



Photograph by Guy Stubbs

Chapter 16

Land Affairs

The Department of Land Affairs is responsible for the following functions:

- surveys and mapping
- deeds registration
- the Surveyor-General
- land development planning
- land reform (restitution, redistribution and tenure reform)
- the management of State land falling under the jurisdiction of the Minister of Agriculture and Land Affairs.

Surveys and deeds

Surveys and mapping

The Chief Directorate: Surveys and Mapping is responsible for maintaining the national aerial photography programme, the integrated survey system, the national mapping programme and associated geospatial products. The Chief Directorate researches and provides information for land claims, and assists communities with the preparation of maps for claims.

The national control network is the unique national spatial reference framework on which all cadastral surveys, mapping development projects and navigation are based.

The Chief Directorate has an archive of aerial photography covering the entire country.

New photography is acquired annually for map revision, used by other departments and/or updating the archive. This archive is used extensively for land resource planning and historical land use research.

Innovative new products for users, such as the provincial map series and new 1:250 000 topographical and aeronautical maps designed to optimally cover major metropolitan areas, have been developed.

The Department runs a map awareness and literacy project to educate people on the use of maps. It aims to donate local topographic maps to every senior school in the country. In 2000, the main achievement was the production of the MapTriX map-reading tool kit. The kit will be distributed to 3 000 disadvantaged schools. Other achievements include the production and publication of orthophoto maps, new edition topographic maps, and aeronautical map series of different scales.

The Chief Directorate provided Statistics South Africa with geospatial assistance in preparation for the 2001 Census. The digital orthophotos produced from this exercise will be available to all spheres of government to use in their own planning and service-delivery projects.

Cadastral surveys

The security of title associated with each parcel of land in South Africa has long provided a basis for the private sector to finance physical development. The great advantage of South Africa's cadastral survey system is that it accurately identifies the position of each parcel of land and the extent of rights over it.

◀ The Department of Land Affairs has revised its Land Reform Programme to support sustainable rural development policies and interventions. The Programme is designed to provide grants to previously disadvantaged people to access land, specifically for agricultural purposes.

The offices of the four Surveyors-General examine and approve all cadastral surveys for the registration of ownership of property and real rights in land.

Cadastral and sectional title surveys and records

The offices of the Surveyors-General process survey records, including the examination, approval and safe-keeping of all survey records. These include all diagrams, general plans and draft sectional plans for registration purposes, relating to the provinces under their jurisdiction.

General plans depicting thousands of erven surveyed for the former Department of Development Aid are being upgraded so that they may be registered in deeds registries when required.

Services to State departments

The Surveyors-General offices provide services for other State departments. These include the preparation of documentation for the granting of tenders to private land surveyors for the survey of State land.

Legislative process

The Chief Surveyor-General is participating in the drafting of a new Land Rights Bill in order to extend security of ownership.

The Cadastral Information System (CIS)

The CIS consists of the Document Imaging System, the Alpha-numeric Database and the Spatial Database.

The scanning of historical documents for the Document Imaging System has been completed, and a fully functional system is in operation.

This System consists of more than two million diagrams, 36 000 general plans and 25 000 sectional title plans. Access to the data has been supplied to the various deeds offices.

The historical capturing of data on diagrams and general plans started in May 1999 and was completed by the end of March 2000. The data will be used in the quality

assurance of spatial data. Major development has been done on this component to further enhance service-delivery in the offices of the Surveyors-General.

It was decided during 1999 that the data on informal rural settlements should be incorporated into the formal spatial cadastral data. After the normal tender procedures have been followed, the HELP database was purchased as well as the mapped villages, with the exception of those of KwaZulu-Natal, which will be purchased during the 2001/02 financial year. These mapped villages consist of about a million land parcels, and the data has successfully been imported into the spatial data at the Chief Surveyor-General.

A website, www.csg.org.za, has been developed for the Chief Surveyor-General during 2000.

The National Spatial Information Framework (NSIF)

The Directorate: NSIF was established in 1997 with the aim of developing and maintaining a framework to ensure access to and support of the utilisation of spatial information by the Public Service.

Cabinet endorsed the development of the NSIF in April 1999. The Spatial Data Discovery Facility was launched, which provides access to information on more than 14 000 existing spatial data sets through the web (see <http://www.nsif.org.za>).

A technical committee, tasked with the development of national standards for geographic information through liaison with the South African Bureau of Standards, was also established. Liaison was initiated with other similar initiatives in Africa to harmonise standards and practices. This enables the sharing of spatially-related data across borders to address environmental and other issues affecting more than one country.

The Directorate was also involved in the development of a departmental intranet-based spatial information system in the form of maps, providing all staff with access to immediate information relevant to land reform.



Interaction with other bodies, departments and provinces

The office of the Chief Surveyor-General is involved in various co-operative activities with other government departments and municipalities. These include the provision of professional advice on cadastral survey matters, assistance with the appointment of land surveyors, and administrative support for the surveying of the country's international boundaries.

Deeds

Registration is normally required when acquiring ownership of land or rights in land in South Africa. An effective registration system is essential for security of title.

The registration of deeds is performed by the Department of Land Affairs through its nine deeds offices, which fall under the supervision of the Chief Registrar of Deeds. The core functions of the deeds office are:

- registration of real rights in land
- maintenance of land registers
- provision of land registration information
- preservation of registration records for archival purposes.

The security of title afforded the holder of registered real rights in land in South Africa is further supported by the accuracy of the Surveyor-General's cadastral survey system, which provides the exact location of the land as well as the extent thereof.

The legal certainty provided by a title deed registered under the South African registration system is of great significance for physical development and the restitution of land under the land reform process. It also forms the security base for investments of millions of Rands per annum in land delivery projects aimed primarily at providing land and housing for previously marginalised sectors of the population.

An integral part of the Deeds Registration System, and a major source of information for the Department's land development initiatives, is the detailed recording of historical information in respect of all registered properties in a computerised land register. These

records are invaluable for the land restitution process, as large numbers of people require historical information for the preparation of their claims.

The Chief Directorate: Deeds Registration is in the process of developing an electronic deeds registration system (e-DRS) to cope with the increase in work volume, when the Department's land-delivery initiatives gain momentum.

It will significantly reduce the deeds registration period and make the system more accessible to previously disadvantaged communities.

An electronic document-tracking system, by means of which the location of deeds and documents lodged in deeds offices can be electronically monitored, is also being developed. Phase one is in full operation in the Pretoria Deeds office. The system will be rolled out in the remaining eight deeds offices.

The Aktex Information System has been available since 1992 to external users such as conveyancers, financial institutions and estate agents to obtain registration information from the Deeds Registration System.

To provide these users with an alternative to accessing Aktex by means of PC-based communications software developed by third parties, the Chief Registrar of Deeds is web-enabling this service by means of the so-called 'DeedsWeb'.

This facility, once operational, will not only provide registered Aktex users with alternative access. It will also allow casual browsers to access deeds registration through the Internet.

As the majority of registered Aktex users are members of the legal fraternity who will eventually make use of the e-DRS, this web-enablement of Aktex will ensure that the much-needed connectivity backbone for e-DRS is in place well in advance.

Land development

The Department provides support for provincial and local governments in implementing the Development Facilitation Act (DFA), 1995 (Act 67 of 1995). It also plays a key role in the

formulation of national policy on land development and planning.

With the exception of the Western Cape and Free State, development tribunals have been established country-wide. Of the seven established tribunals, only the Northern Cape is not operational; the other six are used on a regular basis. Although most of the applications made to the tribunals are for township establishment in order to fast-track the implementation of housing projects, the tribunals also handle rezoning and subdivision applications.

The implementation of Land Development Objectives (LDOs) has been sustained, and most of them are being approved. Some municipalities have completed the annual revision of their LDOs after the first year of implementation. With the promulgation of the Municipal Systems Act, 2000 (Act 32 of 2000), by the Department of Provincial and Local Government, most municipalities have focused on the drafting of integrated development plans. LDOs have been incorporated into these plans.

When South Africa's first democratically elected government assumed office in 1994 it inherited a fragmented, unequal and incoherent planning system. To address this situation the DFA established the Development and Planning Commission (DPC). At the request of the Minister of Land Affairs and in consultation with the Ministers of Housing and Constitutional Development, the *Green Paper on Development and Planning* was prepared. The Green Paper, based on extensive research conducted by the DPC, pointed out an urgent need for a new policy framework on spatial and land use planning.

The *Green Paper on Development and Planning*, tabled in Parliament in August 1999, formed the basis for the drafting of the *White Paper on Spatial Planning and Land Use Management* which was prescribed to Cabinet in May 2001 for consideration.

The aim of the White Paper is to create a new land use and spatial planning system for the country. The Department is furthermore in the process of drafting the Land Use Management Bill which will provide the legal mechan-

isms for the implementation of the policy framework provided for in the White Paper.

Land reform

Land reform was introduced by the Government in 1994, and is derived from Section 25 of the Constitution of South Africa, 1996 (Act 108 of 1996), which determines that

- a person or community dispossessed after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled to restitution of the property or to equitable redress
- the Government must take reasonable legislative and other steps, within its available resources, to enable citizens to gain access to land on an equitable basis
- a person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled to tenure which is legally secure or to comparable redress.

The objectives of the land reform policy are to

- redress the injustices of apartheid
- foster national reconciliation and stability
- underpin economic growth
- improve household welfare and alleviate poverty.

The Land Reform Programme consists of

- land restitution, which usually involves returning land lost because of racially discriminatory laws, although it can also be effected through compensation.
- land redistribution, which enables disadvantaged people to buy land with the help of a settlement or land acquisition grant.
- land tenure reform, which aims to bring all people occupying land under one legal system of landholding. It will provide for diverse and secure forms of tenure, help resolve tenure disputes, and provide alternatives for people who are displaced in the process.

The Department has revised its Land Reform Programme to support sustainable rural development policies and interventions. Its focus will shift over the medium term to the implementation of an integrated programme



of land redistribution and agricultural development. The Programme is designed to provide grants to previously disadvantaged people to access land, specifically for agricultural purposes. The strategic objectives

Total number of restitution claims received

| Region | Number of claims received |
|--|---------------------------|
| KwaZulu-Natal | 14 808 |
| Western Cape | 11 938 |
| Eastern Cape | 9 292 |
| Free State and Northern Cape | 4 715 |
| Gauteng and North-West | 15 843 |
| Mpumalanga | 6 473 |
| Northern Province | 5 809 |
| Total number of claims received (please refer to note) | 68 878 |

A total number of 63 455 claim forms have been lodged with the Commission on Restitution of Land Rights. However, the validation process that is currently under way has indicated that, while some of the claim forms do not represent valid restitution claims, in other cases more than one claim is in fact represented per claim form. The total number of 63 455 claims is in fact subject to change, hence the current number of 68 878 claims. Once the validation process has been completed it will be possible to determine the exact number of valid restitution claims received by the Commission.

Settled restitution claims

Claims settled as at 1 October 2001. These claims represent 9 666 claim forms lodged with the Commission on Restitution of Land Rights.

| Land Restoration | |
|---|-------------------|
| Households awarded land | 19 199 |
| Land cost | R 221,381,840 |
| Hectares of land restored (Land Claims Court) | 173 805 |
| Hectares of land restored (Ministerial approval) | 136 253 |
| Total beneficiaries receiving land | 115 194 |
| Financial Compensation | |
| Households awarded compensation | 16 074 |
| Financial compensation awarded (Land Claims Court) | R 21,860,330 |
| Financial compensation awarded (Ministerial approval) | R 319,240,028. 10 |
| Restitution Total | |
| Claims settled | 12 676 |
| Total households | 35 071 |
| Total restitution beneficiaries | 207 164 |
| Total restitution award cost | R 562,482,198. 10 |

Source: Department of Land Affairs website

of the Programme include:

- facilitating the transfer of a targeted 30% of the country's agricultural land over 15 years
- improving nutrition and income of the rural poor who want to farm on any scale
- expanding opportunities for women and young people who stay in rural areas.

The revised Programme is more flexible than previous interventions as it does not limit beneficiaries to a small range of products. Beneficiaries might want to access the Programme to achieve varying objectives, such as food safety net projects, commonage projects, equity schemes and productions for markets. They can tailor the assistance to their own needs, and can access grants ranging from R20 000 to R100 000, depending on their own contribution in kind, labour and/or cash. Beneficiaries must provide an own contribution of at least R5 000.

Land tenure reform

Tenure reform refers to changes in the terms and conditions under which land is held, used and transacted.

A fundamental goal of tenure reform is to provide people with security of tenure. This is necessary to avoid the suffering and social instability caused by arbitrary or unfair evictions.

Tenure reform is also essential if people are to invest in the land and use it in a sustainable manner.

Over the past seven years, laws have been introduced to protect the interests of farm workers and labour tenants living on other people's land.

The Interim Protection of Informal Land Rights Act, 1996 (Act 31 of 1996), was extended until the end of 1999. The Act was an interim measure to secure the position of people with 'informal' land rights, mainly in the former homeland areas, while more comprehensive legislation was being prepared. The Act ensured that holders of informal land rights were recognised as stakeholders in land transactions and development projects on the land they occupy.

The Land Reform (Labour Tenants) Act, 1996 (Act 3 of 1996), and the Extension of

Security of Tenure Act (ESTA), 1997 (Act 62 of 1997), were passed to protect farm workers and labour tenants from arbitrary evictions and to provide mechanisms for the acquisition of long-term tenure security.

The Department of Land Affairs is responsible for implementing the Communal Property Associations (CPAs) Act, 1996 (Act 22 of 1996). The Act enables communities benefiting from the Restitution of Land Rights Act, 1994 (Act 22 of 1994), the Provision of Land and Assistance Act, 1993 (Act 126 of 1993), and the Land Reform (Labour Tenants) Act, 1996, to form juristic persons, known as CPAs, to acquire, hold and manage property on a basis agreed to by members in terms of a written constitution.

The Department has initiated a process to rationalise and consolidate legislation on tenure reform. The objective is to achieve uniformity in the system of land administration and land holding. Regulations are to be drafted for the transfer of land to communities and tribes in terms of the Upgrading of Land Tenure Rights Act, 1991 (Act 112 of 1991).

The Department of Land Affairs supports the spatial development initiatives of the Department of Trade and Industry. The initiatives aim to attract infrastructural and other investment to underdeveloped areas in order to create employment.

In the area of community forestry, the Department is working with the Department of Water Affairs and Forestry to restructure State-owned forests in a manner which recognises local land rights, while transferring the operational side of the forests to investors.

Public land inventory

Public land includes

- State land registered in the name of the Minister of Land Affairs, as well as land held in trust by the Minister (i.e. so-called nominal-owned State land)
- land registered in the name of the Republic of South Africa and controlled by the Minister of Public Works and in the names of the nine provinces
- land used for public purposes, comprising

land used by parastatals and municipalities (e.g. commonage land of municipalities).

The Department maintains an inventory of public land. This forms a critical element in the land reform process. The Restitution of Land Rights Act, 1994 requires that such an inventory be maintained for identifying land for land reform. The data on the Public Land Inventory has been extended from 758 860 land parcels in 1998 to 972 300 in 1999. Information on State land is integrated in the Geographical Information System. Information on the extent and utilisation of State land is also maintained.

The information is needed in all three land reform programmes, as well as for the certification of State land in terms of Section 28(1) of the Constitution. This provides for the vesting of State land in either national or a provincial government.

A user-friendly Internet-based information system for use by the State land-disposal committees has been developed in co-operation with the Department of Public Works and provincial administrations. With this system, incorporating the inventory, members of the committees can access and capture State land-related data, track progress on applications, and identify land parcels on a map.

To help clients identify land parcels, 1 949 maps were produced during 1999. The Department receives more than 500 land-related enquiries a month. Typical clients are restitution claimants; land restitution researchers; land claims commissioners; local, provincial and tribal authorities; developers; provincial offices of the national Department of Land Affairs; planners; and politicians.

Land restitution

The Land Restitution Programme originates from the Constitution and was established by the Restitution of Land Rights Act, 1994. The purpose of the Programme is to assess the validity of claims, restore land, and/or pay financial compensation to people who were dispossessed of their land rights as a result of racially discriminatory laws and practices after 19 June 1913.



The Act also spells out the functions of the three implementing bodies of restitution, namely the Department of Land Affairs, the Commission on Restitution of Land Rights (CRLR) and the Land Claims Court.

When it became evident that the Restitution Programme was making little progress, the Minister of Agriculture and Land Affairs and the National Land Committee called for a review of the process. Based on the findings and recommendations, it was announced in November 1998 that the Commission would be integrated into the Department of Land Affairs. This meant that there is one line of authority and accountability to the Director-General through the Chief Land Claims Commissioner.

Amendments to the Act also shifted the emphasis from a judicial to an administrative process of resolving restitution claims, using the provisions of Section 42D of the Restitution of Land Rights Act, 1994. This means that if the parties agree, the Minister can approve a restitution settlement outside the Court. Only disputed cases are sent to court for ruling and ratification. This approach has led to an increase in the pace of delivery.

This campaign increased the number of lodged claims from approximately 30 000 to 63 455 claims.

By May 2001, 12 150 claims had been settled. In 2000/01, the Programme focused on rural areas. Expenditure trends on the Restitution Programme show a marked increase, with R198 million spent in 2000/01. During the entire period of implementation since 1995, R182,3 million was spent on land restoration and R260,6 million on financial compensation.

Land Claims Court

The Land Claims Court was set up in 1995 in terms of the Restitution of Land Rights Act, 1994. Should the CRLR, for whatever reason, fail to successfully mediate a claim, it is referred to the Land Claims Court for a ruling. The Court has the status of a High Court, and any appeal against a Land Claims Court decision is handled by the Constitutional Court.

The Government cannot interfere with the workings of the Court.

The Land Claims Court is responsible for determining restitution and compensation for those who lost land as a result of forced removals. The Court is required to be accessible to everyone and to establish processes that will enable it to make speedy decisions. Constitutional rights to restitution must be guaranteed for the Court to function effectively.

It is situated in Randburg, Gauteng.

Land redistribution

The goal of the Land Redistribution Programme is to provide previously disadvantaged South Africans with access to land for residential and productive use. The Programme is aimed at the poor, labour tenants, farm workers, women, emergent farmers and commercial farmers. It is based on the willing buyer-willing seller principle, through which the Department makes available grant and services to enable beneficiaries to purchase land and plan for its optimal use.

Land redistribution is the facet of the Department's Land Reform Programme in which the most substantial delivery has been recorded. This has taken the form of a variety of projects approved by the Minister of Agriculture and Land Affairs. The Provision of Land and Assistance Act, 1993 (Act 126 of 1993), as amended, provides the legal mechanism within which land redistribution takes place.

In February 2000, the Minister of Agriculture and Land Affairs outlined her strategic directions for the Department of Land Affairs. In keeping with this document, both the departments of Agriculture and Land Affairs developed a framework document for the Redistribution Programme entitled *An Integrated Programme for Land Redistribution for Agricultural Development*. The document was subsequently refined, thereby recognising that land redistribution not only encompassed projects of an agricultural nature but also included settlement-type projects and non-agricultural enterprises. The refined document expanded on the agricultural component of the Land Redistribution Programme, and a

policy framework was devised for the new agricultural subprogramme titled Land Redistribution for Agricultural Development (LRAD).

The LRAD subprogramme has two distinct parts. The one deals with the transfer of agricultural land to individuals and groups while the second deals with commonage projects, which aim to improve people's access to municipal and tribal land primarily for grazing purposes. However, they operate according to different financial mechanisms, target groups and delivery systems.

In response to the new subprogramme, the Department of Land Affairs had to either formulate new policies and procedures or re-evaluate the existing mechanisms in keeping with the spirit of the LRAD. These *inter alia* include:

- The Grants and Services document (version seven) was subsequently updated in line with the LRAD policy. Beneficiaries can now access a range of grants (R20 000 to R100 000) depending on the amount of their own contribution in kind, labour and/or cash. Beneficiaries must provide an own contribution of at least R5 000. The LRAD grant and LRAD planning grant (maximum of 15% of the total project costs) can be accessed by black South African citizens of 18 years and older on an individual basis only for agricultural projects. The Settlement Land Acquisition Grant will be retained at R16 000 (pending a review in the next financial year) for non-agricultural products such as settlement/tenure upgrading and equity projects. The document, approved by National Treasury, awaits Cabinet approval.
- A lease option was initiated as a possible solution to help previously disadvantaged individuals who might not be able to purchase the property from the start with the LRAD Grant. For example, on high value agricultural land, the purchase price would take up all or most of the available capital, leaving little or nothing for the development of appropriate production systems. By obtaining a lease on such property, the available capital can be used to generate income from production and so make the

purchase of the property a more viable option at the end of the lease period. Where the lease is used for the intention of gaining access to land that would not otherwise be possible to access and develop, the lease option should be considered.

- An Agency Agreement will be entered into between the Department and the Land Bank. According to the Agreement, the Department would transfer R50 million to the Land Bank for LRAD projects that require a loan component. The intention is for the Land Bank to release its LRAD grant simultaneously with the loan to disadvantaged beneficiaries who require both grant and loan in order to acquire farms and agribusiness properties.
- The Farm Equity Schemes were reviewed and updated in line with the LRAD policy. In addition, the criteria for the design of an equity scheme was improved so that participants can achieve a greater sense of empowerment and advancement. The Minister approved the reviewed policy in March 2001, and an implementation strategy is being developed. Tenure security options for farm workers participating in an equity scheme are being researched.
- The Delegations in terms of the Provision of Land and Assistance Act, 1993 (Act 126 of 1993), as amended in 1998, were also completed during the first quarter of 2001. The delegations will effectively afford provincial directors greater responsibility and decision-making powers, thereby eliminating the lengthy submission process. The Director-General will remain the Accounting Officer.
- The Department is engaged in developing expedient systems and procedures for the transfer of balances of grants, and a supply-led policy in terms of the LRAD. Furthermore, the Department contributed to the national business plan and the *LRAD Implementation Manual*. It continued to play an active role in the National LRAD Task Team and coordination of activities that arise from the Team.

The Commonage Programme was revisited during 2000. Although the Municipal Com-



monage policy and procedures have been in place since 1997, a review and assessment of projects conducted in 1999 necessitated a refinement of current municipal commonage policy and procedures. The Minister has approved the refined policy and procedures. In addition, the need to expand the commonage programme to allow tribes to access land for commonage purposes has also been identified as a matter of priority. A draft policy framework has been developed for tribal commonage.

The Department has been actively engaged in the consistent upgrading of the Land Price Database, which is indicative of land prices for the country's nine provinces.

A website called REDWEB was also developed. All policies and procedures relating to redistribution are placed on this site. The site also contains information that is relevant to redistribution practitioners such as small-scale irrigation technologies.

A land market study was completed in November 2000. The study reflected the manner in which the Redistribution Programme interacts with the market for rural properties, i.e. how the land market impacts or imposes limitations on redistribution, and how redistribution affects the land market.

The Land Reform Credit Facility (LRCF) was also reviewed. The LRCF, a wholesale credit facility hosted and administered by Khula Enterprise Finance Ltd, was created by the Department to assist in the establishment of commercially viable land reform projects. The Department is one of three stakeholders. The other are Khula and the European Union.

The Department continues to play a supportive role to the LRCF and is investigating the possible permanency of the facility.

The Department of Land Affairs has contributed to the work of the Expropriations Task Team (Ministerial), whose task it was to review the policy on land expropriations. Work is in progress in terms of the Tenure Security Grant policy, which is a grant specifically being designed for settlement/tenure upgrading projects. The Redistribution and Tenure directorates, along with the Department of Housing, are involved in the formulation of this product.

Monitoring and evaluation

The Directorate: Monitoring and Evaluation is responsible for the provision of overall monitoring and evaluation support to the Department of Land Affairs.

The responsibilities of the Directorate include:

- effectiveness and efficiency measurement
- development of indicators
- impact analysis and research
- detailed evaluations.

The day-to-day monitoring of projects remains managers' responsibility.

The Directorate has in the past focused mainly on land reform activities and has among its products produced the annual *Quality of Life Report*. The challenge facing the Directorate is to review the existing systems and develop a strategy that will ensure that other programmes of the Department receive monitoring and evaluation support.



Photograph by Henner Frankenfeld/PictureNET Africa



Acknowledgement

Department of Land Affairs

Suggested reading

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