Land reform in South Africa: A contemporary analysis

J.C. BESTER

21863264

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SUPERVISOR: DR. WILLIE VAN WYK

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DECLARATION

I, Jan Christiaan Bester, hereby declare that the mini-dissertation for the degree Master of Development and Management (Governance and Political Transformation) of the North-West University has not previously been submitted by me for any degree at this or any other university. This is my own work in design and execution and all the materials contained in this research have been duly acknowledged.

……………………..

Signed: J.C. Bester

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ABSTRACT

Land reform is a historical issue in South Africa dating back to 1652. Land issues are at the core of political struggles and dynamism in many countries, more specifically those with a colonial history (Duvenhage, 1998:4). Political power is concerned with the capacity to mobilize and organize support within the society and to consolidate that power. Such power allows the taking of binding decisions, for example on the allocation of land to disadvantaged groups.

The Natives Land Act No. 27 of 1913 in South Africa prohibited all natives from owning or renting any land in proclaimed white areas. Government instead provided different areas for exclusive occupation of non-whites. Only non-whites were allowed to own land in these areas (De Beer, 2001:1). After the election of 1994, the African National Congress came into power. One election promise was that of land reform. In 1994 an era of transformation and change in South Africa was ushered in (Van Wyk, 2010:1). The ANC reaffirmed the principles to build a common citizenship and equal rights for all South Africans (ANC, 2009:1). The new South African government set a target to transfer 30% of productive farmland from whites to Africans and previously disadvantaged groups by 2014 (Khuzwayo, 2008:1).

Various methods were utilized to transfer land according to the Green Paper on Rural Development and Land Reform, from here on the Green Paper, such as:

- **Land Tenure:** This method makes sure that communities are secure on the land where they live and that they cannot be unfairly or illegal moved. It also states the conditions under which land can be occupied (SA, 2010:19).
- **Land Restitution:** This method is giving back land, where possible, to those people who were removed by force from their land (to settle historical land-related injustices is a long administrative process and time-consuming). The Land Claims Commission helps people in this regard. Government compensated (in monetary terms) individuals who

were forcefully removed in the past. This was unsuccessful and the policy shifted to land redistribution (SA, 2010:20).

- **Land Redistribution:** This is the programme of acquisition of land in order to provide for the poor residential and agricultural land (dividing rural and urban land equally in the country) in order to improve their livelihoods. Land was initially bought from owners (willing seller) by the government (willing buyer) and redistributed to maintain confidence in the land market (SA, 2010:20). Taking into consideration that these methods of land transfer have worked in different countries in the world, it seems to be a problem in South Africa.

One of the reasons is that some buyers do not actually see the land they are buying beforehand and they are not involved in decisions made at the start of the buying negotiations. From the year 2000 onward, the South African Government has reviewed and changed the redistribution and tenure process to a more decentralized style. This is intended to have in place integrated development plans in 47 districts, which will bring about more community participation and more land redistribution. One of the concerns is the use of third parties, accredited by the state, who held accountability to the government. Due to this, local and holding elites dominated the system in many areas (Hall, 2008:8).

In 2006, government announced that it would start expropriating the land needed. According to the country's chief land claims commissioner there will, unlike in Zimbabwe, be compensation to those whose land has been expropriated. It must, however, be a just amount and not inflated sums. Despite these moves as discussed in the previous paragraph, the improved practices and government promises are not evident.

The Department of Rural Development and Land Reform admits that its present land reform plan is at stalemate, and that it is now looking at a four-tier system as mentioned in the Green Paper:

- Firstly, state and public land on leasehold.
- Secondly, private owned land on freehold with limited extent.

- Thirdly, foreign ownership on freehold but with precarious tenure.
- Fourthly, communally owned land on communal tenure (SA, 2011:1).

This scenario regarding land reform in South Africa is the ideal field of study on which research can be done. Land reform thus forms the foundation of this study.

OPSOMMING

Grondhervorming is 'n historiese probleem in Suid-Afrika en dateer terug tot 1652. Grondkwessies is onderliggend aan die politieke stryd en die dinamika in baie lande, spesifiek dié met 'n koloniale geskiedenis (Duvenhage, 1998:4). Politieke mag is gemoeid met die vermoë om te mobiliseer en te organiseer vir ondersteuning binne die gemeenskap en om die mag te konsolideer. So 'n mag laat toe dat bindende besluite geneem kan word, byvoorbeeld oor die toekenning van grond aan benadeelde groepe.

Die Naturellegrondwet no 27 van 1913 in Suid-Afrika het naturelle verbied om grond te besit of om grond in geproklameerde wit gebiede te huur. Die regering skep egter verskillende gebiede vir die uitsluitlike besetting deur swart mense. Slegs swart mense is toegelaat om grond in dié gebiede te besit (De Beer, 2001:1). Na die verkiesing van 1994 het die African National Congress aan bewind gekom en was een van die verkiesingsbeloftes dié van grondhervorming.

In 1994 het 'n era van transformasie en verandering in Suid-Afrika begin (Van Wyk, 2010:1). Die ANC het bevestig dat die beginsels van 'n gemeenskaplike burgerskap en gelyke regte vir alle Suid-Afrikaners opgebou sal word (ANC, 2009:1). Die nuwe Suid-Afrikaanse regering het 'n teiken van 30% gestel om, produktiewe landbougrond van wittes aan swartes en voorheen benadeelde groepe in 2014, te oorhandig (Khuzwayo, 2008:1).

Verskeie metodes, na aanleiding van die Groenskrif oor Landelike Ontwikkeling en Grond Hervorming, van hieraf die Groenskrif, is gebruik om landelike gebiede oor te dra soos:

- **Grondbesit**: Die metode maak seker dat gemeenskappe veilig op die grond waar hulle woon kan bly en hulle nie onbillik of onwettig verskuif kan word nie. Dit verwys ook na die omstandighede waaronder die grond beset kan word (SA, 2010:19).
- **Grondrestitusie**: Die metode is om grond terug te gee aan die mense wat met geweld van hul grond verwyder is. Dit is bedoel om die onreg van die verlede te herstel (om dus historiese grond-verwante onregte

reg te stel is 'n lang administratiewe proses en neem baie tyd). Die Grondeisekommissie help mense in hierdie verband. Die regering vergoed (monetêr) individue wat deur dwang in die verlede verwyder is. Dit was dusver nie suksesvol nie, en die beleid het geskuif na herverdeling van grond (SA, 2010:20).

- **Herverdeling van grond**: Is die program om grond te verkry om voorsiening te maak vir die armes se residensiële en produktiewe doeleindes en om hul lewensbestaan te verbeter. Grond is oorspronklik gekoop van eienaars (gewillige verkoper) deur die regering (gewillige koper) en herverdeel om vertroue in die grondmark te behou (SA, 2010:20). As mens in aanmerking neem dat hierdie metodes van grondoordrag in verskillende lande van die wêreld gewerk het, is dit wel so dat dit in Suid-Afrika moeilik was om te implementeer.

Hierdie metodes vir die oordrag van grond het in verskillende land in die wêreld gewerk. In Suid-Afrika blyk dit egter moeilik te wees om geïmplementeer te word. Een van die redes is dat sommige kopers die grond nie vooraf sien nie en dat hulle dus nie van die begin af betrokke is in die besluite wat geneem is rakende grondoordrag nie. Vanaf die jaar 2000, is die herverdeling en eiendomsregproses verander na 'n meer gedesentraliseerde wyse. Dit bestaan uit geïntegreerde ontwikkelingsplanne in 47 distrikte, wat meer gemeenskapsdeelname en meer grondherverdeling teweeggebring het.

In 2006 het die regering aangekondig dat dit nou gaan begin om op grond beslag te lê. Volgens die landelike hoofgrondeisekommissaris sal daar, in teenstelling met Zimbabwe, vergoeding aan diegene wie se grond onteien word, gegee word. Dit moet 'n regverdige en nie 'n opgeblase bedrag wees nie. Ten spyte van hierdie voorneme is die verbeterde praktyke en die regering se beloftes nog nie sigbaar nie.

Die Departement van Landelike Ontwikkeling en Grondhervorming erken daarom dat sy huidige grondhervormingsplan 'n dooiepunt bereik het en dat dit nou 'n nuwe vier-vlakstelsel geïmplementeer gaan word wat op die volgende neerkom soos gemeld in die Groenskrif:

- Eerstens, staats- en openbare grond word op huurpag uitgegee.

- Tweedens, private besit van grond sal beperk word.
- Derdens, buitelandse eienaarskap op grond word toegelaat, maar met 'n prekêre verblyfreg.
- Vierdens, gemeenskaplike besit van grond met gemeenskaplike verblyfreg moet toegelaat word (SA, 2010:1).

Hierdie scenario ten opsigte van Grondhervorming is die ideale studieveld om oor navorsing te doen. Grondhervorming vorm dan ook die basis van hierdie studie.

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CHAPTER 1

INTRODUCTION

1.1 **INTRODUCTION**

The Natives Land Act No. 27 of 1913 prohibited all black people in South Africa from owning or renting any land in proclaimed white areas. Government instead provided different areas for exclusive occupation by black people. Only black people were allowed to own land in these areas (De Beer, 2001:1).

After the election of 1994, the African National Congress (ANC) came into power. One election promise to the people of South Africa was that of land reform. The new South African government set a target of 30% of *productive* farmland to be redistributed from white to black people and previously disadvantaged groups by the year 2014 (Khuzwayo, 2008:1). An era of transformation and change in South Africa was thus ushered in with no discrimination against race, sex, people with disabilities and religion (Van Wyk, 2010:1). The ANC affirmed in its manifesto the principles of building a common citizenship and equal rights (including land reform) for all South Africans (ANC, 2009:1).

The Freedom Charter (1955) according to the Green Paper (SA, 2010:13-14), states the following:

- "All the land shall be shared among those who work it.
- Restrictions of land ownership on a racial basis shall be ended, and all the land re-divided among those who work it to banish famine and hunger.
- The state shall help the peasants with implements, seed, tractors and dams to save the soil and assist tillers.
- Freedom of movement shall be guaranteed to all who work on the land and all shall have the right to occupy land wherever they choose.
- Forced labour on farms shall be abolished".

Various methods were utilised by government to transfer land according to the Green Paper**,** such as:

Land Tenure: This method is intended to make sure that communities are secure on the land where they live and they cannot be unfairly or illegally moved (SA, 2010:19).

Land Restitution: The Restitution of Land took place within the legal framework of the Restitution of Land Rights Act no 22 of 1994. The act made provision for the monetary compensation of people who had lost their land after 13 June 1913 because of racially discriminating land laws, without receiving just compensation. The Land Claims Commission manages the restitution process and the Land Claims Court was created to deal with restitution matters (De Beer, 2001:51). Government monetarily compensated individuals who had been forcefully removed in the past. This method was, however, not as successful as predicted and the land policy shifted to land redistribution (SA, 2010:20).

Land Redistribution: This is the programme of acquisition of land in order to provide land for the poor for residential purposes (dividing rural and urban land in the process) in order to improve their livelihoods. Land was initially bought from owners (willing seller) by the government (willing buyer) and redistributed to the mainly black people who could prove that the land had belonged to their ancestors after 1913 (SA, 2010:20).

Although the mentioned methods of land transfer have worked in different countries in the world, in South Africa they have proved to be difficult to implement due to, the political make-up of the country. From the year 2000 onwards, the South African Government reviewed and changed the redistribution and tenure process to a more decentralised style. This is to have integrated development plans in 47 local government districts, which would bring about more community participation and more land redistribution (Hall, 2008:8). This has not, however, always worked.

In the North West Province, for instance, the total area of land is 11 632 000ha of which 6 179 490ha is commercial agriculture farms. In 2003/2004 only 71 484ha of this land had been distributed to black people (Ntsebeza & Hall, 2008:145).

Up to September 2001 only seventeen land claims had been settled country-wide. Not one of the cases where the land was returned resulted in successful agricultural production of that land (Du Toit, 2009:166). According to Lund (2010:1), 90% of the land transfers already completed are no longer productive as has been readily admitted by the department itself.

In 2006, the government announced that it would start expropriating the land. According to the country's chief land claims commissioner, there would have been, unlike in Zimbabwe, compensation to those whose land had been expropriated. It should have been for a just amount and not inflated sums. Despite this the government's strategic objective to improve rural development through improved practices has not worked and government promises are not being realized (SA, 2009-2012:36). Government finds itself currently in a stalemate situation concerning the land reform process. The transfer of 30% of the country's productive land before the year 2014 seems too improbable at present and this date has already been postponed to the year 2025 by government.

An example in North West, where land reform did not result in successful farming, is the Putfontein farm near Coligny. It used to be a highly successful farm, cultivating peanuts and grain. There was also an excellent beef herd with a dairy as well as sheep farming. The two farmers owning the farm, indicated that they had spent thousands of rand on the farm, creating a combined income of R7 million a year. After the government had expropriated the land, six people with their families are now living on the farm and the once prime property produces few products (Du Toit, 2009:166-167).

A neighbouring farm was bought by the Department of Land Affairs for black economic empowerment near Lichtenburg for 1 million rand. It was six hundred hectares in size, it had a flourishing dairy and beef herd and the farm has sustainable water resources. There are now no implements or tractors on the farm and no products are produced. Between sixty and seventy families are living there with no income (Du Toit, 2009:181-182).

A 700ha farm that went insolvent near Lichtenburg was bought by the Department of Land Affairs in May 2003. Five youth members of the ANC

formed a Community Property Association and the land was given to them. The farm was handed over to the new owners during a function attended by 500 people and dignitaries who were flown in with two air force helicopters. The new owners also received 120 cattle as a token from government. In 2004 it was believed that the youth were already looking for money to salvage the operation (Du Toit, 2009:181-182).

Further dilemmas encountered by the 'new' farmers or farmers are the following:

a) **Production limitations** due to availability and affordability constraints relating to the key inputs such as seed, fertilisers, pest control and machinery for cultivation of the fields (NW DARD, 2010:6-7).

b) **Lack of access to credit** which means that small-scale farmers do not have collateral to support them when they apply for credit. The Land Bank and other money lending institutions consider emerging farmers as a high risk (NW DARD, 2010:8).

c) The absence of **human capacity,** like development programmes for emerging farmers, should start at school to increase an incentive for them to become more involved in farming operations (NW DARD, 2010:9).

d) The lack of **market access** to produce markets is a problem for emerging farmers. Many farmers do not have sufficient transportation and are therefore unable to transport their fresh produce to the markets. The farmers sell their products at roadsides and by doing this they reduce their profit margins considerably (NW DARD, 2010:10).

The Department of Rural Development and Land Reform admits that its present land reform plan is in a stalemate, and that it is now looking at a three-part programme. **Firstly**, restrictions will be placed on the amount of land individuals and companies may own.

This will depend on the nature of the farming conducted on it and the geographic location of the land. **Secondly**, the Green Paper says that all land

owned by the state should be leased out and **thirdly**, land may only be owned by foreigners if they have a South African partner (Duvenhage, 2010:1).

With this in mind the concept of farm-sharing came to the fore. This is where workers get an opportunity to put in capital investments to become shareholders on a specific farm (Botha, 2009: 52-53).

Farm-sharing is a known method of land redistribution in certain countries where the land-owner leases the grazing and cropping rights to workers. This includes houses, hay sheds, and milking parlours in return for a share in the income of the enterprise. Farm-sharing can therefore be defined as a common form of farm arrangement where the land-owner and workers share the grazing and cropping rights of the land, natural resources and usually facilities, to share in the income/expenses of the enterprise and/or to be shareholders (Anon., 2010b).

This means that the owner and the workers will share the farm. Instead of buying the farm from the farmer and handing it over to the disadvantaged worker, government in partnership with private companies can provide capital to assist in the farm-sharing process where the farmer and worker will become business partners to buy stock, equipment and to plant crops, buy pesticides to keep fields clean from insects, to harvest, share the profits according to the inputs and outputs, and to draw up business plans for the next financial year (Anon., 2010b).

With all this in mind, emerging farmers must undergo training to become successful farmers. Farmers, on the other hand, must be involved and form part of the development in assisting emerging farmers/workers to become self-sufficient.

With this discussion as background the central research question of this study can be formulated as follows:

Can specific initiatives at present undertaken by the ANC-led government accommodate those who are still deprived of land ownership in South Africa?

1.2 RESEARCH QUESTIONS

With the central research question in mind the study will seek to answer the following research questions:

- What is the history of land reform in South Africa?
- What land reform programme(s) is/are relevant to land reform in South Africa?
- What legislation is relevant in South Africa with regards to land reform?
- What are the current developments on land reform in South Africa with specific reference to the Green Paper on Rural Development and Land Reform?

1.3 RESEARCH OBJECTIVES

The primary objectives of this study are to:

- Describe the history of land reform in South Africa.
- Describe the land reform programme(s) in South Africa
- Analyse land reform legislation in South Africa.
- Establish the current developments of land reform in South Africa with specific reference to the Green Paper on Rural Development and Land Reform.

1.4 LEADING THEORETICAL ARGUMENT

Land reform is a system used by government to give back land to people who have lost it since 1913 due to unfair political interventions by the then government. This is done to assist people to own land and through analysing land reform, a conclusion and recommendation can be made to understand the processes of land reform in South Africa better.

1.5 RESEARCH METHODOLOGY

The study is based on a qualitative research method. According to Rossouw (2003:178-180), credibility in qualitative research is the concept equivalent to internal validity as it refers to the degree to which findings, and by implication

the methods that are used to generate findings, can be trusted. By nature a qualitative study is flexible and open-ended and evolves over the course of the project (Leedy & Ormrod, 2005:143).

The following literature will be analysed to lay the foundation of this study:

1.5.1 Literature review

A literature review of national and international sources will be conducted regarding land reform policies, literature, for example, journals, newspapers, policies and documents on related challenges regarding the implementation of land reform in South Africa.

An analysis of the literature indicated that there are ample books, journals, reports newspaper articles, legislations and other literature on land reform available to undertake a study of this magnitude. The primary sources used include legislation on Land Reform, such as the White Paper on Agriculture and the Draft Land Tenure Security Bill as well as the Green Paper on Rural Development and Land Reform. With this goes a literature review tracing, identifying and analysing government policies and reports. Official documentation was also made available by government institutions to undertake this study.

1.6 EMPIRICAL STUDY

In this research, as mentioned, a qualitative research design was mainly followed. Qualitative research focuses on phenomena that occur in natural settings, that is, in the "real world". Qualitative research involves studying phenomena in all their complexity. A qualitative researcher recognises that the issues he/she is studying have many dimensions and layers and so the researcher should try to portray the issue in its multifaceted form (Leedy & Ormrod, 2001:147).

Qualitative researchers produce descriptive data and usually no numbers or counts are made. They often formulate only general research problems and ask only general questions about the phenomenon under study. However, the

research questions asked in the beginning of the study are not intended to remain loosely defined.

As the study proceeds the researcher gets a better idea on the nature of the phenomenon and problem under discussion. The study thus evolves over its course, from objective one through to the other objectives (Leedy & Ormrod, 2001:147).

The researcher chooses qualitative research as method because qualitative researchers remain neutral, objective and 'see' the topic under research from a neutral point of departure. This is important in a study like this.

1.6.1   Database consulted

During the course of this study, the following data basis were consulted:

Catalogue of books: Ferdinand Postma Library (North-West University);

Catalogue of theses and dissertations of South African Universities;

Department of Rural Development and Land Reform;

EBSCO Academic Search Elite;

North West Department of Agriculture and Rural Development;

African National Congress documents, and

The South African Government website.

1.7   **ETHICAL CONSIDERATIONS**

Researchers have two basic categories of ethical responsibility: responsibility to those, both human and non-human, who participate in a project; and responsibility to the discipline of science to be accurate and honest in the reporting of their research (Gravetter & Forzano, 2003:60). Due to the importance of ethics in research for the purpose of this study two ethical issues are underlined but the concern is not limited to these:

a) **Gender and cultural bias and insensitivity**, bias-free writing is used to avoid language and materials that are oppressive or discriminatory to any group of people.

b) **Analysis and reporting**, where the researcher is acting responsibly towards the broad scientific community.

The highest possible research standards were maintained, by using updated and recently cited literature.

1.8   LIMITATIONS AND DELIMITATIONS

One role of a researcher in a qualitative inquiry is to be a translator/interpreter. According to Glesne (2006:174-175) "…qualitative researchers are also interpreters who draw on their own experiences, knowledge, theoretical dispositions, and collected data to present their understanding of the others' world …".

Separate narration and analysis. The researcher first engages readers with a narrative account of rich research in dialogue and interactions between different kinds of statute, scholarly books, newspapers etc. The writing style changes when the researcher develops and interprets theories with detailed analyses of the literature (De Vos *et al*, 2011:429).

1.9   SIGNIFICANCE OF THE STUDY

Relevant databases revealed no other registered studies on this topic. The study is thus a valuable addition to the body of knowledge concerning the Land Reform implementation challenges in South Africa. The government is currently in stalemate and this study is intended to analyse land reform to understand the successes and failures of Land Reform at this stage in South Africa and to come up with suitable recommendations for government to make informed decisions on land reform and nationalisation.

The study is divided into three stages:

In the **first stage** a contribution is made through the discussion and analysis of theories, principles and statutory information on the history of land reform in

South Africa. In the **second stage** concentration is focussed on the analysis of policies and legislation of land reform in South Africa. In the **third stage** an analysis is made of the current development of land reform in South Africa to enable one to come up with valid and reliable conclusions and recommendations.

This study provides a substantial theoretical analysis of Land Reform for purposes of being of assistance to government in the implementation challenges of Land Reform in South Africa. Government may be able to use this knowledge to launch further studies to examine farm-sharing practices all over South Africa.

1.10 **CHAPTER OUTLINE**

The study is divided into five chapters as summarised below;

CHAPTER 1: INTRODUCTION

The research problem and rationale are introduced through the background and problem statement. The research objectives and research questions arising from the problem statement are outlined. They form the basis of essential theoretical statements and then the methodology used to fulfil the research objectives is described.

CHAPTER 2: HISTORY OF LAND REFORM IN SOUTH AFRICA

This chapter is describing theories, principles and statutory information on the history of land reform within in South Africa since 1652.

CHAPTER 3: LAND REFORM PROGRAMMES AND LEGISLATION IN SOUTH AFRICA

This chapter is intends to describe principles of land reform programmes and legislation in South Africa.

CHAPTER 4: CURRENT DEVELOPMENTS ON LAND REFORM IN SOUTH AFRICA

The purpose of this chapter is to describe current developments in land reform in South Africa, according to the Green Paper, and to consider farm-sharing as an option with reference to co-operative farming.

CHAPTER 5: **CONCLUSIONS AND RECOMMENDATIONS FOR LAND REFORM IN SOUTH AFRICA**

To draw up conclusions after analysing land reform history, policies and acts and the current development of land reform in South Africa and to make recommendations on land reform for South Africa in the future.

1.11   **CONCLUSION**

Political change in South Africa since 1652 has influenced land reform policies. Land was taken away and policies created to prohibit black people from owning land in white farming areas. Later these policies of the National Government where known as 'apartheid' laws. When the ANC won the elections in 1994, many policies and or acts had to be repealed and/or replaced by democratic policies and acts. One of these acts changed in 1994 was the Land Reform Act. Land programmes, like land tenure and land restitution etc. were implemented, but without expected results. Due to this, it is necessary to analyse land reform in South Africa to answer questions on the future of land reform in South Africa.

CHAPTER 2: HISTORY OF LAND AFFAIRS IN SOUTH AFRICA

2.1 INTRODUCTION

After seventeen (17) years in a democratic South Africa, land reform is still a problem for government on the one hand and for the farmers and communities on the other hand. To understand land reform, it is important to take transformation into consideration because they go hand in hand. This chapter will look back into the history of land problems in South Africa dating from the arrival of Jan van Riebeeck in 1652. It was then that different groups of people met for the first time when the Khoi-Khoi (indigenous people in the colony) interacted with the white settlers, from here onwards called the Settlers, and soon problems were experienced concerning land issues (De Beer, 2001:37).

Since then up until today many political changes have taken place, which have had an impact on land reform. Throughout this chapter, the political stages will be discussed, concluding with the role of the F.W. De Klerk government that assisted South Africa to become a democratic state. This event played an important role in the phenomenon of land reform (De Beer, 2001:37).

After 1994, the ANC government took over the government of the country. During this time transformation started and the land reform programme aimed at the equal distribution of land between different racial groups in South Africa was implemented. This chapter will also discuss the legislation outcomes on land reform before 1994 briefly. Chapter 3 will discuss legislation on land reform in depth.

2.2 A HISTORICAL BACKGROUND OF LAND REFORM (1652-1899)

Being a political study and not a historical discussion by nature, only specific elements are highlight regarding history - elements which may refer to land reform in the broadest sense of the word.

The Khoi-Khoi (indigenous to the Cape) had been long-established inhabitants of the Cape when Jan van Riebeeck arrived in 1652. When the Settlers arrived in the Cape to establish a halfway post, the Khoi-Khois had already spread across the Cape Province (Van Aswegen, 1990:109).

The halfway post was set up to supply fresh water and vegetables to the passing ships from Holland. Meat supplies to the ships were obtained by trade with the surrounding Khoi-Khoi population. A culture of reasonable peace and friendship was the order of the day, primarily because the Dutch East India Company (DEIC) acknowledged the Khoi-Khoi tribes as sovereign groups. In the beginning, the refreshment post occupied only a small area, but the need for more land changed the situation rapidly (Omer-Cooper, 2006:18).

The DEIC initially occupied the territory on the basis of its position of power without negotiations with the Khoi-Khoi tribes. The Khoi-Khoi tribes did not possess specific areas of land *per se*, but occupied a larger general area for their cattle and they regarded it as their area. Letters for freedom from the DEIC were consequently issued and the Settlers were released from the company (refreshment post) to settle along the Liesbeeck River. It was unfortunately the best grazing areas for the cattle of the Khoi-Khoi. This was a recipe for disaster (Van Aswegen, 1990:109).

There was constantly conflict between the Khoi-Khoi tribe and the Settlers over land and livestock. It's because of these conflicts that the Khoi-Khoi stopped selling their cattle to the refreshment company which caused a further deterioration of the relationship between the Company and the Khoi-Khoi (Boucher, 1991:67-70).

Round about this point in time, black people arrived in South Africa. According to (BENBO, 1976:2) three migration streams came from, north to south, which can be described as follows:

- The Nguni tribe (Zulu, Swazi and *Xhosa*) that moved southwards along the East Coast of South Africa and which came into contact with the Settlers.
- The Ovambo tribe that moved to the Western parts of South Africa.
- Sotho, Venda and Shangaan tribes that moved into the central parts of South Africa, later Botswana, the former Transvaal, Free State, Lesotho and Northern Cape.

The Xhosas, the spearhead of the African groups in the Eastern Cape, made contact with the Settlers (white people) near the Fish River. It can thus be stated that the land across the Fish River was geographically the property of the Xhosas. Continuous confrontation over land between Settlers (at that point in time also called the border farmers) and the Xhosas was the order of the day. In time the DEIC at the Cape proclaimed the Fish River as an official border between the Settlers and the Xhosa people (BENBO, 1976:2). It became the first official policy of segregation, not only in the Cape Colony, but also in South Africa.

It did not, however, stop the competition for land between the various race groups and it left the DEIC with no permanent solution to the conflict. At the end of the Dutch era (1795) in the Cape the Settlers controlled much of the land that stretched from the Cape to the Fish River (east) and to the Orange River (north) (BENBO, 1976:2).

The first British occupation of the Cape started, as indicated, in 1795 when the British fleet entered Table Bay. The military commander and the Dutch Council of Policy in the Cape capitulated and handed over the responsibility of the Cape to the British forces (Omer-Cooper, 2006:36).

The British Rules were put in place and the liberal policies of Britain were introduced in the Cape, policies such as only one language, English. Under these policies people were supposed to be equal but there was still conflict between the British government, the Khoi-Khoi tribes, the Xhosas and the Settlers (Van Jaarsveld, 1976:85).

This eventually led to the 'Groot Trek' where the Settlers or Border farmers deliberately rejected the British authority/government in the Cape. The Border farmers wanted to establish an independent government in the interior, not controlled by the British rulers (Omer-Cooper, 2006:70).

During the eighteenth century, there was also a regional political change in Zululand and Natal. Chiefdoms were grouped together under a single prominent ruler. Violent upheavals were produced that were known as "mfecane"

('unlimited warfare') Omar-Cooper (2006:53). The "mfecane" upheavals were known for their destruction under the black people (De Beer, 2001:14).

This African grouping's powerful rule meant that Black people outside their kingdoms were better off with the whites (now called Voortrekkers) than with the African 'enemies' and thus they did not offer sustained resistance to the coming of the Voortrekkers. Areas in the Orange Free State, Natal and Transvaal offered ideal opportunities for the Voortrekkers to create their own independent states and thus their own piece of land to settle on (Omer-Cooper, 2006:68). The first Voortrekker governments were formed between 1836-1837.

The first hint of a policy of separate development in the Voortrekker Republics came during this period. Plus-minus 128 square miles were set aside for black people in the form of two homelands according to (Davenport & Hunt, 1974:9) as cited by Murray (1984:17). The first was in the Thaba Nchu area where the Barolong people under Chief Moroka settled in 1833. They later received their own area in 1854 from the Orange Free State Republic. The second consisted of a few farms at Witzieshoek on the northern side of the Drakensberg and it was recognised in 1857 by the Free State government. This land was for the Sotho Chief Mopedi and his tribe, today known as QwaQwa.   In these areas, tribal chiefs were allowed to live on their own land which all fell under the jurisdiction of the Orange Free State Government (Platzky & Walker, 1985:73).

2.2.1   Land Reform in the Transvaal and the Orange Free State

In the two republics of the Transvaal and the Orange Free State, Black people did not have voting rights and they could not become citizens of the two Republics (Van Jaarsveld, 1976:169). In the Transvaal the early white farmers were in general not in conflict with the black population. Centres of white settlements in Eastern and Northern Transvaal were established with permission from the Chiefs in those areas.

The white farmers did not use the land intensively. Most of them were hunters and cattle farmers. The borders of their farms were on the edge of the black people's land, which was set aside for the white farmers, because of this, they

were continuously in contact with black people. The white farmers thereafter invited them to settle on their farms, to work it and to be tenants as well. They could pay either in labour (3 months a year) or pay by producing a certain proportion of their crops and hand it over to the white farmers as payment. This was the beginning of the sharecropper system, a forerunner of the farm-sharing principle which is on the cards of ANC development of today. In 1876 the white farmers, because of the then militant resistance of some chiefs, were obliged to create a number of small African reserves in their territory (Platzky & Walker, 1985:73).

2.2.2 Land Reform in the Cape and Natal under British Rule

The development concerning land affairs in the Cape and Natal was somewhat different from land affairs in the Orange Free State and the Transvaal.

In the Cape and Natal the military strength of the Nguni Chiefdom which consisted of Xhosa, Mponde, and Zulu ensured that certain areas remained under the control of African tribes. At the Eastern frontier of the Cape, a series of wars between Settlers and black tribes, led to it that most of the land west of the Kei River became white settlements by the 1880s (Platzky & Walker, 1985:75).

Early in the 19th Century large numbers of black people lived on white-owned farms because the reserves (land set aside for them) were too small for them to make a living. These blacks worked as full-time servants, cash tenants and sharecroppers.   Only a small number had individual title to their land in the Ciskei areas (Platzky & Walker, 1985:82).

2.3   **LAND REFORM IN THE PRE-APARTHEID ERA (1899-1948)**

During the Anglo Boer War (1899-1902) some strategic changes on land aspects and land reserves took place. The British government in 1901, through Lord Kitchener, adopted a scorched-earth policy in the so-called Boer territories in an attempt to destroy food supplies of the Boer guerrillas. Orders to burn down 'Boer' farms were given and white and African concentration camps were established. By December 1901, 436 out of every thousand people had died in the concentration camps. When the war ended, the camps

were terminated and most of the Africans were allocated to white farms all over the two Boer provinces (Platzky & Walker, 1985:82).

Other Africans, who did not settle on white farms, were only allowed to lawfully acquire land in the reserve areas. No African could buy land outside the proclaimed boundaries, nor were they allowed to rent such land in the future. Africans who were already renting white-owned land (sharecroppers) were to be phasing out in the future. These restrictions were applicable throughout the Union, except in the Cape (Platzky & Walker, 1985:83).

The reserves where the Africans had to settle were too small for sustainable farming (De Beer, 2001:25). The English government took note of this oppression and in 1912 Pixley Ka Izaka Seme, who has obtained a BA degree in United States, was called to England to shed light on the matter and he later held a conference in Bloemfontein on the matter (Platzky & Walker, 1985:83).

Chiefs attended the conference and reached an agreement to establish the South African Native National Congress, later renamed the African Nation Congress (ANC). The newly-formed party (ANC) had at that stage no intention to overthrow white government in South Africa. They only wanted acceptance within a civilised value-based society. They faced discrimination because of their colour and reinforced their identification with the wider African population (Platzky & Walker, 1985:83).

The African people thus strove for social acceptance and did it through grievances, petitions and deputations (Omer-Cooper, 2006:162). In spite of this the Natives Land Act No. 27 of 1913 was promulgated which had a serious impact on land and land aspects as well as land policies in South Africa ever since (Platzky & Walker, 1985:83).

2.3.1 The Natives' Land Act No. 27 of 1913

This Act took all the different African Reserve Systems in each province and used it as the basis of the Union's subsequent Native Policy (Platzky & Walker, 1985:83). The Natives' Land Act, 1913 was the initial legislation, in which the principals of territorial segregation and division of rights in land between White

and Non-White were implemented. This Act made provision for 9191905 hectares for the so-called Natives and called the "Scheduled Native Areas".

The Governor-General approved the "Scheduled Native Areas". When Natives wanted to buy land from Whites outside the "Scheduled Native Area", the Governor-General was also the one who had to approve it (SA, 1913:1).

The ANC condemned the Bill. They wanted it withdrawn and sent a deputation to Cape Town, but it failed. The ANC went further and sent a deputation to Britain in 1914. They were informed that the Act only concerned the government of South Africa and that it did not fall under the jurisdiction of Britain (Omer-Cooper, 2006:162).

The areas reserved for the Natives' occupation in 1913 were those that had already been reserved as tribal land in all provinces before 1910. Most of this land was concentrated in the Cape and Natal and amounted to ± 9 million hectares. It came to about 7% of all land in South Africa. The Natives' Land Act was thus promulgated into law which triggered the process where Natives were dispossessed of 'their' land. Sol Plaatje who was a leading member of the ANC, is said to voice the impact of the Act on his people as follows:

"*A waking on Friday morning, June 20, 1913, the South African Native found himself, not actually a slave, but a pariah in the land of his birth*" (Plaatje, 1916?:17).

The white farmers of the Orange Free State, soon after the Act was implemented, took for instance, advantage of the Natives' Land Act and demanded that their sharecroppers work either for them on a full-time basis or to leave their farms.

This action was regarded as the first of the mass removals of the Natives in South Africa. Thousands of sharecroppers were driven from their land and not given alternative places to settle. They struggled to find their own living spaces and were forced to move to the 'reserves' (land set aside for them) or to move to other white farms (Platzky & Walker, 1985:83-86). The situation remained more or less the same until 1927.

2.3.2 The Natives Administration Act No. 38 of 1927

In 1924 General Hertzog's government came into power. This government mainly represented white farmers and white labourers. A hugely important policy change was that the new government reduced the amount of land set aside for Natives (as indicated in the name of the Act, black people were still called Natives) which made the situation regarding the availability of land for Natives critical. General Hertzog wanted a difference in treatment of Natives and Europeans. He tried to keep to the demands of his rural supporters, to reduce rather to increase the amount of land set aside for African reserves (Platzky & Walker, 1985:88).

Another strategy of his was also to remove Natives from the common voting roll in the Cape because according to him that was where Natives posed big opposition to the whites' dominance of the land. Although he did not get a large enough vote to turn the notion into law, he did manage to introduce key changes into the administration of Native Affairs in his government. Key legislation followed the notion and in this regard, it was the Natives' Administration Act of 1927.

It brought more clarity to Native Administration, a step in the direction of greater segregation practised in the Northern provinces. It also limited farming integration by Natives onto white farms, an aspect that was still tolerated in the Cape Province (Platzky & Walker, 1985:88). The ruling party obtained far-reaching powers by means of this Act with special emphasis on the removals of Natives from white land.

The Governor-General in Hertzog's government had specific powers to rule by proclamation in all Native Areas. Section 5 of the Act states for instance in this regard as follows:

"The Governor-General may:

> ....whenever he deems it expedient in the general public interest, order the removal of any tribe of portion thereof or any Native from any place to any other place within the Union upon such conditions as he may determine" (Platzky & Walker, 1985:89).

Another milestone in the segregation policy government was the Native Trust and Land Act No. 18 of 1936.

2.3.3 The Development Trust and Land Act No. 18 of 1936

In 1936 the Development Trust and Land Act was proclaimed. This Act by the new government authorised reserves to be extended by 6211075 hectares. These lands were "exempted" or "released" for acquisition by the South African Development Trust (SA, 1936:2). This Act established the South African Development Trust that became the Bantu Trust and later the Development Trust. The Trust had the responsibility to administer all aspects relating to land affairs. The Trust therefore became the registered 'owner' of almost all the reserves (Platzky & Walker, 1985:89).

This Trust and Land Act of 1936 provided that only Natives who were full-time labourers on white-owned farms would be allowed to live in the white rural areas. According to the Act each of these workers was to be registered. This included farm workers as well as squatters on farms. The squatters on the farms had, however, to buy licences. This led to widespread squatter evictions due to the non-payment of licences, which had a negative influence on the social life of the Natives (Dubow, 1989:135).

At this point in time only 13% of the country's total geographical area was scheduled land for Native occupation. This meant that 13 % of the country was reserved for almost 80 % of the population (Van der Walt & Pienaar, 1997:452).

In 1948, the era of formal Apartheid started which stretched until the eighties. This period is highlighted next.

2.3.4 Apartheid's Legislation on Land Reform (1948 – 1984)

The era of formal Apartheid started in 1948 when the National Party of Dr. D.F. Malan came into power. His term lasted until 1954 and during this time he introduced various new Acts in South Africa on separate development. Acts to be mentioned were the Registration Act (1950), the Gray Areas Act (1950), the Bantu Authorities Act (1951) and the Separate Amenities Act (1953) (Schine,

1994:300). These Acts, among others, formed the basis of the principle of Apartheid (De Beer, 2001:30).

Between 1948 and 1984, the Apartheid system developed through three definable phases. The first phase, known as 'Baasskap' (white supremacy) lasted from 1948 to the end of the 1950s (Omer-Cooper, 2001:193). The second phase was known as the segregation between different races (Platzy & Walker, 1985:95).

The third phase witnessed a shift away from complete racial segregation, where limited political rights were granted to Asians and Coloureds, the so-called Tri-cameral Parliament period (Beck, 2000:126).

To implement these phases certain actions were taken by the government. These actions were the following:

- The classification of the population into distinct racial groups, namely white, coloured, Indians and blacks was the first action.
- The second action was the strict racial segregation in towns as determined in the Group Areas Act.
- The restriction of African urbanization, which at that time was a major problem, was the third element. This was accomplishing through the Native Law Amendment Act.
- The fourth element was when government laid more emphasis on tribalism and traditionalism within Native communities.
- The last element was reinforcement of security legislation and traditionalism (Platzky & Walker, 1985:95).

Because of the afore-mentioned aspects, black people became more and more demanding and were prepared to use boycotts, strikes and marches to highlight their discontent. The reaction of the government to this was to improve security legislation and to oppress the people more and more (De Beer, 2001:31).

With this general discussion of the beginning of Apartheid as background the focus will know be focussed on land issues during this period.

2.3.5 Land reform policies

The National Party of D.F. Malan had won by only a small majority of five seats in parliament, but it still enabled the new government to launch a major re-organisation of land affairs in South Africa in accordance with Afrikaner Nationalist ideals (Omer-Cooper, 2006:193).

However, the options of strategy with regard to the National Party in 1948 were limited by constraints. One was the Native reserves that had been established prior to 1936. Second was the need to add more land to these existing reserves. Other factors inherited from the Smuts government, was a housing crisis, labour unrest, angry white farmers and black people's expectations (Platzky & Walker, 1985:95).

The National Party came to the conclusion that the main reason for urbanisation of Natives was that there was no form of economic development in the reserves. They were overpopulated and there was no room for development in general.

The reserves were divided into four categories with the 1913 and 1936 Land Acts as basis (BENBO, 1976:22):

- Firstly – isolated areas – reserved land that included land already demarcated for Native people according to the 1913 and 1936 Land Acts.
- Secondly – released areas – this was additional land provided according to the 1936 Land Act.
- Thirdly – Native spots – that included areas where Natives held ownership rights to property or land that was not situated within the reserves or released areas.
- Lastly – badly located Native areas – certain reserves/released areas that would obstruct the consolidated and extended areas in order to generate economic development within the reserves (De Beer, 2001:32).

In the 1950s farmers were overwhelmed by the large number of Native farm labourers available to work for them. In fact, the farmers could not utilise all the

labourers, which led to a situation where many labourers became squatters. The picture worsened when new technology made more labourers redundant. These redundant workers and their families would have to be relocated somewhere else, such as in the already over-crowded reserves.

In the early 1950s, government brought in one of its most crucial segregation measures by means of the Group Areas Act of 1955. This legislation provided government with powers to claim any area in the country to reserve it for a particular race group. Another important principle was that these reserves could start to develop their own political environments and identity (Omer-Cooper, 2006:201).

In 1953 the first steps to assist in the separate political development was taken by introducing the Bantu Authorities Act of 1936. The Act made provision for the establishments of local authorities in the reserved areas. Chiefs would be in charge with increased powers over the tribes. As government appointed more and more chiefs, the increase in their powers were negatively regarded by the majority of the people and it led to serious rural resistance (Omer-Cooper, 2006:201).

In 1959, the Promotion of Bantu Self-Government Act, Act No 46 of 1959, was promulgated which was an important Act/policy in the whole process of separate development. Transforming the reserves into independent homelands was in place and opened the door for development of the country with separate areas (homelands) for each Black ethnic group (the concept Bantu or black also started to develop around this time) (Platzky & Walker, 1985:112).

The National Party had one aim in mind with the homeland system and that was to create separate nations out of the various ethnic communities living in South Africa. To achieve it meant that the consolidation of reserve areas was necessary. The outcome was forced removal of many people from different areas to the homelands (Platzky & Walker, 1985:112). In extreme cases there were the 'Native spots' (areas where Blacks lived in white areas) and from which Blacks had to be removed to make it an all-white area. The only 'value'

for the black people was that government had to compensate them for their land. The created homelands were the following:

Table 2.1   Homelands established in 1959

Ethnic grouping	Homeland
Northern Sotho	Lebowa
South Sotho	Qwa Qwa
Tswana	Bophuthatswana
Zulu	Kwazulu
Swazi	Swaziland
Xhosa	Transkei
Xhosa	Ciskei
Tsonga	Gazankulu
Venda	Venda
South Ndebele	South Ndebele

(BENBO, 1976:ix)

The relocation of the ethnic groups was a long and time-consuming process. When apartheid ended in 1994, the relocation was not even complete and the homelands were integrated into the greater South Africa (Omer-Cooper, 2006:201).

The final phase and collapse of Apartheid started in 1973. These years marked the transition from "Separate Development" to multiracial co-operation (Omer-Cooper, 2006:223). During 1984 the following commemorating marches took place in South Africa: the Sharpeville shootings of 1960; the uprising of Soweto in 1976 and the death of Steve Biko under police custody on 12 September 1977 (Mclean, 2003: 77-95). Biko was regarded as an "outstanding African Consciousness Leader". After these marches it was clear that Apartheid should be phased out and that there was a need for a new government dispensation (Omer-Cooper, 2006:239).

The open resistance by black people led to more pressure from the United States and other western countries to impose sanctions on South Africa. In 1985, the Commonwealth Heads of Government met in NASSAU, Bahamas

and adopted an accord calling on South Africa to free Nelson Mandela, to lift the ban on the ANC and other opposition parties and to enter into negotiations, and to dismantle Apartheid (Omer-Cooper, 2006:239).

2.3.6 The Nationalist Government under F.W. De Klerk (1989 – 1994)

F.W. De Klerk was confirmed as State President in 1989. At first, he tried to maintain at least some of the existing principles of group rights.   His determination was, however, overpowered by more sanctions that would be initiated by the Bush administration if apartheid were not totally abolished. On 2 February 1990, De Klerk announced that Nelson Mandela was to be released and that political parties like the African National Congress (ANC), the Pan African Congress (PAC), the South African Communist Party (SACP) and the United Democratic Front (UDF) etc., were to be unbanned and that government intended to go into negotiations to develop a new constitution (Omer-Cooper, 2006:242).

De Klerk also announced that apartheid laws such as the Group Areas Act and the Land Act of 1913 would be abolished (Geldenhuys, 1994:285). These announcements were acclaimed by the international community and international sanctions were to be withdrawn from South Africa once Apartheid had been removed.   All anti-Apartheid movements and the changes in government policies prepared the way for the De Klerk government to relinquish the National Party government in 1994 and pave the way for the ANC to rule after a fair democratic election had taken place (De Beer, 2001:37).

The changes on the political playing field paved the way for the new democratic government to begin transformation regarding the land reform policies.

2.4 **POLITICAL TRANSFORMATION AND THE IMPACT ON LAND REFORM**

Both political transformation and land reform have to do with 'change', not just change, but change aimed at improving current situations in political transformation and land reform. Change refers to a complex process at all

levels in an organisation, demanding attention to a wide spread of issues – strategic direction, markets, production and operational issues, the use of technology, the alignment of financial systems, human resource utilisation etc. (Anstey, 1999:344).

Political transformation in South Africa during 1994 is regarded as the most comprehensive change in the history of the country. It was essential to change from an apartheid society to a democratic society. It was not only important to change at a political level, but also of interest to the economic development and acceptance in the world markets and to avoid further sanctions against South Africa. For the first time all the people in South Africa enjoyed equal rights. Political transformation can be defined as a, 'rapid, progressive, comprehensive and fundamental political change of society (stemming from an unacceptable political past) in the form of central planning (social and political engineering) accentuating the managing of political change in general and conflict management in particular' (Duvenhage, 2005:5).

With the political transformation in 1994, renewed pressure came from the black population of the country for land reform. Land reform in South Africa took off very slowly and more pressure was put on the ANC government to speed up this reform. There was thus a need in South Africa for better land distribution practices. This led to the "new" Land Distribution Policy. Because of this, it was important to make use of the lessons learned from Zimbabwe to deal with effective Land Reform in South Africa (Peters & Malan, 2000:27).

More than 67,7% of Africans rural households have a need for land and to satisfy this it would mean that about 24% of the available farmland in South Africa should still be redistributed. The current land reform in South Africa is based on three aspects, viz. redistribution, restitution and tenure. In South Africa, government must currently acquire land on a willing seller basis and must pay suitable compensation for the land. Due to this, it could constrain the amount of land acquired in the future (Peters & Malan, 2000:28).

According to the Minister of Rural Development and Land Reform, Gulile Nkwinti, who made a statement on the current land distribution policy namely that they cannot talk anymore about acquiring 30% of land by 2014. This is

because of monetary constraints in the Land Reform Programmes (Anon., 2010d).

In South Africa, government must acquire land on a willing seller basis and must pay suitable compensation for the land. Due to this, it could restrain the amount of land acquired. There is a total of 101million hectares of agricultural land outside the former homelands (Qwa-Qwa, etc.) of which 86,2 million hectares is commercial agricultural land and which is owned by 45 818 white commercial farmers (Statistics SA, 2004). 3.5 million people were removed between 1960-1980 to homelands and most of these people do not own land of their own. This is an indication of how critical the current land issue in South Africa is (Duvenhage, 2008: 383).

According to Senwes (2004) (as cited by Duvenhage, 2008:383) 2493 567 hectares of land were transferred between 1994-2004 as follows:

- Land Reform for agricultural development   = 20%
- Communal land   = 20%
- Other   = 04%
- Labour tenants   = 03%
- Restitution   = 33%
- Expansion of the Law Security of Land Tenure   = 0%
- Settlement / Land acquisition   = 20%

In 2004, at a cost of R4.6 billion, 2.5 million hectares were handed over to beneficiaries. In South Africa 79 696 restitution claims were received. In 2006 the annual report indicated that 71 465 claims (96%) had been settled and that 86% of the 6 986 claims outstanding were in rural areas with the settlement date indicated as 2007/08 (Duvenhage, 2008: 383-384).

2.4.1 Failures of land reform

According to Duvenhage (2008:385) the problems experienced in Political transformation, with regard to land reform are that:

(i)   There is a lack of co-operation at grassroots level (the farmers do not accept the amount of money offered for their land by government).

(ii)   There are limited resources of social and political control (not enough money to cater for land reform. R75 billion is needed to complete the land reform process by 2014 and due to this the land reform process, as it currently is, will run to 2058).

(iii)   There are limited political, administrative and management capacities to implement land reform.

(iv)   There are unsuccessful institutionalization processes available to implement land reform effectively, for example, people lived on land before 1913 and were by law of the previous governments removed. Now that the democratic government is in control, and acting to the needs of the majority of the people, institutions to assist in the land reform process are not in place.

(v)   The so-called "weak state" phenomenon where states do not have the ability to cope with changing circumstances and where political instability is always a possibility - that will hamper land reform considerably (Zimbabwe is a good example of a weak state).

(vi)   Inadequate service delivery (not assisting or giving the community information on how to apply for land reform in a democratic South Africa).

(vii)   Inertia (to do nothing to cater to the needs of the community to give them water and housing and or land in South Africa).

To determine whether political transformation and land reform have been a success and or a failure according to Duvenhage (2008:385) the following factors should be taken into consideration:

(i)   The stability of the political environment (South Africa is at this point in time a stable state).

(ii)   The administrative and other management capacities (a democratic management culture) where the self-serving position be discarded, for example the community must get involved to lead projects.

(iii)   Lasting and stable growth is necessary (development).

(iv)   Strategic planning, conflict and change management (capacities and proficiencies) Duvenhage (2008:385).

Machiavelli (1908:203) argued that: "…nothing is more difficult to carry out, nor more doubtful of success, nor more dangerous to handle, than to initiate a new order to things". The new government should take this into account constantly.

2.5   CONCLUSION

From the time of Jan van Riebeeck's arrival in the Cape in 1652 until today land affairs have remained an issue. It first started with conflict between the Khoi-Khois and white settlers. As the Settlers' numbers increased more and more indigenous people who had occupied land were driven away. Later the Land Acts of 1913 and 1937 made it difficult for Africans to live in white areas. This was aggravating by the Groups Act of 1952, which determined that African groups be divided into various homelands.

Apartheid started losing its authority, when the United States warned the government of South Africa about the further implementations of sanctions if apartheid were not dismantled. A further step was the request of the United Nations that Nelson Mandela should be released, that negotiations with opposition be held for a democratic South Africa. When De Klerk became State President in 1989, his determination to maintain some principles of group rights were overpowered by more sanctions initiated by the Bush administration.

In 1990, De Klerk announced that Nelson Mandela was to be released. That political parties like the ANC, PAC, SACP, and UDF were to be unbanned and that negotiations to develop a new constitution would start. This paved the way for all the 'apartheid' laws to be removed. These announcements were approved internationally and lay the foundation for a fair democratic election in 1994. The ANC took office in 1994 and apartheid officially ended.

Insecure ownership rights in government policies drove the history of South Africa. This is why there is a need for the land policies to change in the new

Democratic South Africa. In the next chapter, the legislation on land reform from 1994 will be discussed.

CHAPTER 3: LAND REFORM PROGRAMMES AND LEGISLATION IN SOUTH AFRICA

3.1   INTRODUCTION

In Chapter two the broad history of Land Reform in South Africa was discussed. The white settlers who arrived in South Africa implemented policies that led to the unequal distribution of land. The blacks were relocated to relatively small reserves. In these reserves, blacks struggled to make ends meet and there were high levels of poverty among them. Later on, independent homelands were established for black people that led to severe poverty, because of the lack of infrastructure and finances.

Subsequent unrest in the country led to pressure from countries such as the USA to implement severe sanctions against South Africa. The 'apartheid' phase started to dissolve from the early 1970s through to the 1980s and ended in 1994, when the ANC took over power in South Africa. This political transformation led to the dismantling of all 'apartheid' legislation. Due to this, new land reform policies had to be developed. The land reform programmes implemented during this time can be divided into three sections: land restitution, land tenure and land redistribution. According to these programmes, opportunities were created for previously disadvantaged groups to obtain land, to secure their tenure and to return to land taken away since 1913.

The Freedom Charter formed the foundation for land reform in South Africa. This chapter will describe the land reform programmes and legislation in South Africa.

3.2   THE FREEDOM CHARTER

The Freedom Charter (1955) is a crucial aspect of South African history. It has a unique authenticity because of the mode of its creation.

The people of South Africa have never before, or since, had the opportunity to write their own vision of the type of society which they would like to live in. The

freedom charter represents a declaration of earlier resistance to the then apartheid legislation. It also marked the start of a new and more extensive phase in the South African struggle. For the first time, in the history of South African resistance, people were actively involved in formulating their own vision for an alternative society (Suttner, 2006:18).

According to the Freedom Charter (1955) access to land, housing and basic services should be available to every South African. The words included in the Freedom Charter (1955) on land aspects were as follows: "'Restriction of land ownership on a racial basis shall be ended, and all the land re-divided amongst those who work it…and, all shall have a right to occupy land wherever they choose…".

When the ANC won the election in 1994, they immediately started, as mentioned, to phase out apartheid laws in the country. This meant they had developed new land reform policies to replace apartheid policies. The Freedom Charter as primary document thus laid the foundation for new policies on Land Reform (Freedom Charter, 1955). The Freedom Charter is also regarded as a framework for much of the new democratic laws in South Africa (De Beer, 2001:41).

With this discussion of the importance of the Freedom Charter as background, the relevant programmes, policies and legislation to land reform are discussed in the rest of the chapter. This legislation will act as foundation for land reform aspects in South Africa.

3.3   THE RECONSTRUCTION AND DEVELOPMENT PROGRAMME

The Reconstruction and Development programme (RDP) of 1994 was the new Government's strategy for fundamental transformation. It was a commitment from Government to create a people-centred society to bind Government to pursue the goals of the people for freedom from hunger, deprivation, ignorance, suppression and freedom from fear. The mentioned freedoms are fundamental for human dignity. Government would therefore constitute part of the centrepiece of what this Government will seek to achieve, the focal point which attention will continuously focus on. The ideas stated in the RDP

constitute the true meaning, the justification and the purpose of the RDP, without which it would lose all legitimacy (Mandela, 1994).

Prior to 1994 and up to the current day, South African society has been in need of transformation. The people of South Africa have basic needs such as water, electricity, sanitation and housing. Land is also identified by the RDP as one of the most basic needs in which the RDP must provide (De Beer, 2001:42). According to the ANC (1994:20) provision is made for establishing a land reform programme that will address the injustices of the past, to provide people with land and to contribute to rural development. The land reform programme must ensure that secure tenure options are available, that land is utilised in an effective and productive manner and that large-scale employment is generated.

The Government of National Unity (GNU) gave direction to this process by way of a new framework for governance. This was to set a new way for Government to be a shining example for restructuring of the rest of the society. Taking years of struggling and previous relocations of the black people into consideration, it was not going to be an easy problem to resolve. It was and will be a long process and with this in mind, it justifies the purpose of the RDP. The framework behind the renewal process, which transforms the society, lies behind the RDP. The RDP offered the people of the country the opportunity to unify, to bring renewal, peace, prosperity, reconciliation and stability.

3.3.1 The RDP and transformation

The RDP is an integrated, logical socio-economic policy framework. Its main aim is to seek mobilisation of all the people and the country's resources towards the final eradication of the results of apartheid, the building of a democratic, non-racial and non-sexist future in South Africa. Its vision is to ensure the fundamental transformation in South Africa. This process of transformation must ensure the following in South Africa:

- Strong and stable democratic institutions must be developed and their practices must be characterised by representativeness and participation.

- The country must become a fully democratic and non-racial society.
- It must be a prosperous society embarking upon a sustainable and environmental friendly growth and development path.
- A moral and ethical development of society is important (SA, 1994:4).

The RDP is to seek comprehensively for changes in people's lives. It has to secure each citizen's liberty, prosperity and happiness. For each nation rebirth can only happen if people voluntarily participate in the process of reaching the goals they have defined themselves (SA, 1994:4).

3.3.2 Basic principles and the RDP

The history as discussed in chapter 2, reminds one of bitterness, colonialism, apartheid, and repressive policies. The result of these policies was poverty and degradation. Rural people were marginalised through a combination of generous wealth and miserable poverty in society. The transformation from apartheid to a democratic South Africa was so sudden that a programme like the RDP needs to guide the transformation process in the correct direction. The RDP has basic principles to assist in the process to make it successful. It is therefore important to discuss the six basic principles of the RDP:

- *Firstly*, the RDP requires an integrated and sustainable programme. The RDP must bring together strategies on all resources in a logical and purposeful effort that can continue into the future.
- *Secondly*, the RDP must become a people-driven programme. The people, are according to the principles of the RDP the most important resource. It focuses on the people's immediate needs and in turn, it relies on the energies of the people to assist government to shape their own future.
- *Thirdly*, the RDP must link up with peace and security for all South Africans.
- *Fourthly*, when peace and security have been established, the nation-building process can start in South Africa.

- *Fifthly*, nation-building, where all the people work together in the process of reconstruction and development.
- *Sixthly,* the first five principles depend on smooth democratization in South Africa (ANC, 1994:7).

The RDP programme can thus, in its totality, be regarded as an important programme to address land aspects as an important venture for the country. With this as background, attention will be given to relevant legislation on land reform in South Africa, starting with the Constitution and then other legislation.

3.4 THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, ACT NO 108 OF 1996

The importance of the Constitution of the Republic of South Africa, Act 1996 (hereafter called the Constitution) on land reform cannot be over-emphasised. The drafting of the Constitution involved South Africans from all walks of life. It was one of the largest public participation programmes ever carried out in South Africa. After almost two years of intensive consultations, political parties represented in the Constitutional Assembly negotiated the final formulation of the text of the Constitution (SA, 1996:3-21).

These formulations were an integration of ideas from ordinary citizens, civil society and political parties represented in and outside the Constitutional Assembly South Africa (1996).

In the Constitution the people of South Africa recognise the injustices of their past and honour those who suffered for justice and freedom in our land; respect those who have worked to build and develop our country and believe that South Africa belongs to all who live in it, united in their diversity. It is therefore, through freely elected representatives, adopted as the supreme law of the Republic, with the following aspects as primary statements (SA, 1996:3-21):

- Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights.

- Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law.
- Improve the quality of life of all citizens and free the potential of each person.
- Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.

Section 25 of the Constitution addresses the property rights of people in South Africa as follows (SA, 1996:3-21):

- That no one in South Africa may be deprived of property except in terms of law of general application, and that no law may permit uninformed deprivation of property.

Section 25 further states that property may be expropriated only if legislation allows it. It further states that the government must formulate reasonable legislative and implement measures, within its available legislative boundaries, to promote conditions which enable citizens to gain access to land on an equitable basis for self-sustainable development.

Blacks who were dispossessed of land and property according to the racial discriminatory laws of 1913 and 1936, need compensation to secure tenure rights. After 1994, people who had existing rights on land were guaranteed of their rights. Provision was made for people who did not have rights to receive rights on the gaining of land. Such people could also gain access to land rights and those that were dispossessed of such rights could be compensated in the form of money. Government therefore has a constitutional duty to establish all land policies and legislation to address the injustice of the past in a manner that will contribute to reconstruction and harmony of all South Africans (De Beer, 2001:42). With the discussion so far as back ground the White Paper legislation will be discussed next.

3.5 **THE WHITE PAPER ON AGRICULTURE 1995**

The Interim Constitution of the Republic of South Africa 1994 required that a new policy be established for agricultural aspects. This was because agriculture, especially in rural communities, was characterised by a very uneven income distribution. This problem could be addressed by broadening access to agriculture by way of land reform and bringing small-scale farmers into the mainstream of the Government's technical and financial assistance to agriculture. However, the rural infrastructure needed for agricultural development, for example, roads, telephone services, electricity etc., were lacking (SA, 1995:3).

The mission statement for the new agricultural policies is to: "Ensure equitable access to agriculture and promote the contribution of agriculture to the development of all communities, society at large and the national economy, in order to enhance income, food security, employment and quality of life in a sustainable manner" (SA, 1995:5).

This mission could be achieved:

- By recognizing the contribution of all farmers.
- By ensuring equitable access to resources and services.
- By the sustainable utilization of agricultural resources, production and marketing (SA, 1995:5).

To get a broader view of the White Paper's intention on land reform it is important to discuss the main principles of this Paper.

3.5.1 The principles mentioned in the White Paper

The following principles are important to land reform in South Africa:

- Food security is an important aspect and should be addressed from a multi-dimensional point of view. This means that national food security is the availability of a constant supply of sufficient, safe and nutritious food for the population within the country.
- Agriculture is an important sector for social and economic growth and development in rural areas.

- Farming systems and the incentives that drive them change over time, but they must be sustainable, environmentally, economically and scientifically sound, and socially and politically acceptable.
- Agricultural support programmes are designed in such a manner as to improve the quality of life, skills and productivity of farmers and farm workers.
- Agricultural support services will be rendered to farmers who participate in land reform programmes.
- Security of land tenure under all land-tenure systems will be promoted as a basis for the effective utilization of agricultural resources (SA, 1995:21).

To support these principles, according to the White Paper, there need to be strategies in place. These strategies are discussed next.

3.5.2 Production and the White Paper

The agricultural production practices and systems must be organised in such a manner as to improve national food security. This includes food for households.

A country can be a large exporter of food, while many of its people live on the poverty line. It is of utmost importance to strive to attain national as well as household food security. The full spectrum of production systems and practices should be supported by Government, from the small-scale production and urban food gardens for household income and food security, to large-scale production systems which can add considerably to national food security (SA, 1995:7).

There are certain production limitations in the production of food. The production limitations according to NW DARD (2010:7) are:

(a) **Input costs**: Where lack of capital is perceived as the most important constraint. Many problems are associated with high input costs and lack of capital.

(b) **Acquisition of production**: Capital determines the affordability of goods inputs, such as good quality seed, effective fertilizers and better pest control, to mention a few.

To maintain sustainable development depends on using good inputs. The lack of finance has a serious impact on emerging farmers, because their input costs usually exceed their potential income. When the availability and affordability of inputs become a concern, farm management becomes difficult. Cheaper and lower quality resources are used to become more cost-effective, and this leads to decreased yields and productivity, and the potential income is less;

(c) **Farming practices**: According to NW DARD (2010:7), it includes both cultivation and livestock practices. Traditional farmers have in many instances a perception that a larger number of livestock represents greater wealth. This belief should be discouraged, because it creates the incentive among farmers to increase livestock numbers, irrespective of the grazing capacity.

The results can be over-grazing and can lead to malnutrition of livestock. It can also lead to erosion that causes deterioration of the grassland and in the long-term, the productivity of the land is decreased. Because of this, the importance of necessary farming skills cannot be overestimated. The skills that a farmer needs (technical, managerial and decision-making) are thus important for emerging farmers.

(d) **Marketing**: The agricultural marketing system should ensure equitable access to the market of all participants (SA, 1995:9). Certain barriers with regard to small-scale farmers are mentioned in the publications of the Broadening Access to Agriculture Thrust (BATAT) programme in Department of Agriculture (DoA, s.a.:2). One of the obstacles in the North West Province is the poor condition of the roads that hampers marketing.

Another obstacle is that small-scale farmers do not have the capacity to compete with large commercial farmers. One of the reasons is that well-established commercial farmers seldom experience problems with access to

markets because they have access to necessary transportation, have storage facilities, applicable information and market-places. Of further importance is that a strategic plan should be compiled to incorporate small-scale emerging farmers in the system.

What makes it difficult in this regard is the bad roads in South Africa, for example around towns in North West province the closest vegetable market is in Klerksdorp, which is 100km from Lichtenburg in the heart of the North West province, and the cost-effectiveness can be in jeopardy at the end of the day.

3.5.3 Sustainable utilisation of natural resources

According to the White Paper, all farmers must be aware of and accountable for the sustainable utilisation of the natural agricultural resources. Both large and small-scale farmers are the principal users and primary custodians of these resources (high-quality agricultural land and water) (SA,1995:12).

It is therefore their responsibility to produce food for the nation. The Government must encourage integrated land-use planning and community participation to ensure optimum management and utilisation of the natural resources. To accomplish the afore-mentioned, the productive land in South Africa should be retained for agricultural use.

Food security and economic development depend on the availability of productive and fertile agricultural land. It is, however, threatening the demand for land for residential and industrial development. It is thus important to minimize agricultural land for other purposes (SA, 1995:13).

This is not what is happening and an example is the case of the Bray Project (Sonning farm) in North West. Bray is a small town on the South Africa-Botswana border. The farmer and owner of Sonning farm went into a joint venture with government and the community of 74 families to build houses on the 1300ha Sonning farm.

Government provided millions to build houses on his farm for the families. He completed 30 out of 150 houses when he received money for his farm from government, but he stopped building all the houses agreed upon and left the

farm. According to the local population, no production is happening on the Sonning farm. Hundreds of people went to the Sonning farm that had been allocated for 150 houses where they have put up shacks. The place is now a squatter camp (Du Toit, 2004:186).

3.5.4 Agricultural financing

Financial management of emerging farmers should be attended to in depth by government. The economy of South Africa depends on It is important for farmers to understand budgets, input and output costs, cash flows, interest rates and budgets to ensure future creditworthiness.

The training needs of the farmers must be evaluated and subsidised by government to minimize the burden on financial institutions (SA, 1995:14).

3.5.5 Institutional infrastructure

Specific efforts must promote, support and facilitate institutional development to enhance the capacity of farm workers, farmers and rural dwellers at local, provincial and national level. This is to ensure that they have a say in the formulation of the policy that affects them.

The support systems will be education, information and training to activate organisations in the community to promote their own interests in policy formulation. The organised agricultural and its local structures will be encouraged to play an initiating and supportive role where this is warranted (SA, 1995:17).

The management of the collection and dissemination of information must be based on the objective circumstances of farmers, for example the difference of land, raining conditions, rock areas etc. Farmers have different training needs. To understand a farmer's circumstances it is important to collect appropriate information for farm development. This information should correspond with the actual needs of the farmers (SA, 1995:18).

A cattle farmer who does not have cropping fields, for example, should be trained in courses like artificial insemination, which is controlled by the Live Stock Improvement Act of 1977. This will assist when Government avails

money for training courses (cost-effectively) to cater for the direct needs of emerging farmers.

3.5.6 Agricultural technology, research, extension and training

It is important that researchers, extension workers and farmers should be part of a dynamic, holistic system. This means that 'special task teams' should operate to analyse land reform aspects. In the holistic system, researchers, extension workers and farmers are partners seeking solutions to problems facing farmers, including emerging farmers. Researchers interact with all the role players as mentioned to get the correct information from the farmers. Farmers now have useful knowledge especially of their own conditions and constraints and of their circumstances, needs, successes and failures and can assist the researcher in giving them the correct information for evaluation, statistically in computer-generated systems (SA, 1995:18).

Although the farmers are not directly involved with the technology available to researchers, they are still interacting with the researchers. The researchers spend more time in the farmer's fields and liaise with the farmers far more often in the conventional model (SA, 1995:18).

Farmers in the commercial as well as non-commercial sector have a wealth of knowledge. Farmers use local varieties of seeds and adapt their practices to local conditions. It is important for researchers to be more sensitive to the knowledge of farmers. Researchers have to check whether this knowledge has applicability, value in the wider system and to incorporate this knowledge in the design of the research programmes (SA, 1995:18).

The White Paper of 1995 is the first step in the Department of Agriculture's endeavour to portray the necessary policy principles or strategies in support of its mission while pursuing the agricultural vision. The second step in policy evaluation is to evaluate the basis of the above-mentioned principles and all agricultural legislation and programmes in order to amend existing and establish new legislation and programmes as deemed necessary. The next section will focus on various methods used to transfer land as part of the implementation of the land reform.

3.6 IMPLEMENTATION OF LAND REFORM

The Department of Rural Development and Land Reform implemented various pieces of legislation, which have been promulgated by Parliament since 1994. These acts will be discussed in chronological order in the next sections. It will discuss the period from 1994 to 2011, explaining the contents of the acts that were implemented.

3.6.1 The Restitution of Land Rights Act No. 22 of 1994

The Restitution of Land Rights Act, provides for the restitution of land or the award of equitable redress to persons or communities disposed of land as a result of past racially discriminatory laws or practices.

The Restitution of Land Rights Amendment Act, 2003 (Act No. 48 of 2003), also empowers the Minister of Rural Development and Land Reform to purchase, acquire in any other manner or expropriate land or rights in land for the purpose of restitution awards or for any related land reform purpose (DRDL, 2010:9). This Act recognises the fact that large numbers of people lost land since the institution of the Land Act of 1913 (Du Plessis, 2004:123).

3.6.2 Land Tenure Reform

For the purpose of this study the mentioned seven acts of the Department of Rural Development and Land Reform Strategic Plan (2010-2013), will be discussed. These acts have an impact on land tenure and therefore the acts are reflected on in more detail.

3.6.2.1 The Upgrading of Land Tenure Rights Act No. 112 of 1991

This Act provides for the upgrading of various forms of tenure to ownership. For example; any 'erf' or any other piece of land in a formalized township for which a township register has been opened at the commencement of this Act, shall at such commencement be converted into ownership.

3.6.2.2   The Distribution and Transfer of Certain State Land Act No. 119 of 1993

This act provides for the distribution and transfer of state land to persons or descendants of persons who were removed from such land and had prior to 27 April 1994 submitted applications to the then Advisory Commission on Land Allocation and the said commission had confirmed their possible entitlement to such land. It further empowered the Minister of Rural Development and Land Reform to designate such land to be dealt with in terms of the Act and also appoint a Land Distribution Commissioner to investigate and make awards to such persons who have legitimate claims to such land.

3.6.2.3   The Land Reform (Labour Tenants) Act No. 3 of 1996

This act provides for security of tenure to labour tenants and their associates and for the acquisition of land by labour tenants, for example a person who was a labour tenant on 2 June 1995, has the right with his or her family members to occupy and use that part of the farm in question.

3.6.2.4   The Communal Property Association Act No. 28 of 1996

This act provides for the establishment of legal communities to acquire, hold and manage land by labour tenants. For example, labour tenants will have the right to own land communally.

3.6.2.5   The Interim Protection of Informal Land Rights Act No. 31 of 1996

This act makes provision for the temporary protection of certain rights and interests in land not otherwise adequately protected by law, until comprehensive new legislation is in place, for example sub-section (2) states, where land is held on a communal basis a person may, subject to sub-section (4), be deprived of such land or right in land in accordance with the custom and usage of that community and, sub-section (4) states, for the purposes of this section the custom and usage of a community shall be deemed to include the principle that a decision to dispose of any such right may only be taken by a majority of the holders of such rights present or represented at a meeting

convened for the purpose of considering such disposal and of which they have been given sufficient notice and in which they have had a reasonable opportunity to participate.

3.6.2.6 The extension of Security of Tenure Act No. 62 of 1997

This act makes provision for security of tenure to people living on land belonging to another person and regulates the conditions under which the eviction of such people may take place. For example, farmers must apply to a court to get eviction orders to evict people.

3.6.2.7 The Communal Land Rights Act No. 11 of 2004

This act provides secure land tenure rights to persons and communities who occupy and use communal land as defined in the Act (DRDL, 2010:9). The land tenure reform is complex because it involves attempts to secure tenure on the short-term goals for people whose tenure is legally insecure, with an aim to secure tenure in the long term.

The labour tenants are regarded as the most vulnerable people in the history of South Africa. These people (disadvantaged people) worked on white farms and in exchange they received the right to live on the farm and to enjoy cropping and grazing rights. Sometime they also received some kind of small cash remuneration. The farm was their place to stay and social life and education were directly linked to their employment. When they lost their employment, they also lost their tenure.

The mentioned acts were thus necessary in the new democratic South Africa to protect the vulnerable people who had no protection during the apartheid regime (Du Plessis, 2004:130).

3.7 **REDISTRIBUTION OF LAND**

The Provision of Land and Assistance Act No. 126 of 1993 was promulgated to redress the imbalanced land allocation of the past by providing land and financial assistance to historically disadvantaged persons and or communities (DRDL, 2010:9). During the apartheid era, 80% of the land in South Africa was

reserved for white people and 13% was reserved for Africans people and 7% for Indians and Coloureds (Toulman & Quan, 2000:247).

There are two types of land earmarked for redistribution. Firstly, Government land held by DLA (Department of Labour and Agriculture), and secondly private land of which the bulk is currently owed by white commercial farmers (Adams & Howell, 2001:2). The objective of the process of redistribution according to the RDP (SA, 1994:21-22) and the White Paper on Land Policy (SA,1997:11) will be achieved through firstly acquiring and distributing land through the "willing-buyer-willing-seller principle", and secondly by redistributing current state owned land to individuals and communities in need (De Beer, 2001:68).

Government now has policies in place to hand over, by 2025, 30% of land to the people who had lost land in the apartheid era, but there are a few problem areas in this regard according to the F.W. De Klerk Foundation (Anon., 2007a), and they are:

- Land-reform failure threatens food security. According to the document titled *Land Reform* the country's food security is already under pressure. Before 1994 South Africa exported agricultural products to the value of R2,40 for every R1 imported, compared with the current levels of R1,40 of exports for every R1 imported. The country cannot afford the non-utilization or under-utilization of arable land.

"Failed land reform projects threaten food security… A land-reform policy in which land is pro-actively acquired by the state and only transferred to non-whites once potential beneficiaries have been identified could place even more arable land outside the sphere of the commercial agricultural sector."

Other factors stated by the (Anon., 2007a) report, are that:

- "Inexperienced participants should accordingly enjoy comprehensive support from the state or via mentorship from existing farmers. However, it is not clear whether the Department of Agriculture and Land Affairs is in a position to provide such support effectively".

- Land reform beneficiaries need access to considerable credit, especially in the initial stages of projects.
- There's a lack of capacity at the land affairs department, and this suggests that the department works with existing white farmers.
- It further suggests that one mechanism used is to offer incentives to white farmers who help emerging black farmers to develop, "In the current political climate, it seems unlikely that such an initiative will enjoy positive consideration."

There is currently fear among many South Africans that the land issue in South Africa will deteriorate into a Zimbabwean scenario where white farmers where removed by illegal seizures. The study will pause for a while on this issue.

3.7.1   Redistribution of land in Zimbabwe

"Racially tinged assumptions behind policymaking, low budgets and low capacity all start looking alarmingly like the beginning of a Zimbabwe-style approach to land issues", says a report released by the Centre for Development and Enterprise. It further states that land reform policies have contributed to a "nobody wins and everybody loses" situation. The report says black commercial farmers who are starting to prosper are sometimes also subject to land claims, effectively disempowering black people who the process of land reform is meant to empower. "Commercial farmers are hesitant to expand because they do not know what will happen with their farms in future, "says Ferdi Meyer, senior lecturer in the Department of Agricultural Economics at the University of Pretoria. Cousins in the CDE report says, "In practice land reform beneficiaries often have inappropriate large-scale models of agriculture foisted on to them by government officials and consultants. With the absence of post-settlement support, this is a key reason for the high failure rate in land reform." This can therefore be one of the reasons why certain farms in South Africa are a failure and this is also a reason for South African farmers to fear a Zimbabwean scenario (as cited by Van Schalkwyk, 2008:1-2).

3.7.2 Land restitution events in South Africa

"Agricultural union 'outraged' at latest land-reform proposal" was the heading of a newspaper clipping after statements had been made that 40% of farm land must now be transferred to blacks. In this clipping, the Transvaal Agricultural Union said to expect of farmers to transfer 40% of their agricultural interest to black shareholders is "outrageous" and "totally unacceptable". This was the reaction after Agriculture Minister Tina Joemat-Petterson announced that government was looking into share schemes for black farmers to replace the failed willing buyer, willing seller principle to reach land reform targets. Minister Joemat-Petterson also said that government's aims of transferring 30% of the country's agricultural land to black ownership by 2014 failed because of the failed willing buyer, willing seller system and that only 5 % of transfers had taken place so far. The Minister further indicated that the new plan might be included in a revised Africans empowerment charter for the agricultural sector (Anon., 2010c).

The president of Transvaal Agricultural Union (TAU-SA), Ben Marais said "A demographical study for the Development Bank tabled as long back as 2001 indicated that the state, together with black people, brown people and Asians already own more than 56% of land in South Africa". Marais further indicated that the TAU-SA members would oppose the new plan in the national interest, because it was a blueprint for the destruction of food (Anon., 2010c).

According to an article, Government owe Land-reform beneficiaries R3,4bn. In the article Minister Gugile Nkwinti said that government failed to pay R3,4bn in post-settlement grants to beneficiaries of land reform with potentially damning consequences, The people could not occupy the land, due to the fact that the farmer who should receive payment for his land did not receive the money from government (Anon., 2010c).

Minister Nkwinti pointed out as defence, that grants were not paid directly to beneficiaries by his ministry, but transferred to "an acting agent", most likely the relevant municipality, as directed by the Public Finance Management Fund. The Minister further stated "Payment could not be effected in respect of some of the agreements due to budgetary constraints in the 2008/09 and

2009/10 financial years." The Minister also said that land restitution and land redistribution bedevilled by the lack of capacity of those who received land to "continue producing effectively and optimally on the land" (Anon., 2010c).

Minister Nkwinti further stated, according to the news item (Anon., 2010e), that the *use it or lose it* principle would be applied firmly to redistribute farmland to ensure that South Africa's agricultural output does not decline further. The Minister also said that farmers should use their land or lose it and that government would assist those farmers, who assisted emerging black farmers financially.

This principle did not apply to the people who received land as part of the restitution process according to Minister Nkwinti, Those who got land through redistribution and did not use it would have it taken away by government. Minister Nkwinti said that his ministry's Green Paper on land reform was intended to try to overcome the problem areas of land reform (Anon., 2010e).

In the next chapter the Green Paper on Rural Development and Land Reform's final draft 11 August 2011 will be discussed. This is an important document in the land reform cycle because it is the latest official policy on land reform.

3.8   **CONCLUSION**

After 17 years of a democratic South Africa, it is clear that although policies like the Constitution, the White Paper, and other policies concerning land reform have been promulgated, and even though the Department of Rural Development and Land Reform have implemented various pieces of legislation which have been promulgated by Parliament since 1994, things have not gone smoothly. These acts had as purpose to try and streamline the land reform process in order to create an atmosphere of goodwill in the country.

Another concern is that the Minister of Land Reform is not sure to whom the money for beneficiaries were paid and think that it was paid to "an acting agent", most likely the municipalities as stipulated by the Public Finance Management Fund. This uncertainty led to a loss of R3,4 billion, something the land reform process in the country could not afford and that can lead to farm evictions. Although it is not a threat at this stage, the possibility still exists.

According to this government noticed that there is a problem concerning land reform and revisited the failures of the current land reform process.

CHAPTER 4: CURRENT AND NEW DEVELOPMENTS ON LAND REFORM IN SOUTH AFRICA

4.1   INTRODUCTION

In Chapter three the legislation on Land Reform was discussed. As from 1994 South Africa changed from an apartheid system to a democratic political system. Due to the changes that took place new land reform policies were promulgated. Because of these changes, old policies and legislation had to be discontinued and or changed to make provision for people who were previously disadvantaged regarding land affairs.

The pinnacle of the discussed legislation is the Green Paper on Rural Reform, 2011. This Green Paper gives the guidelines of the land reform process in the future and as such it will be discussed in more detail in this chapter. The Green Paper that was approved on 11 August 2011 forms the basis of the way forward for land reform in South Africa.

Another aspect that link to the Green Paper, as discussed, is farm-sharing. This chapter will also discuss farm-sharing, as an alternative for land reform in South Africa and to support it, an example of the kibbutz farming system (which is based on communal consumption) will be used.

The Green Paper on Rural Land Reform, hereafter called the Green Paper, is the core document on land reform in recent times. Because of this there is at this stage no newer literature available on the subject and the first section of the chapter will rely on this document as basic source. The purpose of this chapter is to describe the current developments in land reform in South Africa according to the Green Paper and to consider farm-sharing as an option with reference to co-operative farming. The method of bringing forward knowledge of this Paper is thus descriptive in nature.

4.2   BREAKING WITH THE PAST WITH THE GREEN PAPER ON LAND REFORM

The Green Paper presents a new framework for the land reform system in South Africa. The vision for land reform is the following:

It is a re-configured single, coherent four-tiered system of land tenure, which ensures that all South Africans, particularly rural blacks, have reasonable access to land with secure rights, in order to fulfil their basic needs for housing and productive livelihoods and this will include:

- Clearly defined property rights sustained by a fair, equitable administration system.
- Effective land use planning and regulatory systems (SA, 2011:4).

The Green Paper ensures that all South Africans, particularly rural black people, have reasonable access to land with secure rights to fulfil their basic needs.

The Green Paper is aiming to create a new trajectory for land reform which attempts to break from the past without significantly disrupting agricultural production and food security. The principles underlining the new land reform system are to de-radicalize the rural economy, democratise land allocation and secure sustainable production of products (Sabinet Law, 2011).

The key aspect is that the Green Paper proposes a recapitalisation and development programme to ensure that all land reform farms will be 100% productive. This will be the case for all land reform farms acquired through state funds since 1994, as well as small-holder farms privately acquired but where the new owners have had no means of keeping them productive. The programme's strategy is to develop partnerships with commercial farmers on a risk-sharing basis, an aspect that will be discussed later on in the chapter (Sabinet Law. 2011).

4.3   THE GREEN PAPER ON RURAL LAND REFORM: FINAL DRAFT

The Minister of Rural Development and Land Reform, 2011 stated the following in the first draft of the Green paper on Rural Development and Land Reform: "Working together we must build our collective future on this critical social asset" (SA, 2010:3).

The South African National Congress (ANC) founding mission is two-fold and forms part of the Green Paper. The mission is:

- Firstly, to unite all South Africans; and
- secondly, to remove the legacy of Apartheid in all forms (SA, 2010:10).

The removing of the legacy of apartheid is thus one of the pillars of the Green Paper and this includes removing discrepancies in land distribution. Continuity and change are also central to the Green Paper's character. It builds on the effort of government in this democratic era, addressing and redressing landlessness, land restitution, rural development and poverty. Learning from experience and anecdotal evidence the Green Paper suggests alternative strategies to meet these objectives in a more efficient, effective and economical way (SA, 2010:10).

The Green Paper proposes a four-tier tenure system and this will be the point of departure when these aspects are discussed.

4.3.1   The four-tier land tenure system

The word *land tenure* refers to land as owned by an individual (SA, 2011:1). The Green Paper proposes, as mentioned, a four-tier tenure system consisting out of the following:

- State and public land on leasehold.
- Privately owned land on freehold with limited extent.
- Foreign ownership on freehold but with precarious Tenure.
- Communally owned land on communal tenure (SA, 2011:1).

Each one of these features will be discussed next to further highlight the content of the Green Paper.

4.3.2   State and public land on leasehold

There are two categories of state and public land leasehold. Leasehold refers to a form of land tenure where one party buys the right to occupy land for a given length of time (Hornby, 2010:846).

State land is construed to be a limited concept, which refers to land falling under ownership and control of the national government and the nine provincial governments. *Public land* refers to the mass of land belonging to all

forms of government entities. It includes land owned by local governments, provincial governments, and national government and public entities falling under the executive authority of each relevant government. (SA, 2010:88).

A problem identified in the Green Paper is in fact the management of state land. Both the Public Finance Management Act No. 1 of 1999 and the Government Immovable Asset Management Act No. 19 of 2007 require the Accounting Officer of each custodian of state land to maintain an asset register. A challenge confronting the democratic state in this regard is that it has to identify its assets (including state land) before it can exercise control over it. This is a difficult task because some of the government structures that managed state land in the previous homelands totally collapsed during the transition to democracy. It has therefore had a negative impact on the record-keeping of state land (SA, 2010:88).

According to this, it is argued by Government that the land reform process after 17 years in a democratic South Africa still faces serious challenges to implement an asset register. It is not in place and it may happen that government loses valuable assets and income, because they do not have records of assets.

4.3.3 Privately owned land on freehold with limited extent

Freehold refers to ownership of land and the buildings on such land (Hornby, 2010: 597). Urban and non-agricultural land are scattered all over the country and are located in close proximity to agricultural areas.

The restitution process is based on a *willing buyer-willing seller* model, and to a lesser extent the expropriation/confiscation approach, the success of agrarian reform hinges on the ability of the state to acquire land for the farmers to whom it intends to offer agricultural land (SA, 2010:91). The Green Paper defines agrarian transformation as a rapid and fundamental change in the relation (systems and patterns of ownership and control) of land, livestock, cropping and community. It means that agrarian transformation is not just land reform. It is about social, technical, economic, political, cultural, organisational and institutional issues and questions (SA, 2010:84).

According to (SA, 2010:94) the following is proposed:

- South Africans continue to exercise freehold rights over land.
- Sale of land, to non-South Africans, be subjected to limiting regulations.
- Regulatory limitations be placed on the freehold titles held by South Africans in respect of sensitive and national security land such as communal, coastal, heritage, rural, agricultural, environmentally-sensitive, security-sensitive, and broader land. It must be controlled transactions such as transactions valued at a threshold, non-resident 'absent-landlord' properties, and land quantity restrictions be subject to special consent and approval regimes.
- For purposes of equitable redistribution, land quantity restrictions/land ceilings, pre-emption rights and rights of first refusal be imposed on freehold titles of both South Africans and non-South Africans.

4.3.4 Foreign ownership on freehold but with precarious tenure

According to the Green Paper on land reform, frameworks for the regulation of land ownership by foreign nationals are suggested and guided by the need, among others, to:

- Adhere to, and promote the spirit of, the Constitution.
- Promote stability within the land sector of the national economy.
- Encourage increased productive use of land by historically disadvantaged persons.
- Encourage investment in land.
- Promote the most efficient and affordable land use for the benefit of South Africans, especially in housing delivery and agricultural production.
- Ensure that the country's land and its resources are accessible to persons or groups of persons from a diverse range of communities (SA, 2010:95).

It is also important to discuss the next factors that can have an influence on foreign-owned land;

(a)   *Land values and foreign acquisitions*

The moment foreign investors enter the property market; the number of buyers in the market can be expected to raise the demand for commercial properties. This may have a snowball effect on the market and may affect the prices of the properties negatively by increasing the sellers in the market. The more sellers, the more buyers, the competition in the market is greater and the prices of the land may increase in such a way that local people cannot afford it (SA, 2010:96).

(b)   *Regulatory options*;

The following regulatory measures are proposed to be utilised by the state to manage foreign nationals:

- **Forbidden zones**
  This can involve the identification and or classification of parts of the country into no-go zones for non-citizens, for example, a sort of restriction, ranging from military, security defence installations, tribal land, seashores and coastal land.
- **Land quantity restrictions/land ceilings**
  Adverse consequences such as low utilization, land speculation and hoarding, generated by the phenomenon of non-resident absentee property owners have justified the imposition of quantity restrictions.

(c)   *Government's policy position on foreign-owned land*

Out of the above-mentioned, it is clear that there should be a regulatory body to assist government with land reform issues in South Africa. According to the Green Paper, officials in a special structure will perform specific functions.

(d)   *Structures to implement the Green Paper*

An autonomous, but not independent ministry, Land Management Commission (LMC) is proposed with functions including advising, co-ordinating, regulating and auditing. The LMC will have the power to subpoena any entity, private of public, to answer questions relating to its landholdings or land interests, enquire about any land question, verify/validate or invalidate individual or

corporate title deeds. It may also seize or confiscate land obtained fraudulently or through corrupt means (SA, 2010:106).

The Green Paper also suggests the establishment of a statutory office of the Land-Valuer General (LVG) who will be responsible for providing fair and consistent land values for rating and taxing purposes, determining financial compensation in cases of land expropriation and providing specialist valuation and property related advice to government. A Land Management Board (LMB) and Land Management Committees (LMCs) are also proposed (SA, 2010:107).

Land tenure is an important aspect that is included in the Green Paper and it will be discussed next.

4.4   LAND TENURE AS AN ASPECT OF THE GREEN PAPER

As mentioned earlier land tenure has to do with land owned by an individual or community. Land tenure, as mentioned in the Constitution, states that persons or a community whose tenure is legally insecure because of past racially discriminatory laws or practices are entitled to own tenure which is legally secure or to equal give opportunities for tenure to everyone (SA, 1996).

This means that persons who previously could not own land according to 'apartheid' policies, will according to the Green Paper have equal opportunities to own land in South Africa.

Land Tenure systems in South Africa developed over centuries. JRL Milton's writing in (1996:56) on *Ownership,* crafted the historical tenure forms to satisfy the new entrants - the white settlers in South Africa between 1652 and 1910. Other information on the topic includes *Grants in eigendom*; *Loan tenure*– leeningsplaaten; *Loan Ownership – leeningseigendom*; *Emphyteusis–erfpacht*; the *Cradock Proclamation*; and *Quitrent Tenure*. Some of these land acquisitions and subsequent formalisations bear a close resemblance to regulated land invasions and the tenure order created to bolster unlawful occupations. It mentions that when a new tenure system is crafted for the new generation, it should take principles from the past and retain the current

principles, but only if they advance the cause of fundamental change in power relations over land (SA, 2010:84).

The Green Paper also discusses freehold and leasehold as elements of land reform and it will be discussed next.

4.4.1   Freehold and leasehold: land ownership and land use rights

Freehold means full ownership of land and the buildings on such land, as opposed to leasehold land where property reverts back to the owner when the lease expires (Hornby, 2010:597,846).

The main concern is that the land tenure system of South Africa must facilitate land ownership and use rights by communities or individuals while, at the same time, eradicating inequalities and unequal opportunities. This means that there should be an equal balance to protect the rights of landowners and that everyone must have the same opportunity to own land.

The conceptions of land-ownership and land use rights have implications for land holdings by both citizens and non-citizens. For example, when foreigners buy land, it means that less land is available for South Africa citizens. The foreigners may own the land but neglect to produce on the land. This can have a negative impact on the economy of South Africa.

It states further that the Green Paper policy proposals are not intended to strip citizens of private (freehold) rights on land. Freehold means that an individual has limited access to land, for example, land can be confiscated if the economic impact is too severe. Regulatory actions of the state may be "too severe" where the regulation leaves no economic viability, making the property valueless (SA, 2010:93).

Other countries do not, in part or in whole, accommodate private freehold land ownership, even for their nationals. In Zambia and Malawi, for example, an executive authority, usually the State President, on behalf of the people, owns the land and may only extend freehold rights evidenced by a certificate of occupancy (SA, 2010:85).

There are two arguments presenting themselves in relation to the land-ownership and land-use namely:

- *Firstly*, there is the argument against extending full right of ownership to foreigners because of their limited interest in the land. It is also argued that there exist no socially rational bases to accord more than tenancy (use) rights to foreigners. Proponents of this approach regulate foreign land ownership to grant not more than *leasehold* (SA, 2010:93), rights over limited periods with or without renewal clauses. The problem with foreign land ownership is not the *sale or purchase* of the land by foreigners, but as mentioned the *use* of the land efficiently (SA, 2010:85). The problem arising from it is the realm of the effectiveness of measures designed to assuage the bad effects of foreign land ownership (such as rising land values, distortion of the land market, etc).

- *Second*ly the argument is then to regulate this law on agriculture by including measures such as additional property taxation on non-residents or absentee property owners.

The concepts *freehold* and *leasehold* were mentioned in the previous discussion. To get a better understanding of the two concepts it will be necessary to tabulate the advantages and disadvantages of freehold and leasehold in more detail.

Table 4.1 Advantages of freehold and leasehold

Advantages of freehold (privately owned)	Advantages of leasehold (land leased for a period as agreed)
Is perceived as more secure for landowners.	Brings about a reduction in land prices which will stimulate a free market system.
Less risk for the inefficient and slow processes of bureaucracies in that equal opportunities exist to own land.	Planned and controlled land development is easier if the government can act as the ultimate owner rather than a statutory regulator.
There are no tenants to cause	The monitoring and land transactions are

	easier with leasehold clauses (e.g. speculation in sites and services schemes).
	Offer possibilities for providing more equity to disadvantaged groups.

(SA, 2010:86)

Note the following disadvantages related to freehold and leasehold.

Table 4.2 Disadvantages of freehold and leasehold

Disadvantages of freehold	**Disadvantages of leasehold**
Community or national interest may be lost upon transfer from tenant to ownership.	Limited freedom: leaseholders are not entirely free to do what they want with the property. The outer residue after the expiration of the lease results in loss of ownership at some point. Certain things cannot be done without the leasers consent.
Offers fewer opportunities for redistribution and land reform as land ownership patterns may remain skewed for longer.	Increased bureaucratic processes required to sustain leasehold management. For instance, owners may have to be consulted on most major development decisions affecting land.
Distortion of landholding structure as those with quasi-ownership (communal land, PTOs and leaseholds) are perceived to have less secure tenure from these within the formal registration/titling system. Freehold perpetuates the division between the "privileged" and "disadvantaged" persons.	The difference in leasehold ownership constraints (between the leasehold vs. freehold tenure) is reflected in the respective required investment returns. It is felt that leaseholds offer less advantage.
Expensive and formal requirement of freehold titling is exclusionary to	Leasehold financing is more difficult to obtain from banks.

the poor, and may further distort the land records.	

(SA, 2010:86)

Freehold is seen as having higher status than leasehold. For example, an owner of land will get loans from banks more easily, where the land acts as security, than a person who leases land and does not have land ownership as security.

Leasehold on the other side may be more effective for government, for example, when land is leased out on contract to emerging farmers and they fail to produce, the farm can be allocated to other farmers.

It is thus important that land that is privately owned and or leased, should be used effectively and controlled by regulatory systems, which will be discussed next.

4.4.2 Effective land use planning and regulatory systems

As mentioned earlier many policies on land reform have been implemented from 1994 onwards. However land reform in South Africa is still a problem for government. Thus the Green Paper which closely relates to the African tenure system is discussed to further highlight the purpose of the Green Paper.

4.5   **AFRICAN SOCIETY TENURE SYSTEMS**

The communally owned land or communal tenure as one of the 4-tier system of the Green Paper may be linked to the African society tenure system of communal ownership. Land belongs as a whole to the various communities where the king/chiefs are responsible for the administration thereof.

The sub-chiefs or headmen of the king/chief are responsible for allocating land to the community members. The allocated land, however, is not the property of the king or chief (Shaw, 1974:91). Land allocated to individuals, is their property to use or cultivate as they please. The land is never registered in their names, it remains the property of the whole community, and is regarded in African culture as private ownership (De Beer, 2001:86). According to

Schapera and Goodwin (1969:157), the individuals cannot sell or dispose of their land for any form of material compensation.

If the owner wants to give the land away, or part from it to a relative, he has to get consent from the headman. In farm-sharing the farmers' and committee's consent will be required.

African people also make use of communal land in various forms. For example, the chiefs and headmen are at liberty to allocate certain pieces of land for co-operative (land/farm-sharing) of the community and or village. The chief's land is also used as communal land, where the whole community is responsible for cultivating the land on behalf of the chief and people can arrange with each other to cultivate land collectively for periods of time according to De Beer's (2001:86) personal communication with Motlogeloa.

If a person who received land is found guilty of a serious crime, or he abandons the land, it reverts back to the community and can be allocated to someone else. The land therefore remains the property of the owner (in farm-sharing the land will belong to the farmers' committee) as long as he lives on it, and if he maintains and cultivates the land. The owner of the land also permits other people to use the land and or a family member can inherit the land after the death of the owner (Schapera & Goodwin, 1946:157; De Beer 2001:86).

The household head must divide land allocated to him among the household members (De Beer, 2001:87). Natural resources on the land, for example, firewood, water, wildlife, etc. are common property and belong to the community as a whole (and or farmers in the farm-sharing concept). Cattle, however, are private property and the Chief does not provide members of the community with it, as in the case of land (in farm-sharing the cattle will be shared among the farmers).

As already mentioned before, the land over which African leaders rule is the property of the various African communities that are loyal to their respective leaders. If market principles of demand and supply are introduced into this system of land holding and traditional management, people from other

communities will be able to buy land in the jurisdiction of a different community and consequently disturb the existing loyalty and traditions of communities.

The introduction of private ownership and market principles into the traditional African tenure system might therefore create problems among the different African communities as well as with their leadership according to De Beer's (2001:88) personal interview with Zibi. The possibility does, however, exist that with sane planning and negotiations, in which the different African communities' viewpoints are expressed, private ownership might be accepted and incorporated with the traditional African tenure system in a manner that will accommodate both the African leaders and their communities.

As already mentioned at the beginning of this chapter, African people have a tendency to assist each other at both social and economical levels during times of need and refer to it as Ubuntu, which means, "A person is a person through other persons" (Shutte, 1993:46). They are also able to accommodate communal activities when necessary as well as practice private production on individual parcels of land. These characteristics of helping each other and adapting to both communality and privatisation will facilitate a resettlement model based on a combination of private and communal activities.

In analysing the Green Paper a hint can be gained that farm-sharing may be a future plan for the government's land reform plans. Therefore a discussion of the principles of farm-sharing will follow.

4.6   **FARM-SHARING IN SOUTH AFRICA**

As mentioned in the previous chapter, land reform tries to redress the imbalances of land allocation of the past by providing land and financial assistance to historically disadvantaged persons and or communities (DRDL, 2010:9). The main purpose of redistribution is to reverse this unfair racial distribution of land (Van der Elst, 2008:34).

A main problem is, however, that inexperienced participants (such as previously disadvantaged farmers) should accordingly enjoy comprehensive support from the state or via mentorship from existing farmers to make a

success of the whole redistribution action in the form of, for instance, farm-sharing (DRDL, 2010:9).

Farm-sharing is a complex phenomenon which needs to be described. For the purpose of this study farm-sharing has, according to a telephone conversation with Mr. P.H.J Grobbelaar (former Credit Manager Industries and Farming, North West Co-operation) 2011, to do with:

- Two or more farmers who lease land for farming activities from government. The decisions will be taken communally (by the farmers) on the farm. This concept will be known as farm-sharing.
- A committee appointed by government (as mentioned in the Green Paper, the Land Management Committee) should be appointed to control farm-sharing projects.
- Farm-sharing projects should be practised business-wise.
- The appointed committee will be responsible to identify and evaluate prospective farmers to take part in the farm-sharing projects. The selected farmers will take communal decisions in the farm-sharing concept and delegate tasks according to the pyramid system.
- Distribution of inputs, yields and profits is to be handled by the farmers.
- Development is another important aspect in farm-sharing. The farmers will also make communal decisions on the needs for development.
- Monitoring on the farm-sharing should be done regularly by the committee appointed by government, to manage and control farm-sharing projects and to make adjustments if necessary.
- Successful farm-sharing projects should be used as training centres for other prospective farmers to increase production on the farms to become self sustainable.

In the farm-sharing concept, no individual will have sole responsibility for farming activities. Decisions will be taken collectively by the selected farmers who have a share in the farming process.

Individuals in South Africa, due to financial constraints are struggling to survive on farms. The farm-sharing concept may cater for this shortcoming by sharing labour machinery among the members in the farm-sharing community.

- The farm-sharing concept may also cater for development of individuals who need farming skills to improve.
- While one of the farm-sharing members is receiving training the other members can continue without interruptions in the daily farming activities (Grobbelaar, 2011).

Further issues of the farm-sharing concept will be that the land is leased from government and belongs to the selected farmers for a time period as agreed and not to a sole person. The land therefore cannot be sold. Although the committee of the government who controlled farm-sharing in the beginning will later on withdraw some responsibility in financial assistance of farm-sharing projects, government will stay in control of the land and have a final say to ensure continuation of farming activities for the interest of the country and the community (Cloete, 2010:6). Another system that may be part of the farm-sharing concept is the co-operative movement and it is discussed next.

4.6.1 The co-operative movement

One of the best examples of the co-operative movement that has similarities with farm-sharing is the kibbutz farming system and it is discussed next. Context and motivation of this statement will be provided in the next discussion.

4.6.1.1 The kibbutz-system

The kibbutz system developed over time according to the different needs of the Jewish people in Israel and was formed into a settlement that specifically satisfied the need of its members. The kibbutz is changing continuously due to new developments in the country and in the world for example changes in the technology environment and the use of modernised farming equipment. Most aspects of life are based on communal consumption. The production is

economically collectivised and the principle of joint ownership of property exists.

Decisions are taken collectively and no person or group governs the settlement. Production, labour and consumption are equally divided to satisfy all the needs of the members in the kibbutz according to the ability and needs of everyone, based on the importance of work and at the same time giving up individual property right and co-operating with communities (Blasi, 1978:20; De Beer, 2001:97). However, in the kibbutz it is also harder to ensure total equality because there's little control over member's private income, personal belongings and assets.

The kibbutz idea has undergone some changes over the years but it remains a settlement based on communal tenure in property and it is therefore a perfect example of rural settlements based on communal tenure options. The difficulties and problems as well as the advantages of the kibbutz make it an excellent learning and prediction model for rural settlements in South Africa (De Beer, 2001:97). These difficulties and advantages may also play a role in farm-sharing concept.

4.6.1.2   Management of a kibbutz

A kibbutz has a complex structure that is managed by different committees (like the LMCs as recommended by the Green Paper). It is governed by a general assembly which consists of all the members and no person or group of the assembly has sole leadership. Such a management structure and committees are the place where members have an input in the affairs of settlements through democratic elections (De Beer, 2001:98).

4.6.1.3   General composition and functioning of a kibbutz

The kibbutz is communally owned and no form of private ownership in land and houses has the effect that means of production and consumer goods, excluding personal belongings, are allowed. According to Barkai (1977:7) referred to five views of the kibbutz and they are:

- kibbutz properties are held collectively;

- it uses its own labour and no hired labour is allowed;
- kibbutz manpower comes from the community;
- real profits are distributed equally, and
- child-care and education are communal.

When co-operative settlements are formed, it is important to have an assisting agency in the initial stages of the development.

4.6.1.4   The economy of the kibbutz

The kibbutz is a specialised branch and according to Moss (1975:22) the following advantages are identified:

- The risks of production are distributed across agricultural branches and therefore when economic failure is experienced in one sector the other sectors can compensate for the loss.
- The farm is supplying its own agricultural inputs like fodder for animals and most of the community's food needs are catered for. This reduces the expenses of the farm.
- Resources, especially land and water, are optimally used.
- The unemployment rate is reduced because workers are employed annually in the agricultural sectors.
- Markets are supplied with food throughout the year and it ensures a steady income to the kibbutz and assists in reducing the risk of severe market fluctuations and stabilizes the cost of food.

4.6.1.5   The role of the government in the kibbutz

The co-operative movement in Israel was started by a group of young pioneers who voluntarily established settlements. When groups are voluntarily formed it is important to ensure growth and success, because when collectivisation is coerced, violent eruptions, due to different views of groups, are sometimes unavoidable.

This is why the government in Israel protects co-operative settlements against cheap agricultural products from abroad and protects the interest of farmers by the expanding the irrigation network (Darin-Drabkin, 1962:41).

According to Moss (1975:32-33) other roles government has played in the kibbutz are:

- Low interest loans to the communities.
- Technical assistance where possible.
- Administration of the inputs, production and profits to contribute to the reduction of price fluctuations and reduce risks.
- The communities are exempted from tax on imports.
- Government provides subsidies on foods.
- Special rates are given to the community for services such as water and electricity as well as for agricultural inputs, for example, fertilizers.
- Members of the kibbutz are classified as low income earners and the government provides them with tax benefits.

In the 1980s, Israel was hit by very high inflation. The government had to cut down on expenses including monetary assistance to the kibbutz sector. The low interest loans had to be paid back against new extremely high inflation rates. There was no longer any assistance from government and the kibbutz communities had to provide their own agricultural inputs. This is an indication that this system, as discussed, is also open to free market factors which can hamper the effectiveness of land reform (De Beer, 2001:106).

Since the Green Paper has been released critics have been outspoken over the merit of the contents thereof. One of the concerns raised is the possibility of the establishment of so-called agric-villages. Such villages will give people the right to live on farm/land where they could have their own houses with access to basic services and have their own agricultural land for their livelihoods. The government, however, regards this as the most basic human rights enshrined in the Constitution (this aspect will form part of future discussions regarding land reform in South Africa.

4.7   **CONCLUSION**

In this chapter, the Green Paper, as basis for the way forward on land reform in South Africa, was discussed. The Green Paper's purpose is, as mentioned, to unite all South Africans and to remove the legacy of apartheid in all forms.

As mentioned in Chapters 2 and 3, many policies were dismantled and or changed and the need arose for the development of a Green Paper on Rural

Land Reform in South Africa. The link between the Green Paper and the African tenure system was discussed. This paved the way for the possibility of farm-sharing in South Africa. To support the idea of the farm-sharing concept a kibbutz system was discussed and it is clear that there may be room for the development of the farm-sharing concept in Rural Land Reform in South Africa.

Communal farms in the farm-sharing concept may secure security in farming communities, when they are applying for loans at the financial institutions. It may reduce input costs, where farmers share equipment communally. It may further act as a training mechanism to develop emerging farmers by sharing experiences and ideas. A further important factor that may be taken into consideration is that there will always be responsible persons on the farm, when some of the farmer/s go(es) on leave etc. However, challenges for farm-sharing are the diversity of cultures in South Africa that may lead to differences in the farm-sharing process where farming principles are dealt with communally.

CHAPTER 5: CONCLUSION AND RECOMMENDATIONS

5.1   **INTRODUCTION**

Land reform issues started in 1652 with the arrival of white people in the Cape. Indigenous people lived on the land and when a half-way house was established in the Cape to supply in the needs of passing ships, more and more land was taken away from them by the white settlers to practise farming activities.

The land the indigenous people lost in this way was grazing land for their cattle. Consequently they had to move away to get other grazing fields for their cattle. As the settler farms got more and bigger tensions started to grow between these people and the Settlers. Policies were then implemented by the Cape government to segregate the indigenous people from white settler land. These policies were drawn up in such a way that it reminds one of apartheid policies to come.

Throughout history, as discussed in this mini-dissertation, conflict over land has existed in South Africa. When the new South Africa came to the fore in 1994 expectations where that land problems would be resolved. Lund (2010:1), however mentioned that 90% of the land transferred are no longer productive. The Department of Land affairs agreed with this statement.

5.2   **REALIZATION OF THE OBJECTIVES**

The objectives of this study were:

- To describe the history of land reform in South Africa, which developed into chapter 2
- To analyse the land reform programme(s) in South Africa which culminated in chapter 3
- To analyse land reform legislation in South Africa which was addressed in chapter 3
- To analyse the current developments of land reform in South Africa with special reference to the Green Paper on Rural Development and Land

- Reform (Chapter4). In this format the objectives were successfully reached.

5.2.1 Central theoretical argument

The central theoretical argument which guided the study has also been proved to be accurate. It reads as follows:

Land reform is a system used by government to give land back to the people who had lost it since 1913 due to unfair political interventions by government. This is done to assist people to own land and through analysing land reform, conclusions and recommendations can be made to support the processes of land reform in South Africa.

5.2.2 Achieving the objectives of research

To reach the objectives of this study, land reform in South Africa had to be analysed. To start the analysis it was necessary to start with the history of land reform within the context of transformation in South Africa as discussed in chapter 2. It started with the historical background of land aspects between 1652 and 1899.

The Khoi-Khois were spread across the Cape Province when white settlers arrived at the Cape. In the beginning the half-way post occupied a small area in the most Southern part of the country. As time went on more and more ships arrived at the half-way post, and the food requirements of the ships increased.

This meant that more land was needed by the settlers and the only way to get more land was effectively to take the land of the Khoi-Khois. This led to conflict between the Khoi-Khois and the Settlers.

The first British occupation of the Cape started in 1795. The British rules were put in place and one of the policies was to only use one language, English. Under these policies everyone was supposed to be treated equally, but it led to conflict between the British, the Khoi-Khoi tribes, the Xhosa and the Settlers. The Settlers rejected British rule and this later led to the 'Groot Trek'.

During the same time, Chiefdoms grouped together under prominent leaders and they became involved in violent upheavals, known as "mfecane" ('unlimited warfare'). People not willing to belong to the chiefdoms had to settle with white farmers for protection and did not offer resistance to the white settlers when their land was occupied. The Transvaal and Orange Free State offered ideal opportunities for the white settlers to settle. In the Transvaal and the Orange Free State the Africans, however, did not have voting rights or were not allowed to own land.

In the Cape and Natal the military strength of the Nguni Chiefdom, which consisted mostly of Zulus, ensured that certain areas remained under the control of black people. Wars at the Eastern frontier in the Cape between the settlers and mainly Xhosa-speaking people led to most of the land west of the Kei River belonging to white settlers. Out of the small areas where the Africans were forced to live the Ciskei area evolved.

This led to the time of the pre-apartheid era (1899-1948). During this time the Anglo-Boer war took place. The British government wanted to destroy food supplies in the so-called Boer territories to contain the guerrilla war that had evolved. People were kept in concentration camps, and after the war many of the Africans were distributed to white farms all over the Orange Free State and the Transvaal provinces. Africans could not buy land in the white areas. Africans could only buy land in the reserves set out for them. The reserves, however, became too small for the Africans to live in.

The British government took notice of the oppression and in 1912, Pixley Ka Izaka Seme arranged a meeting. Chiefs attended the meeting and the South African Native Congress, later renamed to the African National Congress, was established. They did not want to overthrow the white society in South Africa.

They only wanted acceptance, because they were discriminated against because of the colour of their skin. The Africans strove for acceptance and expressed their feelings through petitions and deputations, but despite it, the Natives Land Act, No. 27 of 1913, was promulgated. This Natives' Land Act was to incorporate territorial segregation and division of rights of land between whites and Africans.

In 1927 another act, the Natives' Administration Act No. 38, was promulgated to introduce greater segregation to limit integration by Africans on white farms. This later led to the promulgation of the Natives' Trust Land Act No. 18 of 1936 that provided for full-time labourers on white farms to be allowed to live in the white rural areas.

This later made way for the apartheid legislation on land reform between 1948 and 1984. Acts to be mentioned during this time are the, Registration Act (1950), the Group Areas Act (1950), the Bantu Authorities Act (1951) and the Separate Amenities Act (1953).

The apartheid system developed through three faces known as firstly, 'Baasskap', secondly segregation and thirdly, it shifted away from total segregation where some political rights were given to Asians and Coloureds. In 1948 the National party was limited by constrains like a housing crisis, labour unrest, angry whites and African expectations. The African reserves were divided into four categories; firstly, isolated areas, according to Land Acts of 1913 and 1936, secondly released areas, thirdly, African spots and lastly, badly located African areas.

Then followed the homeland policy. The Africans were divided into ethnic grouping in reserved homelands as mentioned in table 2.1. The commemorated marches in 1984 and the death of Steve Biko was one of the factors that led to the final phase of apartheid. The people displayed rejection of the legitimacy of government. In 1985 the Commonwealth Heads adopted an accord calling on South Africa to free Nelson Mandela.

The Nationalist Government of F.W. De Klerk (1989 to 1994) tried to maintain some of the existing principles of group rights. Sanctions from the Bush administration if apartheid was not abolished, led to the decision of De Klerk to release Nelson Mandela and to unban, inter alia the ANC, PAC and all apartheid policies were abolished.

In 1994 South Africa changed from an Apartheid state to democracy. An example of land reform failure in Zimbabwe was used as a lesson learned for land reform in Southern Africa. After the history of land reform in South Africa

had been analysed it became clear that there was a need to analyse land reform programmes and legislation in South Africa and this was done in Chapter 3.

The Freedom Charter of 1955 is a crucial document in South African history. It stipulates that access to land, housing, and basic services should be available to every South African. In 1994, the RDP programme was governments fundamental strategy for fundamental transformation to bind government to pursue the goals of the people for freedom from hunger, suppression etc.

The importance of the South African Constitution on land reform cannot be over-emphasised. It was intended to heal the divisions of the past, to lay foundations for a democratic society, and to improve the quality of life.

Due to the Constitution of South Africa it was required that a new policy on land reform be established. The mission of the White paper on land reform is to bring about equal access to agriculture and the development of communities to become self-sustainable. Implementation of the White Paper must be organised in such a way as to improve national food security. Constraints that may hamper the implementation are input costs, farming practices and marketing.

The White Paper makes provision for sustainable utilisation of natural resources and farmers must take accountability for the utilization of natural resources, to secure food security for the nation. It mentioned that farmers should be trained in-depth in financial practices and that government should supply institutional infrastructures for their education.

The implementation of land reform started off with three programmes, firstly land restitution, to allow equitable access to persons who were in the past racially discriminated against; secondly land tenure, to give persons access to ownership of land, and thirdly, land redistribution, to redress the imbalances in land allocation in the past. After the analyses of the land reform programmes and legislation in South Africa it was clear that after 17 years in the new democratic South Africa that all the policies are available but that there is a

lack of an implementation and control strategy. Because of this the need arose to analyse the current developments of land reform in South Africa and it was done in chapter 4 which is discussed next.

This chapter started off with the Green Paper on land reform. The Green Paper was approved on 11 August 2011, and presented a framework for the review of the land reform in South Africa. The Green Paper focuses on the four-tier system which are, state and public land on leasehold, privately owned land on freehold with limited extent, foreign ownership on freehold but with precarious tenure and communally-owned land on communal tenure. More emphasis is laid on land tenure in the Green Paper to give people equal opportunities to own land.

Advantages and disadvantages on freehold and leasehold were discussed and according to it, note should be taken that privately owned and/or leased land should be used effectively. Another system discussed in this chapter was one of the African societies. The link between the African society and the Green Paper is found in one of the Green Paper four tier systems, and that is communal ownership. This then led to farm-sharing as discussed and examples of co-operative farming systems like the kibbutz system, was evaluated.

5.2.3   Recommendations on Land Reform in South Africa

The following recommendations for land reform practices can be made:

- Agri-South Africa should advertise and encourage farm-sharing with current and upcoming farmers as an alternative in the land reform process.
- Research available on the African, the current Green Paper and co-operative farming practices should be gathered to develop farm-sharing principles.
- Government should sponsor upcoming farmers with training, land equipment and stock.
- There should be a body in place to root out corruption practices.

- Government should also support current farmers financially to act as mentors for upcoming farmers.
- Government should subsidise farmers on diesel, payment to workers, and to reduce tax for farmers.

5.3 **CONCLUSION**

The Constitution and the Freedom Charter were emphasised to give everybody equal opportunities to be free in South Africa with equal rights. Apartheid policies were dismantled and the White Paper on land reform was put into place. Many land reform programmes were implemented but with minimum success. It was clear that a new policy on land reform needed to be developed and it paved the way for the release of the Green Paper on land reform in South Africa.

The Green Paper on Land Reform addresses many issues, like the four-tier system that may assist in the land reform process. Note should be taken that land reform policies just after 1994 were also in place to cater for the needs of the rural black people at that stage. Questions may be asked; why has land reform up until this stage been a failure? To answer this question will be difficult. Too many factors play a role, for example, was proper research conducted. Who were the role players involved? How were the finances managed? Were measures in place to rectify shortcomings? According to the Green Paper on Land Reform, measures are being put in place to overcome previous mistakes in policies of land reform.

The research objectives of the study have been reached and the central theoretical argument guided the study constantly. The research question has been:

Can specific initiatives at present undertaken by the ANC-led government accommodate those who are still deprived of land ownership in South Africa?

This has proved to be relevant and was a guideline to follow throughout the study. In this respect, the mentioned Green Paper played an important role. At this stage, however, it is too early to determine the success of the Green Paper. Proper implementation, management, control and auditing, play such

an important role in reducing the risks of failure in land reform that all the steps as mentioned in the Green Paper should be followed to the letter. Its thus important to follow the Xhosa word "Yenza" approach, which means "do it" (Human, 2001:201), when the Green Paper recommendations are accepted as the White Paper on Land Reform in South Africa. It is only when the White Paper on Land Reform is implemented that the people of South Africa can determine on an annual basis whether specific initiatives undertaken by the ANC-led government can accommodate those who are still deprived of land ownership in South Africa. Further research concerning farm-sharing is necessary to be taken into account as alternative for land reform in South Africa.

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