



Issues and Options for Improved Land Sector Governance in South Africa



Application of the Land
Governance Assessment
Framework

Synthesis Report
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1 Introduction

After decades of segregationist policies under the apartheid regime, the first democratically elected government in South Africa inherited a highly skewed pattern of land use and ownership in 1994. Nearly 20 years of land reform policies have altered the racial composition of large-scale farm ownership in the country, but have transferred only a small fraction of agricultural land to small-scale farmers. Indeed, the greatest successes in land reform have come from the settlement of claims in urban areas rather than in the former white farmlands and black homelands. To date, a combination of political, economic, and technical challenges have hindered more rapid progress on the government's land reform goals.

While many of the difficulties of land reform in South Africa have been adequately documented, country experts from Urban LandMark utilized the Land Governance Assessment Framework (LGAF) developed by the World Bank and its partners to assess these issues in a systematic way. This chapter synthesizes and summarizes the key findings of the LGAF process in South Africa and outlines proposals for moving forward. The next section explains the methodology of the LGAF, while the third section provides background information on South Africa and key issues in its land governance. The fourth section presents the results of the South African LGAF panel discussions and validation meetings. Part five offers recommendations for prioritizing land policy improvements, and the final section concludes.

2 LGAF Methodology

The LGAF is a diagnostic tool that is implemented in a collaborative manner at the local level in order to benchmark land governance. This process helps to establish a consensus and priority actions on (i) gaps in existing evidence; (ii) areas for regulatory or institutional change, piloting of new approaches, and interventions to improve land governance on a broader scale; and (iii) criteria to assess the effectiveness of these measures. LGAF helps put in place a structure and process to systematically track progress in improving land governance over time.

The core version of the LGAF consists of 21 Land Governance Indicators (LGIs) covering 80 dimensions of land governance, grouped into five broad thematic areas:

1. Legal and institutional framework (LGI 1-6)
2. Land use planning, management, and taxation (LGI 7-11)
3. Management of public land (LGI 12-15)
4. Public provision of land information (LGI 16-19)
5. Dispute resolution and conflict management (LGI 20-21)

The LGAF also allows the inclusion of optional thematic modules that may be relevant to a specific country context. The South African LGAF process included a module on large-scale land acquisition (LSLA), which contains 16 additional parameters. Each LGAF dimension is rated on a scale from A to D, with scoring options based on international best practice.

Within South Africa, the implementation of the LGAF has been undertaken as a joint initiative between the World Bank and Urban LandMark. The project commenced in South Africa in February 2011 with the report being finalised in November 2011. In the initial phase, a report was prepared on the tenure typology within the country and the manual definitions adapted for the South African context. Thereafter, expert reports were drafted during the months of April and May 2011. The LGAF team then conducted eight one-day panels covering the thematic areas and subtopics with 2 to 5 experts. A total of 23 experts from the public and private sectors took part in the panels, which were held in July and August 2011. Panel members were asked for their own preliminary ratings for the LGIs, which were then discussed until the panel achieved consensus in the scoring of each dimension. The expert panel on rural land use and land policy was poorly attended and as such some of the complexities relating to this topic remain underdeveloped in this report. The consolidated report was drafted in September and presented at the national validation workshop in early November 2011.

3 Overview of Land Policy Issues in South Africa

3.1 South Africa: Background Information

3.1.1 Economy and geography

South Africa has a total land area of 1.2 million square km, of which approximately 12% is arable. Only 0.34% of the land is covered by permanent crops.¹ The country's population stands at around 50 million people, of whom 79.5% are 'African,' 9% are 'white,' 9% are 'coloured' (mixed race), and 2.5% are Indian.² In 2012, South Africa had a Gross Domestic Product of USD 384.3 billion, with a GNI per capita of USD 7,610.³ Foreign trade accounts for 65% of GDP.⁴ By sector, services account for the largest share of GDP, at 68.1% in 2012, compared to 28.4% for industry and 2.6% for agriculture.⁵ Mining remains an economically and politically important sub-sector, accounting for 10% of GDP in 2011 but more than 50% of export earnings.⁶

The country is divided into nine provinces: Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Limpopo, Mpumalanga, North West, Northern Cape, and Western Cape. Approximately 43% of the population resides in two provinces: Gauteng (22.3%) and KwaZulu Natal (21.3%). Northern Cape contains only 2.1% of the national population. Owing to its political and economic history, South Africa is the most urbanized country in sub-Saharan Africa, with 62% of its population residing in urban areas.⁷

3.1.2 Governance system

South Africa is a constitutional democracy with a bicameral parliament, a president, and an independent judiciary. The 400 members of the National Assembly of parliament are elected by proportional representation, while the members of the Senate are indirectly elected from each of the nine provinces.

South Africa further has three levels of government: national, provincial, and local. Traditional leaders form advisory bodies at both the national and provincial levels. In addition, the Municipal Structures Act No 117 of 1998 makes provision for traditional leadership representation on the municipal council within the jurisdiction in which they fall.

¹ CIA World Factbook, "South Africa," data from 2011. <https://www.cia.gov/library/publications/the-world-factbook/geos/sf.html>

² The apartheid regime established four racial categories: white, African, Indian, and Coloured. The terms 'non-white' and 'black' came to refer to anyone from the latter three categories. Although these designations are no longer officially recognized, in practice many South Africans continue to refer to sub-populations according to these distinctions. This report will thus rely on popular usage for the sake of clarity, with due recognition for the problematic nature of these classifications.

³ World Bank Data, "South Africa," http://data.worldbank.org/country/south-africa#cp_wdi.

⁴ Economist Intelligence Unit, "South Africa: Country Fact Sheet," 30 July 2013.

⁵ Economist Intelligence Unit, "Country Forecast: South Africa," July 2013 update.

⁶ Economist Intelligence Unit, "Country Forecast: South Africa," June 2012.

⁷ World Bank Data. "Urban Population (% of total)," <http://data.worldbank.org/indicator/SP.URB.TOTL.IN.ZS>

3.2 Land Issues and Land Policy

3.2.1 Tenure typology

The most relevant types of tenure that exist in South Africa are state, freehold, leasehold, customary, communal, and occupation rights. Public land is owned by all three levels of government: national, provincial, and local. Considerable tracts of land are also owned by state-owned enterprises such as Transnet and its subsidiaries, Portnet, Eskom, Airports Company of South Africa (ACSA), and Denel. Under common law, all land not shown on cadastral maps and not registered in the Deeds Registry is vested in the state.

Freehold status represents full real land rights with a full range of entitlements, including the ability to allocate such rights to others. Most rural land outside the former homelands is held under freehold title. Leasehold rights are real rights in South Africa; a lessee is entitled to the undisturbed occupation of the leased land during the period of the lease and may defend that right against all comers, subject to any terms and conditions agreed between the parties. It is not necessary to reduce a lease to writing in order for it to be binding between the parties and enforceable against third parties, such as creditors and successors in title to the lessor. However, leases longer than 10 years are required to be registered. In general, in South Africa a lease is not terminated on the sale of the leased land.

Customary land is registered in the name of the Minister of Rural Development and Land Reform or, in KwaZulu Natal, the Ingonyama Trust. Occupiers on such land have no registered rights but hold multifaceted vested rights based in customary law and practice. These rights are enforceable against the registered owner, and are usually recorded in the collective mind of the community where the land is situated. A person who holds an informal right to land as defined in the Interim Protection of Informal Land Rights Act (IPILRA) may not be deprived of that right save with his or her consent or by expropriation if required in the public interest or for a public purpose (in which case compensation is payable). If deprivation is consequent on a community decision, that decision must be supported by a majority of those who hold such rights in the area concerned, also subject to the payment of compensation.

Communal land is land registered in the name of an entity owned by members of a 'community,' other than those bound together by clan affiliation. Communities may be created where land has been transferred to farm workers who reside on a farm at a given point in time. Land transfers to communities have had limited success, especially where such land is applied to commercial use rather than residential and subsistence farming uses. Communal land is found within all provinces with the exception of the Western Cape, though communal land in Gauteng is found only in the Tshwane (Pretoria) Metropolitan Area.

Occupation rights may be granted to persons occupying land registered in the name of another person with either express or tacit consent. Such rights were recognized in response to the constitutional affirmation of the right of all South Africans to legally secure tenure. However, there is no clear set of policies on occupiers, including farm workers – many of whom are scattered across farmlands throughout the country.

While data on the area and population of each tenure category was not available, the total state landholdings (including all trust and communal land) is 17 million hectares, or 14% of the total land mass, while private holdings total 96.5 million hectares, or 79%.⁸

Table 1: Basic Tenure Typology in South Africa

| Tenure type | Legal recognition & characteristics | Registration |
|-------------------|--|---|
| State land | Common law | Not recorded; identified by omission or gap in cadastre |
| Freehold | National Constitution; Land Survey Act 8 of 1997; Common law rules | Identified by diagram approved by Surveyor General |
| Leasehold | Common law | Leases of Land Act 18 of 1969: register leases 10 yrs or longer |
| Customary | National Constitution; contractual relationship; Interim Protection of Informal Land Rights Act (IPILRA) No 31 of 1996 | Registered in the name of the Minister of Rural Development & Land Reform or the Ingonyama Trust |
| Communal | Communal Property Association Act No 28 of 1996 | Registered in the name of an entity, e.g. a Communal Property Association or trust |
| Occupation rights | Extension of Security of Tenure Act No 62 of 1997; Land Reform (Labour Tenants) Act No 3 of 1996; IPILRA | Confer rights on persons occupying land registered to another person with express or tacit consent; can be converted to real rights in certain circumstances (i.e. formalization) |

3.2.2 History and current status of land policies

Land in South Africa has a bitter and deeply divisive history, stemming from hundreds of years of colonialism and apartheid. Dispossession of the land by white settlers began in the 17th century. In 1913, the Natives Land Act created so-called ‘reserves’ for ‘native’ populations, which comprised only 13% of the land surface of South Africa. From then on, all land purchases or rent tenancy by black South Africans outside of these reserves were regarded as illegal. Still, until the 1920s, the South African population remained predominantly rural and somewhat integrated, as black farm workers resided on white- and some black-controlled farms. African migrant labourers were frequently housed in compounds near the mines, though others inhabited townships and informal backyard structures within the city.⁹

During the apartheid years (1948 to 1994), racial segregation intensified. The Group Areas Act of 1950 envisioned the creation of distinct locations (later, “homelands”) for the sole occupation of each of ten racial/ethnic categories, with buffer zones separating areas of white inhabitation

⁸ Parliamentary Monitoring Group, Rural Development and Land Reform Question 1464, 7 June 2011, <http://www.pmg.org.za/node/36307>.

⁹ Lemon, Anthony. 1991. *Homes Apart: South Africa's Segregated Cities*. Bloomington and Indianapolis: Indiana University Press.; Maylam, Paul. 1996. ‘Introduction: The Struggle for Space in Twentieth-Century Durban,’ *The People's City: African Life in Twentieth-Century Durban*. Ed. Paul Maylam and Iain Edwards. Pietermaritzburg: University of Natal Press.

from the rest.¹⁰ Forced removals aimed to eliminate integrated spaces in rural and urban areas throughout the country, including longstanding black-owned farms located within ‘white’ South Africa. From 1960 to 1982, an estimated 3.5 million people were forcibly removed under the Group Areas Act and related legislation.¹¹ This coincided with structural changes to the economy and shifting migration patterns in the 1960s and 1970s to produce a spatially fragmented and racially segregated geography of rural, peri-urban, and metropolitan land uses.

By the late 1980s, land use patterns in South Africa could be broadly characterised as follows: predominantly white urban cores with limited black populations; poorly serviced informal settlements in buffer zones and along the peripheries of townships; densely populated African, Indian, and Coloured townships located far from the city centre; small agricultural plots and rural slums in designated homelands; and consolidated commercial farms, largely white-owned, employing fewer and fewer black tenant labourers. By the end of apartheid in 1994, whites held 84 percent of non-public land (a figure that includes urban areas).¹²

Following the first fully democratic elections in 1994, the South African government introduced extensive policy reform to address the gross inequities associated with land distribution and access. South Africa’s foundational land reform legislation, the 1994 Restitution of Land Act, established three essential elements: restitution (whether through restoration of land rights or financial compensation), redistribution (through grants for land purchases), and tenure reform for farm workers, labour tenants, and residents of the former homelands (primarily through legislation). The Act further created a Commission on Restitution of Land Rights and a Land Claims Court. The government adopted a ‘willing-buyer-willing-seller’ model of land reform that promoted private property rights and market transactions over state expropriation of land.

Land reform policy progressed through two significant phases. Initially, the Reconstruction and Development Programme (RDP) aimed to promote the transfer of agricultural land through individual Settlement and Land Acquisition Grants.¹³ The small value of these grants, combined with increasing land prices and the removal of state agricultural supports, proved ineffective in improving land access and productivity among the rural poor. Thus in 2000, under the Land Redistribution for Agricultural Development (LRAD) programme, the ministry increased the maximum size of the grants and required beneficiary contributions.

Additionally, in 2003, the government passed the Black Economic Empowerment (BEE) Act, which extends preferential treatment to formerly disadvantaged groups in hiring, management, ownership, and skills development. BEE policies have helped to alter the racial composition of large farm ownership in South Africa; however, the structure of agricultural production has generally remained intact. Indeed, critics have noted that by and large, BEE policies have facilitated the emergence of a narrow black elite, without offering significant advancement for

¹⁰ Lemon, *Homes Apart*, 1991.

¹¹ Murray, Colin. 1996. ‘Land Reform in the Eastern Free State: Policy Dilemmas and Political Conflicts,’ *Journal of Peasant Studies* 23 (2): 209-244.

¹² De Wet, Chris. 1994. ‘Resettlement and Land Reform in South Africa,’ *Review of African Political Economy* 21 (61): 359-373.

¹³ RDP is also the primary government programme for the provision of affordable housing or “RDP houses.”

ordinary blacks.¹⁴ In response to these criticisms, the government has implemented Broad-Based Black Economic Empowerment (BBBEE) schemes to encourage finance for small-scale land reform beneficiaries, as discussed in section 4.6.

The initial government target was to transfer 30% of farmland within fifteen years, a timeframe that was later extended to 2014. Yet as of March 2013, the government had awarded only 3 million hectares to successful claimants, out of a total of 82 million hectares of agricultural land, or roughly 3.6%.¹⁵ Less than half of this amount has actually been transferred. In addition, the government has spent R6.5 billion in restitution payments.¹⁶

The slowness of land reform implementation reflects several issues. First, all three components have suffered from problems in design, implementation, institutional capacity, and insufficient funding. Second, agricultural land reform retains only secondary political importance in post-apartheid South Africa, its rhetorical appeal notwithstanding.¹⁷ Third, there has never been agreement over the central aim of land reform – whether the redress of historical injustices, the promotion of agricultural production, or the alleviation of rural poverty. Each of these goals suggests alternative formulations of land reform policies.

3.2.3 Land management institutions

From 1996 to 2009, the primary land management institution at the national level was the Ministry of Agriculture and Land Affairs, which was formed from the merger of the two previously separate ministries. Then in 2009, the institution was split again into the Department of Rural Development and Land Reform (DRDLR) and the Department of Agriculture, Forestry, and Fisheries. The former is responsible for topographic mapping, cadastral surveying, deeds registration, and land reform (both the Commission on Restitution of Land Rights and the Land Claims Court are located within the DRDLR). The latter maintains responsibility for supporting the agricultural sector and ensuring food access for the South African population.

South Africa's 20 national parks, an important source of tourism revenue, are managed by South African National Parks (SANPARKS). Timber harvesting and other forestry activities are carried out by the South African Forestry Company Ltd (SAFCOL), a state-owned enterprise under the Department of Public Enterprises. On the finance side, the Land and Agricultural Development Bank of South Africa is mandated to provide financial services to the agri-business and commercial farming sectors. In addition, the Land Bank is charged with developing products that increase the access to finance of new entrants to the agricultural sector, particularly those from "historically disadvantaged backgrounds."¹⁸

¹⁴ The Economist, "A New Kind of Inequality: Black Economic Empowerment has had Unintended Consequences," June 3, 2010. <http://www.economist.com/node/16248651>

¹⁵ Parliamentary Monitoring Group, Rural Development and Land Reform Question 145, 17 February 2012, <http://www.pmg.org.za/node/34181>.

¹⁶ Parliamentary Monitoring Group, Rural Development and Land Reform Question 1540, 14 June 2011, <http://www.pmg.org.za/node/36307>.

¹⁷ Walker, Cheryl. 2005. 'The Limits to Land Reform: Reviewing the Land Question in South Africa,' *Journal of Southern African Studies* 31 (4): 805-824.

¹⁸ Land Bank Overview: Business of the Bank, http://www.landbank.co.za/overview/business_of_the_bank.php

As noted above, the Ingonyama Trust Board manages the 2.8 million hectares of customary land in KwaZulu Natal for the Zulu king on behalf of the residents of traditional areas. As such, it is the largest property owner in the province, managing nearly one-third of the land and overseeing mineral rights on the land. The corporate body was established in 1994 and is run by a Secretariat with expertise in real estate, finance, and administration.¹⁹

¹⁹ Ingonyama Trust Board website, <http://www.ingonyamatrust.org.za/>

4 Assessment of Land Governance

4.1 Legal and institutional framework

4.1.1 Continuum of rights

| Recognition of a Continuum of Rights | | | | | | |
|--------------------------------------|-----|--|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 1 | i | Land tenure rights recognition in rural areas | | ■ | | |
| 1 | ii | Land tenure rights recognition in urban areas | | ■ | | |
| 1 | iii | Rural group rights recognition | | ■ | | |
| 1 | iv | Urban group rights recognition in informal areas | | | ■ | |
| 1 | v | Opportunities for tenure individualization | | | ■ | |

Approximately 16 to 19 million South Africans live within the rural areas, of whom more than 90% are located on communal land. Land rights in rural areas remain highly complex and contested. “In some cases rights and duties are subject to well-defined community rules and management regimes, enforced by local authorities such as traditional leaders or elected committees. In others these management regimes have broken down and ‘open access’ prevails.”²⁰ Thus changes to communal land policy must grapple with the fact that “simplistic notions of homogenous ‘communities’, with clearly defined social and territorial boundaries and under the accepted authority of traditional leaders, are inappropriate in many communal areas in South Africa.”²¹

Rural groups are either culturally defined, as in the case of traditional communities, or voluntarily constituted. Traditional communities may obtain recognition under the Traditional Leadership and Governance Framework Act No 41 of 2003, along with the complimentary provincial legislation. The rules, practices, and procedures are recorded in the collective mind of the community concerned and gain recognition under the 1996 Constitution. By contrast, non-traditional communities, especially land reform beneficiaries to whom land is transferred, must establish legal entities, often Common Law Trusts or Communal Property Associations under the Communal Property Associations Act No 28 of 1996.

In 2004 Parliament passed the Communal Land Rights Act (CLRA) in response to a constitutional requirement that a new law be passed to secure the land tenure rights of black South Africans; however, the Act was declared unconstitutional and so was never implemented.²² There are temporary laws in place for providing rural tenure rights within the communal land areas. The key legislation is the Interim Protection of Informal Land Rights Act, No 31 of 1996 (IPIIRA), which ensures that people may not be removed from their land without

²⁰ Cousins, Ben. July 2007. “More than socially embedded: The distinctive character of ‘communal tenure’ regimes in South Africa and its implications for land policy,” *Journal of Agrarian Change* 7 (3): 281-315.

²¹ *Ibid.*

²² Cousins, Ben: “Potentials and pitfalls of ‘communal’ land tenure reform: experience in Africa and Implications for South Africa.” Paper for World Bank conference, “Land Governance in support of the MDGs responding to new challenges,” Washington DC, USA, 9-10 March 2009 (available on PLAAS website).

their consent. The South African legal framework also guarantees against dispossession and provides for compensation.

Apart from communal areas, a key concern with respect to rural land rights is the plight of farm dwellers on commercial farms. Currently, farm evictions are common. Laws to extend rights to such persons and to protect them against arbitrary eviction and deprivation of rights are ineffective and are thus under review.

In urban areas, tenure is traditionally secured through a title deed, lease, or deed of grant. The 1996 Constitution entitles all persons to adequate shelter, and municipalities are responsible for the provision of services at the local level, including the addressing of basic needs within informal settlements. Still, despite state delivery of subsidised land and housing developments, most of the urban poor fall outside the conventional property market. Indeed, the registration statuses of properties do not necessarily reflect the rights of the people residing on them, as many urban residents live in informal backyard shacks located within formal township areas. These and other forms of informal settlements remain unregulated, although there are informal systems for managing land use in these areas.

The Communal Property Associations Act may be applied in urban informal settlement areas in order to gain group rights. However, there is a tendency for “groups” in urban areas to fight for individual tenure rights rather than group rights.

Communal land rights cannot be individualized under current law (though the CLRA would have vested individuals with “new order rights” to communal land). Nonetheless, unauthorized individualization does occur in areas where informal land markets have arisen, particularly communal areas located near urban centres.²³ Moreover, Cousins notes:

The idea that communal land cannot be bought or sold is still strongly articulated by many residents (Alcock and Hornby 2004, 17), but in some areas, such as Pondoland, it is evident that sales do in fact take place (Kepe, personal communication). Sale of buildings or other permanent improvements such as fruit trees is usually seen as acceptable, but allocation of the land itself must then follow a procedure similar to that followed when outsiders apply for land (Turner 1999, 13). However, in some areas chiefs and headmen sell land to outsiders without such procedures being applied (Ntsebeza 1999, 74–5; Oomen 2005, 158, 173).²⁴

Thus in practice, opportunities for tenure individualization and transfer vary widely across communal areas.

²³ Cousins, 2007, “More than socially embedded.”

²⁴ Ibid.

4.1.2 Enforcement of rights

| Enforcement of Rights | | | | | | |
|-----------------------|-----|--|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 2 | i | Surveying/mapping and registration of claims on communal or indigenous land | | | | |
| 2 | ii | Registration of individually held properties in rural areas | | | | |
| 2 | iii | Registration of individually held properties in urban areas | | | | |
| 2 | iv | Women's rights are recognized in practice by the formal system (urban/rural) | | | | |
| 2 | v | Condominium regime that provides for appropriate management of common property | | | | |
| 2 | vi | Compensation due to land use changes | | | | |

While the Constitution of South Africa recognises traditional rights and traditional tenure, there is as yet no legal mechanism to register communal or indigenous land. Rather, this land is held by the State in trust for the communities. Historically, "Permission to Occupy" (PTO) permits were issued for residents of unsurveyed land,²⁵ but this system is no longer functional in most instances. The DRDLR has launched a programme to survey all the outer boundaries of the communal or tribal authority areas, in preparation for eventual transfer to the communities. The surveying is approximately 75% completed, but no transfers can take place until the necessary legal provisions have been established. In commercial farming areas, the percentage of individual properties which are surveyed but not registered is less than 1% of the total.

When communal land is excluded, the LGAF panel estimated that more than 90% of rural and urban properties are indeed registered. However, it noted that an emerging challenge within urban areas, namely, the slow rate at which the formal registration of government subsidised housing is taking place. In some instances, households in housing schemes completed more than 3 to 5 years ago are yet to receive proof of formal registration. Common reasons for this include delays in the township establishment process (discussed below), which must occur before ownership registration can take place; delays in upgrading settlements in order to upgrade tenure rights; and delays linked to the requirement that transfer duties be paid prior to registration. In general, title registration must occur within 5 years of the approval of a township establishment application.

It should be noted that in South Africa is one of very few countries, if not the only one, where properties can be subdivided but not immediately registered. This may happen, for example, when an owner has his or her property subdivided for eventual transfer to heirs; registration only takes place once the owner is deceased. However, such cases are very few, and represent less than 1% of the total number of properties.

Across South Africa as a whole, women actually represent a majority of registered landowners. This reflects the negligible barriers to female ownership within the white and emerging black middle and affluent classes. It is common for families that own multiple properties to divide ownership of the properties between the husband and wife, largely for tax purposes.

²⁵ Ibid.

The Constitution does offer protection to women-headed households within the communal land system. Nonetheless, *de facto* social barriers to the ownership and distribution of land by women remain, rooted in colonial “redefinitions of women’s land rights as ‘secondary’ and subordinate to those of husbands and men.”²⁶ Women in Limpopo province sometimes face accusations of witchcraft, which can be used to rescind their land rights.²⁷ Still, policies to eliminate gender discrimination on the ground are slowly changing local practices. For instance, women married in community of property (ICP) are automatically registered as joint owners.²⁸

The experts at the validation workshop noted that legal framework does allow residents to claim compensation for land use changes, such as rezoning. However, where poor and vulnerable groups lose rights as a result of land use change outside the expropriation process, compensation is not paid. The panel also pointed that the provisions for compensation in some planning legislation, such as Provincial Ordinances, are seldom used.

The panelists noted that some of the more sophisticated legislation in South Africa pertains to the management of condominiums, including the Sectional Titles Act, No 95 of 1986, the Sectional Titles Amendment Act, No. 6 of 2006, and the Co-operatives Act, No 14 of 2005.

4.1.3 Mechanisms for recognition of rights

| Mechanisms for Recognition of Rights | | | | | | |
|--------------------------------------|-----|---|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 3 | i | Use of non-documentary forms of evidence to recognize rights | | | ■ | |
| 3 | ii | Formal recognition of long-term, unchallenged possession | | | ■ | |
| 3 | iii | First-time registration on demand is not restricted by inability to pay formal fees | | | | ■ |
| 3 | iv | First-time registration does not entail significant informal fees | | ■ | | |
| 3 | v | Formalization of residential housing is feasible and affordable | | | ■ | |
| 3 | vi | Efficient and transparent process to formally recognize long-term unchallenged possession | ■ | ■ | ■ | ■ |

Within the restitution process and in relation to the undocumented land rights, oral evidence is often sufficient to guarantee “tenure security” within many rural communities. However, while such non documented evidence is used, it does not carry the same weight as formal documentation.

The fee for first-time registration in the Deeds Registry is R260.²⁹ However, when considering the total cost of purchasing land – including estate agents, land surveyors, conveyancing, and the

²⁶ Ibid.

²⁷ Lahiff, Edward and James Aphane, 2000. ‘Communal Land Tenure: A Case Study of Dikgale Tribal Area, Northern Province.’ Pietersburg (Polokwane): Nkuzi Development Association.

²⁸ At the time of writing, it was not possible to verify what percentage of women who are married under ICP arrangements.

²⁹ This is the fee for “any other registration or annotation in registers or records, including certificates of title and all other registrations which are not exempted by a law or where no purchase price is involved.” Government Gazette No. 9938, Vol. 574, Pretoria, 2 April 2013, No. 36306, <http://www.deeds.gov.za/ITSODEedsWebB/deedsweb/LatestFees.pdf>

deed registration fee – the cost exceeds 5%. Moreover, in some cases informal fees are paid, especially for access to land in the communal land areas or newcomers into informal settlements. It was also noted that in some instances, it is possible that illegal, ‘informal fees’ can speed up land registration processes in the Deeds Office.

In 2010, an estimated 18% of the urban population – nearly 5 million people – resided in informal settlements, where there is no access to formal title. In many cases, individuals, families, and communities have been residing on the land in question for extended periods and enjoy rights in terms of the Constitution and laws of South Africa, in spite of the fact that these rights are not formally registered or noted. Security of occupation is often tenuous, and retention of informal or undocumented rights often requires the payment of informal fees.

Municipalities have undertaken a process of acknowledging informal settlements through a number of mechanisms, such as enumeration of dwellings and the provision of basic water and sanitation services. In such cases, the recognition of such communities or “groups” is administrative rather than legal. If the land occupied is suitable for upgrading, the process may begin in situ. Where the land is not suitable for upgrading, as when an informal settlement lies within a flood plain, the municipality may move the community to alternative land, though relocation may not begin for several years. Sometimes households are relocated into RDP houses with individual titles; other times households are simply moved to a more suitable portion of land without titles, in which case the municipality continues to administer the community as a “group.”

In addition, there are various national and provincial land use planning laws that allow for the establishment of townships. The Development Facilitation Act (DFA) of 1995 makes provision for a fast-track application process for land use changes and township establishment. Although the DFA is not used uniformly in all provinces, it has been highly effective in speeding up land development in the Eastern Cape. Where conventional land use processes are used, applicants experience frequent delays in getting approval from the numerous line functions for each relevant section of the application.

In terms of legal recognition for long-term, unchallenged possession, the panel noted that the legislation relevant to this issue was drafted in the 1970s and is therefore unhelpful in today’s context. Thus, the panel was unable to assess whether the process is efficient and transparent. Still, it was suggested that if it was possible to prove long-term, unchallenged possession of land, the courts might rule in favour of the possessor.

4.1.4 Restrictions on rights

| Restrictions on Rights | | | | | | |
|------------------------|----|--|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 4 | i | Restrictions on urban land use, ownership, and transferability | | | | |
| 4 | ii | Restrictions on rural land use, ownership, and transferability | | | | |

Formal zones in South Africa’s urban areas have strict restrictions regarding land use, ownership, and transferability. The key challenge lies with enforcing these regulations: often municipalities lack the capacity to enforce regulations, particularly those regarding land use,

while other times officials choose not to enforce them. Informal areas and backyard shacks remain unregulated by authorities, although informal social regulatory systems have developed.

Restrictions on land rights in rural areas vary widely by location, particularly between commercial farms and communal lands. In general, there are no restrictions on owner type, price, or rent. Commercial farms in the former homelands are subject to zoning schemes, although these are rarely enforced. Communal areas, by contrast, are subject to restrictions on transactions involving Permission to Occupy certificates, although again in practice an informal market has developed. Both land types are subject to restrictions on the size of holdings. The LGAF panel noted that enforcement is less likely in communal areas, and enforcement capacity appears to be diminishing across all government spheres and departments.

4.1.5 Clarity of institutional mandates

| Clarity of Mandates | | | | | | |
|---------------------|-----|---|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 5 | i | Separation of policy formulation, implementation, arbitration roles | | | | |
| 5 | ii | Differentiated mandates across institutions | | | | |
| 5 | iii | Differentiated responsibilities across levels of government | | | | |
| 5 | iv | Information sharing across institutions | | | | |

The LGAF team was not able to assess the clarity of mandates among land administration institutions in South Africa. However, a subsequent literature review suggests a few avenues for future consideration of institutional coordination:

The DRDLR maintains a combination of policy formulation, implementation, and arbitration roles through its various divisions, including Land Reform and Administration, the Deeds Registry, the Land Claims Court, etc. In terms of overlap, addressing the legacy of institutional fragmentation left by duplicated departments under the apartheid government has been a challenge.³⁰ In addition, there have been some difficulties in coordinating between the national and provincial levels of government, particularly given the diversity of the agricultural sector across the nine provinces.³¹ Likewise, collaboration between municipalities and agricultural extension officers, who are typically employed by the provincial departments of agriculture, has historically been weak.³² Successful land reform also requires coordination between the DRDLR and district and local municipalities, especially in devising Integrated Development Plans and local development strategies. Thus effective institutional collaboration and differentiation requires significant organizational capacity within and across all levels of government.

In terms of information sharing, the State Land Administration branch within the DRDLR maintains the Land Administration Web (LAW). According to its website, the LAW is an internet and intranet site “comprised of various modules / system (spatial and alpha-numeric land

³⁰ Murray, ‘Land Reform in the Eastern Free State,’ 1996.

³¹ Murray, Colin & Gavin Williams. 1994. ‘Land and Freedom in South Africa,’ *Review of African Political Economy* 21 (61): 315-324.

³² Atkinson, Doreen. 2010. ‘Breaking Down Barriers: Policy Gaps and New Options in South African Land Reform,’ *New South African Review: 2010 Development or Decline?* ed. John Daniel et al. Johannesburg: Wits University Press.

information, leases, vesting, immovable assets register, reporting, etc.) for use by officials in performing state land administration functions. It is also accessed and used by other Departments and specific clients.”³³ While the accuracy and completeness of the information contained in the LAW cannot be assessed, its existence suggests some capacity for information sharing across institutions at the national level, at least with respect to state land management.

4.1.6 Equity and nondiscrimination

| Equity and Non-Discrimination in the Decision-Making Process | | | | | | |
|--|-----|---|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 6 | i | Clear land policy developed in a participatory manner | | | | |
| 6 | ii | Meaningful incorporation of equity goals | | | | |
| 6 | iii | Cost of implementing policy is estimated, matched with benefits, and adequately resourced | | | | |
| 6 | iv | Regular public reports indicating progress in policy implementation | | | | |

With regard to participation, practitioners claim that there was greater transparency in the policy-making process immediately after the first democratic elections in 1994 than there is now. Officials are increasingly giving ‘lip service’ to public participation, and meaningful public participation in a comprehensive process is rare. In some cases, land policy decisions that affect certain segments of the community are made without the consultation of those affected.

Land policies incorporate some equity objectives, but these are not regularly and meaningfully monitored. There are also few public reports as a result of the absence of a coherent rural land development policy. Although such a policy can be inferred from existing legislation, it is incomplete, i.e. some key aspects are missing, or only parts of the country are covered by certain provisions.

There is an implicit costing undertaken by government in that a budget is allocated to the DRDLR by the Treasury based on programme proposals. However, no specific allocations are made for the implementation of the provisions contained in specific pieces of legislation, such as the Communal Property Associations Act or the IPLRA. An additional matter of concern is the lack of budgeting across national and provincial departments. A successful rural land reform programme requires a multi-departmental and integrated approach. There is no consistent tracking of requirements and intergovernmental coordination.

Similarly, the monitoring of the land reform programme has largely been through the use of narrow quantitative indicators such as the number of claims settled and hectares transferred. PLAAS estimates that the cumulative cost of land reform to date has been in excess of 30 billion Rand, but the related benefits remain uncertain. Key questions need to be asked about the failure of the reform process and the upstream and downstream impacts on employment, the rural economy, rural infrastructure and assets.

³³ State Land Administration, Republic of South Africa, <http://www.ruraldevelopment.gov.za/services/land-reform/land-administration>

4.2 Land use planning, taxation, and management

4.2.1 Transparency of restrictions

| Transparency of Land Use | | | | | | |
|--------------------------|-----|---|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 7 | i | Urban land use plans and changes to these are based on public input | | | | |
| 7 | ii | Rural land use plans and changes to these are based on public input | | | | |
| 7 | iii | Public capture of benefits arising from changes in permitted land use | | | | |
| 7 | iv | Speed of land use change | | | | |

Municipalities are required by the constitution and the Municipal Systems Act to align their administrations, budgets, and planning processes with community needs, a task that is partially achieved through the devising of integrated development plans (IDPs). Likewise, public participation processes for rezoning and other town planning applications are legislated. However, methods for receiving public input are commonly criticized for not including the “right” people, and municipalities tend to receive more objections to land use plans from affluent communities than from the urban poor. Additionally, because comprehensive participation is time intensive and often costly, municipalities may simply “go through the motions” for the sake of documenting participation, rather than having communities engage with proposed plans and making tangible amendments.

On the other hand, the panel noted that extensive public participation can also be limiting, in some instances. The government has a responsibility to implement plans that are for the greater good of the city, even where this may have a local impact, as when communities might object to the planned increased densities along the line of a new rapid bus transport system.

Similarly, rural municipalities are mandated to undertake public consultation processes. Moreover, traditional leaders are allowed to participate in Municipal Councils. However, capacity remains limited in many municipalities, particularly those with higher percentages of communal land. Consequently, IDPs are often little more than a “wish list” of development projects and programmes. In addition, the spatial development plans tend to focus on the so-called “town” areas, rather than providing comprehensive spatial plans for municipal areas as a whole. Participants at the LGAF verification workshop noted that less than 10% of rural areas form part of Spatial Development Frameworks.

More than 70% of all town planning applications are approved within a 3-year period. While there are legislated timeframes for processing planning applications, there is not always full compliance; delays may result from incomplete applications, administrative lags, and appeals lodged on applications. The lack of alignment between policies at the national, provincial, and local levels also influences timeframes for land use change, as does the intersection of land use policies with non-land use policies such as environmental legislation. Such laws precede land use regulatory decisions and have major impact in terms of time and cost of land use change. In some instances, changes in physical use occur prior to approval, whilst in others it may take more than 3 years.

4.2.2 Efficiency in planning process

| Efficiency of Land Use Planning | | | | | | |
|---------------------------------|-----|---|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 8 | i | Process for planned urban development in the largest city | ■ | | | |
| 8 | ii | Process for planned urban development in the next 4 largest cities | ■ | | | |
| 8 | iii | Ability of urban planning to cope with urban growth | | | ■ | |
| 8 | iv | Plot size adherence | ■ | | | |
| 8 | v | Use plans for specific land classes (forest, pastures, etc.) are in line with use | | | | |

The largest and most complex city in South Africa is Johannesburg, located in Gauteng Province. Because of the poly-nodal structure of Gauteng (Johannesburg and Pretoria are only some 50 km apart), the emphasis has been on provincial plans and strategies to coordinate land use management and development within the region. The central documents in this respect are the Gauteng Spatial Development Perspective (GSDP) of 2007 and the Gauteng Spatial Development Framework (GSDF) of 2010. While these plans provide high-level development guidance, local plans still take precedence over detailed planning. While local and regional plans are broadly consistent, there are still some discrepancies between the different levels of government, specifically with regards to the delineation of the urban boundary.

Since 2005, the City of Johannesburg has better integrated its planning frameworks and infrastructure master plans. It has also become more disciplined in regulating development and enforcing plans through the approvals process. The city also refused to deliver services to developments that are not in priority areas. However, these measures have not dealt effectively with informal developments that continue to bypass the formal planning system. Likewise, Johannesburg is in the process of producing a consolidated zoning scheme that combines 14 zoning schemes inherited from previous planning regimes. However, the process has been hampered by perceptions that it will involve a loss of rights or additional rates and service charges for residents.

Other municipalities are also required to prepare a hierarchy of plans that align with provincial and national development plans. Even with the existence of such plans, however, South African cities are still sprawling.³⁴ Densification is not being facilitated, but instead occurs by default as informal settlements and subsidized (especially RDP) housing developments arise along the periphery. In the eThekweni metropolitan area, which contains Durban, challenges have arisen in communal areas, with conflictual relationships between traditional authorities and the municipality over actual and perceived planning roles and responsibilities. Land under the control of traditional authorities is not covered by planning and building control legislation.

There are currently 180 informal settlements in Johannesburg, comprising approximately 200,000 households. The city is trying to address this in a clear and systematic manner through the Regularisation of Informal Settlements Programme. However, progress has been hampered by limited funding and capacity for service delivery and infrastructure provision, which has resulted in growing backlogs and a concentration of poverty in the most deprived areas of the

³⁴ Swilling 2010

city. This situation has been compounded by private investment patterns that favor the more affluent areas in the north of Johannesburg over low income areas in the south. As a result, the segregated land use patterns of the apartheid era are being perpetuated.

By implication, the urban poor have adopted increasingly fluid, complex, and layered coping mechanisms. The illegal nature of much of this informal activity makes the extent of the “problem” difficult to measure. Yet there is striking evidence of increased informal growth and densification within established formal urban areas or townships, especially those with good locations. Thus there has been a proliferation of backyard shacks and illegal structures, hijacking of buildings in inner city neighbourhoods, and the illegal subdivision and subletting of residential units. The City of Johannesburg is in the process of developing a strategy to deal proactively with these developments and the severe overcrowding that results.

The LGAF panel noted that plot size adherence is not a good indicator for South Africa, due to the prevalence of (sometimes multiple) backyard dwellings located on formal housing plots. Better indicators include the extent of overcrowding, health and safety factors, the holding capacity of sites, and house location or street frontage.

4.2.3 Speed and predictability

| Speed and Predictability | | | | | | |
|--------------------------|----|--|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 9 | i | Requirements for building permits are affordable/transparent | | ■ | | |
| 9 | ii | Time to get building permit | ■ | | | |

There are two costs associated with land use applications, namely application fees and advertisement fees. Depending on the locality, application fees may be a standard fee for all land use applications, a fee determined by the land area in the application, or a fee that depends on the nature of the application (e.g. rezoning, consent use, departures, etc.). Advertisement fees may either be a standard fee or an actual quotation from a publication, in which case the fee depends on the size of the advertisement. In addition to these two sets of fees, there may be additional costs in certain cases. For example, Cape Town charges complexity fees when Environmental Impact Assessments (EIAs) are required. In eThekweni (the metropolitan area containing Durban), fees for subdivision applications have increased significantly in recent years, such that even small subdivisions may be unaffordable.

Informal or ‘speed’ payments are not common in South Africa. This is because the building plan approval process incorporates several ‘handovers’ amongst large teams of officials. The potential for such payments is higher in rural settings where municipalities are small and officials are more likely to act unwatched, or in situations where a building inspector operates alone.

The average timeframe required to obtain building plan approval is three months. However, there is a public perception that it takes far longer. Officials tend to blame poor quality submissions for delays in the system, while applicants generally believe that delays are the result of limited administrative capacity. The larger metropolitan areas in the country have tracking systems to follow the progress of building permits, some of which are online.

The perception that the acquisition of a building permit takes a long time also leads to a tendency to commence building first and regularise the property later. Moreover, most residents in low-income residential areas do not use formal processes to obtain building permission, an observation that is clear from the number of self-built backyard dwellings and house extensions.

4.2.4 Transparency of valuations

| Transparency of Valuation | | | | | | |
|---------------------------|----|--|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 10 | i | Clear process of property valuation | | | | |
| 10 | ii | Public availability of valuation rolls | | | | |

The Municipal Property Rates Act (MPRA) requires municipalities to determine a rates policy, which is subjected to a public participation process. Property rates are calculated by multiplying the market value of the immovable assets. A municipality is not compelled to adopt exemptions and rebates, and there are no prescribed categories and rebate limits for application. Consequently, rates policies vary significantly across the country, even between the three major metropolitan municipalities. A municipality's valuation role remains valid for a period of four financial years.

In areas outside a metropolis and large local municipalities, capacity for implementation of this law remains a challenge. In these areas, municipalities tend to appoint external service providers to prepare the valuations roll. Problems include the fact that in some provinces the appointed valuers have made use of a 'facturising' approach that weighs multiple indicators, as opposed to the application of 'market-related' value stipulated in the Act.

The MPRA requires municipalities to post their valuation rolls for public inspection and objection within a specified timeframe. A common challenge is that municipalities often do not have postal addresses for property owners. As a result, some owners may not receive relevant communications within the window for public comment. This has implications for compliance and reduces the owner's ability to object to or appeal the valuation.

While the MPRA accommodates differences in the financial status and capabilities of municipalities, such wide variances across municipalities make monitoring and evaluation at a national level difficult. The MPRA provides for provincial oversight of municipalities' compliance; yet to date none of the provinces have effectively developed their monitoring capabilities. As a result, smaller municipalities with limited capacity that may be failing in terms the MPRA have neither received support from nor been sanctioned by their provinces.

4.2.5 Tax collection efficiency

| Tax collection efficiency | | | | | | |
|---------------------------|-----|---------------------------------------|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 11 | i | Property tax exemptions justified | | | | |
| 11 | ii | Completeness of tax roll | | | | |
| 11 | iii | Assessed property taxes are collected | | | | |
| 11 | iv | Taxes higher than cost of collection | | | | |

Overall, property tax mechanisms are well executed by South African municipalities. Zoning changes from residential to commercial use, for example, results in increased rates,³⁵ and municipalities also earn revenue from application fees for new developments. There is significant internal cross-subsidisation, with many indigent households being exempt from municipal rates and service charges. Still, there is currently limited opportunity for municipalities to capture the benefits arising from public investment. One example is the steep increase property values near the recently opened rapid rail system, the Gautrain. Although the rates policy provides some scope for capturing benefits from such a development, the valuation roll is only updated every five years, and municipalities are generally slow to respond.

South Africa scores relatively well in terms of tax collection efficiency. The MPRA ensures that all property holders who are liable for rates are listed on the tax roll. An amendment bill currently under consideration would require a municipality to list all properties, including those subjected to exemptions, reductions, and rebates.

Possible exclusions include the properties of land reform beneficiaries for 10 years, provided the property is not transferred; the right to mineral prospecting; religious properties; and state-owned islands. Property owners who are indigent, dependent on social grants or pensions, living in disaster areas, and farmers may also be eligible for exemptions, reductions, or rebates.³⁶

The LGAF panel estimated that more than 80% of property holders liable for land/property tax are listed on the tax roll. However, the application of indigent policies implies that only between 70-80% of assessed taxes are actually collected. Still, in most cases, the collection rate of households billed by municipalities is over 90%. If property owners liable for rates fail to pay, the municipality is able to attach the property.

In the metropolitan municipalities and the large, well-established local municipalities, the rates collected exceed staff costs by a factor of more than five. However, low-capacity municipalities find it difficult to recoup the cost of the general valuations roll.

4.3 Management of Public Land

4.3.1 Identification of public land

| Identification of Public Land | | | | | | |
|-------------------------------|-----|---|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 12 | i | Public land ownership is justified and implemented at the appropriate level of government | | ■ | | |
| 12 | ii | Complete recording of publicly held land | ■ | | | |
| 12 | iii | Assignment of management responsibility for public land | | ■ | ■ | |
| 12 | iv | Resources available to comply with responsibilities | | | ■ | |

³⁵ Municipal Property Rates Act No. 6 of 2004.

³⁶ Municipal Property Rates Act Frequently Asked Questions & Answers. http://gis.tshwane.gov.za/documents/MPRA_FAQ's%20_2_.pdf

| | | | | | |
|----|----|---|--|--|--|
| 12 | v | Inventory of public land is accessible to the public | | | |
| 12 | vi | Key information on land concessions is accessible to the public | | | |

The LGAF panel determined that public land ownership is generally justified by the provision of public goods at the appropriate level of government, but its management may be discretionary. Moreover, in some instances there is poor alignment of the strategic plans and development emphases across spheres of government in the management of public land. Constitutionally, local governments are mandated to contribute to national and provincial development programmes. Conversely, national government departments have limited obligations to contribute to the strategic planning initiatives of local governments. Land designated as strategic at the local level may not be identified as such by the provincial or national government. There are cases where land has been released by the national government for housing, but then is used by the developing entity for other purposes. This has contributed to a breakdown in trust between the different levels of government.

The LGAF panel estimated that more than 50% of public land is clearly identified on the ground and mapped, though approximately 30% of state land on which traditional or rural households reside is not mapped. Moreover, there is no single inventory of public land. Rather, this aspect is managed by each individual state landowner. Access to the information largely depends on who is requesting it, who the custodian is, and the level of security risk attached to the land. However, in 2012, the Minister of Rural Development and Land Reform reported that an audit of state land was underway and state land asset register was planned.³⁷

Limited human and financial resources have diminished state capacity to manage public land and to settle land claims quickly. The former Department of Land Affairs (DLA) consistently received less than 1% of the national budget from 1994 until at least the mid-2000s, despite the expense of the willing-buyer-willing-seller model.³⁸ Even so, the DLA was not always been able to exhaust its funds, returning a quarter of its budget to the treasury in 2005-2006.³⁹ As in other spheres of government, the departure of experienced white extension officers reduced the level of human capital within relevant departments. In the mid-2000s, the DLA had more than 1000 vacant posts, compared with only 850 filled positions.⁴⁰

The management of concessions in South Africa is complex and open to corruption and abuse. Access to information on expropriations largely depends on who is requesting it, who the custodian is, and the level of security risk attached to the land. Specific mention was made in the panel discussions of mining concessions and the implications for communities directly affected by these. Environmental and social impact studies often lack credibility. Many households have been required to relocate without adequate compensation. The process for obtaining and managing concessions needs to be more transparent and open to public scrutiny.

³⁷ Parliamentary Monitoring Group, Rural Development and Land Reform Question 636, 16 March 2012, <http://www.pmg.org.za/node/34181>.

³⁸ Walker, 'The Limits to Land Reform,' 2005.

³⁹ Atkinson, 'Breaking Down Barriers,' 2010.

⁴⁰ Atkinson, 'Breaking Down Barriers,' 2010.

4.3.2 Justification of expropriation

| Incidence of Expropriation | | | | | | |
|----------------------------|----|--|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 13 | i | Transfer of expropriated land to private interests | | | | |
| 13 | ii | Speed of use of expropriated land | | | | |

Land expropriations in South Africa take place in a unique context, in which the transfer of land to private interests is necessary for the redress of historical grievances. Thus it is considered in the public interest when land is expropriated and/or public land is developed for housing purposes, with ownership being transferred to individual or group owners. Still, as noted above, the land restitution programme has faced the challenges of slow implementation, project failure, and corruption. Indeed, there are delays in converting expropriated land to its destined use, particularly in rural areas. Land use conversion generally occurs more speedily in urban areas.

4.3.3 Transparency of expropriation procedures

| Transparency of Procedures | | | | | | |
|----------------------------|-----|---|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 14 | i | Compensation for expropriation of ownership | | | | |
| 14 | ii | Compensation for expropriation of all rights | | | | |
| 14 | iii | Promptness of compensation | | | | |
| 14 | iv | Independent and accessible avenues for appeal against expropriation | | | | |
| 14 | v | Appealing expropriation is time-bounded | | | | |

Owners of expropriated land are entitled to compensation. However problems around expropriation include the fact that displaced households may not have comparable assets despite receiving compensation, and that unregistered rights, such as grazing, are not usually compensated.

In most cases, compensation is paid within one year. However, there is often the public perception that the level of compensation offered by the state is insufficient. The rate of compensation may vary depending on the location. In addition, the efficiency and effectiveness of different authorities may impact the price. There are cases of land price fixing or inflation in which property owners benefit unfairly from the expropriation process.

It is considered a breach of contract if payment does not occur within the agreed period. In such cases, the person can obtain relief from the courts. The legal system for appealing expropriations is well developed in South Africa. However, there are obstacles to the system, which hinder the ability of the poor and vulnerable to gain access.

4.3.4 Allocation of public land

| Transparent Processes for Divestiture | | | | | | |
|---------------------------------------|-----|--|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 15 | i | Openness of public land transactions | | | | |
| 15 | ii | Collection of payments for public leases | | | | |
| 15 | iii | Modalities of lease/sale of public land | | | | |

Public land owned by the provincial and national governments and parastatals is subject to extensive regulations outlined in the Public Finance Management Act of 1999, including the requirement that accounting authorities “collect all revenue due to the public entity concerned.”⁴¹ Section 217(1) of the Constitution requires public procurements – and by extension, transactions – to be conducted “in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.”⁴² Given the public interest in redistribution noted above, land prices reflect a combination of market values and non-market factors, including the history of the acquisition of the land and the use to which it has been put.⁴³ Foreigners are allowed to own and lease land.⁴⁴

In practice, however, the disposal of public land has generally not been transparent. In March 2011, at the request of President Jacob Zuma, the Special Investigations Unit launched a probe into the DRDLR to examine “the application for and awarding of grants, the transfer of land, payment of funds to beneficiaries, irregular expenditure, and wasteful and fruitless expenditure.”⁴⁵ Several officials and a businessman from KwaZulu Natal were charged with fraud and corruption, assets worth R50 million were frozen, and several farms that were transferred to the businessman’s company rather than to the farms’ employees were seized.⁴⁶ Another 32 officials were implicated in fraud and corruption in the 2012 report of the Auditor-General.⁴⁷ The SIU is currently cataloguing the evidence from its investigation into a database that can be used to detect and analyse additional irregularities.

⁴¹ Public Finance Management Act of 1999, <http://www.dac.gov.za/acts/PFMA.pdf>

⁴² National Treasury, Public Finance Management Act, <http://www.treasury.gov.za/legislation/PFMA/>; Sue Arrowsmith & Geo Quinot, 2013, *Public Procurement Regulation in Africa*, Cambridge: Cambridge University Press.

⁴³ Walker, ‘The Limits to Land Reform,’ 2005.

⁴⁴ Parliamentary Monitoring Group, Rural Development and Land Reform Question 1354, 27 May 2011, <http://www.pmg.org.za/node/29546>.

⁴⁵ Mazibuko, Lindiwe. “South Africa: Land Reform Department Special Investigating Unit Investigation - DA Requests Progress Report,” allAfrica.com, 21 September 2011, <http://allafrica.com/stories/201109220047.html>.

⁴⁶ Benjamin, Chantelle. “SIU probing R171-million worth of govt rot,” Corruption Watch, 18 April 2012, <http://www.corruptionwatch.org.za/content/siu-probing-r171-million-worth-govt-rot>; McKune, Craig, “Special Investigating Unit gets close to the fire,” 2 December 2011, Mail & Guardian, <http://mg.co.za/article/2011-12-02-special-investigating-unit-gets-close-to-the-fire>.

⁴⁷ Parliamentary Monitoring Group, Rural Development and Land Reform Question 563, 22 March 2011, <http://www.pmg.org.za/node/36307>.

4.4 Public provision of land information

4.4.1 Completeness

| Completeness of Registry Information | | | | | | |
|--------------------------------------|-----|-----------------------------------|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 16 | i | Mapping of registry records | ■ | | | |
| 16 | ii | Relevant private encumbrances | ■ | | | |
| 16 | iii | Relevant public restrictions | | | ■ | |
| 16 | iv | Searchability of the registry | ■ | | | |
| 16 | v | Accessibility of registry records | ■ | | | |
| 16 | vi | Timely response to requests | ■ | | | |

In South Africa, more than 90% of ownership information in the registry is accurate, up to date, and readily identifiable on maps. The records in the registry are publicly available at a small cost and can be searched by both the right holder's name and land parcel description. Moreover, the DRDLR maintains a website called DeedsWeb with information from the Deeds Registry that users can access upon registration. The average response time to requests for cadastral information was three days, as of April/May 2011.⁴⁸ Similarly, private encumbrances are recorded consistently and can be verified at low cost.

Public restrictions on land may be included in title deeds, town planning schemes and related legislation and regulations. The Deeds Office is the custodian of the title deeds, whereas municipalities have authority over the management of the scheme provisions. There are no set national standards for the quality and the contents of the town planning schemes in South Africa. Consequently, wide variations are found between municipalities. A number of municipalities are yet to develop a single scheme for their area of jurisdiction, with some operating with more than 10 schemes in place due to the disestablishment of the apartheid local structures.

4.4.2 Reliability

| Reliability of Registry Records | | | | | | |
|---------------------------------|----|---------------------------------------|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 17 | i | Registry focus on client satisfaction | | | ■ | |
| 17 | ii | Cadastral/registry info up-to-date | ■ | | | |

The Surveyor General and the Deeds Office have internally published standards to facilitate optimal service delivery. In addition, all public officials are required to adhere to the Batho Pele principles, which are meant to guide and improve customer relations within the public sector generally.

Overall, the systems and procedures for land registration in South Africa are effective and efficient. An extensive project was recently undertaken to clean up the digital cadastral set for

⁴⁸ Parliamentary Monitoring Group, Rural Development and Land Reform Question 1435, 3 June 2011, <http://www.pmg.org.za/node/29546>.

the country. The participants of the National Verification Workshop noted that the Deeds Office is up to date, but challenges remain within the Surveyor-General's office.

4.4.3 Cost-effectiveness, accessibility, and sustainability

| Cost Effectiveness, Accessibility, and Sustainability | | | | | | |
|---|-----|---|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 18 | i | Cost of registering a property transfer | | | | |
| 18 | ii | Financial sustainability of registry | | | | |
| 18 | iii | Capital investment in the system to record rights | | | | |

The average cost of transferring land is approximately 2.6%. Still, the expert investigator present at the panel discussion on land information systems commented that freehold title by Africans is not adequately captured. In many instances, transfers are not registered for customary reasons. Families rely on oral traditions and are commonly reluctant to have their rights recorded in a single person's name as it is regarded as a family property.

In terms of investments, the DRDLR spent R46,295 on payments for capital assets the third quarter of the 2012/13 fiscal year.⁴⁹ However, there have been questions about the spending patterns of the DRDLR in recent years. For instance, in the 2012/13 fiscal year, the department spent nearly R11.5 million on catering and entertainment, down from R13.4 million the year before.⁵⁰

4.4.4 Transparency of service costs

| Transparency of Service Costs | | | | | | |
|-------------------------------|----|---|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 19 | i | Schedule of fees for services is public | | | | |
| 19 | ii | Informal payments discouraged | | | | |

The latest schedule of fees was published in April 2012 in the Government Gazette, with a copy publicly available online through DeedsWeb. While there is no requirement to pay an informal fee for first time registration, corruption may occur anywhere along the value chain. The extent to which this may occur is unknown and is not documented.

⁴⁹ Parliamentary Monitoring Group, Rural Development and Land Reform Question 1043, 17 May 2011, <http://www.pmg.org.za/node/36307>.

⁵⁰ Parliamentary Monitoring Group, Rural Development and Land Reform Question 1237, 24 May 2011, <http://www.pmg.org.za/node/36307>.

4.5 Dispute resolution and conflict management

4.5.1 Assignment of Responsibility for Dispute Resolution

| Assignment of Responsibility for Dispute Resolution | | | | | | |
|---|-----|---|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 20 | i | Accessibility of conflict resolution mechanisms | | | | |
| 20 | ii | Informal or community based dispute resolution | | | | |
| 20 | iii | Forum shopping | | | | |
| 20 | iv | Possibility of appeals | | | | |

In South Africa, there are parallel avenues for conflict resolution, ranging from the formal to the informal and subsets thereof. In poor and vulnerable communities, there is often no common first point for resolving disputes. However, in formal and advantaged communities, recourse will often follow the legally established routes.

Disputes relating to South Africa's land reform program are heard in the Land Claims Court, a specialized court with the same level of standing as the High Court. The Court is located in Johannesburg, but is empowered to hold hearings anywhere in the country in order to increase accessibility.⁵¹ Appeals against decisions of the Land Claims Court are heard by the Supreme Court of Appeal, with final recourse to the Constitutional Court where applicable. Currently, claims are restricted to those occurring after 1913, the year of the Natives Land Act, effectively to preclude tribal claims for restitution.⁵² The original cut-off date for claims was set at 31 December 1998; however, the proposed Restitution of Land Rights Amendment Bill of 2013 would reopen the Court to claims lodged through 31 December 2018.⁵³ Under court rules, the burden lies on claimants to demonstrate past dispossession. Successful claimants may be awarded the restitution of their dispossessed land or equitable redress, which includes rights to an alternative parcel of state land or financial compensation. The Amendment Bill seeks to add a restriction that the claimant's ability to utilize the land productively must be established in order for restoration to occur.

The vast number of people living within informal settlements and on communal land have no or limited access to formal institutions for conflict resolutions. Such communities make use of locally established systems and local leaders such as ward councillors, traditional leaders or headman, and in some urban areas, civic structures. The use of informal systems varies from area to area, with some systems being well-structured, long-standing, and active, and others being inconstant and barely functioning. Additionally, women and other vulnerable groups may not be empowered within these systems.

Locally-recognised systems are yet to be adequately acknowledged and accepted by the formal systems in South Africa. In urban informal settlements, municipalities often do not recognise

⁵¹ The Land Claims Court of South Africa, 2011. Department of Justice and Constitutional Development. <http://www.justice.gov.za/lcc/>

⁵² Beinart, William. 2001. *Twentieth-Century South Africa*. Oxford: Oxford University Press.

⁵³ DLA Cliffe Dekker Hofmeyr, Sandra Gore, and Verusha Moodley. "Avalanche of new land claims expected." 5 June 2013. <http://www.lexology.com/library/detail.aspx?g=3f19dc72-23d9-4c2d-9ebc-293d62d28929>

informal dispute resolution mechanisms or may not even be aware of community-based processes. In some cases, municipalities establish new structures, ignoring processes that are long standing and/or have community-based legitimacy. In addition, “informal” tends to be equated with illegal or criminal. This delegitimizes community-based dispute resolution mechanisms and processes.

Still, informal or community-based decisions do have some recognition within the formal judicial system. For example, the community’s “word” within a formal court hearing may be sufficient to influence the outcome of the case. However, poor legal representation and limited resources leads to poor legal outcomes and the possible further disempowerment of the community. In cases where the courts do rule in favor of the community, often the institutions then ordered to provide a remedy fail to do so. During the panel discussion on dispute resolution, an example was given of the recent “Protea South” case, which was won by the community for the municipality to provide basic services and engage in a meaningful participation process. The City of Johannesburg has taken very little subsequent action, thus largely ignoring the court action. Poor communities have limited resources and often lack the ability to continue returning to court to ensure the enforcement of court rulings.

Mechanisms are in place in South Africa for appealing rulings on land cases, but the costs are high and thus not easily accessible to the poor and vulnerable groups. Appeals systems are not always well understood by such communities and are often not used.

4.5.2 Pending conflict level

| Low Level of Pending Conflicts | | | | | | |
|--------------------------------|-----|---|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 21 | i | Conflict resolution in the formal legal system | | | | |
| 21 | ii | Speed of conflict resolution in the formal system | | | | |
| 21 | iii | Long-standing conflicts (unresolved cases older than 5 years) | | | | |

While there is no consistent recording of formal land disputes in South Africa, anecdotal evidence suggests that the resolution of land claims takes excessively long. The Minister of Rural Development and Land Reform has stated that the average time for settling a claim is 18 months, with individual and family claims taking less time and community claims taking longer.⁵⁴ Of the nearly 80,000 land restitution claims that were lodged by 1998, the DRDLR reports that 96% have been resolved. Still, this leaves more than 2,500 cases outstanding 15 years after the deadline for filing.⁵⁵ Similarly, organisations such as the Association for Rural Advancement (AFRA) have presented cases that took in excess of 12 years to resolve. Most of the restitution claims that were resolved relatively quickly were located in urban rather than rural areas, and this process was accelerated greatly by the introduction of a standard settlement offer in 2000.⁵⁶

⁵⁴ Parliamentary Monitoring Group, Rural Development and Land Reform Question 1664, 24 June 2011, <http://www.pmg.org.za/node/29546>.

⁵⁵ Ibid.

⁵⁶ Walker, ‘The Limits to Land Reform,’ 2005.

4.6 Large-Scale Land Acquisitions

| Large-scale Acquisition of Land Rights | | | | | | |
|--|----|--|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| PLI | 1 | Most forest land is mapped and rights are registered | ■ | | | |
| PLI | 2 | Conflicts generated by land acquisition and how these are addressed | | | ■ | |
| PLI | 3 | Land use restrictions on rural land parcels generally identifiable | | | ■ | |
| PLI | 4 | Public institutions in land acquisition operate in a clear and consistent manner | | | ■ | |
| PLI | 5 | Incentives for investors are clear, transparent, and consistent | | | ■ | |
| PLI | 6 | Benefit sharing mechanisms for investments in agriculture | | | ■ | |
| PLI | 7 | Direct and transparent negotiations between right holders and investors | | | | ■ |
| PLI | 8 | Information required from investors to assess projects on public/community land | | | | ■ |
| PLI | 9 | Information provided for cases of land acquisition on public/community land | | | ■ | |
| PLI | 10 | Contractual provisions on benefits and risks sharing regarding acquisition of land | | | | ■ |
| PLI | 11 | Duration of procedure to obtain approval for a project | | | ■ | |
| PLI | 12 | Social requirements for large scale investments in agriculture | | | ■ | |
| PLI | 13 | Environmental requirements for large scale investments in agriculture | | | ■ | |
| PLI | 14 | Procedures for economically, environmentally, and socially beneficial investments | | | ■ | |
| PLI | 15 | Compliance with safeguards related to investment in agriculture | | | ■ | |
| PLI | 16 | Procedures to complain if agricultural investors do not comply with requirements | | | ■ | |

Large-Scale Land Acquisition (LSLA) is undoubtedly South Africa's poorest performing area. The country scores poorly on all 16 LSLA indicators, except for the fact that most forest land is mapped and rights are registered.

Forest land

There are between 1.2 million and 1.3 million hectares of commercial forest in South Africa. All forest land rights are registered, with rights including private ownership, long-term notarial lease agreement, management agreement, and community forest agreement. The ownership pattern is outlined in the table below. Half of all forests are part of the land claims process as outlined in the Restitution of Land Rights Act No. 22 of 1994.

Table 2: Ownership Pattern of Forest Land in South Africa

| Institution | Percentage | Sector |
|-------------------------|------------|--------------|
| Corporate organisations | 59 | Private |
| Commercial farmers | 20 | Private |
| SAFCOL | 10 | State Entity |
| State & municipality | 7 | Government |
| Small growers | 4 | Private |

Each of the major forestry companies has detailed spatial data of their forests, but this information is not publicly available. While practitioners question the accuracy of the information, the Department of Agriculture, Forestry, and Fisheries has information on the vegetation types such as thickets, woodlands and champion trees; department-owned forests; leases in respect of commercial plantations; and on state-owned plantations, indigenous forests, plantations, and savannah woodlands.

Less than 0.5% of the surface area of South Africa is covered by indigenous forests, and these are found mainly in the Western Cape, Eastern Cape, and KwaZulu-Natal provinces. They are mapped and governed by the National Forests Act No. 84 of 1998. Forests in close proximity to traditional or communal lands have appointed 'forest officers.' The Act also makes provision for community forestry agreements. However, in KwaZulu-Natal, while some of the forest areas may be mapped, community rights are yet to be registered.

Mining

With regards to mining rights, prospecting, and mining applications, third parties create the most conflict between investors, the state, private landowners, and communities. This may result from the loss of use rights or occupation of the land, removal from the land, inefficient compensation, a lack of benefit-sharing mechanisms, the gap between short-term benefits and long-term goals, and environmental degradation of the land. There is a public perception that the process for supplying sufficient information to obtain prospecting permits in the mining industry is flawed, with inefficiency and corruption.

There are several examples of communities having little say in their removal from the land for mining purposes. While the Mineral and Petroleum Resources Development Act makes provision for public participation, the owners of the land, holders of land rights, and communities have no say in negotiations. The government plays an active role in receiving, processing (excluding the public participation process and the drafting of the application), and granting the prospecting and mining licenses.

Management of conflict

Conflicts in the LSLA process are commonly linked to the forced removal of farm workers or employment losses; the possible loss of rights, including occupation and/or use; the content of the trust or the Community Property Association agreement, or conflict between community members themselves; and collusion between landowners and officials around land fixing and land price inflation. A common challenge is the limited capacity available for resolving conflicts. While there are land claims courts, the processing of cases is extremely slow. Many land redistribution and land restitution cases have dragged on for long periods of time due to a lack of clear procedures and numerous bottlenecks in the system.

Management of investors

South Africa has no specific laws or regulations providing incentives for investors engaging in LSLA and its development. Commercial farming, forestry, and related industries receive no economic assistance from the state. However, the Forest Sector Charter Council has drafted a proposal for the establishment of the Forest Grant which calls for state-funded grants for investment purposes. Two South African asset management firms launched a R3-billion

farmland investment fund in March 2010, which is expected to promote agricultural development in the country. The Futuregrowth Agri-Fund, launched by Old Mutual South Africa, Futuregrowth Asset Management, and UFF Agri Asset Management, plans to tap institutional investors for the cash needed to invest in farms in South Africa.

Broad-Based Black Economic Empowerment (BBBEE) could be considered an incentive scheme through which various government departments give preference and assistance (financially or otherwise) to previously disadvantaged people. This allows for easy access to loans, equity finance, and loans for land reform beneficiaries. When purchasing land owned by state-owned enterprises, investors must comply with the BBBEE guidelines for non-core property assets and the code of good practice, as prescribed by the BBBEE Act. According to the Restitution of Land Rights Act, investment on land awarded to communities is based on settlement models, which require investors to provide sufficient information about financial capacity, benefit-sharing models, and social investment in the community. In both instances, information is publicly available.

Still, problems exist around unclear laws and regulations, a lack of audits and monitoring, a lack of publicly available information, and lengthy times for processing investors' applications. In addition, there tends to be a lack of clarity around expropriation of land by the state and insufficient information from investors to assess a project's viability, benefits, and risks.

Negotiations between land rights holders and investors

In South Africa, the willing seller-willing buyer principle applies with no restrictions on the size and/or extent of investment permissible on private land. People who own registered property are protected by law. Within the communal land context, communities do not have formal or documented rights, as the land is owned by the state. In such cases, negotiations between the land holders and investors are often not direct or transparent.

Social requirements

The country does have a legal framework guiding the implementation of large-scale agricultural projects, including the requirement of adherence to the Labour Relations Act. Likewise, the National Forests Act provides for the implementation of social and economic benefits and safeguards for local communities, such as community forestry agreements and access to the forest for cultural and religious purposes. However, there are limited requirements in the agricultural sector relating to social impact assessment studies. Moreover, no mechanisms are in place to prevent projects from proceeding based on the projected social impacts. As such, economic advantages tend to outweigh social consequences, and job creation tends to overshadow all other considerations. This is well demonstrated in the current proposal to introduce fracking for natural gas in the Karoo in the Eastern Cape. Economic imperatives must be balanced more effectively with social outcomes.

Environmental requirements

Extensive legislation and policies are in place to manage environmental aspects in the agricultural sector. These include Conservation of Agricultural Resources Act, National Forests Act, National Water Act, Agricultural Pests Act, National Environmental Management Act, and legislation relating to waste management, pollution control, and hazardous and toxic substances.

However, the expert investigator noted in his report that the provisions of the Mineral and Petroleum Resources Development Act tend to favour the mining industry, often to the detriment of the environment. The panel noted the inconsistent implementation of social and environmental safeguard requirements and procedures, and a lack of action in cases of non-compliance with these.

5 Policy Priorities

The panelists and workshop participants developed a number of recommendations arising from the LGAF process. These have been categorized in the annex below in terms of the broad thematic areas used in this report. However, many of the issues are cross-cutting and therefore not easily categorized into one specific thematic area.

Appropriate baseline indicators should be developed for monitoring the implementation of the land reform, redistribution, and restitution processes. The indicators currently used are too narrow and do not adequately identify challenges. There appears to be a disjuncture between strategic planning and reports on land governance and land use. In particular, there remains the possibility of misrepresentation or overstating of results to improve the outcome being projected. In some cases, this has resulted in a lack of credibility in reporting.

The vast majority of rural residents do not have registered land rights, and informality is an issue in urban areas. Systems and fast-track procedures should be developed to address the backlog in RDP registration and transfer, as there are approximately one million RDP housing units which are yet to be registered and transferred to the identified beneficiaries. Moreover, about 20 million land parcels in the communal lands areas and informal settlements are yet to be surveyed, which is only possible within a reasonable time frame when using alternative methods for land parcel identification. Such alternative methods need to be developed by the DRDLR in association with the Surveyor General's office and subsequently legalized. Legislation also needs to be enacted to revise the Protection of Informal Land Rights Act and the Communal Land Rights Act, while ensuring that all revisions are constitutional. The DRDLR is currently preparing policies that will lead to legislative change in relation to land reform. The findings of the LGAF are important for this process.

Addressing urban informality in existing settlements requires a better understanding of how plots and houses are acquired. Little attention has been given to the so-called socially dominated markets – which depend on personal networks more than just market prices – when developing the systems for acquiring and trading land within the informal settlements. Improvements require municipalities to innovate and demonstrate leadership in developing an appropriate response in coordination with DRDLR and the Department of Cooperative Governance. One option is to develop an incremental tenure approach for urban informal settlement dwellers,⁵⁷ and to roll out a support strategy for municipalities for the implementation of this approach.

With respect to planning of residential areas, there has been increasing concern about the location of state-funded low-income housing projects and falling production rates. Under RDP, large tracts of peripheral land have been used for housing developments, perpetuating the apartheid spatial structure of sprawling, low-density settlements. The government should undertake a review of the current RDP subsidy scheme in order to develop a more robust housing policy. In the short term, the current housing policy and funding mechanisms should be

⁵⁷ Incremental tenure commence with the application of benign zoning provisions recognising the existence of informal settlers, incrementally extending tenure rights to them (initially by administrative decision), progressing to legally secure tenure and ultimately including freehold tenure.

reviewed, with a long term goal of reducing the number of projects being built in areas far from economic opportunities and urban amenities/networks.

The Housing Development Agency (HDA) has been established to fast-track housing delivery and assist with processes such as the rapid release of well-located land. However, the resources made available to the organization are insufficient for it to address its mandate easily, especially with regard to the assembly of a significant land portfolio. Funding for land acquisition should be increased substantially if the HDA's mandate is to be realized.

Overall, more effective land use management tools should be developed for both rural and urban areas and their inter-linkages. In order to accomplish this, the DRDLR must enact the proposed Spatial Planning and Land use Management Act followed by the development of Provincial and municipal policy and regulations for implementation. Given the difficulty for small and rural municipalities to attract qualified planners a strategy for the implementation of service centers could be developed.

With respect to the management of public land and concessions, the allocation of mining licenses is another key concern. It appears that there is insufficient participation of the affected communities in the negotiations and insufficient compensation in case they have to relocate. Economic imperatives must be balanced more effectively with social outcomes. Contracts and conditions need to be made public, and public officials should be accountable for these negotiations.

More effective use can be made of informal dispute resolution mechanisms to speed up conflict resolution. The first step is a better mapping and analysis of the various systems in place and their strengths and weaknesses, including the position of women and other vulnerable groups. Based on the research findings, a national policy should be developed to guide the recognition of such systems within the formal system.

6 Conclusion

The application of the LGAF within the South African context has provided a useful snapshot of the state of land governance in the country. It has exposed the obvious successes and failures of the current system, highlighting areas of sophistication and areas that need attention. The government is aware of the gaps within the land governance system and is trying to address these in a number of ways. Priorities are communal lands, the position of farm dwellers, an incremental approach towards formalization in cities and the transparent management of public land and concessions.

The country has made innovative and active use of digital solutions for rapid delivery, such as GIS and digital boundaries, to determine municipal boundaries, and 'evaluation' solutions for rapid land appraisal. Within the formal sector, land governance systems are accurate, reliable and highly sophisticated, easily comparable to developed countries. This is often very different in more rural areas.

The LGAF's findings suggest the following key areas for further examination:

- Improved tracking of large-scale land acquisition in Africa and its impact: many foreign buyers are buying land, and tracking is currently mainly through media reports;
- The preparation of a methodology and related tools for supporting municipalities in the implementation of an incremental tenure approach;
- The development of a possible legal framework for supporting the implementation of an incremental tenure approach;
- Support with the drafting of suitable legislation to enforce communal land rights.

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Annex: Policy matrix

| Policy matrix | | |
|---|--|---|
| Thematic area | Proposed short term policy interventions | Proposed medium term policy recommendations |
| Legal and institutional framework | <p>Rural:</p> <ul style="list-style-type: none"> i. Regulations need to be developed in support of the Interim Protection of Informal Land Rights Act – to greater process clarity ii. A strategy will need to be developed which identifies an alternative method for land parcel identification iii. A programme should be initiated to rationalise the legislation guiding rural land use into a possible omnibus iv. The Department should development appropriate baseline indicators for monitoring the implementation of the land reform, redistribution and restitution process v. Improved levels of reporting should be identified | <p>Rural:</p> <ul style="list-style-type: none"> i. Appropriate legislative response to communal land rights must be negotiated and finalised must be developed ii. The preparation of appropriate policies and legislation for ensuring greater protection of farm dweller rights to tenure security |
| | <p>Urban:</p> <ul style="list-style-type: none"> i. A methodology and tools for supporting municipalities in the implementation of an incremental tenure approach should be prepared ii. Systems and procedures should be developed to address the backlog in RDP registration and transfer⁵⁸ | <p>Urban:</p> <ul style="list-style-type: none"> i. The determination of a possible legal framework for supporting the implementation of an incremental tenure approach ii. A research project should be initiated which examines the social value of land , taxation, public investment related to the changes in land use and the benefits thereof |
| Land Use Planning, Management and Taxation | <ul style="list-style-type: none"> i. A comprehensive review of planning legislation should be undertaken ii. Planning capabilities and capacity | <ul style="list-style-type: none"> i. While in an advanced stage of development, a National Planning Act should be |

⁵⁸ The Western Cape have recently released a tender calling for proposals for addressing this matter.

| | | |
|---|---|---|
| | <p>requirements of all municipalities should be assessed</p> <p>iii. A research project should be initiated which examines the institutional arrangements for facilitating the streamlining of the institutional arrangements for land use planning and management</p> | <p>legislated</p> <p>ii. Effective land use management tools should be developed for the rural and urban areas</p> <p>iii. The implementation of the strategies developed for addressing any gaps or weaknesses in land use planning, management and taxation as identified in the related policies</p> |
| Management of Public Land | <p>i. The capacity requirements of the HDA should be assessed with the intention of making additional capacity and resources available to the agency</p> <p>ii. The capacity requirements need to be examined for the management of public land. This should include an assessment of different types of public land and the possible decentralisation of management thereof.</p> <p>iii. Strategies need to be developed which facilitate the elimination of the duplications in the management of public land</p> | |
| Public Provision of Land Information | <p>i. Strategies need to be developed which allow the poor to have greater levels of accessibility to the land information systems.</p> | |