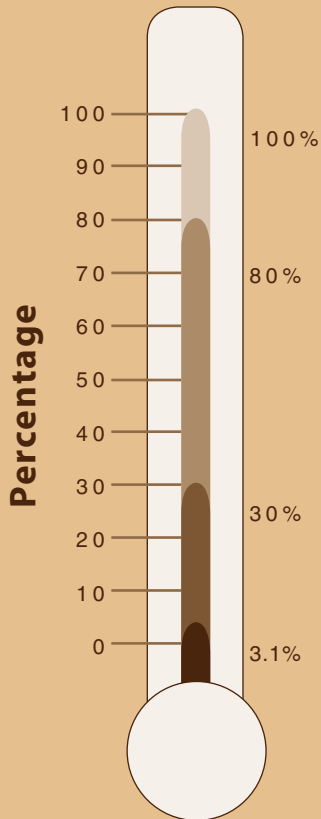




LAND BAROMETER



Land delivery

- Total land area
- Total white-owned agricultural land
- Total targeted agricultural land to be delivered
- Delivered to date

Source: Ministry of Agriculture and Land Affairs, July 2005.

Welcome to the fourth issue of *Umhlaba Wethu*, the update on land and agrarian reform in South Africa from the Programme for Land and Agrarian Studies at the University of the Western Cape.

With the recent National Land Summit, South Africa's Land Reform Programme came under public debate (see page 2). The slow progress of land reform was highlighted by both government and civil society and debate primarily focused on whether this is due to the 'willing seller, willing buyer' approach. The resolution to abandon this approach was welcomed by many of the landless, but what it means in terms of government's strategy is still unclear.

Minister Thoko Didiza accepted that it is time for a review of land reform and that the process would happen with full participation by civil society and business – what the Ministry for Agriculture

and Land Affairs refers to as 'a partnership to fast-track land reform'. The Minister recently released a parliamentary report in which she stated the strategy of the Department of Land Affairs (DLA) on the way forward. The document outlines amongst others a review of the 'willing seller, willing buyer' approach which has been the principal method of redistributing land since 1994.

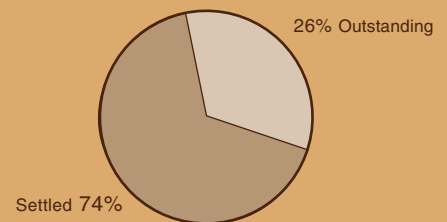
On page 3 we report on the success of the longstanding advocacy campaign to get the KwaZulu-Natal Cemeteries Act amended.

This edition also reflects on the challenges facing civil society in building a meaningful response to the Summit (page 4). Finally, we report on research by Nkuzi Development Association and Social Surveys that indicates that farm evictions continue unabated (page 5).

Restitution summary

- By the deadline of December 1998, a total of 63 455 claims had been lodged nationally. As these claims were investigated and some were split into multiple claims, the total number of valid claims has since risen to 79 696 as at March 2005.
- From 1995 to March 2005 74% of claims were settled of which only 11% were located in rural areas.
- Since 1995 the restitution process has restored approximately 916 470ha of land.

Settled and outstanding claims since 1995 as at 31 March 2005

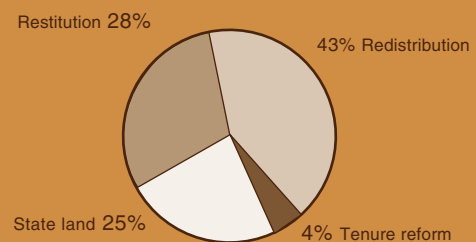


Source: Commission on the Restitution of Land Rights, 2005.

Land reform summary

- By July 2005, a total of 3.1 million hectares had been transferred through the various land reform programmes.
- A total of 1 347 943ha (43%) of this land was transferred through the redistribution programme, followed by restitution and state land.
- According to the Ministry of Agriculture and Land Affairs, annual delivery of land will have to rise to 2.2 million hectares for the next 10 years to reach the target of 30% by 2015. This is far higher than what has been delivered in any one year to date.

Percentage of land delivered by programme



Source: Ministry of Agriculture and Land Affairs, July 2005.339

In this edition:

- Land barometer | Land reform statistics | National Land Summit
- Amending the KZN Cemeteries and Crematoria Act | Organising the landless | Farm evictions
- Recent court judgments | Policy under review | Websites | Research update | Upcoming events



The National Land Summit: A turning point?

From 27–31 July 2005, the Ministry of Agriculture and Land Affairs hosted a National Land Summit, attended by about 1 500 delegates, under the official slogan 'a partnership to fast-track land reform: a new trajectory, forward to 2014'.

In their opening speeches, both the Deputy President, Phumzile Mlambo-Ngcuka, and Minister of Agriculture and Land Affairs Thoko Didiza set a new tone by declaring that the 'willing seller, willing buyer' principle would need to be reviewed.

Restitution

A substantial number of delegates at the Land Summit were land claimants impatient with the pace of restitution or disillusioned with its impact on their livelihoods. The Summit called for:

- speeding up the process of settling rural claims and restoring land to claimants
- expropriating land under claim where negotiations with current landowners fail
- re-opening the lodgment process for eligible restitution claimants who missed the 1998 deadline
- improving development planning for claimants who have returned to their land
- a holistic approach to restitution of mineral rights and rights to water and forests, as well as land
- a Restitution Truth and Reconciliation Commission to hear people's experiences of dispossession and to bring healing and closure.

Redistribution

Delegates complained that market-based land reform was not working

because land purchase grants were too small, landowners have been able to inflate prices and there is no compulsion on landowners to sell. The Summit called for:

- a proactive role for the state to acquire land through negotiated purchase and, where necessary, expropriation
- increased resources to appoint new staff and enable state agencies to take on this new role
- regulation of land markets through a moratorium on foreign land ownership, a ceiling on the size of land holdings, a right of first refusal for the state on all sales of agricultural land, and the imposition of a land tax to curb speculation and bring under-utilised land onto the market
- proactive subdivision of farms to make available parcels of land appropriate to the needs of smallholders
- targeting the poor, specifically women, farm workers and the youth
- payment of 'just and equitable' compensation for land, in line with the Constitution, rather than market prices
- a social obligations clause in the Constitution, to legally protect landless people who occupy certain categories of land
- local government to identify land needs and land to meet these needs, and to stop renting municipal commonage to commercial farmers
- state support for small-scale farming by the poor and a moratorium on

'elitist' developments such as golf courses and game farms.

Tenure reform

The insecure rights of those living on land owned by others continue to be a major grievance despite the existence of tenure legislation. The Summit called for:

- a new law to secure farm dwellers' tenure rights, independent of their employment status, and to create a class of 'non-evictable occupiers'
- a moratorium on evictions of farm dwellers until a new law and effective systems for its enforcement are in place
- provision of basic services to farm dwellers, including water and sanitation
- land for farm dwellers so that they can become farmers in their own right.

Despite the new directions for land reform envisaged at the Summit, the process for the development of new policy is far from clear. The 'post-Summit' process to which most parties committed themselves has not yet materialised. Despite the dramatic claims of the Summit to be charting out a new trajectory for 'fast-track' land reform, it is not clear which of the proposals will be taken forward, nor when, how, and whether there will be further public participation in policy development. What the Summit did signal, however, is a new phase of debate and struggle for far-reaching land reform. Now the question is not whether or not 'willing seller, willing buyer' is an obstacle, but what will take its place.

Ruth Hall, PLAAS (rhall@uwc.ac.za)

What is happening with land reform statistics?

	Ministry (Oct 2004)	Ministry (July 2005)	Change %
Redistribution	1 732 111	1 347 943	-22.18
Tenure reform	145 258	100 175	-31.04
State land	770 000	772 626	0.34
Restitution	810 292	916 470	13.10
TOTAL	3 457 661	3 137 214	-9.27

Sources: Ministry of Agriculture and Land Affairs, October 2004; July 2005.

The latest statistics on land reform delivery come from the publication issued by the Departments of Land Affairs and Agriculture for the National Land Summit in July 2005. These figures show that approximately 3.1 million hectares of land have been delivered under all aspects of the land reform programme (presumably up to June 2005), equivalent to 3% of the total of white-owned commercial farm land in 1994.

These figures are, however, substantially lower than those presented by the Minister of Agriculture and Land Affairs before the public hearings on the pace of land reform convened by the Portfolio Committee on Agriculture and Land Affairs of the National Assembly on 18 October 2004. There, the Minister reported that approximately 3.5 million hectares had been transferred (as of 31 September 2004). This drop, of over 9%, is largely accounted for by a decrease of 384 168ha in the figure for redistribution. The figure for tenure reform has also declined, while the only significant increase is in the figure for restitution.

It would appear that the need for accurate and reliable data on the performance of the land reform programme is as pressing as ever. *Edward Lahiff, PLAAS (elahiff@uwc.ac.za)*

Civil society advocacy for an amendment to the KwaZulu-Natal Cemeteries and Crematoria Act

The denial of burial rights on farms in KwaZulu-Natal (KZN) has long been a concern to civil society and community-based organisations in this province. The KwaZulu-Natal Land Legal Cluster Project has attended to 22 cases of denial of burial rights for farm dwellers since the project's inception in 2001. Strategies considered by the Cluster to address this untenable situation included challenging the legality of provincial law in court, the argument being the need to align this with the national framework legislation, as well as amending the Act through the legislative process. The Cluster was advised that none of these options was likely to be successful.

In mid-2003 the Association for Rural Advancement (AFRA), together with other member organisations of the Cluster, approached the KZN

Legislature's Portfolio Committee on Traditional and Local Government Affairs to motivate for an amendment to the KwaZulu-Natal Cemeteries and Crematoria Act 12 of 1996. Landowners and their lawyers cited provisions in this Act (namely that all burials had to be in designated cemeteries) to deny farm dwellers the right to bury their deceased on commercial farms in the province.

Submissions were made by farm dweller structures and civil society organisations to the KZN Department of Traditional and Local Government Affairs. This initiated a process of extensive lobbying and liaison with members of the portfolio committee to motivate for an urgent consideration of the submitted Amendment Bill by the House. Following the presentation of a formal submission to a full sitting of

the Committee, the members of the portfolio committee agreed to conduct a series of public hearings on the issue. This made possible the participation of farm dwellers in the process. Their speakers affirmed the impact of the current Act on the denial of their cultural and religious rights to bury on farms. This persuaded the committee on the matter.

The Amendment Bill was considered by the legislature in late August 2005 and, after some drama and caucusing by members, was passed unanimously as the KwaZulu-Natal Cemeteries and Crematoria Amendment Act of 2005. This process has confirmed that focused, strategic and committed lobbying by civil society structures can positively impact on laws which deny the rights of citizens. *Domini Lewis, AFRA (domini@afra.co.za)*

ALARM: Challenges in organising the landless and building a land sector network

The Alliance for Land and Agrarian Reform Movements (ALARM) formed prior to the recent National Land Summit consists of NGOs, landless groups and the South African Communist Party (SACP). ALARM embarked on discussions to identify substantive policy proposals as well as demands for a more consultative process of policy making following the Summit.

While the Land Summit provided an opportunity for many landless communities and land sector organisations to work together, this experience underlined a few major challenges. These are:

- the current lack of radical thinking around alternatives in agrarian reform
- the continued absence of a coherent political voice and the weak state of self-organisation among the landless
- limited mobilisation, understanding and joint thinking through of issues, and the virtual absence of support for co-operatives which are an essential part of any people-based agrarian reform alternative.

At the Summit, the key achievement of the ALARM network was the consolidation of a common platform of demands from disparate communities and land sector organisations. ALARM prioritised key demands, including scrapping the 'willing seller, willing buyer' principle, re-opening the restitution claims process, increased use of expropriation, an immediate moratorium on evictions, land and support for small farmers for food production, and a consultative, democratic and representative post-Summit process. ALARM also agreed to focus on:

- taking forward Summit resolutions with government through local campaigns
- supporting each other in engaging agricultural capital
- building and sharing a research agenda
- supporting the self-organisation of the landless
- building alliances with trade unions, women's organisations, churches, homeless people and farmers' associations
- providing a forum for collaborative radical thinking around alternatives in agrarian reform.

These demands resonated throughout the Summit and were endorsed by the majority of Summit delegates. Thus, the initial strategic impact of the ALARM network at the Summit was to consolidate a majority voice in favour of a pro-poor land and agrarian reform. This led to the progressive content of many of the summit resolutions.

Following the Summit, the ALARM network facilitated reporting back to communities, continued organisation and co-ordination of networks and campaigns, as well as engagement with DLA in the provinces and its head office on the implementation of the resolutions. A decision was also made to convene a National Landless People's Summit on Land and Agrarian Reform in the first quarter of 2006.

Provincial report-backs to land sector organisations and landless communities have been taking place in the Eastern Cape, Gauteng, Limpopo, Mpumalanga and the Western Cape. In addition, organisations such as the Border Rural Committee have engaged in mobilisation and advocacy around the re-opening of the date for

the submission of restitution claims by victims of betterment planning in the Eastern Cape. In the Western Cape, the ALARM demands were endorsed by the new Congress of South African Trade Unions (Cosatu)-led Coalition against Unemployment and Poverty, and Western Cape landless communities and land sector organisations have been meeting regularly to take this forward and have formed an interim ALARM Steering Committee to link up with the Cosatu-led Coalition, engage the Provincial Land Reform Office, start a campaign for a moratorium on farm evictions, support local land struggles, and take forward the framework for a pro-poor land and agrarian reform programme.

The most pressing challenge thus far is how to access human, financial, intellectual and other resources in support of the self-organisation of the landless. Some comrades are arguing about the need for the state to provide the financial resources in promoting democracy without any strings attached. Some are sceptical of this and are concerned that the state will revert to its tendency to pull strings. Others are asking critical questions: What resources? For what? Controlled by whom?

The ALARM Steering Committee will convene a National Consultative Workshop at the end of November 2005 in order to discuss progress since the Land Summit, and the aims, objectives, content and preparation for the National People's Summit mentioned above.

All these are the initial first steps in defining a common programme to achieve the goal of making another countryside possible. *Mazibuko K Jara, Interim Co-ordinator of ALARM (mazibuko@union.org.za)*

Evictions from farms

Nkuzi Development and Social Surveys presented the key findings of their National Evictions Survey to Parliament on 30 August 2005, thus making them public for the first time. This attracted media attention and caused a stir in the land and agricultural sector as the full extent of evictions from farms was revealed.

Since September 2004 Social Surveys field teams have conducted scoping exercises in 300 settlements, and surveys in 75 settlements. In all, more than 8 000 household interviews have been carried out. Sufficient information on people evicted from farms was gathered to calculate statistically accurate national figures. In-depth interviews revealed more detail of the nature of evictions and the impact on affected families.

The survey found that almost 4.2 million people had moved off farms in the 21 years from 1984 to 2004, of which 460 000 found accommodation on other farms. Thus a total of over 3.7 million people permanently moved off farms. Of those who left farms, just under 1.7 million were evicted: forced against their will to leave their land and homes. Of the evictees, 49% were children at the time of the eviction. It was also found that the pace of evictions has not slowed since 1994 and that the new tenure legislation implemented in 1996 and 1997 seems to have had a negligible impact. Between 1994 and the end of 2004, a shocking 2 351 086 people were displaced from farms and 942 303 people were evicted from farms.

The trends in eviction numbers, along with information gathered from evictees and farmers, indicates that the cause of many evictions is economic pressure, sometimes exacerbated by droughts, trade liberalisation, and new tenure and labour laws. Economic factors may be behind evictions but the manner in which they are carried out often involved brutality and racial overtones reflective of the unequal relations between farm dwellers and land owners. Only 1% of evictions involved a legal process. The full report of the survey was released on 26 October 2005 during a national conference in Johannesburg to discuss the situation of farm dwellers. Clearly there is an evictions crisis that cannot be allowed to continue. Urgent action is needed. *Marc Wegerif, Nkuzi (marc@nkuzi.org.za)*

Recent court judgments

- **Du Toit vs Minister of Transport (Constitutional Court, CCT2004/22 September 2005).** Farmer Paul du Toit's appeal against the R6 000 compensation offered to him by the Road Boards for the removal of 80 000 cubic meters of gravel from his land for the upgrading of a national road close to his Western Cape farm failed in the Constitutional Court. Du Toit believed that he should have been compensated for both the right to use the land and the removal of the gravel. The court was divided, however, on the precise sections of the Roads Act that were applicable, as well as on the exact relationship between the Act and Section 25(3) of the Constitution which deals with compensation for expropriation. Judge Mokgoro writing for the majority [Madala, Moseneke, Sachs, Skweyiya and Yacoob concurring] stated that, while the constitutional protection of private property is an important right, the ability to expropriate property was a crucial constitutional power of the state that could be exerted to overcome the undue obstructions of private ownership. She further stated that the compensation offered reflected an equitable balance between the private and the public interest. In a separate judgment, Judge Langa [with the concurrence of Ngcobo, O'Regan and van der Westhuizen], held that what was expropriated was both Mr Du Toit's gravel and the right to use his land. He stated that the suggestion of Judge Mokgoro that the Act can be reconciled with Section 25(3) by first undertaking the Act's approach to the calculation of compensation and then considering whether that calculation is consistent with the test set by the Constitution, is not permitted by our Constitution. This judgment lays an important foundation that should inform expropriation for land reform purposes.
- **Hlaneki Tribe (Land Claims Court, LCC43/02/ 9 September 2005), order handed down by Judge J Moloto.** The Hlaneki Tribe, under Chief Chabane Jackson Hlaneki, appealed the decision of the Limpopo Regional Land Claims Commissioner to dismiss their restitution claim on the basis that they had not been dispossessed because they were still in physical occupation of the land in question and that the Chief, in lodging the claim, had not adequately demonstrated that he represented the community in question. The court held that physical occupation was not a bar to a land claim, as the tribe was specifically claiming that it had been deprived of its right of ownership by the government after 1913. The court also held that a legitimate chief should be considered as a rightful representative of their tribe. The court ordered that the claim of the Hlaneki Tribe now be gazetted and properly investigated by the Regional Land Claims Commissioner.

Land reform policy under review

• Municipal Commonage Review

A Municipal Commonage Review report has been submitted to the provincial directors for their consideration. Some of the key points in this report indicate that greater attention should be given to secure the rights of the individual commonage user (that is, how many head of stock should be allowed, what an individual must pay per stock unit, etc.). It further tasks the DLA with providing municipal planning grants to facilitate the development of sustainable commonage projects. The review of the Commonage Manual is also underway.

• Farm Equity Schemes (FES)

According to the Department of Land Affairs, a FES review was completed at the beginning of August 2005. The review makes recommendations on a number of issues, for example, liquidated projects, the lack of empowerment and tenure security, and insufficient grant amounts. A draft report is to be submitted to the Minister by the end of November.

Useful websites

- The Wits Law School website: www.law.wits.ac.za/ gives access to land-related judgments of the Constitutional Court, the Supreme Court of Appeal, the Eastern Cape High Court and the Land Claims Court.
- The Namibian Institute for Democracy and the Konrad Adenauer Stiftung have published a downloadable copy of Justine Hunter's 2004 report 'Who should own the land?' Analysis and views on land reform and the land question in Namibia and southern Africa. www.nid.org.na/pdf/land_reform_namibia.pdf
- The Centre for the Study of Co-operatives (<http://coop-studies.usask.ca/>) is an interdisciplinary teaching and research institution at the University of Saskatchewan in Canada. It provides contributions from a number of departments and units – Agricultural Economics, History, Management and Marketing, Political Studies, and Sociology, among others.

Sources

Business Day, 9 August 2005 | Civil society organisations | Commission on Restitution of Land Rights. 2005. *Annual report for the year ended 31 March 2005*. | Ministry of Agriculture and Land Affairs. 2005. *Delivery of land and agrarian reform, July 2005*. | The Wits Law School www.law.wits.ac.za/

Research updates

- Agrarian reform, social movements and poverty eradication: A focus on the Western, Northern and Eastern Cape. The objective of this research is to understand how agriculture can contribute towards poverty eradication and to understand social movements and their role in the struggle against poverty. The aim of the study is to contribute to an alternative discourse on agrarian reform. Ricardo Jacobs, Surplus People Project (ricardo@spp.org.za)
- HIV/Aids and agrarian reform: Strategy development. The objective of the study is to understand the current and future impact of HIV/Aids on agrarian reform. The study will be conducted in the West Coast, Namaqualand and Hantam Karoo municipal areas. This will result in the development of a HIV/Aids strategy for the Surplus People Project and landless formations. Ricardo Jacobs, Surplus People Project (ricardo@spp.org.za)
- The Human Sciences Research Council is collaborating with Praxis Development Facilitation and PLAAS on a study of land reform, livelihoods and farm employment. The main objective of the study is to understand the present economic impact of land reform in the context of a changing rural economy. The study is based on intensive exploration in four municipalities in the Western and Eastern Cape, KwaZulu-Natal and Limpopo. Michael Aliber, HSRC (aliber@sn.apc.org)

Upcoming events

- **International Conference on Land, Poverty, Social Justice and Development**, Institute of Social Studies, The Hague, The Netherlands, 12–14 January 2006.
- **XVI World Congress of the International Sociological Association**, Durban – July 2006. Submit an abstract for the next International Sociological Association Conference in 2005. See www.ucm.es/info/isa for more information.

Please forward suggestions and comments on this publication to:

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