheries and Department of Rural Development and Land Reform hence the process of accessing such funds is not clearly outlined, instead it is lengthy and complicated one, that cannot be easily understood by the target beneficiaries. Hence the need to have one institution charged with the responsibility to fund and grant support services to land reform beneficiaries to farm productively. Moreover, provide a more detailed and clearly outlined procedure for land reform beneficiaries to access funds aimed at assisting in increasing agricultural production particularly in in rural communities where vulnerable land reform beneficiaries reside.

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<sup>518</sup>Wandile Sihlobo, Finding common ground, Picador Africa 2020.

<sup>519</sup>Ibid note 518.

The state intention of delegating certain department to facilitate different programmes aimed at achieving land reform beneficiaries was based on the checks and balance principle. A principle that is aimed at ensuring that one organ of state is not entrusted with all the power to facilitate land reform objectives. For instance Department of Rural Development and Land Reform was tasked with the responsibility to deliver the land, after which the beneficiaries would approach the Department of Water and Sanitation to acquire water rights, thereafter the beneficiaries can approach the Department of Agriculture, Forestry and fisheries to gain access to agricultural inputs and lastly the beneficiaries would approach the Department of Trade and Industry which is tasked to make provision of implements to land reform beneficiaries. The whole process is made complicated by the lengthy bureaucracy. Sihlobo asserts that this complicated process has resulted in misalignment of land and the associated services which has often set the beneficiaries for failure.<sup>520</sup> Although the state initiative to some extent has simplified land reform objectives by categorising the funds by its intended purposes and tasking certain departments to handle a specific objective such as Department of Agriculture, Forestry and Fisheries which is only tasked to make available agricultural inputs The processes of acquiring all necessary support services is scattered in different departments which each have a bureaucratic system that must be complied with and requirements thereof. However, this seem to suggest that, the institutions can only assist those who have something to contribute in that it is not practically feasible for a land reform beneficiary to acquire all the necessary support services in time without having to comply with every department procedure and waiting periods for approvals. Therefore, only land reform beneficiaries who need a specific support services but be in possession of other resources can feasibly utilise their land productively without having to wait for different department approvals to achieve their goals. There are number of programmes that promotes development and growth of commercially viable and sustainable business opportunities together with money intended for funding. Programmes such as the Local Economic Development, Black Business Supplier Development Programme, Small Enterprise Finance Agency and Technology for Sustainable livelihood. Furthermore, these programmes promote creation of new sustainable jobs. However, in order to gain access to the funds, one must meet the standard requirements, such as furnishing security. This is one rare requirement most land reform beneficiaries lack. Those who have acquired land from redistribution programme they do not have ownership of the land, since the state no

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<sup>520</sup> Sihlobo (n518).

longer transfers rights of ownership to beneficiaries. As a result, these beneficiaries struggle to secure loans or funds aimed at assisting emergent farmers. Perhaps the security requirement for securing funds has to be revisited if the state wish for the beneficiaries to utilise land productively.

### **8.2.2 The need for proper training, mentoring and monitoring land reform beneficiaries who are engaged in developmental projects**

For land reform beneficiaries to productively utilise their land, they need to have knowledge and skills of projects they intend to do. For a farmer to farm productively he needs to be skilled on crop growing, rehabilitating the land, pesticide / insecticide the crops and have knowledge of what to grow in which season and the suitable soil etc. However, not all land reform beneficiaries have general knowledge of the projects they want to undertake, hence the need to have skills training programmes, mentoring and monitoring programmes to assist beneficiaries to optimally reach production in their projects. It is generally expected that the state financial institutions may not be liquidated enough to also finance the training programmes. However, it can be made a requirement that every person who has received funding must mentor and monitor emergent farmers or developers in similar projects after you have received funding and are duly assisted to master their specific projects. This can help save costs in training and transferring knowledge and can give a practical experience to beginners. In this fashion production can be secured and prospects of failed projects due to lack of skills or knowledge can be eliminated. Therefore, funds repayments and share profit of the financial institution can be secured without having required real property to bond the loan against.

### **8.2.3 Participation in the market trade**

After a land reform beneficiary has been duly assisted with funding and other necessary resources including skills training, will be able to farm productively or engage in other developmental projects gainfully. However, in order to ensure that such production is monetary gainful, land reform beneficiaries needs to participate in the trade market of the specific project thus land reform beneficiaries must be able to sell the goods on the relevant market such as food crops on agricultural markets (retailers and consumers) locally and internationally. Therefore, it is of paramount importance that partnership relationship be encouraged amongst land reform beneficiaries and other stakeholders interested in the

same trade to promote the products. Including promotion of easy access to the market to allow land reform beneficiaries to participate in the market to generate income.

This will necessitate for state to encourage and promote buying from local/ informal markets. Land reform beneficiaries will assist the state to source goods locally by engaging in farming different crops locally, including crops that are mostly imported to South Africa. This will strengthen the food security of the country and create variety of goods to export to other countries and consequently have a positive impact on the country's economy. To support land reform beneficiaries who are small scale farmers by the government will instil confidence to other stake holders to support and encourage sales from informal markets. This will also ensure that small scale farmers farm productively to meet the demand on the market created by the state support, consequently land reform beneficiaries will gainfully make profit to fend for their families and also continue farming.

### **8.3 Notable Lessons from Zimbabwe, Nigeria, Uganda and South Korea**

#### **8.3.1 Zimbabwe**

Two decades ago, the leadership of the former late president Robert Mugabe embarked on land reform program in Zimbabwe with the backing up of legislation such as fast track Land Resettlement Policy (FTLRP) 1999, aimed at acquiring land speedily for purposes of redistribution. The land reform was aimed at correcting historical injustices by claiming back land that was forcefully taken away from black Zimbabweans. The land reform program managed to secure about 4000 farms from the country's 4,500 white large-scale commercial farmers. This was achieved through the implementation of Land Acquisition Amendment Act of 2002 which put a formal structure to the on-going fast track land reform program, introduced by the FTLRP of 1999. By the end of 2002 many black Zimbabwean's had access to large scale-commercial farms through the leasehold system. The land reform program had successfully transferred land from white minority to the state, which holds the land to the benefit of black Zimbabweans. Despite the successful transfer of land, the land reform program was widely criticised for its wreaking havoc on the agricultural sector.<sup>521</sup> According to Mabaye majority of land reform farmers lacked the necessary capital to invest in cash crop farming which is capital intensive as they require chemicals, fertilizers, implements, and machinery.<sup>522</sup> Although the land grab was expected to have some glitches, the extent

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<sup>521</sup> Ish Mfundikwa/AFP, two decades on, Zimbabwe takes stock of Mugabe land reform legacy.

<sup>522</sup> Tapiwa M Mabaye, Land reform in Zimbabwe: An Examination of Past & Present Policy, Shortcomings & Successes and Recommendations for Improvement,2005.

of negativity it had on agricultural sector was not anticipated. The land grab resulted in decrease of 25% of agricultural production from all sectors.<sup>523</sup>

The economy output fell by half following the land seizures and the economy of the country has continued to depreciate since. According to Mabaye, during the period of resettlement between 2000 and 2003, agricultural production fell by 25%. Mabaye further asserts that although a certain percentage of this drop can be accounted for to the 2002 drought.<sup>524</sup> However, a notable portion of this drop is due to the “fast track land resettlement and invasions of 2000 to 2003 which resulted in resettled farmers not knowledgeable in commercial farming, especially large scale and in farming of some of the cash crops such as tobacco and cotton”.<sup>525</sup> In 2019 it was recorded that the economy depreciated by 7,5 percent according to the International Monetary Fund. The decrease depicted in the Zimbabwe’s economy since the introduction of land reform, clearly highlights a similar challenge in South African land reform is facing. And that is failure to utilise redistributed land productively to generate income and contribute the country’s economy. Consequently, combat hunger and starvation amongst land reform beneficiaries and alleviate poverty. Mafundikwa opines that food shortage experienced over most post-land reform years in Zimbabwe is widely blamed on the loss of white farmers.<sup>526</sup> This is revealed by the current state of farmers failure to utilise land productively and generate income. Since land was expropriated from white owners and leased to Black Zimbabweans for period of 99 years, the agricultural sector has suffered production.

The land reform beneficiaries struggled to farm productively, due to lack of funding and other resources. Furthermore, land reform beneficiaries could not secure funds from investors and banks due to lack of collateral property, since the land does not belong to land reform beneficiaries but belongs to the state. Zakariya opines that the leasehold system has not inspired confidence to the financiers.<sup>527</sup> Gilpin asserts that “if land reform beneficiaries had title deeds or some bankable entity that is truly tradable and can be honoured by the banks, government would not have to fulfil the role of being responsible for post-settlement support services”.<sup>528</sup> Land reform beneficiaries continues to struggle to farm productively even after

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<sup>523</sup> Ibid note 522.

<sup>524</sup> Mabaye (n522).

<sup>525</sup> Ibid note 524.

<sup>526</sup> Mfundikwa (n521).

<sup>527</sup> Paul Zakariya, Ben Gilpin, Zimbabwe farmers’ union, two decades on, Zimbabwe takes stock of Mugabe land reform legacy. 31/05/2020.

<sup>528</sup> Ibid note 527.

the introduction of the “command agriculture” scheme aimed at supplying farmers with inputs, seeds, fertilisers and insecticides, and in return farmers would pay back during their harvest. Even though the scheme gave hope to Black emergent farmers, but it was not enough to ensure good production of crops. Land reform beneficiaries were still facing challenges such as lack of equipment and inputs, late delivery of inputs and sourcing funding. As a result, large number of redistributed farms are not utilised productively. Most land reform beneficiaries are experiencing hunger and starvation.

According to World Food Programme, about 56 of the country’s 60 district are experiencing hunger. Hence the Zimbabwean land reform, economically is seen as a failure. However, the government seem to be committed to rectify this, the government after carrying out a land audit, it has vowed to reduce the size of underutilised farms and introduce multiple farm ownership to increase production on farms. Despite the economic challenges and failure to productively utilise the land to combat hunger and starvation, Zimbabwean’s land reform is recommended for its success of recovering land from white minority to the benefit of Black majority. Although the ownership rights have not been transferred to land reform beneficiaries, but Black people still enjoy the benefits that comes with the right of ownership through the 99 years’ leasehold.

However, the land reform in Zimbabwe has contributed in destroying the asset value of land in Zimbabwe and this has negatively affected the economy of the country too. Depriving land reform beneficiaries’ ownership rights over land acquired for redistribution consequently renders such leased land valueless as it cannot be used as security to acquire funding nor can it be sold by financial institutions to recover their funds from land reform beneficiaries. Asset value of land is attached to ownership rights and appreciation value of the land. If the land is not held in freehold land system (system that transfers ownership rights to people and allow landowners to do as they will with their land) such land does not have much value attached to it, as it cannot be acquired as property, however it can be made available through the systems of permission to occupy or lease hold which does not transfer the ownership rights. Therefore, the land holder cannot deal as they please with the land, however they are given permission to perform certain deeds on the land either residential or commercial use. This does not necessarily assist land reform beneficiaries who have no funds or other resources to farm productively. Furthermore, availing support services of resources such as equipment, seeds and pesticides is not adequate support services to land reform beneficiaries who lack funds, skills and knowledge of farming.

However, it could be useful to farmers who are experienced and have some funds but lack farming implements.

The South African Land Reform Programme can borrow from the neighbouring country Zimbabwe few lessons that can assist in fast pacing South African land reform movement. Although there is more to avoid doing than adopting, Zimbabwe's land reform can still shed more light to South African current land system. Particularly the redistribution, a shift from redistributing land to productively utilise land that is already distributed, could be a change that South African economy and Agrarian reform much needs. The focus on redistributing land without intensifying the process that should be followed to ensure that land is used productively, results in many challenges. Availing land for redistribution and failure to couple it with support services to ensure productive utilising of such land has resulted in many plots laying fallow and underutilised. A lesson that South Africa can learn from Zimbabwe's land reform, there is a conception that Zimbabwe used to be the breadbasket of Africa before the implementation of the late President Mugabe's land reform. Although some scholars can argue that there is no evidence that Zimbabwe has ever been a breadbasket of Africa but is important to appreciate that at some point before the land reform, Zimbabwe's food security, economy and the agricultural output was stable.

This is not to state that the land reform did not have some positive impact in the country, land was successfully repossessed from the whites and held by the state for the benefit of the locals. The land reform has ensured restitution of Zimbabwean's land. Although the land was not transferred to the beneficiaries, but they were afforded long term leases (99 years lease). To this end Zimbabwe land reform has successfully expropriated land from the white minority. Zimbabwe has introduced a post-settlement support system that is sought to assisting black emergent farmers through Comprehensive Agricultural Policy Framework 2012. Although the support services are not given freely but in a form of loan, farmers are loaned seeds, pesticides and other necessary resources needed for farming. In return farmers must pay the loan with the proceeds of the products or a certain percentage of their production.

### **8.3.1.1 Lessons from Zimbabwe**

Below are the few key lessons that South Africa must learn from Zimbabwe before embarking on the proposed expropriation without compensation.

1. That a highly visible situation in which a small number of white farmers (whose predecessors took the land by conquest) continue to own a large part of a country's most productive agricultural land will never be accepted at a fundamental level by the majority.

Considering the above point, most arable and fertile land in South Africa is owned by the white minority. Hence the proposed radical approach of land expropriation without compensation is largely supported by the majority. To ensure that land is redistributed equally amongst historically disadvantaged people. This is the objectives of land reform programme, however the manner in which the proposed expropriation is going to be carried out has not yet been legislated, pending the amendment of section 25 of the constitution. Not only it is unacceptable for Black people not to own arable land, but it is also unjustifiable to provide historical disadvantaged people with land without furnishing them with support services to enable them to utilise land productively.

**2. That opponents of land reform are often strong, well organised, politically well connected, and highly effective lobbyists for their cause**

It is rather unfortunate that land issues are often politicised and influenced by the elite. Despite the fact that land is essential to all human beings, but often the elite or rather the minority oppress the poor, uneducated people. This has been the case in South Africa during the apartheid era, however since the introduction and implementation of land reform, not much has changed. Redistribution for agricultural purposes of land is largely focused on large commercial farms, to which only the rich affords. Moreover, land that is redistributed to Black people for residential purposes is not as arable and the large commercial farms that are sold at a higher price.

**3. That neglecting to confront tenure issues in communal areas does not make them go away**

South African rural lands are faced with a multiple regulations system, a legacy of apartheid era. Millions of South Africans residing in rural areas or what is known as former homelands, are faced with insecure tenure system. Rural dwellers do not have ownership to the piece of land they are occupying. Land in rural areas often falls under communal land (land that is administered by traditional leaders). Rural dwellers are given permission to occupy the land, but they do not have ownership to land, nor can they sell the land. The communal land system has a negative impact on investment opportunities as the land does not appreciate in value (it cannot be put on sale) and also creates challenges for beneficiaries who wish

to utilise their land productively, they face challenges such as the lack of bond security or when applying for funding.

#### **4. That unpopular political leaders who use the land issue to try to win votes can do untold damage to their countries**

The land issue is a very sensitive issue to the society at large, it bears an uneasy history for blacks and politicians have capitalised on its sensitivity. As such political campaigns make endless promises on how they going to ensure that land is redistributed equally amongst historically disadvantage people. By doing so the politicians are aiming at gaining votes from the majority landless people, despite their lack of interest of delivering their promises. Consequent to that people vote for politicians who have no interest in ensuring that historical injustices of apartheid era are put to an end. Politicians who have no regard to the landless poor people, their interest is in advancing their businesses and looting the state money.

#### **5. That ruling elites ('week-end farmers') often acquire land for prestige or investment, rather than for production**

The focus of redistributing large commercial farms at exorbitant prices attracts the rich uninterested want to be farmers. The so called "weekend farmers" who are not necessarily interested in farming for making profit or reaching production targets but interested in acquiring land for attaining a prestige status or for purposes of making profit after re-sale of the land. These types of farmers pose a serious risk on food security, as they reduce the number of productive farms for their personal gains.

#### **6. That a relatively successful resettlement programme may not be seen as such either at home or abroad**

The alternate objective of land reform programme is to ensure that beneficiaries are well settled after land has been redistributed to them. However, reality has shown that land reform beneficiaries are far from resettlement. Their social and economic status has not been positively affected by their possession of land; however, they still continue to live in poverty deteriorating lifestyle.

#### **7. That the poor do eventually benefit from resettlement.**

Land reform that focuses on ensuring that beneficiaries life is positively impacted by redistribution of land, actively ensure that historical injustices are eradicated. Black people were not only dispossessed of their land, but an opportunity to make a meaningful livelihood was also stolen from them. Their means of survival was taken away and also their way of

livelihood was disturbed. Hence it is of paramount importance to ensure that both the land and their means or survival is restored.

### **8. That in a complex and polarised situation it may be good to draw up a National Land Policy before it is too late**

Given the current land reform transition in South Africa, it would be wise to make thorough consultations before drafting the soon to be national land policy on expropriation. It is of paramount importance to ensure that all stakeholders are consulted, and their concerns are taken into account, in order to address the common interest of land. Having a standard land policy that reflects the intentions of legislatures, and also the expectations of the beneficiaries but not excluding the interest of other stakeholders, would ensure that land is not only changing hands but it remains productive and also assist in alleviating poverty.

#### **8.3.2 Nigeria**

Nigeria's agricultural sector is one of the major sectors contributing to the economy of the country. About 50 percent of the rural population found employment in the agricultural sector. The country's total land area is estimated to be "more than 910 thousand square kilometres of which almost 80% is usable for cultivating crops and livestock production. 80% of the rural population are farmers, however the percentage of land used from the total land was previously at 33%".<sup>529</sup> About 67% of arable land was not utilised due to lack of clarity on access to land for agricultural projects.<sup>530</sup> Other courses of inefficient land use were as a result of limited public investment, corruption, lack of land law reform.<sup>531</sup> Where public investment was afforded it was hindered by corruption practices and as a result it did not serve purpose effectively. Moreover, the lack of land law did not help to provide a clear objective of land use system, therefore use of land for agricultural purposes is not clearly outlined nor easily accessible.

The Nigerian government was not investing to agricultural projects as expected. Considering the large number of population and the need to secure food production versus the availability of arable land.<sup>532</sup> According to Behery, the cause of ineffecient land use is owing to stringent or rather limited public investment, corruption and lack of land reform

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<sup>529</sup> Hend Behery, Land reform in Africa: Lessons from Nigeria and South Africa, infomineo. com, last accessed 01/09/2020.

<sup>530</sup> Ibid note 529.

<sup>531</sup> Behery (n529).

<sup>532</sup> Ibid note 531.

law.<sup>533</sup> One would suggest that with such quantity of arable land the government would partner with people to utilise land productively and generate income which will have a positive impact on the economy of the country. However, far more demanding issues such as ownership of land were at play. Taking into account that land ownership is a major determinant in the use of land for agricultural purposes, the Nigerian government introduced the Land Use Act of 1978 (LUA) to ensure that “land is accessible to all farmers in a fair distribution system”.<sup>534</sup> The Act created a uniform system of land titles and land control system. Section 28(2) of the LUA read together with Section 36(2) of the 1999 Constitution of Nigeria, it provides that “the owner or holder of land is entitled to be heard”, furthermore, the Constitution provides protection to land occupants by providing that occupants must be heard before their right over the land they occupy are revoked. Therefore, this provision created confidence in land occupants to productively use their land with no fear of losing their investment and development on the land. Hence agricultural activities in Nigeria are not hindered by land ownership nor threatened by lack of ownership rights to productively use their land. Moreover, the government took responsibility to educate public about the laws, procedures, and reforms in order to ensure that Nigeria becomes one of the 20 largest economies in the world by 2020.<sup>535</sup> The careful implementation of Land Use Act has rendered Nigeria’s land reform system as one of the remarkable land use system to date.

In Nigeria, production of arable crops is essentially the integral feature of agricultural activities.<sup>536</sup> Majority of the farmers in Nigeria grow one or more arable crops for food and income.<sup>537</sup> According to Fayinka, “Nigerian agricultural production is influenced by rural-based small scale arable crop producers, who are responsible for about 80% of total food requirement.”<sup>538</sup> Fanyika further alludes that in a study on production of some major arable crops in Nigeria, the study revealed that the standard farm size in arable crop production was 4.58 ha. This clearly indicates the high number of rural based farming of arable crops. According to the report of Central Bank of Nigeria, CBN, (2005) about 36.25 to 82.41 million

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<sup>533</sup> Behery (n529).

<sup>534</sup> Ibid note 533.

<sup>535</sup> Behery (n529).

<sup>536</sup> Rashid Solagberu Adisa (2012). Land Use Conflict Between Farmers and Herdsmen – Implications for Agricultural and Rural Development in Nigeria, Rural Development - Contemporary Issues and Practices, Dr. Rashid Solagberu Adisa (Ed.), ISBN: 978-953-51-0461-2, InTech, Available from: <http://www.intechopen.com/books/rural-development-contemporary-issues-and-practices/land-use-conflictbetween-famers-and-herdsmen-implications-for-agricultural-and-rural-development-in>.

<sup>537</sup> Ibid note 536.

<sup>538</sup> Fayinka, F. A. (2004). Food Security in Nigeria: Challenges under Democratic Dispensation. Paper Presented At 9th ARMTI Annual Lecture, March 24, 2004.

hectares of arable crops were cultivated in 2004 and 2005 respectively. Rural farming in Nigeria is quite active and contributes largely to the country's agricultural outputs as indicated by the subsequent report of CBN. The report further stated that production of arable crops increased from 88.3million tones in 2001 to 111.8 million tons in 2005. By far the most widely grown arable crop in Nigeria is maize, accounting for 6.6 and 7.5 million hectares in 2004 and 2005 respectively.<sup>539</sup>

Maize is grown most parts of the country. Furthermore, the study revealed that “most arable crop farmers rely on rainfall to produce, with farming activities normally beginning as soon as the onset of rains. Apart from being veritable sources of income for farmers; arable crops are processed into other useful items at industrial and household levels”.<sup>540</sup> The Nigerian land reform may have its own challenges, but productive use of land is not one of them. The land reform system has managed to balance the need to utilise land productively to maintain the livelihoods of land reform beneficiaries. Consequent to that the land reform system has equally managed to alleviate poverty and combat hunger and starvation amongst land reform beneficiaries. Others may argue that the land reform system has failed to guarantee people access to land by failing to prioritise clear procedure system of obtaining land in rural areas. However, it is of no good use to avail land to poor land reform beneficiaries with no strategies of assisting them to utilise land productively to generate income and fend for their families

In Nigeria land was previously owned by communities, families, or private individuals and not subject to superior governor.<sup>541</sup> The government only exercised control on land it occupied for its use, essentially land could only be acquired through negotiations with rightful land owners.<sup>542</sup> Private ownership had complete control and freedom to mortgage, sell, lease or retain their land without consulting the government. Therefore, private ownership was as a result sources of commerce.<sup>543</sup> The government in sought of equal access to land and resources introduced the Land Use Act, which is aimed primarily on reducing unequal access to land resources and land. The Act is focused on decreasing the high cost of land needed for merchandised agriculture and industrial estate. Moreover, to

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<sup>539</sup> Ibid note 538.

<sup>540</sup> Rashid (n536).

<sup>541</sup> Zethu Gexu and Kudzai Tumuka Moyo, Nigeria Land Reform and Rural Transformation Overview, 2018.

<sup>542</sup> Ibid note 541.

<sup>543</sup> Gexu *et al.* (n541).

facilitate unfettered access to land and its resources by Nigerians in a country heavily depending on minerals and agriculture would bring about needed economic growth.

The purpose of this shift in legislation was to strengthen socioeconomic growth of the Nigerian Agricultural and Cooperative Bank established direct and indirect grant loans to support farmers. Fisheries, dairy, beef, poultry, and food crops like cassava, maize, oil palm, rice and sorghum were given priority. The Nigerian government also invested in the agricultural support policies of both the federal and state government, aiming at increasing agricultural output particularly as means of improving the standard of living and alleviating poverty. Further the government ensured that financial resources are distributed to assist farmers with pesticides, fertilisers and other essential agricultural inputs. As an additional contribution of support services to agricultural production, at government expense land development schemes and tractor hire services were also provided. The Nigerian government further introduced the Green Revolution government scheme which was launched for promoting agriculture in the 1980s. This required a National Council to coordinate the activities of the Green Revolution. The activities involved various organisations and ministries in developing agricultural processing, production, research and marketing.

Furthermore the Nigerian government saw it fit to promote integrated rural development, and established the National Agricultural Land Development Authority (NALDA) during the years 1992 to 2000.<sup>544</sup> The programme provided “strategic public support for land development, promoting and assisting better use of Nigeria’s rural land and the available resources. To boost profitable employment opportunities for rural citizens, achieving food security through self-reliance and raising the standard of living of rural people. To provide baseline data for agricultural related activities and services to land users the program embarked on activities such as land preparation, soil conservation, environmental issues, bush cleaning and soil testing and capacity”.<sup>545</sup> During its first year of operation alone, 28 000 of hectares was cleared and developed and more than 54 000 of hectares of land was acquired. Upon the end of the program, the number of active participants in the NALDA program was 6, 811 and a sum of 17, 820 hectares had been cultivated.

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<sup>544</sup> Ibid note 543.

<sup>545</sup> National Agricultural Land Development Authority (NALDA) 1992-2000.

At state level the government established the Agricultural Development Programmes (ADP). As one the government approach to alleviate widespread poverty and inequality in the country. The main purpose of the ADP programmes was to increase farm income and food production for rural household. Nigeria's agriculture growth rate in the first quarter of 2014 recorded at 5.53% and a decrease of 0.83% was recorded in the first quarter of 2015. Contribution of agriculture to GDP was 19.65% in the first quarter of 2014 and a slight growth of 0.14% in the first quarter of 2015. In 2017 November third quarter, contribution of agriculture to GDP amounted to 29.15%, an increase compared to the third quarter of 2016 of 28.68% correspondingly, emphasising its increasing importance in the livelihoods of Nigerians.

### **8.3.3 Uganda**

Land reform in Uganda has been high on the development agenda since early 1990's. particularly in the agricultural sector which is the most important source of income and livelihoods for Uganda's predominantly rural population. Agriculture in Uganda "contributes 43% of Gross Domestic Product (GDP), 80% of employment and 85% of export earnings".<sup>546</sup> Although food crops dominate, but only one third of food crop produced is marketed. This could be owing to a number of reasons such as the quality of food crops produced to accessibility of the agricultural market. Taking into account that majority of the farmers are poor rural people.

Access to machineries, equipment, pesticides and other necessary resources could be very challenging. However, these challenges do not deter rural people from engaging in agricultural projects for purposes of fending their families. Due to the importance of agriculture to rural livelihoods, land is the most significant asset for many Ugandan households.<sup>547</sup> Therefore, access to land for Ugandan is of paramount importance, their livelihoods depend on farming and animal husbandry. Hence the land reform in Uganda is focused on issues of economic efficiency and poverty reduction. It is important that land reform addresses both land issues and the social and economic status of land reform beneficiaries. A land reform system that prioritises the social and economic status of land reform beneficiaries, prioritises poverty alleviation amongst land reform beneficiaries. Hence the need to reconcile land reform legislation with poverty alleviation strategies. Uganda land

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<sup>546</sup> The Fiber Optic Association, Inc, <[www.foa.org](http://www.foa.org)>,last accessed 01/09/2020.

<sup>547</sup> Ibid note 546.

reform system prioritises productive use of land particularly in the agricultural sector, hence farm production is well recommended.

The republic of Uganda has implemented a very progressive set of statutory laws and regulations to govern land in line with the regional and international principles.

Statutory land laws including the Constitution of 1995 in Uganda promotes and safeguard the rights of women and the most vulnerable citizens, and outline ways land can be allocated, transferred, used or managed. The Uganda Constitutions specifically states that land in Uganda belongs to all citizens of Uganda. Furthermore, land is made available to Uganda citizens through a four-fold tenure system and thus Customary, Freehold, Mailo and Leasehold. The government statutory laws such as the Land Act of 1998 focus on ensuring that the most vulnerable citizens are afforded equal rights and access to land. Although the Land Act was enacted to regulate land management systems, it introduced the certificates of occupants in terms of Section 29 for occupants residing on someone's land (landowner). However, in 2010 an amendment to the Act made provision that any occupant who has occupied the landowner's land for more than 12 years cannot be evicted for any other reason except non-payment of rent. The Land Act further advocates that for secure and legally demonstrable rights to land must be leveraged to secure capital and attract investment. While policies and laws are important, it is also of paramount importance to ensure that implementation of legislation such as Land Act is done effectively to meet the expectations of the society and also the intentions of the legislatures. And thus to provide protection to land occupants instead of the current challenges of deterring landowners from developing their land due to (tenants or rather occupants who cannot be evicted except for default in rental. Since the government has declared occupants who have resided on the land for a period longer than 12 years. Therefore, the protection of occupants rights should not in a way deter landowners from developing and utilising their land productively, nor does it create entitlement to occupants to deal with the land as they please. But it must be implemented in a way that encourages productive use of land despite lack of real rights over the land to land occupants moreover, it should instil confidence to landowners to invest and develop the land despite the occupation of land occupants.

Uganda is leading the continent in the implementation of land policies and laws, and the National Land Information System (NLIS) in Uganda is the very first of its kind in Africa. The main objective of NLIS is to "provide a secure, efficient, sustainable and cost effective land

administration and registration system for the Republic of Uganda to improve service delivery in the land sector, facilitate enterprise development and strengthen public confidence in government".<sup>548</sup> Majority of Uganda's land was unrecorded and land administration was done manually.<sup>549</sup> The manual system allowed corrupt practices to prevail in land administration processes.<sup>550</sup> Consequently, service delivery was little to nothing due to the ineffective land administration system. However, the implementation of NLIS resulted in revamping land management and administration processes and consequently ensured speedy delivery of land and land use services. Perhaps the most important lesson that South Africa can adopt from Uganda is that an effective land reform system cannot be implemented overnight. The successful implementation of an effective NLIS is a process that in the case of Uganda has taken almost 30 years starting with the necessary policies and legislation. This is a reality that South African government must appreciate, there are quite a number of policies and laws for land reform such as (Restitution of Land Rights Act 1994, Promotion of Land Assistance Act 126 of 1993, Extension of Security Tenure Act 1997) that are progressive and can aid in ensuring that land is used productively to benefit land reform beneficiaries and alleviate poverty.

#### **8.3.3.1 lessons from Uganda are:**

The need for sufficient infrastructures to support and aid land reform beneficiaries to utilise their land productively. This will not only improve the lives of land reform beneficiaries but will also contribute to meaningful development particularly in rural areas. Another key lesson from Uganda is that it is of critical importance that political parties work together to ensure equal access to land. Moreover, the necessity of complementary governance and budgetary mechanisms aimed at providing post-settlement support services to land reform beneficiaries. Investment on Comprehensive post-settlement support services would make a notable different in the use of land particularly in agricultural production. This would also strengthen the economy of country, whilst meaningfully improving the livelihood of land reform beneficiaries in South Africa. Furthermore, the need to develop and strengthen human capacity and the core importance of agricultural training to land reform beneficiaries, in order to ensure production in agricultural activities. Training and transferring skills to land

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<sup>548</sup> National land information system, UGANDA, <<https://www.ignfi.fr/en/portfolio-item/systeme-information-foncier-national-ouganda>>, last accessed 27/03/21.

<sup>549</sup> Ibid note 548.

<sup>550</sup> National land information system, UGANDA(n549).

reform beneficiaries will not only ensure that they farm productively but it will also capacitate land reform beneficiaries to be of better assistance to other emerging land reform farmers. The state should encourage mentorship programmes amongst land reform beneficiaries and experienced farmers. Another notable lesson from Uganda is that the state should encourage role of development partners and stakeholders to land reform beneficiaries. Creating an opportunity for land reform beneficiaries to learn from experienced partners and forge a way to participate in bigger markets and consequently make profits from farming. Lastly the state can learn that a good dissemination of information to the public simplifies process and procedures of acquiring necessary services from the relevant designated offices, which will ultimately ensure speedy accessibility of land related services. Moreover, taking note of the importance of raising public awareness of all stakeholders to the general public will encourage land reform beneficiaries to gain interest in farming productively, knowing relevant stakeholders that can assist.

One of the initial most notable benefits of the NLIS in Uganda was the volume of government revenues it generated, excluding any taxes on land. The overall generation of \$193.7m in revenue at completion of the project represented an enormous 269% return on the \$72m investment. This presents a severe distinction to public investment in other sectors such as roads, railway and energy projects across Africa that have experienced protracted implementation delays, cost overruns and minimal returns on investment.

#### **8.3.3.2 Other lessons that can be drawn from Uganda are:**

##### **1. That governments should not pass laws (however good) which they don't have the capacity or resources to implement**

It is of paramount importance to note that any law or legislation passed has its consequences or legal obligations and failure to implement it properly, it may result in more legal complicated situation. The government must ensure that they have capacity and resources for any legislation that they intend to pass, in order to achieve positive results, without complicating or withdrawing and delaying the land reform process.

##### **2. That trying to create a whole set of new institutions is problematic**

Creating more institutions to administer land reform programme will not only complicate the process but it will also delay the process. In the case of land reform programme different institutions would create disintegration in the process by failing to coordinate with each other

in order to deliver the much-needed services of redistributing land and supporting land reform beneficiaries to utilise their land productively. This may however be as a result of lengthy bureaucratic process of different institutions.

### **3. That new land laws need to be costed and budgeted for**

The introduction of new laws needs to be well budgeted in order to ensure proper implementation. There must be funds sets out to cover all expenses including fail attempts and the enforcement thereof.

### **4. That having constitutional deadlines by which to pass land laws can concentrate the mind**

Creating constitutional deadlines of passing laws, will not only force compliance to time limit but will ensure that necessary issues are legislated and attended to in time. However, it can also have negative impact of having rough sketched legislation which are drafted solely to meet time limits but not the needs of the society.

### **5. That the implementation stage is crucial**

Legislating issues is important, but implementation is more crucial to achieve the intentions of the legislatures and meet the needs and expectations of the society. There are laws and policies which have been drafted but poor implementation has rendered them useless to the society. Implementation is the key element to ensuring that people get the intended service they ought to receive from legislated laws.

#### **8.3.4 Latin America land reform (Mexico)**

The need of land reform in Latin America was long expressed, but its adoption took longer than anticipated. The first implementation of the agrarian land reform took place after 1920 ten years after the initial discussions of land reform. The adoption of agrarian land reform was not easily acquired; it was a political power struggle with economic intentions. However, since the implementation of agrarian land reform the country has adopted a agricultural system called Chinampa. The Chinampa system is an agricultural system whereby a farmer creates artificial island built on a freshwater lake for agricultural purposes This type of farming model dates back to early days of farming in Mexico. This historical agriculture system was adopted to deal with hydrologic and climate constraints and the pressure of

food demand.<sup>551</sup> The chinampa farmers have managed to create a balance between sustained yield and environmental and technological management factors.<sup>552</sup> This ecosystem performance is largely depended on biological stability improvement, including different types of farming methods such as multiple cropping system and shift crops. Multiple cropping system refers to mix farming of different crops on the same land in the same growing season, whilst shift crops refers to shifting farming from one plot to another after cultivation to allow land to rehabilitate.

The chinampa system is the core farming method which expands local food production through technological innovation and has brought land under cultivation and increased labour inputs.<sup>553</sup> This productive production of allowing intensive cultivation throughout the year seasons is one of the major activities that contributed to the country's economy.<sup>554</sup> The chinampa farmers are not reliant on the state protection or the agriculture market or the strict application of technological innovation and capital investment, however their human settlement on chinampas zone with more resilience have indicated fair distribution of property and a power balanced distribution among the people with same social regional interest.<sup>555</sup> It is clear from the above discussion that farmers need to develop an agricultural system that is suitable for the region, climate and intended crops in order to have good production.

Furthermore, farmers should adopt farming techniques such as crops shifting to ensure that there is food production for every season and further ensure that the land is rehabilitated after each harvest. This will not only increase food production, but it will also ensure that redistributed land is used optimally to alleviate poverty and combat hunger and starvation. Therefore, it is pertinent that land reform programme encompasses comprehensive post-settlement support programmes such as training and transfer of skills, including multi cropping to ensure stability of food security though out the year season. This will consequently ensure that land reform beneficiaries are equipped with different types of farming techniques to enable them to farm productively and actively participate in agricultural markets to generate income. For land reform beneficiaries to farm seasonally

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<sup>551</sup> Historical Notes on Mexico's Land Reform, <<http://era.anthropology.ac.uk/>>, last accessed 23/02/2021.

<sup>552</sup> Ibid note 551.

<sup>553</sup> Historical Notes on Mexico's Land Reform(n551).

<sup>554</sup> Ibid note 553.

<sup>555</sup> Historical Notes on Mexico's Land Reform(n551).

will not necessarily ensure that poverty is alleviated, as there will be seasons that the farm will not be generating income therefore, land reform beneficiaries will have to survive with the proceeds of the previous harvest season. Hence the need to have multi cropping to ensure continuous use of the land and production on the farm throughout the year season. Multi crop farming will therefore ensure sustainability of productive use of land as the land reform beneficiary will have food crops throughout the year season and will be from time to time participating on the agricultural markets selling food crops for all seasons. Hence, the need for state to adopt different types of farming system that will ensure that land reform beneficiaries continuously farm and generate income to fend for their families.

#### **8.3.4.1 South Korea**

South Korea Land reform is identified as one of the successful cases of land reform. South Korea launched their land reform program in the 1950s and continuously implemented it in accordance with their Five-Year Plans, a series of five-year economic development plans formulated by the South Korean government since 1962. South Korea's land reform is regarded as one of the most successful, making large-scale land redistribution possible within a short period.<sup>556</sup>

It made a huge impact on agricultural productivity, which consequently reduced poverty and ensured sustainability. In the broader context of socio-political, the land reform redressed the colonial legacy of dispossession by doing away with the long-standing landlord system, and landowners and large-scale landholders were nearly expelled.<sup>557</sup> This anticipated the conflict between landlords and tenants, which could have led to a great state of disturbance politically. Disturbing the state-building process which was necessary for migrating during the post-colonial and post-war period in South Korea.<sup>558</sup>

Land reform transformation was necessary and had to be implemented despite the dangers that it posed to the political state of the country, but It was necessary for a greater benefit of the society. Consequent to the radical implementation, the Land reform made a huge impact with the introduction of the Saemaul Undong (New Village Movement) in the 1970s.<sup>559</sup> The combination of land reform and Saemaul Undong (what we would term support services)

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<sup>556</sup> Kim Yejoo, South Africa could model its land reform on the success achieved in South Korea, <<http://www.iol.co.za>>, last accessed 27/03/21.

<sup>557</sup> Ibid note 556.

<sup>558</sup> Yejoo (n556).

<sup>559</sup> Ibid note 558.

was introduced in order to improve rural economy, both rural infrastructure and income; the government re-grouped rural areas into smaller units and deployed government officials to carry out the various projects, providing credit and education among others.<sup>560</sup>

Government officials and local leaders took initiative to close the gap that was created after the termination of the landlord system. Most notably the independent small farmers who were created by the land reform made the movement successful. However, during the first (1962-1966) and second (1967-1971) Five-Year Economic Plans, the rural economy did not experience growth rates as expected. But the government expanded its investment in agriculture, necessitated by “increasing price support and the availability of inputs such as fertiliser to encourage expanded production in the early 1970s”.<sup>561</sup> These efforts resulted in rapid increases in yields, agricultural output and farm productivity.

Agricultural transformation powered the state in utilising a large surplus from agriculture and transferring it to finance industrialisation. Land reform transformed the previous landlord class into industrialisers. At the same time, poverty-reduction in rural areas prevented the rapid influx of migrants to the cities; it contributed towards resolving poverty in urban areas, preventing rapid/unplanned urbanisation.<sup>562</sup> “For those who migrated into the industrial sector, the government and business were able to keep main staple food prices and industrial wages low. Consequently, business could reap high profits by keeping wages low in the industrial sector. South Korea’s successful land reform became the foundation for their next Five-Year Development Plans”.<sup>563</sup> The South Korean case may, to a certain extent, offer some valuable lessons for South Africa.

Among South Africa’s three “legs” of land reform - redistribution, land restitution and land tenure reform - land redistribution is focused to the “the disadvantaged and the poor such as labour tenants, farmworkers and new entrants to agriculture”, and seek to grant access to land and opportunities for participation in economic activity in rural communities.

Notwithstanding these intentions, the main purpose of land redistribution set by the government has been postponed over several times. Over the past years, less than 15% of farmland has been redistributed and this is too insignificant to change the existing structure

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<sup>560</sup> Yejoo (n556).

<sup>561</sup> Ibid note 561.

<sup>562</sup> Yejoo (n556).

<sup>563</sup> Ibid note 562.

of agriculture and the rural economy.<sup>564</sup> Firstly, land reform requires the government's capacity to allocate resources such as finance and skills support, among others. Lack of funding, for example, for land restitution was one of the obstacles encountered by key land stakeholders in South Africa. The budget for rural development and land reform did not result in desirable socio-economic development during the period of 2017-2018. The government's expenses on agriculture, rural development and land reform was R26.53billion, which represents less than 2% of total government expenditure. The budget allocation for restitution was increased by 2.5% - from R3.17bn in 2016/17 to R3.25bn in 2017/18 -while the funds for land redistribution declined from R1.23bn to R1.19bn. From the above illustrated trends of government budget regarding different "legs" of land reform, government focus is not on redistribution rather it is focused on restitution. Hence the current state of unsatisfactory use of redistributed land, which is due to lack of support services (resources, funds and skills training) to land reform beneficiaries.

While land has been highly politicised, the importance and effects of land reform have been largely overlooked.<sup>565</sup> South Africa is currently in a transitioning phase of land reform considering the proposed land expropriation without compensation. However, it is of paramount importance that before we transition to expropriating without compensation some things have to be put in order, before more complications are created. The sole objective of land reform is to redress the historical injustices of apartheid era and ensure that the social and economic status of Black people is uplifted. However, redistributing land to historically disadvantaged people and fail to couple the redistribution with support services does not seem to be addressing the historical injustices entirely. Not to state that the land reform has not managed to change the social and economic status of people, there are some people who have benefited from land reform and have managed to utilise their land productively, but that is a small percentage of people. There are also people who have benefited from land reform particularly redistribution, however the accumulation of a piece of land has not made a social and economic benefit to them. Consequent to that a large number of land reform beneficiaries are still living in poverty-stricken lifestyle, succumbing to the harsh reality of going to bed without food. Despite their possession of redistributed land, it is for this reason that the government must provide post-settlement support services. To ensure total redressal of historical injustices is afforded to land reform beneficiaries.

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<sup>564</sup> Yejoo (n556).

<sup>565</sup> Ibid note 564.

Granting land reform beneficiaries, a fighting chance for survival in the agricultural business or any other developmental projects focused on utilising land productively.

In pursuit of redressing historical injustices, the international land bank has asserted that to overcome land reform challenges, and to ensure that the reforms serve the purpose of sustainable growth, the following steps were suggested;

**1. Securing tenancy rights over individual and public lands<sup>566</sup>**

Although South African land reform has attempted to secure tenure in rural areas, however the current position is that people living in rural areas do not have ownership to land, the land is held in trust by the traditional leader for the benefit of the community, hence people in rural areas are given permission to occupy not ownership.<sup>567</sup>

**2. Redistribution of land possession, to include the poor and deprived majority<sup>568</sup>**

For the past 26 years since the implementation of land reform, about 15 % of farmland has been redistributed to the land reform beneficiaries, however a substantial amount of land that has been redistributed has not been put in to use, it is laying fallow.

**3. Improve land governance: enhance transparency, power decentralization, develop information systems and databases to ensure proper documentation and better mapping of lands<sup>569</sup>**

The department of rural development and land reform has established an entity called deeds registry, for the purposes of recording and documenting information system on data base regarding land. to this end the South African government has managed to keep proper records and mapping of land.

**4. Adopt technology innovation to enhance efficiency**

The department of agriculture has made changes in adopting technology into the agricultural industry, in 1997 South Africa planted its first insect resistant cotton Genetically modified (GM) crop, in 1998 GM maize was planted and in 2001 GM Soybeans were planted

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<sup>566</sup> Hend Behery, Infomineo, <<https://infomineo.com>>, last accessed 27/03/21.

<sup>567</sup> Department of Water Affairs and Forestry, <[https:// www.dwaf.gov.za](https://www.dwaf.gov.za)>, last accessed 27/03/21.

<sup>568</sup> Behery (n566).

<sup>569</sup> Ibid note 568.

for the very first time.<sup>570</sup> The production of GM crops showed a rapid growth over the years.<sup>571</sup> However, there is room for improvement by adopting more GM crops in the agriculture industry and also investing in seed breeding to ensure that seeds withstands conditions out of their normal season conditions to ensure continues production out of seasons and consequently secure food security throughout the year seasons.

#### **5.Capacity building: providing training and knowledge transfer facilities for better administration of land<sup>572</sup>**

Skills training and knowledge transfer is one of the key points that can assist land beneficiaries to better administer their land and ensure productivity in their agricultural projects. For emergent farmers or land reform beneficiaries to successfully use their land productively, they need to be trained in their respective anticipated projects in order to succeed. A farmer who has been trained and afforded knowledge in their area of farming are likely to have good production.

#### **6.Reforms of planning to ensure efficient use of the available agricultural capacity**

The department of agriculture has attempted to assist land reform beneficiaries previously, however the funds and resources which were given to land reform beneficiaries di not yield good outcome. Instead funds misused and resources were mismanaged, and it all resulted in project fail. This could be owing to a number of reasons, such as beneficiaries lack of skills and knowledge in the undertaken agricultural project, poor management skills and so forth.

#### **7. Empower the rule of law to guarantee farmers rights and resolve disputes**

In one of the South African government attempts to force transfer of skills and knowledge programme, known as mentorship programme, whereby a well-established farmer would be allocated a land reform beneficiary who has just started farming to mentor. The relationship between the mentor and the mentee was supposed to be that of trainer and a student, however it often ended in situation where mentors dictates and force their will to mentees. This has often resulted in conflicts where they could not be resolved, the parties had to

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<sup>570</sup> Behery (n566).

<sup>571</sup> Ibid note 571.

<sup>572</sup> Behery (n566).

pathways. In is in these situations where a rule of law could have played an important role, by ensuring the mentee of his rights over his project.<sup>573</sup>

Implementing these reforms would enable South Africa to make use of its land resources to attract investments and achieve higher returns, which will lead to more growth and less poverty in the country.

### **8.5 South African land reform can also reflect on these key lessons from past experience:**

Since the introduction of land reform in South Africa land has been restored and redistributed where practically possible and compensated where it was impractical to restore. Furthermore, land has been redistributed for both residential and commercial farming purposes. However, the process of acquiring and redistributing land to land reform beneficiaries has been often greeted with many challenges. Challenges such the costliness of acquiring land through programmes such as expropriation, willing buyer willing seller and acquiring land on freehold market for purposes of redistribution. Coupled with the ineffectiveness of the process of redistributing land to land reform beneficiaries. These challenges are resulted from poor implementation of policies, limited resources, lack of sustainable plan to generate funds and resources needed to acquire and redistribute land and lengthy bureaucrat processes. The state land reform is too invested in acquiring land particularly big plots for commercial farming. Whilst the intended beneficiaries are not well capacitated to farm productively nor manage a large commercial farm. Hence, a number of redistributed land has been left fallow and where there way productive use of land the projects have failed been abandoned, with very small percentage productive farms led by land reform beneficiaries. This clearly indicate the fragmented system aimed at delivering land reform objectives and thus redressal of historical injustices through restoring land to Black people and consequently alleviate poverty. Shinobi and Kristen outline the following key lessons from the previous experiences as important lesson's land reform programme should take cognisant of:

- The need for land reform to be fast paced in order to avoid excessive bureaucracy and centralisation of the process and furthermore combat legal challenges.<sup>574</sup>

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<sup>573</sup> Ibid note 572.

<sup>574</sup> Wandile Sihlobo and Johann Kristen, The Secret of land reform success is to lean lessons from experience, 28 May 2018.

- The role of the public sector must be clearly articulated.<sup>575</sup>
- Recognition that redistribution of land is necessary, however it is not sufficient to bring about real economic empowerment and poverty alleviation on its own.<sup>576</sup>

The general conclusion from the above-mentioned lessons, is that the state has excelled in acquiring land, but does not necessarily ensure that such land is redistributed effectively. Despite the great need to ensure that land reform beneficiaries are favoured with restitution of their land and or are duly compensated. Programmes led by the state are generally controlled by the public sector's complicated bureaucratic inefficiencies from acquiring the land.<sup>577</sup> Therefore, the land reform progress is hindered by its own administrative processes, which seem to be lengthy and complicated to execute the intended objective of redistributing land to people who have been previously dispossessed. While it can be argued that a market-assisted land distribution programme seems to bear much effective results than the land redistribution programmes administered by the public sector.<sup>578</sup> However, it should be noted that land market is only suitable to beneficiaries who have financial muscles as opposed to the poor South African land reform beneficiaries who have no access to finance to acquire the large commercial farms made available on market.

Hence the state administered land redistribution remains their only hope of receiving land back. Although, one can suggest that perhaps the large commercial farms need to be resized into smaller portions in order to make them accessible to the few beneficiaries who could afford to buy from the market. However, the suggestion can be overlooked by the society's needs, as it is generally known that South Africa has dual agricultural system, Large commercial farms aimed at ensuring food security at the national level and the small farms which are commonly focus on informal market that is intended to service the poor class in the society.<sup>579</sup> The two systems are equally important and serve different needs within the society, perhaps instead of resizing the farms, much emphasis should be focused on encouraging rural farming and utilisation of redistributed land within rural areas. Coupling it with market venture for these small rural farmers in order to ensure that small farmers also make notable profits from their farming activities. Perhaps this could assist in combating

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<sup>575</sup> Ibid note 574.

<sup>576</sup> Sihlobo *et al.* (n574).

<sup>577</sup> Ibid note 576.

<sup>578</sup> Sihlobo *et al.* (n574).

<sup>579</sup> Ibid note 578.

hunger and starvation amongst land reform beneficiaries and consequently alleviate poverty.

Although there are still much bigger issues of ensuring that land reform beneficiaries are given post-settlement support to ensure that they utilise land productively. The state administrative process is not properly coordinated to ensure that land reform beneficiaries receive the much need support services. This is evident from the relationship the provincial land reform and the agriculture department have, many of the process overlap and don't seem to properly coordinate with the needed services from both structures to aid land reform beneficiaries utilised their land productively.<sup>580</sup>

The land reform has shifted from the grant system (individual/group) purchases to state purchase. Meaning the state now proactively acquires land through expropriation and from the market for purposes of leasing to land reform beneficiaries. The state keeps ownership of the land and grants short term leases to people who are interested in agricultural projects. However, this approach does not seem to be solving the problem of underutilised land or failed agricultural projects but creates more problems to the beneficiaries who struggles to secure funding due to lack of ownership to the land. These are some of the challenges that repeatedly render the land reform programme inefficient. There is a great need for a practical and legally feasible process to ensure that land reform beneficiaries are given the necessary support to utilise land productively. Granting land reform beneficiaries lease agreements to use the land of which they do not have funds to sponsor the intended projected, and further require a security in a form of tittle deed to loan land reform beneficiary funds seems like land reform beneficiaries are set up for failure.

## **8.6 Conclusion**

The current land reform system in South Africa is a stumbling block to successful redistribution and productive use of redistributed land. The shift in land policy to Proactive Land Acquisition Strategy (PLAS) from the Market assisted approach, has unfolded many difficulties and presented land reform beneficiaries with countless challenges. The PLAS has since acquired land for an estimation of 4.3 million hectors of land since its inception in 2006. However, the state has not transferred the said hectors to beneficiaries, instead beneficiaries were given short term lease agreements. Although, according to state, Land

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<sup>580</sup> Sihlobo *et al.* (n574).

Lease and Disposal Policy the acquired land should be leased to beneficiaries for a period ranging between 5-30 years with an option to transfer ownership. However, the reality is that implementation of the policies does not depict the intentions of the legislator nor does it reflect the expectations of the beneficiaries. The very same policy put in place to assist beneficiaries fails to address the needs of beneficiaries. However, it contributes to the complicated bureaucratic process and as a result defers the aspirations of beneficiaries to acquire land and secure funding for their agricultural projects.

Despite the initiative of Department of Land Reform of venturing in Post-settlement support, by creating the Recapitalisation and Development Programme (RADP), which is focused on recapitalising poorly performing land reform projects. The initiative has not managed to resolve the issues of poor performing agricultural projects nor resolved the issue of under-utilised land. However, the initiative seems to be looting the funds aimed for acquiring land, instead of investigating the cause of failed or struggling agricultural projects and allow the relevant body, Department of Agriculture, Forestry and Fisheries and provincial departments of agriculture to address the issues, including post-supplement support. Although doing so previously has proven difficult, considering the lengthy procedure and the misalignment between the land and associated services and has often resulted in failure. Post-settlement services were ought to have been vested in one department in order to ensure easy access to beneficiaries. Consequently, ensure that the process is less bureaucratic and support services are efficiently delivered to beneficiaries. Moreover, the post-settlement services should not be limited to resources and funds but extended to skills training programmes, mentorship programmes and progress monitoring services.

The state made further initiatives to secure the land reform programme by proposing expropriation without compensation a measure sought to fast pace land reform. The proposed expropriation without compensation will largely focus on acquiring land that is state owned, and further prioritise redistribution of under-utilised, vacant and unused land as well as land held for speculation and over indebted land. Although this proposition may seem well and good but there are more severe consequences that may outweigh the good intentions of the proposal. Shortfalls such as the loss of foreign investors in agricultural projects maybe one of the harsh consequences of this approach. Notwithstanding the negative impact it may have on the food security, including loss of jobs in the agricultural sectors. Consequently, the approach will cause more harm than good to the lives of poor

black who are depended on labour farming as a source of income. Moreover, the approach will not only increase the number of unemployment in the country, but it will also increase the number of unutilised lands by expropriating farmlands.

This is not to suggest that land must not be expropriated to redress the historical injustices amongst Black people, but the manner in which the expropriation must be carried out, should not threaten the food security, investors' confidence, job security and risk liquidity of land bank and other commercial banks. On the same note, government should invest in assisting land reform beneficiaries to utilise their land productively, in order to alleviate poverty in South Africa and consequently ensure sustainable development in agricultural industry.

Drawing from other international countries South Africa can use approaches such as land use system of Nigeria, whereby the state encourages rural farmers to use land and farm productively. South Africa will need to provide comprehensive support services to rural people, particularly land reform beneficiaries to ensure that they farm productively and consequently participate in the agricultural markets. Like the Nigeria local farmers who contribute about 80% of the stable crops in the country, this type of production consequently ensures that hunger and starvation is combatted amongst the local people and also ensures that the state imports less goods to the country as most of the stable crops are produced locally. This positively impacts the economy of the country and the external debt of the country on international level. South Africa can also take a notable lesson from Zimbabwe that leasehold land system affects the assert value of the land. Withholding ownership rights from land reform beneficiaries does not necessarily assist land reform beneficiaries to use land productively, as it becomes a hindrance of acquiring funding from financial institutions. Furthermore, availing of post-settlement support services that does not comprises of knowledge and skills transfer but only focus on implements does not necessarily capacitate land reform beneficiaries to use land productively. Moreover, the proposed land expropriation without compensation should consider the asset value of land and strategise on how is the debt or bond held over land to be expropriated is going to be paid and who should be liable and furthermore avoid withholding ownership rights from land reform beneficiaries. As this will not assist land reform beneficiary to acquire funding nor investors, as the investor confidence would be insecure, since the land reform beneficiary lacks ownership rights over the land. Therefore, South Africa should rethink expropriation without compensation and ensure that necessary policies are put in place to give confidence to

investors and also protect asset value of the land and ensure food security by encouraging productive use of redistributed land.

## CHAPTER NINE

### CONCLUSION AND RECOMMENDATIONS

#### 9.1 Introduction

Land reform in South Africa has been the beacon of hope for majority of Black people who have been dispossessed of their land since its inception. The land reform program was introduced during South Africa's democratic transition. When the new democratic governance system was introduced, with an aim of redressing historical injustices amongst black South Africans. One of the major focus of the new democratic government was to ensure that land is redistributed back to the indigenous owners or their successors. Moreover, ensure that there is sustainable development in areas that are underdeveloped and consequently alleviate poverty.

Since the introduction of land reform, the South African government has legislated quite a number of policies and Act's aimed at ensuring that land is redistributed equally amongst the beneficiaries. In pursuit of the above the state adopted initiatives of willing buyer and willing seller with an aim of acquiring land for the purposes of redistributing it equally to the beneficiaries. However, the willing buyer and willing seller initiatives proved to be very costly for the state to acquire land for redistribution. The state had to rely only on the expropriation, which also had its fair share of hefty costs to the state. Hence the current proposed expropriation without compensation.

Over the past 26 years the state has managed to redistribute about 12.2% out of the initial target of 30% of the free hold land to land reform beneficiaries. Despite the slow pace of realisation of land reform objectives, the state has managed to redistribute 3.36 million hectares out of the 28 million hectares of free hold land. Although it could be argued that the land reform progress is very slow and ineffective to resolve black people's social and economic challenges owing to their historic land dispossession. However, the state has done its part by legislating the land reform policies, what is left is for the relevant organs of state to ensure proper implementation of the policies. The challenges are not on the legislation, but the implementation and enforcement of the land reform legislation.

Consequent to the poor implementation of the laws and policies of land reform, the beneficiaries thereof are face similar challenges irrespective of whether they have received land, or they have not received land. Majority of the land reform beneficiaries are living in underdeveloped areas and are subjected to inadequate living conditions. This is owing to a number of reasons ranging from lack of funds, skills and resources to utilise their land productively to lack of access to land, capacity and the necessary resources to use the land productively. Hence this study sought to find solutions for land reform beneficiaries who have received their land to use their land productively to alleviate poverty and improve their social and economic status.

## **9.2 Conclusion of the Study**

Dating back to the early days of 1652 an era of colonisation, South Africa suffered land dispossession in the hands of the white minorities. Subsequent to the dispossession legislation was enacted to enforce the racial discrimination under the leadership of apartheid government. Black people were forced to relocate to overcrowded non-arable land, and such areas were termed homelands. Following the forced removals Black people began to experience poverty and oppression by the white minorities. Blacks worked for white people in order to make a living, since their means of survival was stripped away with the land dispossession. Their landlessness situation was also aggravated by the different land use system which were introduced by policies such Proclamation R293 and Proclamation R188 which created different land use system that resulted in the current insecure tenure system that is experienced mostly by people living in rural areas. In 1994 South Africa gained its independence and became the democratic republic, Black people were freed from white oppression. The democratic government then took upon itself to remedy the historical injustices of apartheid era, by introducing land reform program. However, during the early days of drafting and strategizing how to remedy the historical injustices, the state introduced Abolition of Racially Based Land Measure Act 108 of 1991 which was aimed at doing away with the provisions of NLA, NTLA and its successors GAA including all discriminatory Acts. The ARBL abolished discriminatory legislation and paved a way for the state to received help from the international community that is the United Nation Committee. With the help of international instruments such as UNDRIP, UDHR, ILO Convention and many more, South Africa managed to draft a Constitution that embodies land reform as a measure to redress historical injustices. This is in line with the provisions of ILO 169 Convention Article 14 which requires that the state must promulgate legislation that will regulate the procedure and

process to afford people access to land and further made provisions of protection of indigenous people rights over land they previously occupied. Therefore, International instruments played a big role in providing guidance on how to provide redressal to indigenous people who have suffered forced relocation. According to UNDRIP indigenous people have a right to live, own and use their territories, whilst ILO Convention requires that member states must identify land that was traditionally occupied by indigenous people and guarantee ownership and protection of the rights. Therefore, the member states are required to ensure that people who have been previously dispossessed of their land be granted rights over the land they previously occupied and that is restitution of land. Whilst UNDRIP commends that indigenous people should live (redistribution for residential purposes), own (Transfer of ownership rights- secured tenure rights) and use (redistribution for commercial purposes) their land. However, right to access land is not limited to indigenous people but it is extended to all people. Although land reform program prioritises historically disadvantaged people as means of redressing historical injustices and putting Black people at par with the white minority. Although granting access to land does not necessarily redress the historical injustices entirely, Black people are still living in poverty despite the restoration of their land. This is resultant from failure to utilise land productively. Most of redistributed land is laying fallow, due to many reasons flowing from lack of comprehensive post-settlement support services to assist land reform beneficiaries to use their land productively. Land is a source of livelihood and central to the economy, however if it is not productively utilised it does not serve its purpose. Therefore, for Black people to gain access to land it means regaining of their way of living, blacks used to till the ground for food and when land was taken away from them, their way of living was destructed. Not only people depend on land for survival, but delivery of basic human rights of people is also depended on access to land. Hence the right to access land is both internationally and nationally recognised and regulated to give way for delivery of basic human rights. UDHR provides that everyone has a right to own land read together with Section 25 of the Constitution. However, availing of land particularly to historical disadvantaged people, without adequate post-settlement support services does not necessarily provide Black people access to necessities of life such food, shelter, clean water and many more basic human rights. Ideally providing Black people with land that is not coupled with the necessary support services, land reform beneficiaries requires to use land productively does not resonate with redressal of historical injustices. However, it merely restores land that will lay fallow and have no positive impact in bettering the living conditions of the land reform beneficiary. Therefore, any redressal of

historical injustices that does not encourage development and alleviate poverty amongst land reform beneficiaries is not a redressal but a restoration of property. Bettering the lives of land reform beneficiaries requires developmental projects, hence the need to ensure that redistributed land is used productively in developmental projects that have a potential of bringing income and changing both the social and economic status of the beneficiary. Although, the post-settlement support services provided by the organs of state are not sufficient, there are other ways in which the state may assist land reform beneficiaries to gain access to funding. There are international institutions and organisations that promote and fund development in under-developed or developing countries. Institutions such as the World bank it promotes development and regards it as a mechanism of alleviating poverty and promote economic growth. The state may loan money from institutions like World bank to fund land reform beneficiaries with loans to use their land productively. And interests made from such loan repayments by the land reform beneficiaries would assist the liquidity of the state institutions to continue doing business with more land reform beneficiaries. However, the requirements set out by the state or rather the national financial institutions are unrealistic taking into account the target market (land reform beneficiaries). There is a need to reconcile financial institutions prerequisite requirements of funding with the need to ensure that land is used productively in developmental projects that enables access to necessities of life (basic human rights). In pursuit of redressal of historical injustices, the state drafted progressive legislation that is aimed at reconciling Black people with the land and their way of living. However, the implementation thereof, does not meet the intentions of the legislatures nor the expectations of the society. This is owed to poor implementation of the legislations and the lack of practical link of redressal objectives in the implementation. This has rendered the current legislation in effective in providing total redressal of historical injustices.

Perhaps what South African land reform needs is to draw notable lessons from other international countries. Lessons such as to improve land use system like the Nigerian land reform that focuses on encouraging land reform beneficiaries to farm productively to ensure food security and positively impact the economy of the country. However, in order to achieve this, the state should invest in providing comprehensive post-settlement support services together with the introduction of different farming strategies such as crop shifting and multiple cropping. A strategy that is widely used in Mexico to improve production and ensure food security throughout the year season. This type of strategy requires a land reform to

take technological innovations to considerations, such as seed modification to be suitable for any season and tolerate to climate change. Moreover, emphasis of land reform that is sought to cater both social and economic lives of land reform beneficiaries should be considered. Such as the Uganda land reform which focuses both on economic efficiency and poverty reduction amongst the land reform beneficiaries. Furthermore, there is a need for South African land reform programme to have policy link for redistribution of land and ensuring use of redistributed land to alleviate poverty and improve the lives of land reform beneficiaries. However, in order for South African land reform to be a success, it will require more than a policy links but practicality of the implementation of legislations. Without practical implementation of legislation, even initiatives such as expropriation without compensation will not be explored to its maxim efficiency. A notable lesson can be drawn from Zimbabwean land reform, whereby the state embarked on a radical land reform and took ownership of land from white farmers. Consequent to this land expropriation without compensation the state provided lease hold systems to lease land to land reform beneficiaries. Which consequently affected the asset value of land and negatively impacted the economy. Furthermore, it served no purpose to land reform beneficiaries who lacks funds and resources to utilise the land productively. Since they could not use the land as security to acquire funds from financial institutions neither could they secure investors since investor confidence was destroyed through the forceful expropriation of land. Perhaps expropriation without compensation in South Africa should be re-thought with more policy innervations to avoid destroying asset value, decline in food security and threatening investors' confidence. Although it is believed that this initiative could speed up the process of redressal. However, it is not clear how expropriation without compensation is going to address the issue of underutilised redistributed land and alleviate poverty amongst land reform beneficiaries.

The study sought to draw a shift from redistribution of land to productive use of redistributed land. During the course of the study few key obstacles to the above were noted. The study has noted that in order to ensure productive utilisation of land amongst land reform beneficiaries, the state needs to provide comprehensive post-settlement support services to land reform beneficiaries. The study further investigated the obstacles that hinders land reform beneficiaries from utilising their land productively. Pursuant to the above, the study has found the following.

The state has focused mostly on redistributing land than ensuring that the redistributed land is used productively. The call on state to speedily deliver or redistribute land to land reform beneficiaries, is an important call, however failure to ensure continuous productive use of the redistributed land does not solve the entire problem. But leaves room for more challenges, such as reducing the number of land or farms that are used productively and consequently threatens food security.

Further legislation of policies and laws aimed at accelerating land reform beneficiaries is not necessary, if proper implementation is not going to be enforced. There are quite a number of progressive legislation aiming at accelerating land reform and delivery of necessary resources to land reform beneficiaries, however the slow pace and poor implementation of these policies renders the policies ineffective.

The complex allocation of funds aimed at assisting land reform beneficiaries to utilise their land productively, has contributed to the already complicated and lengthy process of acquiring funds. Different organs of states are entrusted with funds aimed at same objective but different category of land reform. As a result, the process of acquiring funds has become lengthy and bureaucratic.

Apart from complex allocation of funds, the state has established financial institutions aimed at assisting land reform beneficiaries to productively utilised their land. However, the process and the requirements thereof, requires that an applicant must have a collateral property or security bond. Therefore, for land reform beneficiary to qualify for the loan they must have title deed of the land or ownership rights which can be held as security. To be sold in an event when the applicant fails to repay the loan.

In as much as securing funding is difficult, so is making good production. To the few land reform beneficiaries who have managed to secure funding, they are struggling to make good production due to lack of skills and as a result the crops that they produce are not of good quality. Consequent to this a lot have abandoned farming.

To the few that have continued with farming are experiencing access denials to agricultural markets and often resort to informal markets, where profits are not optimally reached. The state has not afforded emergent farmers with ascertainable access to the agricultural market.

Consequent to the above land reform beneficiaries have failed to utilise their land productively. Either because of lack of adequate post-settlement services or for other reasons relating to lack of necessary resources to conduct gainful projects and contribute to the economy. The failure of utilising land productively has consequently ensured the lack of sustainable development, particularly in rural areas. Where developmental initiatives were taken, the lack of resources, poor management and skills has rendered the development unsustainable. Hence there are progressive projects which have been abandoned, due to lack of resources to sustain the projects, apart from the land that is laying fallow.

### **9.3 Recommendations**

The study has highlighted quite a number of issues that affect the productivity of land that has been redistributed to land reform beneficiaries. However, there are few suggestions that could ensure that the land that is redistributed to land reform beneficiaries is optimally used to contribute to the economy and alleviate poverty. The study recommends as follows:

The history of land dispossession has left many Black people in poverty traps lifestyles, whereby people experience outright poverty and lack of basic necessities of life despite their possession of redistributed land. The study recommends that the state must investigate the lands that have been redistributed to land reform beneficiaries to identify and ascertain the number of plots or lands that are left laying fallow. Upon ascertaining the number of plots that are not productively utilised, the state must consult with the beneficiaries to identify the issues that hinders land reform beneficiaries to utilise the land productively. Furthermore, the state must gather information of the required support the land reform beneficiaries need to use their land productively. Once all the necessary data is collected the state can draw a budget against the needed resources and also source help from training institutions that can partner with the relevant departments to offer skills training programmes to land reform beneficiaries. Including partnering with experienced farmers to transfer knowledge and provide mentoring sessions to emergent farmers. Whilst the state makes available experts of the trade to inspect and monitor production of the developmental project.

Granting access to land is one step of redressing historical injustices, however, failure to provide comprehensive support services to land reform beneficiaries it does not complete the process of redressal. Land is central to the livelihoods of people and economy, therefore, to complete the process of redressing historical injustices through land reform programme.

The state must invest in developmental projects by ensuring that land reform beneficiaries are utilising their land productively. However, this will have to begin with provision of necessary support to land reform beneficiaries. Once land reform beneficiaries are able to use their land gainfully, they would be able to generate income and fend their families and consequently contribute to the economy of the country. However, not only will poverty be alleviated but another objective of the Constitution of providing people with basic human rights would be achieved. Land reform beneficiaries would have been afforded an opportunity to gain access to basic human rights through the assistance of using their land productively. Therefore, in order to ensure that dignity of Black people is restored, the state must assist Black people to use their land productively to improve both their social and economic status.

It is of no use to avail land to poor people to take possession only and fail to use it to improve their lives. Moreover, assisting beneficiaries to use their land productively is not only for their welfare reasons but it also contributes to development that makes a positive impact on the economy of the country. When the state invests in developmental projects it is indirectly investing in growth of the country's economy. Therefore, the need of developmental projects on redistributed land is both beneficial to the land reform beneficiaries and the state. Furthermore, it has a potential of reducing unemployment rate, state dependency and increases stability on the economy.

However, it must be appreciated that state has limited resources and may at some not be able to meet all the needs of land reform beneficiaries. Hence the study recommends that financial institutions that are aimed at assisting land reform beneficiaries with funds to use their land productively should work with the state by revising their borrowing requirements to suit all land reform beneficiaries including those who do not have ownership rights over the land they possess. Furthermore, the state could provide guarantee over loans taken by land reform beneficiaries who lack ownership rights over the land they possess because of tenure type or lease agreement in terms of state land lease policy. Moreover, there are international organisations and institutions that are aimed at assisting developing country with funds to develop and improve their economic growth. The state can partner with the international institutions to loan money for purposes of liquidating the national Land bank. Once the Land bank has funds, such funds could be used for post-settlement support services by adopting a systematic procedure. A procedure that would make requirements

of obtaining loan reasonable to the poor land reform beneficiaries. That is the state would furnish security on behalf of the land reform beneficiaries by a form of bank guarantees, whilst the land reform beneficiary will have a duty to train and mentor other emergent farmers or land reform beneficiaries who are in the same trade. The land reform beneficiary will still be responsible for loan repayment, however, should he fail the state will cover the costs. This may sound like too much of risk and liability to the state, but it is necessary to ensure that state makes proper follow up and support on land reform beneficiaries to ensure that they use their land productively and that such developmental projects do not fail because of lack of support.

It is equally of paramount importance that other independent financial institutions aimed at assisting land reform beneficiaries to utilise their land productively, revisit their requirement criteria and assess it to serve the intended market, which is the land reform beneficiaries (beginners or emergent farmers). Essentially the institutions target market is people who pose a lot of risks, mostly inexperienced and lack security. Therefore, the focus of the institutions should be in creating better access to funds without maximising risks of non-payment. The institutions can employ a systematic strategy of empowering emergent farmers with knowledge, by making it a requirement for experienced farmers who have received funding from the institution to mentor and monitor the emergent farmer as a process of transferring skills and securing good production. Furthermore, the institution can focus on sharing profit from the farm production than requiring security. To ensure generation of income from the production, the institution can foster access to agricultural markets and collaboration of experienced farmers with emergent farmers in the agricultural market.

The state must encourage transfer of skills training programmes to land reform beneficiaries, including loaning of farming equipment's as part of post-settlement support services. There is no point in encouraging productive utilisation of land without showing actual support to those who have started utilising their land productively. Most of the crops produced by unskilled farmers fails to make it to the agricultural trade market, due to its low quality. This is as a result to lack of skills and knowledge of growing and rehabilitating the soil. Therefore, it is necessary for the state to promote and provide skills training programme, mentorship and monitoring programmes to emergent farmers. To assist emergent farmers to grow quality crops and increase production.

Furthermore, the state can encourage collaboration of experienced farmers with emergent farmers to provide gateway to the international agricultural market. This will consequently ensure that emergent farmers make profits from their production, and as result generate income. The collaboration of experienced farmers and emergent farmers can also create a platform for emergent farmers to receive mentorship and transfer of skills from the experienced farmers.

Moreover, the state can also borrow lessons from other countries by implementing different farming methods such as the use of technological farming. Cross breeding of seeds and investing more on land use to ensure stability of the economy. But not excluding improving the lives of land reform beneficiaries through developmental activities.

On the aspect of lack of practical link between the land reform legislation and poverty alleviation strategies. The state should practice legislating policies and laws after holding a public consultation with the relevant stakeholders and other interested parties. A public consultation must be held with the land reform beneficiaries. Furthermore, the Legislatures have to consider the comments of the beneficiaries when drafting the policies and also reflect on the practical reality and the necessary aspect that have to be addressed. Moreover, the state must ensure proper compliance and implementation of legislations. For purposes of achieving legislator's intentions and the expectations of the beneficiaries, but not excluding the interest of other stakeholders, such as investors.

Furthermore, the state should consider enforcing practical link between policies aimed at redistributing land and alleviating poverty amongst historical disadvantaged people. Land has a deeper meaning to black people, previously Black people used to till the ground for food, therefore restoration of land to land reform beneficiaries means restoration of their livelihood, their way of living. Hence the need to ensure that such land redistribution has have a meaningful impact in the lives of land reform beneficiaries by improving their social and economic status and consequently alleviate poverty.

Lastly, perhaps what the South African land reform requires at this stage in order to ensure speedy delivery of land to land reform beneficiaries, is for the state to transfer ownership rights from the white minority to the historically disadvantaged blacks without taking physical possession of the land. This will consequently ensure that the white minority continue doing business on the land as they previously did but pay rental fee to the land reform beneficiary who has been favoured with ownership rights. This will not only secure food security, but it

will ensure that land reform beneficiaries have ownership rights and make a gainful income from the land. This will also ensure that asset value of the land is not destroyed. Moreover, it can encourage investors' confidence in farming activities, since the normal business of the farm would not be disturbed, however the ownership rights would have changed. Although one may ask what is to happen to debts held against the land that would be transferred to land reform beneficiaries. A practical solution would be to let the farmers (white minority) take responsibility as the surety. However, this could also create more financial burden to the white minority, unless if the financial institutions could grant the farmers (white minority) an extended or longer period for repayment of debt with a lesser instalment amount, so that farmers could cope with paying farm rent to land reform beneficiaries.

Therefore, the study recommends a systematic comprehensive post-settlement support services, that will not exhaust the state resources but will put a systematic process that will allow land reform beneficiaries to benefit from experienced farmers and equally capacitated other emergent farmers. The state could set aside funds to make available farming implements to land reform beneficiaries who would gain access to the farming implements to use and return them after use. State should further make available seeds and other necessary resources available to land reform beneficiaries, who would in turn contribute a certain percentage of their production as seeds that will be made available for other needing land reform beneficiaries. Whilst experienced farmers provide skills and knowledge transfer programmes to emergent farmers. In this fashion the state would not be required to spend on every aspect of support needed by land reform beneficiaries but would be working in partnership with the people to ensure that land is used productively and consequently contribute to the economy of the country. However, to ensure that land reform beneficiaries farm gainfully, the state must invest in buying local goods and create platform in the agricultural market for land reform beneficiaries to sell their products even on international markets. This will not only strengthen food security within the country, but it will also positively impact the economy of the country on international level.

The issue of land use is very complex in nature, but it is the study's submission that the above suggestions can aid where possible and assist to improve productive use of redistributed land. The suggestions are however not conclusive, but could be put to test in a quest to improve the livelihood of land reform beneficiaries. Land is an important factor of all people's livelihood, hence the need to assist land reform beneficiaries to utilise land

productively is closely related to the peoples need for survival. Using land productively can assist the beneficiaries to combat hunger and starvation and contribute to the economy of the country.

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