

Chapter 3



Chapter 3

Land reform in a changing development context

Linkages between evidence, policy and practice



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1 The chapter at a glance

The first section of this chapter provides a brief history of the land reform programme by:

- reviewing the extent of dispossession and landlessness prior to 1994;
- charting the formation of DLA and the evolution of different dimensions of the land reform programme, having located its roots in the Constitution, the White Paper on South African Land Policy and legislation promulgated to give effect to the Constitution; and
- summarising the overarching problems and challenges facing land reform implementation.

The chapter moves on to locate the implementation of the land reform programme within a rapidly changing development environment by:

- examining the mechanisms developed to make co-operative governance work more effectively, and the implications of *ad hoc* intergovernmental relations for land reform implementation;
- highlighting key principles underlying public administration and spatial planning; and
- reviewing the process of local government transition, the notion of developmental local government, the decentralisation of development functions, the establishment of 'wall-to-wall' municipalities, and progress made on integrating land reform within municipal IDPs.

Then the chapter highlights the rapidly expanding suite of legislation relevant to the management of natural resources, human settlement and service delivery on land once it has been transferred through the land reform programme.

Finally, it provides an institutional and legislative backdrop on which different elements of a comprehensive settlement and implementation support strategy will be projected in subsequent chapters.

2 A short history of land reform

2.1 Dispossession and landlessness prior to 1994

Reform of the highly unequal racial division of landholding inherited from colonialism and apartheid was one of the greatest challenges facing South Africa in the transition to democracy in 1994. Popular expectations were high that the new democratic regime would effect a fundamental transformation of property rights to address the history of dispossession and lay the foundations for the social and economic advancement of the rural and urban poor.

Under colonialism, and later under apartheid, South Africa was divided into racial zones. Most of the country, including most of the best agricultural land, was reserved for the minority white settler population, with the African majority confined to just 13% of the territory (the native reserves, later known as African 'homelands' or 'bantustans'). At the end of apartheid, approximately 82 million hectares of commercial farmland (86% of all farmland, or 68% of the total surface area) were in the hands of the white minority, concentrated in the hands of approximately 60 000 owners. Over 13 million black people, the majority of them poverty-stricken, remained crowded into the former homelands, where rights to land were generally unclear or contested and the system of land administration was in disarray. These areas were characterised by extremely low incomes and high rates of infant mortality, malnutrition and illiteracy when compared to the rest of the country. On private farms, millions of workers, former workers and their families faced severe tenure insecurity and lack of basic facilities. In the cities and rural towns, informal settlements continued to expand, beset by poverty, crime and a lack of basic services.

South Africa continues to have one of the most unequal distributions of income in the world, and income and material quality of life are strongly correlated with race, location and gender. A deepening social and economic crisis in the rural areas – fuelled by falling formal sector employment, the ravages

of HIV/Aids and ongoing evictions from farms – has accelerated the movement of people from ‘deep rural’ areas to towns and cities throughout the country, while tens of thousands of retrenched urban workers make the journey the other way. The result of these continuing processes is a highly diverse pattern of demand for land for a variety of purposes, a complex pattern of rural-urban interdependency, and numerous hot-spots of acute land hunger in both urban and rural areas.

Under the apartheid regime, whites were assisted by the State in every aspect of agriculture, including provision of land and infrastructure, generous financial support, regulation of markets and legal coercion of farm labour. Since the mid-1980s, however, the agricultural sector has undergone major reform, through gradual reductions in state support and ongoing deregulation and trade liberalisation. This has led to considerable restructuring and consolidation within the sector, which is now dominated by approximately 40 000 highly capitalised producers who compete in both domestic and international markets. Commercial farmland is held almost entirely in freehold title, and is actively traded on the market with minimal restrictions.

There are a number of key trends since 1994 (Ambert & Hornby 2006):

- The number of commercial farms is diminishing, with 20% of commercial farms producing 80% of the total value of production.
- Agriculture is a major employer. Commercial farmers employ 865 000 people, and a further 420 000 are employed in subsistence or small-scale agriculture. This accounts for 11% of the national labour force.
- There has been a 15% rise in agricultural subsidies to producers in the developed world between the late 1980s and 2004, and a simultaneous reduction in South Africa’s general economic tariffs from 28% to 7.1%.

Demand for land in South Africa has a number of origins, both economic and political. Much of the demand for land is a demand for restoration of historical rights (restitution), and does not necessarily mean that people intend returning to an agrarian

lifestyle. Indeed, large numbers of restitution claimants have opted for cash compensation rather than land, and it appears likely that many who regain their land will end up leasing it to established white producers, possibly in the form of joint ventures. Farm workers on commercial farms are largely poor, and only a minority has either the resources or the inclination to engage in agricultural production on their own. Secure housing and paid employment thus tend to be the priority for this group. Within the former homelands there are a variety of small- and medium-sized African farmers, many of whom would be interested in expanding production. However, many more people in these areas look to agriculture only as a supplement to other sources of livelihood in the urban-industrial economy.

While its population is substantially rural (close to 50%), South Africa has long ceased to be an agrarian society. Widespread dependence on wage employment and the most comprehensive social welfare system in sub-Saharan Africa mean that the majority of the population, even in the rural areas, do not look to land-based activities as their primary source of livelihood, and are unlikely to do so in the future. This helps to explain the relatively weak pressure for land reform ‘from below’. At the same time, we have the most developed commercial agricultural sector in Africa, one which exerts a powerful political influence despite its racist past and the small number of farmers and farm owners. This sector has successfully lobbied government, both before and after the transition to democracy, for the protection of private property rights and for agrarian reforms to be minimised.

2.2 The formation of DLA

DLA is a relatively new department, created in 1994, charged with creating and implementing a land reform programme to transform economic relations in the countryside. It incorporated the former Department of Regional and Land Affairs, itself a successor to the Department of Native Affairs (Hall 2004). The DLA inherited an old guard of civil servants, but also saw the influx of a new cadre drawn in large part from the ranks of NGOs involved with rural resistance. The NDA had its own Minister until 1996, when the two departments were united under one Ministry of Agriculture and Land Affairs, although they continued to operate under separate policy frameworks. Under

the Constitution, land is a national competence, meaning that responsibility for this area is not shared with provincial or local government, unless powers are specifically delegated to them.

A Land Reform Pilot Programme (LRPP) was launched by DLA in 1995 to test a range of approaches to land reform and to develop appropriate institutional systems and procedures. Alongside the pilots, the policy framework was being created through a lengthy consultation process involving rural communities, commercial farmers and farming organisations, NGOs, planners, academics, financial institutions, statutory organisations, government departments and foreign experts. The emerging policy framework was debated in a series of workshops and conferences, including discussion of the Draft Land Policy Principles in September 1995, the Green Paper published in 1996, and the final policy framework, the White Paper on South African Land Policy, adopted in 1997 (Hall 2004).

The vision of the DLA is:

To be a global leader in the creation and maintenance of an equitable and sustainable land dispensation that results in social and economic development for all South Africans.

Its mission is:

To provide enhanced land rights to all South Africans, with particular emphasis on black people, that would result in increased income levels and job opportunities, productive land use and well-planned human settlements.

The Department is organised into three operational branches, namely Land Planning and Information (responsible for Deeds, Surveys, Mapping and Spatial Information), Land and Tenure Reform (responsible for all aspects of Tenure Reform and Redistribution, including the LRAD and Commonage programmes) and Restitution (responsible for all aspects of the Restitution programme).

DLA operates through a national office and nine provincial offices, known as provincial land rights offices. Similarly, the Commission for the Restitution of Land Rights is organised into the office of the Chief Land Claims Commissioner, based in Pretoria, and

seven Regional Land Claims Commissioners, spread throughout the country.

2.3 The evolution of the land reform programme

Since 1994, South Africa has embarked on a land reform programme, designed to redress the racial imbalance in land-holding and secure the land rights of historically disadvantaged people. The Constitution of the Republic of South Africa sets out the legal basis for land reform, particularly in the Bill of Rights (Chapter 2), albeit within a liberal-democratic framework that upholds the rights of all property holders. Section 25 allows for expropriation of property for a public purpose or in the public interest, which explicitly includes land reform, subject to just and equitable compensation for owners. The Constitution places a clear responsibility on the State to carry out land and related reforms and grant specific rights to victims of past discrimination.

The framework for land reform policy was set out in the White Paper on South African Land Policy, which divides land reform policy into three broad areas:

1. **Restitution**, which provides relief for certain categories of victims of forced dispossession under apartheid.
2. **Redistribution**, based on a system of discretionary grants that assists certain categories of people to acquire land through the market.
3. **Tenure reform**, which is intended to secure and extend the tenure rights of the victims of past discriminatory practices.

The State's land reform programme aims to achieve equity and efficiency: equity by providing access to, and ownership of, land; and efficiency by improving land use and its contribution to the rural (and ultimately the national) economy.

2.3.1 Restitution

The legal basis for the return of ancestral land is the Restitution of Land Rights Act (commonly known as the Restitution Act), which provides for the restitution of land rights to persons or communities dispossessed

under racially based laws or practices after 1913. Legally, all restitution claims are against the State, rather than against current landowners. Provision is made for three broad categories of relief for claimants: restoration of the land under claim, granting of alternative land, or financial compensation. A total of 79 687 claims were lodged for urban and rural restitution by the cut-off date of 31 December 1998.

Having settled a high proportion of urban claims, mostly by cash compensation, the CRLR is currently dealing with the backlog of rural claims, many of them on prime agricultural land. Unlike urban claims, where restoration of land is often not feasible or desired by the claimants, a high proportion of rural claimants are demanding the right to return to their land. The processing of rural claims involves major political considerations, especially where white landowners resist restitution and the commercial agriculture lobby opposes the 'loss' of prime agricultural land. To date, the CRLR has relied on voluntary agreements with current landowners in order to purchase land on behalf of claimants, but a 1999 amendment to the Restitution Act allows the Minister of Land Affairs to expropriate land by ministerial order. Since 2004, some landowners have been threatened with expropriation when no agreement could be reached, but no expropriation orders have yet been issued.

2.3.2 Redistribution

Redistribution policy aims to make land available to historically oppressed people for whom the Restitution and Tenure Reform programmes may not be applicable. To date, this has been done by means of the 'willing seller, willing buyer' (WSWB) approach, the South African version of the market-based land reform being promoted internationally by institutions such as the World Bank. The historical path of agricultural development in South Africa – specifically the destruction or extreme marginalisation of smallholders and tenant farmers and the consolidation of production in the hands of relatively few large-scale producers – meant that a 'land to the tiller' approach was not a realistic option. Land reform, to be meaningful, would have to be fundamentally redistributive, benefiting not only those currently involved in agriculture, but also those who had long been excluded from the sector.

WSWB entered the discourse around land reform in South Africa gradually during the period 1993–1996,

reflecting the rapid shift in economic thinking of the African National Congress (ANC) from left-nationalist to neo-liberal. By contrast, the ANC's Ready to Govern policy statement of 1992 advocated expropriation and other non-market mechanisms. WSWB was also not mentioned in the Reconstruction and Development Programme (RDP), the manifesto on which the party came to power in 1994. By the time the White Paper on South African Land Policy was published in 1997, however, a market-based approach, and particularly the concept of WSWB, had become a cornerstone of land reform policy. Such an approach was not dictated by the Constitution, which makes explicit provision for expropriation for purposes of land reform and for compensation at below market prices, but was rather a policy choice, in line with the wider neo-liberal (and investor-friendly) Growth, Employment and Redistribution (GEAR) macro-economic strategy adopted by the ANC in 1996.

Both Restitution and Tenure Reform, in theory, fall outside the scope of WSWB, as they are based on rights set out in the Constitution and other legislation. In practice, however, both of these rights-based programmes have been influenced (and limited) by the focus on WSWB in the Redistribution programme.

Until 2000, Redistribution policy centred on the provision of the Settlement/Land Acquisition Grant (SLAG), a grant of R16 000 to qualifying households with an income of less than R1 500 per month. In 2001, a new programme, LRAD, was introduced with the aim of promoting commercially-oriented agriculture.

The new policy offers higher grants, paid to individuals rather than to households, and makes greater use of loan financing through institutions, such as the state-owned Land Bank, to supplement the grant. LRAD offers a single, unified grant system that beneficiaries can access along a sliding scale from R20 000 to R100 000. All beneficiaries must make a contribution, in cash or kind, the size of which determines the value of the grant for which they qualify. The minimum contribution is R5 000, with which an applicant can obtain a grant worth R20 000. In its approach to land acquisition, LRAD retains the market-based, demand-led approach of previous policies.

Most Redistribution projects have involved groups of applicants pooling their grants to buy formerly white-

owned farms for commercial agricultural purposes. This emphasis on group projects has been largely due to the small size of the available grant relative to the size and cost of the typical agricultural holding and the many difficulties associated with subdivision of land.

Also, many rural communities view Redistribution as a means of extending their existing system of communal land-holding and favour collective ownership. Under LRAD, though, there has been a move towards smaller groups, including extended family groups, due to the increased availability of finance in the form of both grants and credit.

In addition, the removal of the income ceiling for grants has facilitated the entrance of black business people into the Redistribution programme. These individuals are able to engage more effectively with officials and landowners in order to design projects and obtain parcels of land that match their needs.

Less commonly, groups of farm workers have used the grant to purchase equity shares in existing farming enterprises. Since 2001, State land under the control of national and provincial departments of agriculture has also been made available for purchase.

Commonage

A separate grant, the Grant for the Acquisition of Municipal Commonage, has been made available to municipalities wishing to buy land for use by the poor, typically for grazing purposes.

2.3.3 Tenure reform

DLA's Tenure Reform programme aims to protect (or strengthen) the rights of residents of privately-owned farms and State land and the reform of the system of communal tenure prevailing in the former homelands. Almost all land in the rural areas of the former homelands is still legally owned by the State. These areas are characterised by severe overcrowding and numerous unresolved disputes where rights of one group of land users overlap with those of another. Today the administration of communal land is spread across a range of institutions such as tribal authorities and provincial departments of agriculture, but is in a state of collapse in many areas. There is widespread uncertainty about the validity of documents such as Permission to Occupy (PTO) certificates, the appropriate procedures for transferring land within

households, and the legality of leasing or selling rights to use or occupy land.

Attempts to draft a law for the comprehensive reform of land rights and administration in communal areas were abandoned in mid-1999 in the face of stiff opposition from traditional leaders. A second attempt began in late 2001. After lengthy debate and many delays, the Communal Land Rights Act was passed by Parliament and signed by the President in 2004, but it is yet to be implemented.

On commercial farms, the Extension of Security of Tenure Act (ESTA) has had limited success in preventing evictions. In theory, ESTA provides protection from illegal eviction for people who live on rural or peri-urban land with the permission of the owner, regardless of whether they are employed by the owner or not. While the Act makes it more difficult to evict occupiers of farm housing, evictions within the law are still possible, and illegal evictions remain common. ESTA allows farm dwellers to apply for grants for on-farm or off-farm developments (e.g. housing), and gives the Minister of Land Affairs powers to expropriate land for such developments, but neither of these measures have been widely used. Where grants have been provided, it has usually involved people moving off farms and into townships rather than granting farm residents agricultural land of their own or secure accommodation on farms where they work.

One category of farm dwellers, labour tenants, have, in theory, acquired much stronger legal rights. The term 'labour tenant' usually refers to a black tenant on a white-owned farm who pays for the use of agricultural land through the provision of labour, as opposed to cash rental. The Land Reform (Labour Tenants) Act (LTA) aims to protect labour tenants from eviction and gives them the right to acquire ownership of the land that they live on or use. Approximately 19 000 claims have been lodged under the LTA, mostly in KwaZulu-Natal and Mpumalanga, but only a small number have been settled.

2.4 Key problems facing land reform

Land reform has suffered from two major problems to date: slow delivery of land and limited benefits for participants in terms of sustainable livelihoods.

Overall, there is a continuing tension between meeting quantitative targets and delivering sustainable and adequately supported projects.

A total of 3.3 million hectares of land had been transferred by the end of 2005, benefiting an estimated 1.2 million people. Of this, the greatest proportion was delivered by the Redistribution programme (1 477 956ha or 44% of the total), followed by Restitution (1 007 247ha or 30%), disposal of State land (761 524ha or 22%) and Tenure Reform (126 519 or 4%).

While these figures represent substantial progress, they fall far short of the national target which aims to deliver 30% of agricultural land in the period 1994–2014 across all areas of land reform. The area of land delivered amounts to approximately 4%, or slightly more than one-eighth, of the target. DLA now plans to deliver a further 21.3 million hectares by the year 2014, or 2.36 million hectares per annum between 2006 and 2014 across all aspects of the land reform programme.

Under Restitution, of 79 696 claims lodged by the 31 December 1998 deadline, just 8 107 remain outstanding, of which 6 975 are classified as rural and 1 132 as urban claims.¹ This distinction is somewhat misleading in that the Act does not distinguish between urban and rural claims. It rather differentiates between claims made by persons and those made on behalf of communities. The majority of community claims are on rural land. These are usually complex and time-consuming to settle as they often involve large numbers of people. Large community claims represent the bulk of the claims remaining to be settled.

The slow delivery of land and the inadequacy of post-transfer support have been exacerbated by weakly defined intergovernmental relations, the generally poor integration of land reform into municipal IDPs, and the limited capacity within many municipalities and provincial line departments to support land reform.

This is in part a reflection of a 'silo-driven' approach to land reform, where the relevant departments concentrate on defining and improving their internal business processes and programmes while ignoring the need to conceptualise land reform as a joint programme of government which must articulate with a range of crosscutting development imperatives and related legislative requirements.

3 Co-operative governance and local government transition

It is clear that well-defined intergovernmental relations and effective local and provincial government support are prerequisites for successful land reform. In this regard, the period since 1994 has seen many changes. The pre-1994 model of government involved three hierarchical tiers with national government at the helm. With the enactment of the Constitution in 1996, this changed to become three 'distinctive, interdependent and interrelated' spheres of government (Glazewski 2000).

The interdependent nature of these governments suggests that all spheres must exercise their powers to 'the common good of the country as a whole'. It underlines the belief that it is only when all spheres of government act collectively and work in cooperation with one another that they can provide coherent government that meets the needs of the nation (Steytler et al. 2005:6).

3.1 The principle of co-operative government

The Constitution emphasises the importance of co-operative government. This requires different spheres and institutions of government to co-ordinate their activities and work together. Closely linked to this has been the evolution of the concept of spheres, as opposed to tiers, of government and the creation of municipalities as a distinct third and co-equal sphere of governance.

Section 41(1)(h) of the Constitution requires all spheres of government and organs of state within each sphere to co-operate with one another in mutual trust and good faith by:

- (i) fostering friendly relations;*
- (ii) assisting and supporting one another;*
- (iii) informing one another of, and consulting one another on, matters of common interest;*
- (iv) co-ordinating their actions and legislation with one another;*

(v) adhering to agreed procedures; and

(vi) avoiding legal proceedings against one another.

Section 41(2) requires that an Act of Parliament must establish or provide for structures and institutions to promote and facilitate intergovernmental relations. The Intergovernmental Relations Framework Act (IGRFA) was promulgated on 15 August 2005 to realise this obligation. The opportunities presented by IGRFA for the planning and implementation of land reform and current compliance by government with its provisions are discussed more fully in Chapter 7.

3.2 The objects and role of local government

Since 1994, when the RDP was published, local government has been conceptualised as a key development actor – the ‘hands and feet’ of the RDP.

Section 152 of the Constitution explains the objects of local government. It emphasises the importance of providing services to local communities and providing for democratic and accountable government at local level. The objects also include the promotion of social and economic development and the active participation of communities in matters of local government.

This developmental role is further emphasised in Section 153(b) where the Constitution says that a local municipality must ‘structure and manage its administration and budgeting and planning processes to give priority to the basic needs of the community and to promote the social and economic development of the community’. To achieve this, this section says that the municipality should ‘participate in national and provincial development programmes’.

In addition, and linked to the participation in national and provincial programmes, Section 154(1) of the Constitution requires national and provincial governments to support local governments as follows:

The national government and provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.

Although the Constitution creates three co-equal spheres of government, it also gives national and provincial governments the specific powers to monitor,

support and ensure the effective performance of municipalities, and, in extreme cases, to intervene when constitutional or statutory obligations are not being fulfilled.

The Constitution has created local government as an equal organ of state, and it links the three spheres of government together in anticipation of them acting together to collaboratively achieve the broad objectives of the State.

3.3 The impetus for decentralisation

The emphasis on local government as a key development actor reflects a growing impetus towards decentralisation of development planning and implementation. This is partly a reflection of the ‘belief that many functions can be undertaken more effectively at local levels of government’ (SLSA Team 2003:10). However, in practice there remain complex tensions around decentralisation. On the one hand, there is the tension between the desire to retain control at the national and provincial levels and the need to invest in and empower the local sphere. Effectively, the ‘resources and responsibilities vested in the local sphere of government continue to be set largely by other spheres of government, particularly line departments at provincial and national levels’ (SLSA Team 2003:10). On the other hand, decentralisation offers an opportunity to a national government department ‘to relieve itself of existing, or potential, fiscal pressure and administrative responsibilities’ (SLSA Team 2003:10).

The extent to which decentralisation is effected is mirrored in the extent to which fiscal decentralisation has been taking place in line with the increasing responsibilities of sub-national governments to provide public services. The sub-national governments are allocated a proportion of nationally raised revenue and have the legal autonomy to formulate their budgets and spend the funds as they wish. Over the period 2005/06, national departments accounted for about 37.6% of total revenue collected nationally, provinces received 57.7% and municipalities 4.7%. Overall, there has been a steady increase in transfers from the national to the provincial and local levels (Yemek 2005).

In addition to focusing on the local government sphere, national departments, like DLA, have been through extensive processes of decentralising functions to PLROs and RLCCs in a bid to speed up the land reform process by localising budgets and project approvals.

3.4 Public administration and developmental local government

Section 195 of the Constitution determines that the basic values and principles that govern public administration require that such administration must be governed by the democratic values and principles enshrined in the Constitution, including the principle that ‘public administration must be development-orientated’ (Subsection c) and that ‘people’s needs must be responded to, and the public must be encouraged to participate in policy-making’ (Subsection e).

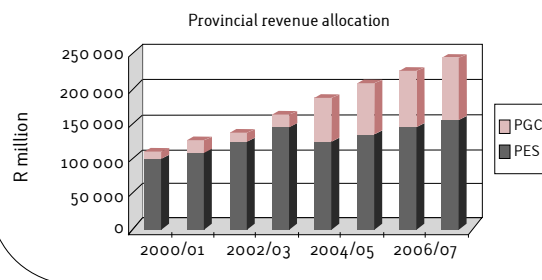
Section 195(2) provides that the above principle applies to administration in every sphere of government, organs of state and public enterprises. It confirms that municipalities are part of public administration insofar as the principles of the Constitution are applicable, and re-emphasises the notion of interdependence and co-operation.

Perhaps the most important observation from a land reform perspective is that up until 1996 democratic local government, developmental or otherwise, did not exist in rural areas.

In most parts of South Africa, rural local government is a new phenomenon, with democratic rural district councils and rural local councils coming into existence only after the first local government elections held in 1995 and 1996. Since then, rural local government has remained largely underdeveloped and as structured during the transition phase 1995 to 2000, lacking sufficient financial and administrative capacity to have a significant impact on poverty (Pycroft 2002).

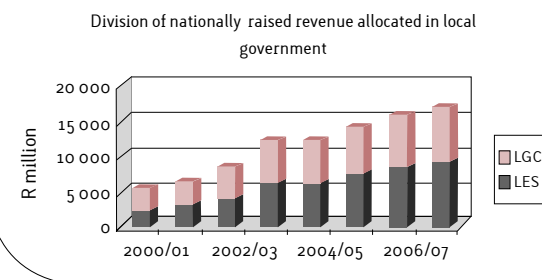
The 1998 White Paper on Local Government outlined a new vision of developmental local government, which was to be implemented following the 2000 local government elections. This was defined as ‘local government committed to working with citizens and groups within the community to find sustainable ways

Figure 3.1: Trends in allocation of Provincial Equitable Shares (PES) and Provincial Conditional Grants (PGC)



Source: Department of Finance Medium Term Budget Policy Statement and Budget Review 2004.

Figure 3.2: Trends in allocation of Local Equitable Shares (LES) and Local Conditional Grants (LGC)



Source: Department of Finance Budget Review 2004.

to meet their social, economic and material needs and improve the quality of their lives’.

Developmental local government and the progressive decentralisation of service delivery have been the recurring motifs of the local government transition process through the interim and final phases of local government transition, which resulted in the demarcation and establishment of ‘wall-to-wall’ local and district municipalities as the basis for the 2000 municipal elections.²

However, with the proliferation of new institutions, the challenge has been to find effective ways to share information, jointly plan and budget and co-operate with regard to implementation. This has led to the establishment of a variety of forums and information channels to try to improve intergovernmental relations. However, a recent review characterised the current state of intergovernmental relations as ‘fraught with confusion and misunderstanding’ (Steytler et al. 2005:4).

3.5 Local government transition

3.5.1 The Local Government: Municipal Structures Act

Addressing the needs of the community, understood broadly in terms of Section 152 of the Constitution, pervades the role of local government in all subsequent legislation. The Local Government: Municipal Structures Act (commonly known as the Municipal Structures Act or simply the Structures Act) addresses this by focusing on delimiting the powers between district and local municipalities. All four sub-clauses in Section 83(3) are of relevance to land reform:

A district municipality must seek to achieve the integrated, sustainable and equitable social and economic development of its area as a whole by—

- (a) ensuring integrated development planning for the district as a whole;*
- (b) promoting bulk infrastructural development and services for the district as a whole;*
- (c) building the capacity of local municipalities in its area to perform their functions and exercise their powers where such capacity is lacking; and*
- (d) promoting the equitable distribution of resources between the local municipalities in its area to ensure appropriate levels of municipal services within the area.*

In order to achieve this, Section 19(2) requires that the municipal council must annually review the following:

- (a) the needs of the community;*
- (b) its priorities to meet those needs;*
- (c) its processes for involving the community;*
- (d) its organisational and delivery mechanisms for meeting the needs of the community; and*
- (e) its overall performance in achieving the objectives referred to in subsection 1 [Section 152 of the Constitution].*

3.5.2 The Local Government: Municipal Systems Act

This law, commonly known as the Municipal Systems Act (or simply the Systems Act), provides direction

to municipalities with regard to their development responsibilities by requiring and giving some guidance to the preparation of IDPs. Most importantly, in relation to land reform, Section 25(1) requires municipalities to:

adopt a single, inclusive and strategic plan for the development of the municipality which—

- (a) links, integrates and co-ordinates plans and takes into account proposals for the development of the municipality;*
- (b) aligns the resources and capacity of the municipality with the implementation of the plan;*
- (c) forms the policy framework and general basis on which annual budgets must be based;*
- (d) complies with the provisions of this Chapter [the chapter on integrated development planning]; and*
- (e) is compatible with national and provincial development plans and planning requirements binding on the municipality in terms of legislation.*

3.6 Local government and land reform

Section 157(4) of the Constitution provides for local government to be assigned a role in a wide range of matters including land reform:

The national government and provincial governments must assign to a municipality, by agreement and subject to any conditions, the administration of a matter listed in Part A of Schedule 4³ or Part A of Schedule 5⁴ which necessarily relates to local government, if—

- (a) that matter would most effectively be administered locally; and*
- (b) the municipality has the capacity to administer it.*

This is the principle of subsidiarity, where the power and responsibility to perform a particular function is located at the lowest appropriate level.

Section 23(1)(c) of the Municipal Systems Act clearly provides for the involvement of municipalities in land reform through their IDPs by saying that a municipality must undertake developmentally orientated planning so as to ensure that it:

together with other organs of state contribute to the progressive realisation of the fundamental rights contained in sections 24, 25, 26, 27 and 29 of the Constitution [the rights related to the environment, property and land, housing, health care, food, water and social security and education].

Local governments are required to plan and implement land reform in their areas of jurisdiction in co-operation with the various other spheres of government.

Section 88 of the Municipal Structures Act describes this as follows:

- (1) A district municipality and the local municipalities within the area of that district municipality must co-operate with one another by assisting and supporting each other.*
- (2) (a) A district municipality on request by a local municipality within its area may provide financial, technical and administrative support services to that local municipality to the extent that that district municipality has the capacity to provide those support services.*
 - (b) A local municipality on request of a district municipality in whose area that local municipality falls may provide financial, technical and administrative support services to that district municipality to the extent that that local municipality has the capacity to provide those support services.*
 - (c) A local municipality may provide financial, technical or administrative support services to another local municipality within the area of the same district municipality to the extent that it has the capacity to provide those support services, if the district municipality or that local municipality so requests.*
- (3) The MEC for local government in a province must assist a district municipality to provide support services to a local municipality.*

Although the Constitution and the Municipal Systems Act make it clear that municipalities should be involved in land reform, there is less clarity concerning the exact nature of this involvement and the extent to which local municipalities are directly responsible for the implementation of land reform projects and programmes.

What is significant, however, is the fact that neither Schedule 4 nor Schedule 5 of the Constitution⁵ clarify

the roles of national, provincial and local government with regard to the development responsibilities of government – in particular the development roles emerging from the Bill of Rights in respect of the environment, property and land, housing, health care, food, water and social security and education, all of which are specifically highlighted in the Municipal Systems Act.⁶

To give effect to the provisions of the Municipal Systems Act, DPLG has developed a set of guidelines which indicate that, while no separate sector plan is necessarily required, the IDP must address land reform by:

- a. Supporting the land reform programme and its operations;*
- b. Assisting in the land reform application process; and*
- c. Addressing the need for municipal services and land use planning within existing land reform projects (DPLG undated:53–55).*

3.7 The gaps between vision and manifestation

As indicated above, effective co-operative governance is one of the more challenging developmental goals to realise. Such co-ordination involves harmonisation of the legislation and legislative mandates of different departments, co-ordination of functions within a clear spatial development framework, and alignment of budgets and human resources to efficiently identify and meet priority development goals.

Overall, while there have been efforts to improve intergovernmental relations and integrate planning and delivery processes across different sectors, there is still much evidence that many municipalities remain weak and intergovernmental relations are fragmented.

In April 2005, DPLG launched Project Consolidate, a programme of support to local government. More than half the established municipalities have been found to be in need of intensive support from the programme. Overall, a shortage of management skills has been identified, which is often associated with poor financial administration (DPLG 2005). Many municipalities have accumulated substantial debt. In the Auditor-General's

report on the Submission of Financial Statements by Municipalities for the financial year ended 30 June 2005, it was stated that 132 out of 284 municipalities submitted financial statements late or did not submit financial statements at all. The shortage of skilled staff contributes to the high number of qualified audit reports amongst municipalities.

Weak local government and *ad hoc* intergovernmental relations have had major implications for effective land reform delivery. While land is a national competency, the planning and implementation of land reform necessarily cuts across national, provincial and local spheres of government. Overall, there are continuing problems of government departments/spheres of government working without reference to one another. This is a key constraint impacting on the effectiveness of land reform and other government programmes which are national development priorities. A recent status quo review of intergovernmental relations found that:

The implementation of key national priorities requiring the cooperation of all three spheres of government has been an unpredictable and incoherent process (with the clear exception of the budget process). This confusion regarding the status, role and interrelationship of these processes results in little coherence between the spheres' policies and priorities.

Second, most instruments of intergovernmental relations are ad hoc as they lack institutional definition. This is despite the fact that service delivery programmes often fail due to the perplexing jurisdictional boundaries between state departments, organs or spheres for policy priorities that cut across traditional competencies.

Thus the ad hoc nature of the intergovernmental relations has resulted in poor service delivery at community level, including problems of duplication, real or perceived unfunded mandates, and a general inability to forge collaborative partnerships or find common ground for joint action (Steytler et al. 2005:6).

Measures to make co-operative governance feasible, practical and functional have to be at the centre of any strategy seeking to involve different government actors in the provision of settlement and implementation support.

4 Changing planning legislation and approaches

The planning and development landscape was characterised by extreme fragmentation in 1994. There was a plethora of planning legislation all influenced by the apartheid mindset of 'separate development' and parallel institutions.

4.1 The Development Facilitation Act

The first piece of legislation signalling the new government's approach to planning was the Development Facilitation Act (DFA) of 1995. This Act was passed to help speed up land development and remove many of the obstacles contained in planning legislation from the past. The DFA was conceptualised as interim legislation to override a mass of historically inherited planning legislation and pave the way for the development of new planning law.

Chapter 1 of the DFA specifies a number of general principles for land development which must apply to all land development.⁷ The principles, which remain in force, encourage active participation of communities in local planning decisions, and efficient, integrated and environmentally sustainable land development. Section 2 provides that:

The general principles for land development set out in section 3 apply throughout the Republic and—

- (a) apply to the actions of the State and a local government body;*
- (b) serve to guide the administration of any physical plan, transport plan, guide plan, structure plan zoning scheme or any like plan or scheme...*
- (c) serve as guidelines by reference to which any competent authority shall exercise any discretion or take any decision in terms of this Act or any other law dealing with land development, including any such law dealing with the subdivision, use and planning of or in respect of land.*

Section 3(1) lists the general principles for land development. Those that are relevant to land reform include the following:

- (c) *Policy, administrative practice and laws should promote efficient and integrated land development in that they—*
- (i) *promote the integration of the social, economic, institutional and physical aspects of land development; ...*
- (iii) *promote the availability of residential and employment opportunities in close proximity to or integrated with each other; ...*
- (vii) *contribute to the correction of the historically distorted spatial patterns of settlement in the Republic and to optimum use of existing infrastructure in excess of current needs;...*
- (d) *Members of communities affected by land development should actively participate in the process of land development ...*
- (g) *Laws, procedures and administrative practice relating to land development should— ...*
- (iii) *be calculated to promote trust and acceptance on the part of those likely to be affected thereby; and*
- (iv) *give further content to the fundamental rights set out in the Constitution.*

The DFA was particularly concerned with trying to address the spatial distortions of apartheid and move from a fragmented and racially-skewed approach to planning and decision-making to a more holistic and integrated approach. To this end it required local government to develop land development objectives (LDOs) and to begin to work in a more developmental way. LDOs were designed as a mechanism for land use planning in local and district municipalities. This was combined with the Local Government Transition Act, which ‘imposed a major obligation on all local governments to engage in a new form of planning which it termed integrated development planning’ (Mabin 2002).

4.1.1 Spatial development frameworks and land-use management schemes

There have been a number of moves towards establishing a unitary spatial development planning

and land use management system. This process began with the passing of the DFA in 1995 and the release of the Draft Green Paper on Development and Planning in 1999. This was followed in 2000 by the Municipal Systems Act, of which Section 26(e) requires municipalities to produce ‘a spatial development framework which must include the provision of basic guidelines for a land use management system for the municipality’. In 2001, the White Paper on Spatial Planning and Land Use Management was released by the Ministry of Agriculture and Land Affairs. Various versions of a Draft Land Use Management Bill have also been published, the most recent version of which is dated 30 January 2006.

The four components of a spatial development framework (SDF), specified in the White Paper (Ministry of Agriculture and Land Affairs 2001), are:

1. **Policy** for land use and development.
2. **Guidelines** for land use management.
3. A **capital expenditure framework** showing where the municipality intends spending its capital budget.
4. A **strategic environmental assessment**.

The content of this spatial framework is further spelled out in the Local Government: Municipal Planning and Performance Management Regulations, 2001 (Government Notice 22605, 24 August 2001), which state that an SDF in a municipality’s IDP must:

- give effect to the Chapter 1 principles of the DFA;
- set out objectives that reflect the desired spatial form of the municipality;
- contain strategies and policies regarding the manner in which to achieve the objectives;
- set out basic guidelines for a land use management system;
- contain a strategic assessment of the environmental impact of the SDF;
- identify programmes and projects for the development of land within the municipality; and
- provide a visual representation of the desired spatial form of the municipality, including identification of where public and private land

development and infrastructure investment should take place.

The DLA White Paper on Spatial Planning and Land Use Management (2001) and the subsequent Draft Land Use Management Bill emphasises that in a rural context it will be necessary also to deal specifically with natural resource management issues, land rights and tenure arrangements, land capability, subdivision and consolidation of farms, and the protection of prime agricultural land.

Section 18(12) of the Draft Land Use Management Bill also requires that ‘a municipal land use scheme must give effect to and be aligned with the National Spatial Development Perspectives *[sic]*, Provincial Growth and Development Strategy, Provincial Spatial Development Framework or similar instruments’.

Despite the emphasis on SDFs and land use planning schemes, relatively little emphasis has been placed on and investment been made in providing reliable spatial information on existing and planned land reform projects. This is an essential input if municipal SDFs are to have any meaning. DLA, which administers the Spatial Data Infrastructure Act, is in the process of trying to align the various spatial datasets and secure common standards for spatial information for South Africa.

5 Legislation regulating township establishment and the provision of municipal services

The purpose of establishing towns or denser settlements is to enable residents to share the financial burden of services and to cross-subsidise each others’ use of services such as water and electricity. If the South African population were to be spread across the country without denser settlement, each household would have to make its own arrangements for service delivery and payment in the same way that farm homesteads get their services. This is the position on land classed as ‘agricultural land’ as opposed to ‘erven’.⁸ Such landowners,

whether they are public (State) owners or private owners (including private individuals, corporate entities, trusts and communal property associations), have to undertake their own refuse collection and disposal, negotiate with Eskom to bring power lines up to the boundary of the land, and bear the cost of reticulating the (bulk) electricity from the service point on the boundary fence. In practice, these landowners usually have to provide their own water and sanitation services as well, although DWAF maintains that municipalities are obliged to provide at least a basic level of these services to all residents, regardless of where they live (DWAF 2005:5).

Township establishment provides the legal and institutional framework for the subdivision and registration of erven (on scale) in the name of private landowners so that the ‘practical measures’ needed to impose and collect charges may be used. Various pieces of legislation make provision for the establishment of townships, and for creating the legal institutional arrangements for the provision of municipal services and the collection of payments. These payments include rates as a form of tax and direct service charges for water, refuse removal and other services. Local government is entitled to an ‘equitable share’ of the revenue raised nationally to enable it to provide basic services and perform its functions.

In terms of the Municipal Systems Act, municipalities are obliged to provide services on a financially sustainable basis. Section 1 of the Act defines the concept as follows:

‘financially sustainable’, in relation to the provision of a municipal service, means the provision of a municipal service in a manner aimed at ensuring that the financing of that service from internal and external sources, including budgeted income, grants and subsidies for the service, is sufficient to cover the costs of—

- (a) the initial capital expenditure required for the service;*
- (b) operating the service; and*
- (c) maintaining, repairing and replacing the physical assets used in the provision of the service.*

Because of practical difficulties, municipalities are unable to take responsibility for the ‘internal’ reticulation of services to users on land that they

do not own. Landowners who receive services can be held liable to pay for those services because the municipality has more reliable and readily available legal means to extract payment. If a landowner does not pay, the municipality can discontinue the services and take steps to collect charges from the owner.⁹ These 'practical' debt management measures are not available to a municipality if supplied services to people living on land owned by someone else. In cases where landowners reticulate water and electricity on their land and provide refuse removal, the collection of charges for these services is the business of that landowner.

An occupant of a registered erf may, once he or she receives services, qualify for indigent grant subsidies. Section 97(1)(c) of the Municipal Systems Act says that 'provision must be made for indigent debtors that is consistent with its rates and tariffs policies and any national policy on indigents'. Each municipality may determine its own indigence policy in conjunction with the local community. The policy must be governed by the constitutional principles of lawfulness, fairness, effectiveness, transparency and responsibility and it has to be monitored and evaluated regularly. The allocated amount depends on the number of persons who qualify, as well as the amount of money received in terms of the equitable share system. The municipality also has to decide what the long-term tendency of indigent households is likely to be, in order to avoid creating expectations and having to change the amount of the subsidy drastically each year.

The following laws provide for township establishment:

- the Development Facilitation Act or provincial equivalents of the DFA, where these exist;¹⁰
- the ordinances of the four pre-1994 provinces,¹¹ styled according to the Cape Province's Land Use and Planning Ordinance (LUPO), all of which continue to apply in the current nine provinces;
- the Less Formal Townships Establishment Act (commonly known as LEFTEA); and
- the Provision of Land and Assistance Act 126 of 1993 (commonly known as Act 126).

A township can (arguably) also be established by a landowner who subdivides land and transfers each subdivided portion. However, such steps will be long and cumbersome and will require that township

establishment conditions are registered against the title deeds in terms of servitudes, etc.

The main difference between Act 126 and the other ways of establishing a township is that this Act does not contain a provision in terms of which streets and public places automatically vest in the municipality upon the transfer of the first erf from the general plan which establishes the township perimeters.

Municipalities are obliged to establish spending priorities when it comes to providing services to established townships. They are likely to give a higher priority to providing services to more densely populated settlements closer to town. This is because the cost of reticulation is proportional to the distance which has to be covered, and because the number of people who will benefit is greater.

6 Emerging environmental legislation

Over the last ten years, the South African government has passed a significant body of legislation geared towards environmental management and protection. A full review has been commissioned by SDC (McLean 2007). Chapter 9 contains more detailed information.

While these efforts are laudable, there is an increasing risk that DLA planners and new landowners may not be aware of the complex mass of interlinking but distinct pieces of legislation containing various environmental entitlements, duties and obligations. This has major implications for environmental and natural resource management within the context of land reform and for the formulation of DLA's Environmental Implementation and Management Plan in terms of the National Environmental Management Act. The Act is discussed further below.

The legal obligations of the State and of all landowners with respect to environmental governance and management are grounded in a number of sources of law: the Constitution, especially the Bill of Rights, the common law,¹² domestic legislation, and certain international treaties.

In the land reform context, Section 24 of the Constitution is particularly important:

Everyone has the right—

- (a) to an environment that is not harmful to their health or well-being; and*
- (b) to have the environment protected for the benefit of present and future generations, through reasonable legislative and other measures that—*
 - (i) prevent pollution and ecological degradation;*
 - (ii) promote conservation; and*
 - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.*

The wording of Section 24(b) indicates that the State and organs of state have an obligation to take ‘reasonable legislative and other measures’ to prevent ecological degradation and achieve ecologically sustainable development and natural resource use.

The State has partly met its obligations by passing all the legislation discussed below, but the requirement that it must take ‘other measures’ indicates that it must do more to ensure the environmental goals are achieved in practice.

6.1 The National Environmental Management Act

NEMA is a key piece of environmental legislation. It seeks to provide a framework for co-operative environmental governance by establishing principles for decision-making on matters affecting the environment, institutions that will promote co-operative governance, and procedures for co-ordinating environmental functions exercised by organs of state. It further seeks to provide for certain aspects of the administration and enforcement of other environmental management laws.

NEMA embraces all three fields of environmental concern: resource conservation and exploitation; pollution control and waste management; and land-use planning and development. The concept of sustainable development underpins the statute,¹³ and the definition of ‘environment’ in Section 1 is broad and far-reaching:

- (xi) “environment” means the surroundings within which humans exist and that are made up of—*
 - (i) the land, water and atmosphere of the earth;*
 - (ii) micro-organisms, plant and animal life;*
 - (iii) any part or combination of (i) and (ii) and the interrelationships among and between them; and*
 - (iv) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being.*

6.1.1 NEMA Principles

Section 2 of NEMA contains important and extensive National Environmental Management Principles, which apply to the ‘actions of all organs of state that may significantly affect the environment’. These principles must guide decisions under NEMA or any statutory provision concerning the protection of the environment. Those principles with particular relevance to the land reform process include:

- Environmental management must place people and their needs first, serving their physical, psychological, developmental, cultural and social interests equitably (Section 2(2)).
- Development must be socially, environmentally and economically sustainable (Section 2(3)).
- Sustainable development requires the consideration of all relevant factors including that:
 - the disturbance of ecosystems, loss of biological diversity, waste, pollution and degradation of the environment are avoided, or, where they cannot be avoided, minimised and remedied;
 - the use and exploitation of non-renewable natural resources is responsible and equitable, and takes into account the consequences of resource depletion, while renewable resources are utilised in a manner that does not jeopardise their integrity or that of the ecosystem; and
 - negative impacts on the environment and on people’s environmental rights be anticipated and prevented, and where they cannot be prevented, minimised and remedied (Section 4(a)).

Table 3.1: Summary of environmental legislation

Act	Purpose
Environmental Conservation Act (ECA)	The ECA seeks to provide for the effective protection and controlled utilisation of the environment.
National Environmental Management: Biodiversity Act	The Biodiversity Act seeks to provide for the management and conservation of biological diversity and its components, the sustainable use of indigenous biological resources and the fair and equitable sharing of benefits arising from bio-prospecting of indigenous biological resources. It further seeks to provide for co-operative governance in biodiversity management and conservation.
National Environmental Management: Protected Areas Act	The Protected Areas Act creates a national system of protected areas in order to protect and conserve ecologically viable areas representative of biodiversity in the country. It further seeks to achieve co-operative environmental governance and to promote sustainable and equitable utilisation and community participation.
Conservation of Agricultural Resources Act (CARA)	CARA seeks to provide for the conservation of natural agricultural resources by maintaining the production potential of land, combating and preventing erosion and weakening or destruction of water resources, protecting vegetation and combating weeds and invader plant species.
National Water Act	The National Water Act gives effect to the constitutional right of access to water. The statute's overall purpose is to ensure that South Africa's water resources are protected, used and managed in ways which take into account a number of factors, including inter-generational equity, equitable access, redressing the results of past racial and gender discrimination, promoting sustainable and beneficial use, facilitating social and economic development, and providing for water quality and environmental protection.
Marine Living Resources Act	This Act seeks to provide for the conservation of the marine ecosystem, the long-term sustainable and equitable utilisation of marine living resources and orderly, fair and equitable access to exploitation, utilisation and protection of certain marine resources. This has important implications for the livelihoods of communities living in coastal areas whose livelihoods may depend in part on access to marine resources.
National Forests Act	The National Forests Act seeks to promote the sustainable management and development of forests for the benefit of all, to restructure forestry in State forests, to protect certain forests and trees, to promote community forestry and greater participation in all aspects of forestry activities, and to 'promote the sustainable use of forests for environmental, economic, educational, recreational, cultural, health and spiritual purposes'.
National Veld and Forest Fire Act	The purpose of the National Veld and Forest Fire Act is to prevent and combat veld, forest and mountain fires, and to establish a variety of institutions, methods and practices for achieving this purpose.
Mineral and Petroleum Resources Development Act (MPRDA)	The MPRDA has a number of diverse objects, including promoting equitable access to mineral and petroleum resources, promoting economic growth and resource development, providing for security of tenure, and giving effect to the 'environmental right' contained in Section 24 of the Constitution.
National Heritage Resources Act (NHRA)	The NHRA sets out to protect and promote good management of South Africa's heritage resources, and to encourage and enable communities to nurture and conserve their legacy so it may be bequeathed to future generations. The statute recognises that South African heritage is unique and precious, defines cultural identity, aids in spiritual well-being, and shapes national character.
Provincial nature conservation ordinances	The nature conservation ordinances which applied in the pre-1994 provinces (Transvaal, Orange Free State, Natal and the Cape Province) still apply in the nine current provinces, although some new legislation has been adopted by certain provinces.

- Equitable access to environmental resources, benefits and services to meet basic human needs and ensure human well-being must be pursued, and special measures must be taken to ensure access to categories of persons disadvantaged by unfair discrimination (Section 4(d)).
- Widespread participation of interested and affected parties in environmental governance must be promoted, and all people must be given the opportunity to develop the 'understanding, skills and capacity necessary for achieving equitable and effective participation' (Section 4(f)).
- Community well-being and empowerment must be promoted through environmental education, the raising of environmental awareness, the sharing of knowledge and experience and other appropriate means (Section 4(h)).
- Decision-making must be open and transparent, and access to information provided in accordance with the law (Section 4(k)).
- There must be intergovernmental co-ordination and harmonisation of policies, legislation and actions relating to the environment (Section 4(l)).
- The environment is held in the public trust for the people. The beneficial use of environmental resources must serve the public interest and the environment must be protected as the people's common heritage (Section 4(o)).
- The vital role of women and youth in environmental management must be recognised and their full participation promoted (Section 4(q)).
- Sensitive, vulnerable, highly dynamic or stressed ecosystems require specific attention in management and planning procedures, especially if subject to significant human resources usage and development pressure (Section 4(r)).

It is important that land reform projects consciously take the NEMA Principles into account in shaping and implementing land reform policy. Land reform decisions wield the potential to significantly impact on the environment, so the principles apply to DLA's decisions and actions.

6.1.2 Environmental implementation and management plans

In seeking to establish procedures for co-operative governance, Section 11 of NEMA requires provincial governments and certain State departments to prepare and implement environmental implementation and/or management plans.

DLA is one of several national departments required to prepare a joint Environmental Implementation and Management Plan (EI&MP) in terms of Section 11(3) of NEMA. The purpose of these plans includes harmonising environmental policies and programmes, minimising duplication and promoting consistency in environmental governance, and securing the protection of the environment across South Africa. EI&MPs are key mechanisms through which various organs of state may consider how their laws, policies and practices impact the environment and how to co-ordinate their environmental responsibilities with other government actors.

6.2 Other environmental legislation of relevance to land reform

Table 3.1 highlights a range of environmental laws that protect rights and confer duties, obligations and potential liabilities on people acquiring land under the land reform programme. The relevance of these for land reform planning and implementation are further discussed in Chapter 9.

7 Conclusions

This chapter illustrates the rapidly changing nature of the development context and the increasingly complex environment that DLA planners and municipal managers must navigate. It highlights the multidimensional nature of the land reform programme and the centrality of co-ordinated and aligned intergovernmental relations for the success of the land reform programme. It provides the basis for an argument that land reform should be regarded as a joint programme of government in that it encapsulates a full gamut of development functions, of which the transfer of land is but the first step.

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Endnotes

- ¹ Sources: Keynote address by the Honourable Minister for Agriculture and Land Affairs, Ms Lulu Xingwana, at the launch of the Land Claims Commission's Annual Report, Limpopo, 11 August 2006; Department of Land Affairs, Presentation to NEDLAC by Mr Mduduzi Shabane, Deputy Director-General, 24 August 2006.
- ² Section 151 of the Constitution provides that the entire territory of South Africa must fall under a municipality.
- ³ Schedule 4 of the Constitution lists the functional areas in which national and provincial government have joint power to pass laws.
- ⁴ Schedule 5 lists the functional areas in which only provinces have the authority to pass laws.
- ⁵ See footnotes 3 and 4.
- ⁶ In a 2003 report, DPLG asserts that Schedules 4 and 5 'bear little resemblance to the developmental mandate of local government...'.¹
- ⁷ Some provinces have passed their own planning laws in accordance with the Chapter 1 principles of the DFA.
- ⁸ An erf (plural: erven) is the name for a piece of land in a township and municipal area. Barring the 'homelands'/'communal areas' (to which a different set of tenure arrangements applied), land that does not fall within the area of jurisdiction of pre-1994 municipal areas is deemed to be 'agricultural land'. In most cases, such pieces of land are registered, not as erven, but as 'farms'. The Subdivision of Agricultural Land Act prohibits the subdivision of 'agricultural land', unless the Minister of Land Affairs grants permission. The Act therefore effectively stops developers from subdividing land to establish townships/erven. Even though we have had 'wall-to-wall' municipalities since 5 December 2000, the categorisation of 'agricultural land' continues to apply.
- ⁹ If need be, the municipality can go so far as to sell the owner's land in execution to settle the debt.
- ¹⁰ The Western Cape has its own provincial equivalent of the DFA, but it has not been promulgated.

KwaZulu-Natal and the Northern Cape have their own provincial acts in place of the DFA.

- ¹¹ Transvaal, Orange Free State, Natal and the Cape Province.
- ¹² The common law is concerned with how people interact with each other in the context of the environment. It protects use and enjoyment of property, within certain limits, including that such use and enjoyment does not interfere with the rights of other people. The common law also applies to State action.
- ¹³ E.g., NEMA Preamble and Sections 1 (definition), 2(2)–(4) and 26(2)(a).

