

THE UNIVERSITY OF THE WESTERN CAPE

LAW FACULTY

**Potential alternative sources of funding South Africa's Land
Redistribution Programme in its agricultural sector.**



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A mini thesis submitted in partial fulfilment of the requirements for the LLM
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DECLARATION

I declare that 'Potential alternative sources of funding South Africa's Land Redistribution Programme in its agricultural sector.' is my own work, that it has not been submitted before for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged as complete references.

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13 May 2011



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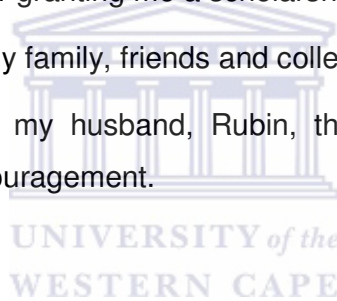
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KEY WORDS

Agricultural Investment

Black Economic Empowerment (BEE)

Bi-lateral Investment Treaties (BITs)

Developing Countries

Foreign Direct Investment (FDI)

Land redistribution

Market-led agrarian reform

Millennium Development Goals

Willing Buyer, Willing Seller (WBWS)

World Bank



ABBREVIATIONS

AfDB	African Development Bank
AIF	Agricultural Investment Fund
ANC	African National Congress
AGRA	Alliance for a Green Revolution in Africa
Agri SA	South African Agricultural Union
BASIC	Brazil, South Africa, India and China Group
BEE	Black Economic Empowerment
BBBEE	Broad-Based Black Economic Empowerment
BIPPA	Bilateral Investment Promotion and Protection Agreement
BIT	Bilateral Investment Treaty/Treaties
BRICS	Brazil, India, China and South Africa
CAADP	Comprehensive Africa Agriculture Development Programme
CASP	Comprehensive Agricultural Support Package
CDD	Community Driven Development
CDE	Centre for Development and Enterprise
CTV	Centro Terra Viva, Mozambique
DAFF	Department of Agriculture, Forestry and Fisheries
DCD-DAC	Development Cooperation Directorate-Development Assistance Committee
DRDLR	Department of Rural Development and Land Reform
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FDI	Foreign Direct Investment
FTLRP	Fast Track Land Reform Programme
GDP	Gross Domestic Product
IDC	Industrial Development Corporation
IBSA	India-Brazil-South Africa Dialogue Group
IEG	Independent Evaluation Group
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation
IISD	International Institute for Sustainable Development
INCRA	Instituto Nacional de Colonização e Reforma Agrária

GAFSP	Global Agriculture and Food Security Program
GoZ	Government of Zimbabwe
IIED	International Institute for Environment and Development
IMF	International Monetary Fund
LRAD	Land Redistribution for Agricultural Development Programme
LRRP	Zimbabwean Land Reform and Resettlement Program
MAFISA	Micro Agricultural Finance Institution
MDG	Millennium Development Goals
MFN	Most-Favoured-Nation
MIGA	Multilateral Investment Guarantee Agency
MLAR	Market-Led Agrarian Reform
NGP	New Growth Path
NEPAD	New Partnership for Africa's Development
NGO	Non-Governmental Organisation
NIIF	NEPAD Infrastructure Investment Facility
NPO	Non-Profit Organisation
NT	National Treatment
OECD	Organisation for Economic Co-Operation and Development
PLAAS	Programme for Land and Agrarian Studies
PLAS	Proactive Land Acquisition Strategy
PPP	Public-Private Partnership
RADP	Recapitalisation and Development Framework
RDP	Reconstruction and Development Programme
SACAU	Southern African Confederation of Agricultural Unions
SADC	Southern African Development Community
SAG	South African Government
SALRP	South African Land Redistribution Programme
SLAG	Settlement/Land Acquisition Grant Policy
SDC	Swiss Agency for Development and Cooperation
SIP	Small Investment Program
SME	Small or Medium Enterprise
SSA	Sub-Saharan Africa
SOE	State-Owned Enterprise
SPV	Special Purpose Vehicle

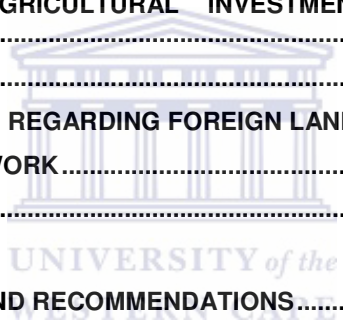
SRLRTSF	SADC Regional Land Reform Technical Support Facility
SWF	Sovereign Wealth Fund
UK	United Kingdom
UNCTAD	United Nations Conference on Trade and Development
USAID	United States Agency for International Development
WBWS	'Willing Buyer, Willing Seller'



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CHAPTER 1: INTRODUCTION

1 BACKGROUND

The land issues in South Africa are rooted in the land dispossession that took place from as early as the colonial era and were further ingrained by apartheid. The result of this dispossession was a skewed land distribution and rural poverty for millions of South Africans.¹ The primary purpose and objective of land redistribution in South Africa are to redress the effects of this dispossession.² Although debateable, commentators such as Lahiff have expressed the view that: 'Redistribution is potentially the most important and far-reaching component of land reform in South Africa'.³

As a symbol of redress, land redistribution is an important political and government driven goal for an integrated South Africa. The importance of land redistribution in South Africa is evidenced by the fact that it has been entrenched in the Constitution of South Africa, 1996 (Constitution). The Constitution provides: 'The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.'⁴ The Constitution also empowers the South African Government (SAG) to expropriate land, provided that the amount of compensation is 'just and equitable'.^{5 6}

The importance of land redistribution in South Africa is closely tied to the importance of agriculture given its role in the economy which is, broadly speaking, a provider of employment, poverty alleviation and food security.

Internationally, the importance of land redistribution has generally been recognised and accepted to arise out of the need for fairness, equality, growth and poverty alleviation, efficiency and to help land markets.⁷ The World Bank

¹ Jacobs P, Lahiff E & Hall R 'Land redistribution' (2003) 1 PLAAS (Programme for Land and Agrarian Studies) Evaluating land and agrarian reform in South Africa Occasional Paper Series 1.

² Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) Washington D.C.: The International Bank for Reconstruction and Development / The World Bank 195.

³ Lahiff E 'Land reform in South Africa: A status report' (2008) 38 PLAAS (Programme for Land and Agrarian Studies) Research Report 21.

⁴ s25(5) Constitution of the Republic of South Africa, 1996.

⁵ s25(2) Constitution of the Republic of South Africa, 1996.

⁶ Constitution of the Republic South Africa, 1996.

⁷ Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 8 -10.

has acknowledged that although there has been not been substantial progress in the land redistribution arena, there is a growing consensus on 'the need and justification for redistribution where inequality and landlessness are widespread'.⁸

In 1994 the SAG, on the advice of the World Bank, made a policy decision to adopt its version of market-led agrarian reform (MLAR), namely the 'Willing Buyer, Willing Seller' (WBWS) model, and also declared, for itself, a land redistribution target of 30 percent by 2014. Although the SAG received donor funding from other governments and multilateral donors, the World Bank did, however, not tie its advice to making funds available⁹ and its influence was rooted in terms of policy formulation.¹⁰

The *White Paper on South African Land Policy* of 1997, being the first articulated policy on land redistribution in South Africa, expressed clearly after an assessment¹¹ conducted for the SAG, in respect of the budgetary implications of land reform, that in order to meet the land reform demands both its capital budget and staff capacity would have to be increased.¹² South Africa's Land Redistribution Programme (SALRP) has, based on various policies, been funded by means of government grants since implementation, with a recent trend to credit and private sector funding.¹³

The business models, based on the WBWS model, for these government grant-funded transactions centred on communal property associations, initially, evolving towards shared ownership or share-equity schemes, joint ventures or public private partnership type structured business models.^{14 15} Regardless,

⁸ Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 4.

⁹ Hall R 'Two cycles of land policy in South Africa: Tracing the contours' in Anseeuw W & Alden C (eds) *The Struggle Over Land in Africa Conflicts, Politics & Change* (2010) 178.

¹⁰ Karumbidza BJ "Redistributionist' versus 'Productionist' land reform: Contested priorities in donor funded land reform in South Africa with comparisons to Zimbabwe' (2002) 5 available at http://www.networkideas.org/feathm/may2002/donor_13.pdf (accessed 21 March 2011) (hereinafter "Redistributionist' versus 'Productionist' land reform").

¹¹ According to The *White Paper on South African Land Policy* of 1997, the assessment was commissioned by the then DRDLR, and titled *The Macroeconomic Room Within Which Land Reform Will Take Place in South Africa*. This assessment was conducted by the Land and Agriculture Policy Centre during February 1996.

¹² The *White Paper on South African Land Policy* of 1997 para 3.26.

¹³ Kleinbooi K 'The private sector and land reform' in Hall R (ed) *Another Countryside? Policy Options for Land and Agrarian Reform in South Africa* (2009) 193.

¹⁴ Hall R (ed) 'Land reform for what? Land use, production, and livelihoods' in *Another Countryside? Policy Options for Land and Agrarian Reform in South Africa* (2009) 26 – 30.

¹⁵ Vermeulen S & Cotula L 'Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders' 61 available at <http://www.iied.org/pubs/display.php?o=12566IIED> (accessed 10 August 2010).

however, of the manner in which these land redistribution projects have been structured, since the early years of implementation land redistribution has been plagued by various problems.^{16 17} Commentators and observer experts are divided on what the main problem with land redistribution is and that there is no agreement between commentators on the various reasons for this slow pace of redistribution in South Africa.¹⁸ A strong argument is that the MLAR, WBWS model is inappropriate.¹⁹

It has been argued that 'fiscal restraint' and budgetary problems have been identified as some of the reasons why the redistribution of land has been limited, ten years after introducing land distribution.^{20 21 22 23} By the start of 2004, land redistribution projects valued at R500 million were put 'on hold' because of a lack of funds. This has been interpreted to mean that the SAG's budget has become a 'key constraint' to the successful implementation of the SALRP.²⁴ It has been said that even if the SAG implemented non-market methods of land acquisition, or expropriation at below market value along with private sector commitments and resources, additional government aid would still be required in order for the SAG to afford and fund the SALRP.²⁵

As a result of its budgetary and other constraints, the SAG's 1994 land redistribution target of transferring 30 percent of South Africa's agricultural land to black farmers intends to be extended from 2014 to 2025.²⁶ Although some commentators have been optimistic about the SALRP's budget available for

¹⁶ Hall R 'Two cycles of land policy in South Africa: Tracing the contours' in Anseeuw W & Alden C (eds) *The Struggle Over Land in Africa Conflicts, Politics & Change* (2010) 181.

¹⁷ Hall R & Lahiff E 'Budgeting for land reform' (2004) 13 Policy brief debating land reform and rural development.

¹⁸ Ntsebeza L 'Land redistribution in South Africa: the property clause revisited' in Ntsebeza L & Hall R (eds) *The Land Question in South Africa. The Challenge of Transformation and Redistribution* (2007) 107.

¹⁹ Kariuki S 'Creating the black commercial farmers in South Africa' (2004) 56 African Studies Centre Leiden, The Netherlands Working Paper 63 – 65.

²⁰ Hall R 'Two cycles of land policy in South Africa: Tracing the contours' in Anseeuw W & Alden C (eds) *The Struggle Over Land in Africa Conflicts, Politics & Change* (2010) 181.

²¹ Hall R & Lahiff E 'Budgeting for land reform' (2004) 13 1.

²² Hall R 'A political economy of land reform in South Africa' (2004) 31 *Review of African Political Economy* 219 - 220.

²³ Department of Rural Development & Land Reform strategic plan 2010 – 2013' 16 available at <http://www.info.gov.za/view/DownloadFileAction?id=123854> (accessed 30 August 2010).

²⁴ Hall R 'Transforming rural South Africa? Taking stock of land reform' in Ntsebeza L & Hall R (eds) *The Land Question in South Africa. The Challenge of Transformation and Redistribution* (2007) 101.

²⁵ Hall R 'Transforming rural South Africa? Taking stock of land reform' in Ntsebeza L & Hall R (eds) *The Land Question in South Africa. The Challenge of Transformation and Redistribution* (2007) 102.

²⁶ SAPA 'Govt remains committed to land-reform objectives' *Mail & Guardian Online* 10 November 2009 available at <http://www.mg.co.za/article/2009-11-10-govt-remains-committed-to-landreform-objectives> (accessed 26 July 2010).

land acquisition; in their view the 'non-land costs are under-funded'.²⁷ Budget analysts have predicted that, given the current spending trends in terms of the WBWS model, it would take about 125 years to complete the redistribution of 30 percent of South Africa's agricultural land to black people.²⁸

Examples of how this budgetary problem has manifested itself in the land distribution process are, for example, illustrated by the fact that: i) the SAG has encountered that the implementation costs of a land redistribution project sometimes exceed the cost of acquiring the land;²⁹ ii) departments do not spend their allocated budgets and where they do spend their allocated budgets, there is a disconnect between size of the budget and the cost of land reform;³⁰ iii) in certain land redistribution projects up to 389 recipients have not received grants,³¹ and iv) the SAG is not in a position to make post-settlement support available to beneficiaries.³²

Various media reports have also recorded a public admission by the SAG of these budgetary constraints.³³ One such report quoted the Minister of the Department of Rural Development and Land Reform (DRDLR) as saying that 'the government would not meet its target of turning over 30 percent of arable land to the black majority by 2014 as the state simply does not have the R72 million needed to achieve this'.³⁴ Apart from the budgetary constraints there have also been reports that there are fears that the agricultural sector would see an outflow of foreign investment because of the challenges that beset the SALRP.^{35 36}

²⁷ Van den Brink R (ed), Thomas G & Binswanger H et al *Consensus, Confusion and Controversy. Selected Land Reform Issues in Sub-Saharan Africa* (World Bank Working Papers) (2006) 41.

²⁸ Thwala W 'Land and agrarian reform in South Africa' in Rosset P, Patel R & Courville M (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 68.

²⁹ Hall R 'Two cycles of land policy in South Africa: Tracing the contours' in Anseeuw W & Alden C (eds) *The Struggle Over Land in Africa Conflicts, Politics & Change* (2010) 179.

³⁰ The Centre for Development and Enterprise 'Land reform in South Africa: Getting back on track' (2008) 16 22-23 CDE Research.

³¹ SAPA 'Land-reform beneficiaries owed R3,4bn by govt' *Mail & Guardian* 5 July 2010 available at <http://www.mg.co.za/article/2010-07-05-landreform-beneficiaries-owed-r34bn-by-govt> (accessed 26 July 2010).

³² Lahiff E 'Willing Buyer, Willing Seller': South Africa's failed experiment in market-led agrarian reform' (2007) 28 *Third Quarterly Review* 1590.

³³ Zvomuya F 'Southern Africa: Land reform underfinanced and failing' *IPS* 14 August 2010 available at <http://ipsnews.net/news.asp?idnews=52490> (accessed: 21 September 2010).

³⁴ SAPA 'Land reform: Use it or lose it, says minister' *Mail & Guardian Online* 2 March 2010 available at <http://mg.co.za/article/2010-03-02-land-reform-use-it-or-lose-it-says-minister> (accessed 19 April 2011).

³⁵ Thompson Reuters 'S. Africa may lose more investors over land reforms' *International Business Times* 21 July 2010 available at <http://www.ibtimes.com/articles/37236/20100721/s-africa-may-lose-more-investors-over-land-reforms.htm> (accessed 26 July 2010).

³⁶ Kumwenda O 'SA 'may lose investors' over land reforms' *Mail & Guardian Online* 22 July 2010 available at <http://www.mg.co.za/article/2010-07-22-sa-may-lose-investors-over-land-reforms> (accessed 26 July 2010).

Land redistribution funding constraints is not a new problem. Van den Brink, Thomas, Binswanger, Bruce and Byamugisha note, based on international evidence, that land reform is usually 'under-funded'.³⁷ In their experience, they found that the lack of funding slows down land reform implementations; results in political resistance by land owners and failed land reform projects post-implementation.³⁸ Harris identified this problem in 1969 and noted that land reform generally has been regarded as a 'costly' exercise, affecting government's funding burden.³⁹ The current government grant-funded SALRP has put a strain on the budget available for the SALRP and has been regarded as an 'enormous burden' on the SAG.⁴⁰ Although there is no consensus amongst commentators as to the main constraint to the SALRP, the likes of the Centre for Development and Enterprise (CDE) have identified budgetary challenges and constraints as a key issue to the success of the SALRP.⁴¹ The CDE has noted that the SAG has attempted to address budgetary constraints by seeking additional funding, trying to keep land prices low and threatening to expropriate land and impose taxes on agricultural land.⁴²

It has been suggested that one of way of alleviating the SAG's SALRP budgetary burden is through 'substantial investment' - not only in acquiring land but also infrastructure and 'post transfer support'.⁴³

Recent literature has taken the view that land redistribution transactions are agricultural investment opportunities.⁴⁴ Furthermore, recent agricultural investment trends show that there has been an increase in agricultural investment⁴⁵ centred on foreign direct investment in land.⁴⁶ Research into these trends and the broader context of agricultural investment is required to

³⁷ Van den Brink R (ed), Thomas G & Binswanger H et al *Consensus, Confusion and Controversy. Selected Land Reform Issues in Sub-Saharan Africa* (World Bank Working Papers) (2006) 29.

³⁸ Van den Brink R (ed), Thomas G & Binswanger H et al *Consensus, Confusion and Controversy. Selected Land Reform Issues in Sub-Saharan Africa* (World Bank Working Papers) (2006) 40.

³⁹ Harris ER Jr 'Financing land reform: The role of bonds as compensation in modern land reform programs: Characteristics of landowner payments converting landlords into producers' (1969) 28 *The American Journal of Economics and Sociology* 325 - 332.

⁴⁰ Hall R 'A political economy of land reform in South Africa' (2004) 31 *Review of African Political Economy* 219.

⁴¹ The Centre for Development and Enterprise 'Land reform in South Africa: Getting back on track' (2008) 16 23.

⁴² The Centre for Development and Enterprise 'Land reform in South Africa: Getting back on track' (2008) 16 23.

⁴³ Hall R 'A political economy of land reform in South Africa' (2004) 31 *Review of African Political Economy* 220.

⁴⁴ Vermeulen S & Cotula L 'Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders' 4.

⁴⁵ Kugelmann M & Levenstein SL (eds) *Land Grab? The Race for the World's Farmland* (2009).

⁴⁶ Miller C, Richter S & McNellis P et al 'Agricultural investment funds for developing countries' 1 available at http://www.ruralfinance.org/servlet/BinaryDownloaderServlet/71360_Investment_fund_pape.pdf?filename=1270826402324_investment_funds.pdf&refID=71360 (accessed 2 September 2010).

see whether these trends hold any opportunities to alleviate the budget constraints experienced by the SALRP.

2 PRIMARY PURPOSE AND OBJECTIVE OF RESEARCH

Given this funding constraint, there is a need for a study into suitable and sustainable funding methods or mechanisms that can complement government grant funding and could be a catalyst for changing the landscape of the SALRP.

The academic aim and purpose of the research are, amidst the debate over whether the WBWS model is appropriate, to research, examine and evaluate what potential alternative funding methods, means and/or mechanisms are available to government grant-funded land redistribution to address the budgetary constraints that have plagued the SALRP since 1994.

3 RESEARCH QUESTION

The question that emerges is thus whether and how the budgetary constraints of hindering the progress of the SALRP can be overcome by the implementation of alternative funding methods, mechanisms or approaches.

The research question to be answered is thus:

‘Whether there are potential alternative funding methods, mechanisms or approaches available, as alternatives or complementary to government grant funding, as a means of funding South Africa’s land redistribution programme in the agricultural sector?’

4 SIGNIFICANCE OF THE RESEARCH

Develop policies, creating new legislation and creating new legal business models for the SALRP will be in vain and not meet its goals if the SAG or the private sector is not able to meet the funding obligations that the SALRP requires.

The research contributes to academia to further research the manner in which the funding opportunities can be unlocked either by the SAG alone or together with the private sector in partnership with other financing institutions or investors. If the SAG (together with the private sector or international partners) is able to address the budgetary constraints experienced by the SALRP, it may be the key needed to revive the SALRP, in an economically viable manner that is able to meet the SALRP targets.

5 RESEARCH METHODOLOGY

The research is mostly literature-based with a focus on primary (for example, government policy documents and legislation) and secondary (for example, academic analyses) sources. The Internet served as a main source to access useful documents that helped in the advancement of the research.

As part of the research, a literature-based comparative analysis is conducted between South Africa, Zimbabwe and Brazil. The criteria for the choice is that these countries have introduced land redistribution projects; have done so as a result of similar historical inequalities and at the outset adopted a version of MLAR approach to land redistribution. The chapter includes both the simultaneous and successive comparative methods. The first part, setting out the reason for the comparison, is written using the simultaneous method of comparison. The second part is written using the successive method of comparison.

The author, in her capacity as attorney in a private legal practice, has been involved in the commercial legal advising and structuring of land redistribution projects in the Western Cape and rendering ad hoc advice to the Department of Rural Development – Winelands District. The author has also drawn from her experience and certain parts of the research are also based on the author's own experience.

6 SCOPE OF THE RESEARCH AND CHAPTER OUTLINE

The scope and focus of this thesis is limited. Although there are many issues, areas and themes to consider in respect of each chapter and different concepts, it is not possible to deal with each and every aspect of a particular issue, area, concept or theme and also not possible to discuss any of those highlighted in great detail.

Firstly, in South Africa, land reform is based on three pillars, namely: land tenure, land restitution and land redistribution. This research will only focus on the land redistribution pillar.

Save for discussing the history of land redistribution in South Africa pre-1994 in chapter two, the focus of this thesis is on the post-1994 era of the SALRP.

The author is aware that there is a debate as to whether the WBWS model or state-led agrarian reform is appropriate in South Africa. However, the research only focuses on this debate insofar as it pertains to the funding of the SALRP, and not at a developmental or policy level.

Chapter one serves as a general introduction to contextualise the study, articulate the main research problem, define the problem statement and delineate the scope of the thesis. It also outlines the objective of the thesis; the research methodology applied and provides an outline and overview of the chapters.

Chapter two contextualises the significance of, need and reasons for land redistribution in South Africa from a historical context. It also situates land redistribution within South Africa's agricultural sector and highlights the dynamics between land redistribution and the agriculture sector.

Chapter three gives an overview of the legal basis for the SALRP, discusses how the SALRP is funded and highlights the problems experienced within the land redistribution arena, with particular emphasis on the budgetary problems that constrain the SALRP. The various other problems are merely highlighted.

Chapter four is a comparative analysis of land redistribution in South Africa, Zimbabwe and Brazil. The chapter is not aimed at discussing the land questions in Zimbabwe and Brazil, but focuses on the funding aspects of the land redistribution programmes in Zimbabwe and Brazil in order to determine whether the Zimbabwean and Brazilian land redistribution programmes hold any potential alternative sources of funding for the SALRP.

Drawing on the previous chapters, chapter five identifies and analyses certain potential alternative sources of funding land redistribution; in a condensed manner. Drawing on the relationship between the agricultural sector and land redistribution, the author argues that the SALRP should be regarded as an investment opportunity. Following this line of argument, the chapter focuses on foreign agricultural investment as a potential alternative source of funding the SALRP. Key to this argument is the agricultural investment trends. Given that South Africa is a developing country, this section focuses on the agricultural investment trends in developing countries.

Notwithstanding the myriad of risks associated with investing in agriculture generally, chapter six is limited to examining two problems that the SAG would need to address if it were to consider foreign agricultural investment as a potential alternative source of funding the SALRP. These problems are: South Africa's position on foreign ownership of land and the FDI regulatory framework. The author argues that the use of business models are key to unlocking potential alternative potential sources of funding for the SALRP in the face of South Africa's position on foreign ownership of land. The author also argues that South Africa should leverage off initiatives such as 'responsible investment' in order to ensure that the FDI regulatory can better serve South Africa's investment needs.

Chapter seven concludes with recommendations on what could be done in order to explore potential alternative sources of funding for the SALRP in order to alleviate the burden on the SAG's budget.



CHAPTER 2: THE HISTORY OF LAND REDISTRIBUTION AND THE AGRICULTURAL SECTOR IN SOUTH AFRICA

'Our land reform programme helps redress the injustices of apartheid. It fosters national reconciliation and stability,' 'It also underpins economic growth and improves household welfare and food security' – Nelson Mandela.⁴⁷

1 INTRODUCTION

This chapter will highlight the main issues that created the need for the SALRP in South Africa's agricultural sector. The chapter also discusses the significance of land redistribution in South Africa.

The author is of the view that the SALRP cannot be viewed in isolation from agriculture and that one of the main answers to the thesis question lies in the link between SALRP and the agriculture sector. For this reason the discussion on the history and significance of the SALRP will be placed within the context of the South African agriculture sector.

2 HISTORICAL OVERVIEW

2.1 Pre-apartheid and apartheid era

It is generally accepted that South Africa's history of land dispossession can be traced back as far as 1652, with the arrival of the Dutch settlers.⁴⁸

Between 1910 and 1948 the process of dispossession and separate development continued to be entrenched in the form of spatial segregation, categorised by different types of forced removals.^{49 50 51}

Although there were various other significant pieces of legislation passed during this time that contributed to the dispossession and skewed landscape,⁵²

⁴⁷ Mseteka B 'Mandela calls for land reform' *The Independent* 14 June 1998 available at <http://www.independent.co.uk/news/mandela-calls-for-land-reform-1167159.html> (accessed 1 April 2011).

⁴⁸ 'Our land...Our life' available at http://www.sahistory.org.za/pages/governance-projects/land-dispossession/01_intro.htm (accessed 27 January 2011).

⁴⁹ http://www.google.co.za/search?q=history+of+land+dispossession+in+south+africa&hl=en&sa=X&biw=1126&bih=449&tbs=tl:1,tl_num:35,tl:1900,tl:1949&prmd=ivns&ei=PxdBTeSDM4ruuAOtrYzBAw&ved=0CL8BEMkBKAY (accessed 27 January 2011).

⁵⁰ Kariuki S 'Creating the black commercial farmers in South Africa' (2004) 6.

⁵¹ Baldwin A 'Mass removals and separate development' (1975) 1 *Journal of Southern African Studies* 215 – 227.

the year 1913 was a landmark year in the history of land dispossession in South Africa and its agricultural sector. This year was marked by the promulgation of the Native Land Act 27 of 1913 (or Black Land Act). This Act ultimately made available 7 percent of South Africa's land area as 'reserves' for black people.

As Lahiff points out, by the 20th century most of the 'best' agricultural land was owned by the Dutch and British settlers.⁵³ Rugege supports this and highlights that black people were moved to 'over-crowded, over-grazed and over-cultivated land, resulting in the bulk of agricultural land being owned by white people'.⁵⁴ It has also been asserted that the dispossession was used as a means to reduce competition within the agricultural sector and to create a pool of cheap labour to support this industry and others.⁵⁵ Ntsebeza contends that the process of dispossession converted the indigenous people from 'once successful farmers to poorly paid wage labourers'.⁵⁶ This observation is interesting, as the SALRP appears to be reversing this by creating 'emerging' black commercial farmers. However, this approach to land redistribution has been criticised for 'retaining the structure of the commercial farming sector rather than restructuring the agrarian regime'.⁵⁷

During the 1930s and 1940s and at the height of the period of dispossession, the (white) commercial farming sector was highly subsidized and enjoyed extensive support from the then SAG. This support included subsidies (maize, export and interest rate);⁵⁸ subsidised credit and bail-out programmes; interest rate subsidies⁵⁹ and other means of direct state support such as tax breaks,

⁵² The most significant of these were the Native Trust and Land Act 68 of 1936 which extended the 'reserves' allocated; the Natives Laws Amendment Act 46 of 1937 which prohibited Africans from buying land in urban areas; the Group Areas Act 41 of 1950; the Blacks Resettlement Act 19 of 1954 which empowered the then SAG to remove black people from any area in Johannesburg and adjacent areas; the Prevention of Illegal Squatting Act 52 of 1951; the Reservation of Separate Amenities Act 49 of 1953; the Promotion of the Bantu Self-Government Act 49 of 1959; the Bantu Homelands Citizens Act 26 of 1970; and the National States Constitution Act 27 of 1971.

⁵³ Lahiff E 'Land reform and poverty in South Africa' available at <http://www.lalr.org.za/south-africa/new-working-paper-by-edward-lahiff> (accessed 27 January 2011).

⁵⁴ Rugege S 'Land reform in South Africa: An overview' 2 available at <http://ccs.ukzn.ac.za/files/LandreforminSouthAfrica.pdf> (accessed 1 August 2010).

⁵⁵ Thwala W 'Land and agrarian reform in South Africa' in Rosset P, Patel R & Courville M (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 59.

⁵⁶ Ntsebeza L 'Land redistribution in South Africa: the property clause revisited' in Ntsebeza L & Hall R (eds) *The Land Question in South Africa. The Challenge of Transformation and Redistribution* (2007) 108.

⁵⁷ Hall R 'A political economy of land reform in South Africa' (2004) 31 *Review of African Political Economy* 213.

⁵⁸ Maize subsidies were abolished by 1993 and export and interest rate subsidies were abolished in 1997. Hall R (ed) 'Dynamics in the commercial farming sector' in Ntsebeza L & Hall R (eds) *The Land Question in South Africa. The Challenge of Transformation and Redistribution* (2007) 122.

⁵⁹ Hall R (ed) *Another Countryside? Policy options for land and agrarian reform in South Africa* (2009) 122 – 220.

state-run cooperatives and tariff.⁶⁰ However, by the 1970s and 1980s this support declined and this contributed to the economic contribution of agriculture declining to 4.6 percent of South Africa's gross domestic product (GDP) in 1990.⁶¹

2.2 Post-apartheid era

The transition to democracy was marked by negotiation and not violence.⁶² In 1990 Nelson Mandela (later to become the first post-apartheid president) was released from prison and the transition to a negotiated democracy began in earnest. Central to this negotiated democracy was the status of, inter alia, agricultural land and the associated property rights.⁶³

From 1990, the World Bank was quite involved in advising the African National Congress and prospective South African policymakers concerned with, inter alia, land and agricultural issues.⁶⁴ On their advice,⁶⁵ the SAG: adopted and introduced the WBWS model for the SALRP; adopted the 3 percent land redistribution target⁶⁶ and 'dismantled' subsidies by the 1990s.^{67 68}

This advice has been criticised and one such criticism was the fact that the World Bank did not clarify what the SALRP would cost and who would foot the bill for the SALRP.⁶⁹ The 30 percent target, which was hoped to be achieved within five years but which has been extended on numerous occasions, has been criticised as being 'arbitrary'.⁷⁰

⁶⁰ Hall R 'A political economy of land reform in South Africa' (2004) 31 *Review of African Political Economy* 220.

⁶¹ Hall R (ed) 'Dynamics in the commercial farming sector' in Ntsebeza L & Hall R (eds) *The Land Question in South Africa. The Challenge of Transformation and Redistribution* (2007) 122.

⁶² Lahiff E 'Land redistribution in South Africa' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 170.

⁶³ Hall R 'A political economy of land reform in South Africa' (2004) 31 *Review of African Political Economy* 214.

⁶⁴ Williams G 'Setting the agenda: A critique of the World Bank's Rural Restructuring Programme for South Africa' (1996) 22 *Journal of Southern African Studies* 139.

⁶⁵ The advice of the World Bank was contained in its *Options for Land Reform and Rural Restructuring in South Africa of 1993* report. Williams G 'Setting the agenda: A critique of the World Bank's Rural Restructuring Programme for South Africa' (1996) 22 *Journal of Southern African Studies* 139.

⁶⁶ Ntsebeza L & Hall R (eds) *The Land Question in South Africa: The Challenge of Transformation and Redistribution* (2007) 8. This 30 per cent target was adopted in the ANC's manifesto and RDP in 1994.

⁶⁷ Williams G 'Setting the agenda: A critique of the World Bank's Rural Restructuring Programme for South Africa' (1996) 22 *Journal of Southern African Studies* 152.

⁶⁸ Hall R (ed) 'Dynamics in the commercial farming sector' in Ntsebeza L & Hall R (eds) *The Land Question in South Africa. The Challenge of Transformation and Redistribution* (2007) 122.

⁶⁹ Williams G 'Setting the agenda: A critique of the World Bank's Rural Restructuring Programme for South Africa' (1996) 22 *Journal of Southern African Studies* 160 – 162.

⁷⁰ Hall R (ed) *Countryside? Policy Options for Land and Agrarian Reform in South Africa* (2009) 2.

Even though the removal of subsidies was meant to “level the playing”, as predicted by Williams, it did not,⁷¹ and this lack of support still haunts the agricultural sector and has been labelled as one of the reasons for the slow pace of the SALRP.⁷²

By the end of apartheid, the general consensus was that about 82 million hectares of South Africa's commercial farmland, constituting 86 percent of all farmland in South Africa at that time, were in the hands of the white minority which constituted 10.9 percent of the population.⁷³

Since 1990 several processes were undertaken to reverse the effects of discriminatory legislation and to improve participation of black people in the agricultural sector.⁷⁴ The Reconstruction and Development Programme (RDP) recognised a healthy agricultural sector as critical to the success of the land reform programme as a whole.⁷⁵ In 1994 land reform was entrenched in the Constitution.⁷⁶

In 1997 the *White Paper on South Africa Land Policy* of 1997 was introduced. This was the first policy that ‘articulated’ and communicated South Africa’s MLAR land redistribution programme.^{77 78} It is said that this ‘market-based approach to land redistribution has been rationalised to maintain efficiency in the agricultural sector, maintain or even improve the current production level of the country and ensure food self-sufficiency and investor confidence’.⁷⁹

During the first decade of democracy approximately 2.9 percent of agricultural land was redistributed and the budget for land reform was at or below 0.5 percent of the SAG’s national budget.^{80 81}

⁷¹ Williams G ‘Setting the agenda: A critique of the World Bank’s Rural Restructuring Programme for South Africa’ (1996) 22 *Journal of Southern African Studies* 154.

⁷² See chapter 3 for a discussion of the problems experienced by the SALRP.

⁷³ Lahiff E ‘Land redistribution in South Africa’ in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 170.

⁷⁴ The strategic plan for South African agriculture para 3 available at <http://www.nda.agric.za/docs/sectorplan/sectorplanE.htm> (accessed 17 April 2011).

⁷⁵ The *Reconstruction and Development Programme* (GN 1954 in GG 16085 of 23 November 1994) para 4.5.2.1.

⁷⁶ s25 Constitution of the Republic South Africa, 1996.

⁷⁷ Hall R ‘Two cycles of land policy in South Africa: Tracing the contours’ in Anseeuw W & Alden C (eds) *The Struggle Over Land in Africa Conflicts, Politics & Change* (2010) 176.

⁷⁸ This was a departure from the RDP and the ANC’s *Ready to Govern* document, which promoted expropriation. Lahiff E ‘From ‘Willing Seller, Willing Buyer’ to a people-driven land reform’ 2005 17 PLAAS Policy Brief Debating land reform, natural resources and poverty 1.

⁷⁹ Thwala W ‘Land and Agrarian Reform in South Africa’ in Rosset P, Patel R & Courville M (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 67.

⁸⁰ Hall R ‘A political economy of land reform in South Africa’ (2004) 31 *Review of African Political Economy* 219.

⁸¹ In Ntsebeza L & Hall R (eds) *The Land Question in South Africa: The Challenge of Transformation and Redistribution* (2007) 15 it was recorded that in 2005 ‘just over 3 per cent of agricultural land had been

In 2005 a National Land Summit was held in an effort to 'fast track land reform'.⁸² At this Summit, the 30 percent target for the SALRP was shifted to 2014 and the SAG resolved the following for purposes of the SALRP: the SAG should be the driving force behind the SALRP; the WBWS model should be done away with; the SAG should have a right of first refusal in respect of all land sales and land expropriation should be used to accelerate land acquisition.⁸³

Since 2005 and as it stands currently, the WBWS has not been rejected and expropriation has not been implemented. The SAG also does not have a right of first refusal in respect of all land sales. In the author's experience, the SAG has 'implemented' the right of first refusal in respect of land transferred pursuant to land redistribution projects on an ad hoc basis by recording these provisions in commercial agreements.

3 DYNAMICS BETWEEN LAND REDISTRIBUTION AND THE SOUTH AFRICAN AGRICULTURAL SECTOR

3.1 Significance of the agricultural sector in South Africa

One of the main reasons for the significance of the agricultural sector in South Africa is its role in the economy. Although it contributes only approximately 3.03 percent of the South African GDP,⁸⁴ it has strong linkages into the economy, such that it has been estimated that the 'agro-industrial sector' comprises about 12 percent of GDP.^{85 86}

Some commentators hold the view that agriculture is significant because of its 'immense strategic importance', based on the fact that substantial numbers of South Africans depend on agriculture for their survival.⁸⁷ Linked to this is the

transferred' to beneficiaries. At page 9, of the same text it was recorded that after a decade of democracy 3.1 per cent of agricultural land had been transferred.

⁸² Ntsebeza L & Hall R (eds) *The Land Question in South Africa: The Challenge of Transformation and Redistribution* (2007) 15.

⁸³ Ntsebeza L & Hall R (eds) *The Land Question in South Africa: The Challenge of Transformation and Redistribution* (2007) 15.

⁸⁴ World Development Indicators 2009 available at http://www.google.com/publicdata?ds=wb-wdi&met=nv_agr_totl_zs&idim=country:ZAF&dl=en&hl=en&q=south+african+agriculture+gdp (accessed 21 April 2011).

⁸⁵ <http://www.southafrica.co.za/about-south-africa/environment/agriculture-forestry-and-land/> (accessed 21 April 2011).

⁸⁶ Hall R (ed) 'Dynamics in the commercial farming sector' in Ntsebeza L & Hall R (eds) *The Land Question in South Africa. The Challenge of Transformation and Redistribution* (2007) 121.

⁸⁷ Hall R 'A political economy of land reform in South Africa' (2004) 31 *Review of African Political Economy* 221.

fact that agriculture also supplements the income of migrant and non-migrant workers.⁸⁸

The agricultural sector is also important because of its contribution to employment in South Africa. The agricultural sector accounts for 8 percent of South Africa's total employment.⁸⁹ This is crucial for South Africa because, by creating employment, the agricultural sector also contributes to poverty alleviation.

Aside from the creation of employment and poverty alleviation, the agricultural sector is also geared towards addressing food security concerns.⁹⁰

Agricultural policy reform continues to address past injustices, which include: land redistribution; agricultural support programmes (for disadvantaged farming communities); and broad based black economic empowerment.⁹¹ Thus the agricultural sector and its policies are important for land reform as a whole.

3.2 Significance of land redistribution in South Africa

In terms of the Reconstruction and Development Programme (RDP), land redistribution should be a 'demand driven programme' that:

must aim to supply residential and productive land to the poorest section of the rural population and aspirant farmers. As part of a comprehensive rural development programme, it must raise incomes and productivity, and must encourage the use of land for agricultural and other productive or residential purposes.⁹²

The primary purpose and objective of the SALRP is to redress the effects of dispossession⁹³ and the racially skewed land ownership imbalance.^{94 95}

The objectives and significance of the SALRP can be drawn from the manner in which it is defined.

⁸⁸ Lahiff E & Cousins B 'Smallholder agriculture and land reform in South Africa' (2005) 36 *IDS Bulletin* 128.

⁸⁹ <http://www.southafrica.co.za/about-south-africa/environment/agriculture-forestry-and-land/> (accessed 21 April 2011).

⁹⁰ <http://www.southafrica.co.za/about-south-africa/environment/agriculture-forestry-and-land/> (accessed 21 April 2011).

⁹¹ 'Agricultural policy reform in South Africa' (2006) Organisation for Economic Co-Operation and Development Policy Brief 1.

⁹² The *Reconstruction and Development Programme* (GN 1954 in GG 16085 of 23 November 1994) para 2.4.3.

⁹³ Lahiff E 'Land redistribution in South Africa' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 195.

⁹⁴ The *White Paper on South African Land Policy* of 1997 para 2.5.

⁹⁵ Hall R 'A political economy of land reform in South Africa' (2004) 31 *Review of African Political Economy* 214.

The *White Paper on South African Land Policy* of 1997 has defined land redistribution as providing the 'poor, labour tenants, farm workers, women and emergent farmers' with 'access to land for residential and productive uses, in order to improve their income and quality of life'.⁹⁶

Land redistribution has been defined as bringing about 'just and equitable transformation of land rights';⁹⁷ integral in re-structuring the South African agrarian order and shaping the political economy of the country as a whole;⁹⁸ a 'political project with an economic rationale' that aims to provide benefits (of a direct and indirect nature) to the rural economy.⁹⁹ It aims to achieve this through enabling previously disadvantaged individuals and communities to acquire commercial farm land.¹⁰⁰

Land reform in general also aims to contribute to economic development. It does this through creating opportunities for productive land use and increasing employment opportunities through encouraging investment.¹⁰¹ The SAG's New Growth Path (NGP) envisages that the 'restructuring of land reform' will contribute to South Africa reaching its employment targets.¹⁰² Upgrading employment in commercial farms is one of the restructuring actions envisaged in the NGP.¹⁰³

The significance of the SALRP also lies in poverty alleviation and addressing food security concerns.^{104 105} This is evidenced by a study conducted by the HSRC regarding people's expectations of the SALRP; and an important finding was that of those people who wanted to own land, being able to grow food for own consumption, that is food security, is the main reason for wanting to own land.¹⁰⁶

⁹⁶ The *White Paper on South African Land Policy* of 1997 para 4.3.

⁹⁷ Thwala W 'Land and agrarian reform in South Africa' in Rosset P, Patel R & Courville M (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 72.

⁹⁸ Greenberg S 'Land reform and transition in South Africa' (2003) 52 *Transformation: Critical Perspectives on Southern Africa* 42.

⁹⁹ Hall R (ed) 'Land reform for what? Land use, production, and livelihoods' in *Another Countryside? Policy Options for Land and Agrarian Reform in South Africa* (2009) 23.

¹⁰⁰ Hall R (ed) *Another Countryside? Policy options for land and agrarian reform in South Africa* (2009) 5.

¹⁰¹ The *White Paper on South African Land Policy* of 1997 para 2.1.

¹⁰² Minister of Economic Development 'The New Growth Path: The Framework' 12 available at <http://www.info.gov.za/view/DownloadFileAction?id=135748> (accessed 1 April 2011).

¹⁰³ Minister of Economic Development 'The New Growth Path: The Framework' 34.

¹⁰⁴ The *White Paper on South African Land Policy* of 1997 para 4.3.

¹⁰⁵ Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 7 – 14.

¹⁰⁶ Aliber M, Reitzes M & Roefs M 'Assessing the alignment of South Africa's land reform policy to people's aspirations and expectations: A policy - oriented report based on a survey in three provinces' (2006) 19 - 20.

The significance of the SALRP is also rooted in the dualistic agricultural sector, comprising of large-scale commercial farming on the one hand and small-scale, generally subsistence-oriented, farming on the other created as a result of the dispossession discussed above.¹⁰⁷ The aim of the SALRP is, inter alia, to 'settle small and emerging farmers on viable farming operations in the commercial farming areas'.¹⁰⁸ It has been suggested that the SALRP is also aimed at easing the 'congestion in the communal areas' and to 'diversify the ownership of commercial agriculture'.¹⁰⁹

Hall presents the counter-argument to the significance of the SALRP voiced by some intellectuals, politicians and business people to the effect that people do not need land, but rather that they need jobs and houses in an industrial economy and, accordingly, it serves no purpose to pursue land reform.¹¹⁰ Although this is not entirely baseless, it has been argued that even though employment in towns would be appealing, in the face of South Africa's high unemployment rate, a job in rural South Africa or on farms would be better than unemployment.¹¹¹ The author agrees with this reasoning and submits that there is sufficient justification for the SALRP, provided that it also creates employment and provides housing, which, as seen above, it does do.

Thus, the SALRP is as much a land rights issue as it is a food security, poverty alleviation, environmental, agricultural development and agricultural sector issue.

3.3 Dynamics

The SALRP has developed in isolation from other interventions in rural and agricultural economies. However, it has been suggested that restructuring the agricultural economy will also unleash the potential of land reform to contribute to economic development.¹¹²

¹⁰⁷ Hall R 'A political economy of land reform in South Africa' (2004) 31 *Review of African Political Economy* 213.

¹⁰⁸ 'Agricultural policy reform in South Africa' (2006) Organisation for Economic Co-Operation and Development Policy Brief 4.

¹⁰⁹ Hall R 'Transforming rural South Africa? Taking stock of land reform' in Ntsebeza L & Hall R (eds) *The Land Question in South Africa. The Challenge of Transformation and Redistribution* (2007) 89.

¹¹⁰ Hall R 'A political economy of land reform in South Africa' (2004) 31 *Review of African Political Economy* 222.

¹¹¹ Van den Brink R (ed), Thomas G & Binswanger H et al *Consensus, Confusion and Controversy. Selected Land Reform Issues in Sub-Saharan Africa* (World Bank Working Papers) (2006) 28.

¹¹² Hall R 'Transforming rural South Africa? Taking stock of land reform' in Ntsebeza L & Hall R (eds) *The Land Question in South Africa. The Challenge of Transformation and Redistribution* (2007) 103.

The historic overview of land redistribution above is indicative of the fact that, apart from substantial macroeconomic and social reforms,¹¹³ land redistribution has also contributed to shaping the South African agricultural sector. It could be said that the SALRP is an extension of the agricultural sector.¹¹⁴

The historical overview and the discussion of the significance of both the agricultural sector and land redistribution revealed that the objectives of each are aligned and that the two are intertwined and cannot be viewed in isolation from each other. Progress in the one should mean progress for the other, and vice versa.

The Department of Agriculture has also recognised that 'the process of economic empowerment in South African agriculture starts with improved access to land ...'.¹¹⁵

Lahiff and Cousins argue that land redistribution, enhanced state support to existing black smallholders and reform of agricultural markets and land reform, as a whole, have 'the potential to underpin a revitalised system of smallholder production, in tandem with a transformation of the agricultural sector in ways that would promote economic development and reduce poverty in the rural areas'.¹¹⁶ This again illustrates that progress of the agricultural sector as a whole could hold value for land redistribution.

The relationship between agriculture and land reform has also been recognised at the level of the African Union and recorded in the Maputo Declaration on Agriculture and Food Security in Africa (Maputo Declaration).^{117 118} Pursuant to the resolutions of revitalising the agricultural sector and targeting small scale and traditional farmers in rural areas and the creation of enabling conditions for private sector participation¹¹⁹ and accelerating the establishment of the African Investment Bank and investment in agricultural production, the Maputo Declaration could hold potential alternative sources of funding for the SALRP,

¹¹³ 'Agricultural policy reform in South Africa' (2006) 2.

¹¹⁴ South African Institute of International Affairs 'Fair land reform without violence' (2004) 2 *The Electronic Journal of Governance and Innovation eAfrica* 1.

¹¹⁵ The strategic plan for South African agriculture para 5.1.

¹¹⁶ Lahiff E & Cousins B 'Smallholder agriculture and land reform in South Africa' (2005) 36 *IDS Bulletin* 127.

¹¹⁷ Phillips L 'Zuma – 'Agricultural investment in Africa a necessity' *Farmers Weekly* 9 July 2007 available at [http://www.farmersweekly.co.za/index.php?p\[IGcms_nodes\]\[IGcms_nodesUID\]=c71f2b8d66d1297930aeceb59f3e8749](http://www.farmersweekly.co.za/index.php?p[IGcms_nodes][IGcms_nodesUID]=c71f2b8d66d1297930aeceb59f3e8749) (accessed 24 April 2011).

¹¹⁸ Assembly of the African Union Second Ordinary Session 10 - 12 July 2003 Maputo, Mozambique Assembly/AU/Decl.7 (II) 1.

¹¹⁹ Assembly of the African Union Second Ordinary Session 10 - 12 July 2003 Maputo, Mozambique Assembly/AU/Decl.7 (II) resolution 1 1.

depending on how the SAG implements its commitment to the Maputo Declaration.¹²⁰

4 CONCLUSION

This chapter gave a summary of the historical events that led to unequal land distribution the land policy in South Africa, focussing on the dynamics within the agricultural sector.

In analysing the history of land redistribution as well as the significance of both the agricultural sector and land redistribution, it was shown that the two are intertwined.

This relationship between agriculture and land redistribution is important because it means that in searching for potential alternative sources of funding the SALRP, the net can be cast wider into the agricultural sector as a whole.

Key to the funding of the land redistribution is the regulatory framework. This is also an important consideration for investors investing in developing countries. For these reasons, the next chapter will review the legal basis for land redistribution in South Africa. In addition, the next chapter will also analyse how the SALRP is funded and what problems the SALRP has experienced.

¹²⁰ Assembly of the African Union Second Ordinary Session 10 - 12 July 2003 Maputo, Mozambique Assembly/AU/Decl.7 (II) resolution 7 1.

CHAPTER 3: LEGAL BASIS FOR THE SALRP, HOW IT IS FUNDED AND PROBLEMS EXPERIENCED WITH THE SALRP

1 INTRODUCTION

The legislative framework that supports land reform is regarded by some commentators as the most 'progressive in the world'.¹²¹

This chapter examines the legal basis of the SALRP and the legislative framework that supports the SALRP, how the SALRP is funded as well as the problems the SALRP has faced, concentrating on the budgetary problems.

2 LEGAL BASIS FOR THE SALRP

Subject to the three tiers of land reform, in theory the SALRP is characterised by three sub-programmes, namely: agricultural development, settlement and non-agricultural enterprises. This is explained in the Land Redistribution for Agricultural Development (LRAD) policy as making land available for agricultural purposes, providing land to people for settlement purposes and for non-agricultural purposes such as ecotourism.¹²²

The RDP records that all legal provisions 'which may impede the planning and affordability of a land reform programme must be reviewed and if necessary revised'.¹²³ Accordingly, in the same way that legislation played an important role in creating the dispossession that ultimately created the need in a democratic South Africa for a land redistribution programme, legislation is equally, if not more, important in creating the legal framework that would support the SALRP and within which the SALRP would operate.

2.1 **The *White Paper on South African Land Policy of 1991***

The first building block of the SALRP came in the form of the *White Paper on South African Land Policy of 1991*.

In terms of this *White Paper on South African Land Policy of 1991*, the SAG promulgated the Abolition of Racially Based Land Measures Act 108 of 1991,

¹²¹ Van den Brink R (ed), Thomas G & Binswanger H et al *Consensus, Confusion and Controversy. Selected Land Reform Issues in Sub-Saharan Africa* (World Bank Working Papers) (2006) 34.

¹²² 'Land Redistribution for Agricultural Development June 2001' available at <http://www.nda.agric.za/docs/Policy/redistribution.htm> (accessed 3 February 2011).

¹²³ The *Reconstruction and Development Programme* (GN 1954 in GG 16085 of 23 November 1994) para 2.4.7.

which repealed the land and related acts in existence in order to abolish the restrictions these pieces of legislation represented.

De Klerk observed that the *White Paper on South African Land Policy* of 1991 recorded the consensus reached between the then National Party and the ANC. He also pointed out that one of the areas that consensus was not reached on was the need for the SALRP and compensation for present or past owners of land.¹²⁴

2.2 RDP

In 1994 the ANC introduced the RDP, which marked land reform as a primary initiative.¹²⁵ The legislative framework for land reform is based on the RDP.

In respect of funding the SALRP, the RDP provided that it is the SAG's obligation to provide 'substantial funding' for land redistribution. In addition, beneficiaries should pay according to their means and a land tax should be imposed.¹²⁶ The RDP also envisaged expropriation as a means for the SAG to acquire land for redistribution.¹²⁷

2.3 The *White Paper on South African Land Policy* of 1997

The *White Paper on South African Land Policy* of 1997 is the overall policy framework for land reform in South Africa.¹²⁸

2.4 Constitution of the Republic of South Africa, 1996 (Constitution)

Land reform was entrenched in the Constitution of the Republic of South Africa, 1996 and is captured in section 25 of the Constitution.¹²⁹

Land redistribution is specifically entrenched in section 25(5) of the Constitution.¹³⁰ This section has been interpreted as: imposing a 'positive obligation' on the SAG to 'enhance accessibility to land'¹³¹ and creating a socio-

¹²⁴ De Klerk M 'Rural aspects of the White Paper on land reform and four accompanying Bills' (1991) 15 *Transformation* 104 available at <http://archive.lib.msu.edu/DMC/African%20Journals/pdfs/transformation/tran015/tran015008.pdf> (accessed 27 January 2011).

¹²⁵ Ntsebeza L 'Land rights and democratisation: rural tenure reform in South Africa's former bantustans' (2003) 52 *Transformation: Critical Perspectives on Southern Africa* 52.

¹²⁶ The *Reconstruction and Development Programme* (GN 1954 in GG 16085 of 23 November 1994) para 2.4.8.

¹²⁷ The *Reconstruction and Development Programme* (GN 1954 in GG 16085 of 23 November 1994) para 2.4.7.

¹²⁸ The *White Paper on South African Land Policy* of 1997.

¹²⁹ This section 25 of the Constitution is commonly referred to as 'the property clause'.

¹³⁰ s25(5) states: 'The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.'

¹³¹ Rugege S 'Land reform in South Africa: An overview' 7.

economic right for those in need of land to call on the SAG to act and make land accessible.^{132 133}

The Constitution also empowers the SAG to expropriate property,¹³⁴ provided that a 'just and equitable amount' of money is given as compensation.¹³⁵ The procedural aspects of expropriation are regulated by the Expropriation Act 63 of 1975.

2.5 Subdivision of Land Act 70 of 1970

The Subdivision of Land Act 70 of 1970 is regarded as a 'major impediment to land reform' because it places restrictions on the subdivision of agricultural land.¹³⁶ Land reform projects are, however, exempted from these restrictions.¹³⁷

The subdivision of agricultural land is regarded as 'a precondition for intensifying land use in countries like South Africa with a highly skewed distribution of land ownership'.¹³⁸

2.6 Provision of Land and Assistance Act 126 of 1993

Although some commentators have indicated that South Africa does not have enabling legislation that provide mechanisms for the SALRP,¹³⁹ the Provision of Land and Assistance Act 126 of 1993 is the enabling legislation for the SALRP.

Section 10 of the Provision of Land and Assistance Act 126 of 1993 specifically provides for the rendering of financial assistance by the SAG to implement the SALRP.

The Provision of Land and Assistance Act 126 of 1993 also authorises the Minister to publish policies and regulations which would regulate the financing of the SALRP.¹⁴⁰

¹³² Rugege S 'Land reform in South Africa: An overview' 7.

¹³³ Lahiff E & Rugege S 'A critical assessment of land redistribution policy in the light of the Grootboom judgment' (2002) 6 *Law, Democracy and Development* 280.

¹³⁴ In terms of s25(4)(b) Constitution of the Republic of South Africa, 1996 'property' is not limited to land.

¹³⁵ s25(2) and s25(3) Constitution of the Republic of South Africa, 1996.

¹³⁶ Hall R (ed) 'Land reform for what? Land use, production, and livelihoods' in *Another Countryside? Policy Options for Land and Agrarian Reform in South Africa* (2009) 38.

¹³⁷ s10(3) Provision of Land and Assistance Act 126 of 1993.

¹³⁸ Hall R (ed) 'Land reform for what? Land use, production, and livelihoods' in *Another Countryside? Policy Options for Land and Agrarian Reform in South Africa* (2009) 38.

¹³⁹ Rugege S 'Land reform in South Africa: An overview' 8.

¹⁴⁰ These include policies such as the Settlement/Land Acquisition Grant (SLAG) and Land Redistribution and Agricultural Development (LRAD) sub-programme, Proactive Land Acquisition Strategy (PLAS) and the Recapitalisation and Development Programme (RADP) and the Comprehensive Agricultural Support Programme (CASP) which will be discussed in paragraph 3.1.1 below.

2.7 Broad-Based Black Economic Empowerment Act 53 of 2003 (BBBEE Act)

Land reform, as a whole, is considered by some commentators as a 'means of achieving black economic empowerment, as required by the BBBEE Act'.¹⁴¹

The objectives of the BBBEE Act are to 'facilitate broad-based black economic empowerment' in South Africa though, inter alia, 'promoting economic transformation in order to enable meaningful participation of black people in the economy; achieving a substantial change in the racial composition of ownership and management structures and in the skilled occupations of existing and new enterprises and promoting investment programmes that lead to broad-based and meaningful participation in the economy by black people in order to achieve sustainable development and general prosperity'.¹⁴²

Considering the objectives of the BBBEE Act and the objectives of the SALRP outlined in chapter 2, it is evident that there is a correlation between the two. Thus, the SALRP is closely tied to black economic empowerment (BEE) in South Africa.

The AgriBEE Sector Charter¹⁴³ states that: 'The process of economic empowerment in South African agriculture starts with improved access to land for Black People and the vesting of secure tenure rights with Black People in areas where these do not exist'.¹⁴⁴ Thus, the SALRP can be regarded as a mechanism to achieve black economic empowerment.¹⁴⁵

The AgriBEE Sector Charter aims to achieve the SALRP target of transferring a minimum of 30 percent of the land to black people. It aims to achieve this by encouraging farming enterprises to undertake, inter alia, to sell agricultural land to black people and farm workers on a WBWS basis ('Qualifying Transactions');¹⁴⁶ ¹⁴⁷ lease agricultural land to black persons in 'Qualifying

¹⁴¹ Lahiff E 'Land Reform in South Africa: A Status Report' (2008) 38 PLAAS Research Report 8.

¹⁴² s2 Broad-Based Black Economic Empowerment Act 53 of 2003.

¹⁴³ The AgriBEE Sector Charter was promulgated in terms of the BBBEE Act 53 of 2003 and became effective on 20 March 2008.

¹⁴⁴ s5.1.2.2 AgriBee Sector Charter on Black Economic Empowerment (GN 30886 in GG 314 of 20 March 2008).

¹⁴⁵ Lahiff E 'Land Reform in South Africa: A Status Report' (2008) 38 PLAAS Research Report 8.

¹⁴⁶ s5.1.2.6 AgriBee Sector Charter on Black Economic Empowerment (GN 30886 in GG 314 of 20 March 2008).

¹⁴⁷ In terms of s7.8.3 of the AgriBee Sector Charter on Black Economic Empowerment (GN 30886 in GG 314 of 20 March 2008) 'Qualifying Transactions' are defined as 'sales of a business, valuable business assets, shares or land that result in the creation of sustainable business opportunities and transfer of specialised skills or productive capacity for black people'.

Transactions',¹⁴⁸ and make available agricultural land to farm workers as a corporate social investment initiative.¹⁴⁹ These farming enterprises are granted 'bonus points' if they transfer more than 30 percent of their total land.¹⁵⁰

The SAG, in turn, undertakes to: further land redistribution and access to land and acquisition of agricultural land by black people through its existing programmes;¹⁵¹ proactively acquire suitable agricultural land that comes onto the market for land redistribution;¹⁵² and using land acquired and agricultural land that reverts to it for purposes of land redistribution through, for example, long lease arrangements.¹⁵³

The AgriBEE Sector Charter also states within the context of promoting ownership by black people that 'all Sector Stakeholders should endeavour to source sufficient financing in order to ensure the establishment of viable and sustainable Enterprises'.¹⁵⁴ However, it does not elaborate on how this is to be done.

2.8 Green Paper on Land Reform

There is currently a draft Green Paper before parliament which is intended to culminate in a new land policy framework and an 'omnibus of legislation' which should see the consolidation of all land-related laws.¹⁵⁵

Media speculation is that the Green Paper would extend the 30 percent SALRP target to 2025; limit the amount of land that individuals and companies may own depending on the geographic location of the land and the nature of the farming conducted on it; provisions regarding the leasing out of all state land and restrictions on foreigners owning land.¹⁵⁶

At the time of writing, a draft of the Green Paper had been 'leaked' and there have been recent media reports that the Green Paper is currently being

¹⁴⁸ s5.1.2.7 AgriBee Sector Charter on Black Economic Empowerment (GN 30886 in GG 314 of 20 March 2008).

¹⁴⁹ s5.1.2.8 AgriBee Sector Charter on Black Economic Empowerment (GN 30886 in GG 314 of 20 March 2008).

¹⁵⁰ s5.1.2.2, 14 AgriBee Sector Charter on Black Economic Empowerment (GN 30886 in GG 314 of 20 March 2008).

¹⁵¹ s5.1.2.9 AgriBee Sector Charter on Black Economic Empowerment (GN 30886 in GG 314 of 20 March 2008).

¹⁵² s5.1.2.10 AgriBee Sector Charter on Black Economic Empowerment (GN 30886 in GG 314 of 20 March 2008).

¹⁵³ s5.1.2.11 AgriBee Sector Charter on Black Economic Empowerment (GN 30886 in GG 314 of 20 March 2008).

¹⁵⁴ s5.1.1 AgriBee Sector Charter on Black Economic Empowerment (GN 30886 in GG 314 of 20 March 2008).

¹⁵⁵ Speech by the Minister of Rural Development and Land Reform, Mr G Nkwinti 'Debate on the budget vote of the Department of Rural Development and Land Reform' 24 March 2010 available at <http://www.pmg.org.za/briefing/20100324-minister-rural-development-and-land-reform-budget-speech> (accessed 4 February 2011).

¹⁵⁶ Duvenhage H 'Land reform plan to stir angry debate' *Fin24* 19 July 2010 available <http://www.fin24.com/Economy/Land-reform-plan-to-stir-angry-debate-20100719> (accessed 2 February 2011).

revised.¹⁵⁷ ¹⁵⁸ According to the Parliamentary Monitoring Group, the Green Paper on Rural Development and Land Reform was due to be gazetted by May 2011.¹⁵⁹ However, it has been reported that the Green Paper would be split into two and that there would be a green paper for rural development and another for land reform.¹⁶⁰ Given the uncertainty around the Green Paper, it would be premature and ill-advised to discuss the provisions of the draft Green Paper at this stage.

Although it cannot be considered enabling legislation of the SALRP, it must be noted that there are also other pieces of legislation that are key to the implementation of the SALRP. These include (in alphabetical order): the Companies Act 71 of 2008, the Development Facilitation Act 67 of 1995, the Distribution and Transfer of Certain State Land Act 119 of 1993, the Expropriation Act 63 of 1975, the Preferential Procurement Policy Framework Act 5 of 2000, the Public Finance Management Act 1 of 1999 (PFMA) and the Treasury Regulations issued in terms of the PFMA.

3 FUNDING THE SALRP

3.1 The fiscus

As mentioned above, the RDP envisaged that the SAG would fund the SALRP substantially.¹⁶¹

Before 1994 the SAG's budget for the SALRP comprised an allocation from National Treasury and donations from the European Union (EU), Denmark and the United Kingdom (UK). The purpose of the donor funding was to develop capacity in rural and agricultural sector policy to uplift the low income and disadvantaged groups.¹⁶²

The DRDLR's budget for the SALRP currently comprises an allocation from National Treasury to 'initiate, facilitate, coordinate and catalyse the implementation of a comprehensive rural development programme that leads to

¹⁵⁷ Pressly D 'Cabinet to glimpse new land ownership plan soon' *Business Report* 26 January 2011 available at <http://www.iol.co.za/business/cabinet-to-glimpse-new-land-ownership-plan-soon-1.1017006> (accessed 31 January 2011).

¹⁵⁸ Cousins B & Hall R 'Plotting a new course for land reform and rural development' (2010) 16 *Amandla!* 22.

¹⁵⁹ <http://www.pmg.org.za/report/20110323-department-rural-development-strategic-plan-2011-2014-budget-allocati> (accessed 1 April 2011).

¹⁶⁰ Hartley W 'Land reform to be split from rural policy' *Business Day* 25 February 2011 available at <http://www.businessday.co.za/articles/Content.aspx?id=135516> (accessed 1 April 2011).

¹⁶¹ The *Reconstruction and Development Programme* (GN 1954 in GG 16085 of 23 November 1994) para 2.4.8.

¹⁶² Adams M 'Evaluation of ODA iro land sector' available at p://www.treasury.gov.za/publications/other/devcoop/section_2/08.pdf (accessed 31 January 2011).

sustainable and vibrant rural communities',¹⁶³ and donor funding.¹⁶⁴ ¹⁶⁵ Karumbidza makes the point that donor funding in South Africa is not very significant in the national budget, but is significant within the NGOs, who work as 'watchdogs' of the SAG.¹⁶⁶ The Minister of RDLR, in answering questions regarding this donor funding, noted that 'all documents relating to donor funding ... have been archived and would require a period of at least 3 months to retrieve and collate the requested information'.¹⁶⁷

According to Karumbidza, out of South Africa's 18 major donors, half of them are involved in rural development and related activities. He cites the major donors funding land reform as including the United Nations Development Programme, Irish Aid, Australia, Switzerland, Germany, Denmark, the UK, the EU,¹⁶⁸ United States Agency for International Development (USAID) and the World Bank.

3.1.1 Grant funding

The DRDLR uses its budget to make grants available to beneficiaries for purposes of land redistribution projects.

3.1.1.1 *Settlement/Land Acquisition Grant (SLAG)*

From the period 1995 until 1999, the SAG was the main mechanism for funding the SALRP.¹⁶⁹

The aim of the SLAG was to make available grant funding to beneficiaries from poor households to enable them to purchase land.¹⁷⁰ Various commentators, such as Lahiff, have made the point that it was 'pro poor'.¹⁷¹

¹⁶³ Vote 32 Rural Development and Land Reform 661 available at <http://www.treasury.gov.za/documents/national%20budget/2010/ene/vote32.pdf> (accessed 22 March 2011).

¹⁶⁴ Adams M 'Evaluation of ODA iro land sector' available at p://www.treasury.gov.za/publications/other/devcoop/section_2/08.pdf (accessed 31 January 2011).

¹⁶⁵ The Minister of DRDLR confirmed this and pointed out that recently the Branch: Land Reform received funding from the Austrian Development Agency (ADA). Furthermore EUR 329 000 was committed in terms of a tripartite agreement for a two year period (2009 and 2010) between the ADA, Umhlaba Development Services (UDS) and the SAG, early in the first quarter of 2009 for area based planning available at <http://www.pmg.org.za/node/22745> (accessed 21 March 2011).

¹⁶⁶ Karumbidza BJ 'Redistributionist' versus 'Productionist' Land Reform' 17.

¹⁶⁷ Parliamentary Monitoring Group 'Question 2072 internal question paper [No 19-2010]' available at <http://www.pmg.org.za/node/22745> (accesses 21 March 2011).

¹⁶⁸ The rationale behind the EU's contribution towards rural developments is poverty alleviation. Karumbidza BJ 'Redistributionist' versus 'Productionist' Land Reform' 21.

¹⁶⁹ Rugege S 'Land reform in South Africa: An overview' 11.

¹⁷⁰ Hall R 'A political economy of land reform in South Africa' (2004) 31 *Review of African Political Economy* 215.

¹⁷¹ Lahiff E 'Land redistribution in South Africa' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 176.

SLAG worked on the basis of making grants available to households who applied for the government grants to buy land. The maximum amount of grant that could be made available was R16 000. The criteria for applicants were that they had to earn below R1 500 a month in order to be eligible for these grants.¹⁷²

The SLAG was complemented and supported by the Settlement Planning Grant, which was intended to be used to procure the services of planners and other professionals who would assist SLAG applicants in preparing grant and post-transfer support applications.¹⁷³ However, given that SLAG has fallen away, this grant is also not used.

SLAG was widely criticised. One of the criticisms levelled against it was that the grant amount made available was not enough to fund the acquisition of land in terms of the WBWS model.¹⁷⁴ The SLAG has, however, been replaced with LRAD Programme.^{175 176}

3.1.1.2 *Land Redistribution for Agricultural Development (LRAD) Programme*

Between 2001 and 2010, grants made available pursuant to the LRAD Programme were the mechanisms used to fund the SALRP.

The LRAD Programme provided funds by way of grants to black South African citizens for purposes of accessing land specifically for agricultural purposes.

The LRAD grant could be used towards funding food security (food safety net projects), land acquisition, land improvements, agricultural infrastructure investments and capital assets such as shares in share-equity schemes, short term agricultural inputs and lease options.^{177 178} Thus, the LRAD grant could also be used for investing in agricultural production.¹⁷⁹

¹⁷² Grant and Services Policy, 2001 (Version 7) para 4.2.2(c).

¹⁷³ Grant and Services Policy 2001 (Version 7) para 1.

¹⁷⁴ Weideman M *Land Reform, Equity and Growth in South Africa: A Comparative Analysis* (unpublished LLD thesis, University of Witwatersrand, 2006) 222.

¹⁷⁵ Human Sciences Research Council (Integrated Rural and Regional Development unit) 'Land redistribution for agricultural development: Case studies in three provinces' Final Report 6 available at http://www.hsrc.ac.za/research/output/outputDocuments/2380_IRRD_Landredistributionin3provinces.pdf (accessed 1 February 2011).

¹⁷⁶ Hall R 'Transforming rural South Africa? Taking stock of land reform' in Ntsebeza L & Hall R (eds) *The Land Question in South Africa. The Challenge of Transformation and Redistribution* (2007) 87 - 92.

¹⁷⁷ Grant and Services Policy 2001 (Version 7) para 1.1(a).

¹⁷⁸ Grant and Services Policy 2001 (Version 7) para 1.

¹⁷⁹ Jacobs P, Lahiff E & Hall R 'Land redistribution' (2003) 1 PLAAS Occasional Paper 14.

The LRAD grants were made available to individuals, in terms of a sliding scale, dependent on their 'own contribution'¹⁸⁰. The 'own contribution' could be in kind or cash or labour and is commonly referred to as "sweat equity".^{181 182}
^{183 184} The minimum LRAD grant that could be made available was R20 000 with a R5000 own contribution, and a maximum of R100 000 with an own contribution of approximately R40 000.

The approval of the LRAD grants was based on the 'viability' of the proposed project, which took total project costs and projected profitability into account.¹⁸⁵ Viability is not necessarily a consistent measure, hence the grants being discretionary in nature.

The LRAD Programme has, however, been phased out since mid-2010 and replaced with the Proactive Land Acquisition Strategy (PLAS).¹⁸⁶

3.1.1.3 Proactive Land Acquisition Strategy (PLAS)

In terms of section 10(1)(a) of the Provision of Land and Assistance Act 126 of 1993 the PLAS was initiated at the National Land Summit in 2005, in keeping with the 'fast track' theme to accelerate the pace of the SALRP.^{187 188} PLAS was, however, only implemented by the SAG (on an ad hoc basis) from about 2009.¹⁸⁹

¹⁸⁰ The term 'own contribution' refers to the contribution made by the land redistribution beneficiary towards the land redistribution project.

¹⁸¹ Land Redistribution for Agricultural Development Policy June 2001 available at <http://www.nda.agric.za/docs/Policy/redistribution.htm#Basic%20principles> (accessed 3 February 2011).

¹⁸² Hall R 'A political economy of land reform in South Africa' (2004) 31 *Review of African Political Economy* 216.

¹⁸³ Grant and Services Policy 2001 (Version 7) para 3.3.2.

¹⁸⁴ It is not unusual for beneficiaries to contribute to the costs of land reform. Based on international evidence Van den Brink, Thomas and Binswanger submit that this can take the form of 'beneficiaries providing cash or some kind of non-monetary contribution, or, implicitly, having beneficiaries fend for themselves once they receive land'. Van den Brink R (ed), Thomas G & Binswanger H et al *Consensus, Confusion and Controversy. Selected Land Reform Issues in Sub-Saharan Africa* (World Bank Working Papers) (2006) 39 – 40.

¹⁸⁵ Kariuki S 'Creating the black commercial farmers in South Africa' (2004) 18.

¹⁸⁶ The author was made aware of this fact and tried to verify it by requesting documentation from the DRDLR. The author was informed telephonically by Mr S. Molepo, Manager: Recapitalisation Programme: DRDLR, Cape Town office on 5 May 2011 that there are no official documents recording the fact that the LRAD programme has been 'phased out'. Telephonic enquiries to PLAAS (Programme for Land and Agrarian Studies) on 5 May 2011 also confirmed this. However, according to Mr Molepo, notwithstanding the 'phasing out' of the LRAD programme certain provinces, such as the Western Cape have still applied the LRAD programme up until the end of last year. The DRDLR is currently embarking on a national road show to roll out the Recapitalisation and Development Programme (RADP).

¹⁸⁷ Implementation Plan for the Proactive Land Acquisition Strategy (2006) Version 1 available at <http://www.info.gov.za/view/DownloadFileAction?id=80209> (accessed 31 January 2011).

¹⁸⁸ Address by Ms. Thoko Didiza, MP Minister of Agriculture and Land Affairs at the National Land Summit 27 - 30 July 2005 available at <http://www.polity.org.za/article/didiza-summit-on-land-and-agrarian-reform-27072005-2004-12-27> (accessed 17 February 2011).

¹⁸⁹ The author tried to verify the exact implementation date but as with the enquiries made in respect of the phasing out of the LRAD programme, the author was informed telephonically by Mr S. Molepo, Manager: Recapitalisation Programme: DRDLR, Cape Town office on 5 May 2011 that there are no official documents

PLAS allows the SAG to acquire land by way of expropriation, auction and/or market transactions and/or negotiated transfers before identifying beneficiaries.¹⁹⁰

In terms of the PLAS, the SAG purchases 'advantageous land', defined as such because of where it is located, whether it can be subdivided and the suitability thereof for particular agricultural activities that the SAG would like to promote vis-à-vis redistribution, and/or because it is an 'especially good bargain'.¹⁹¹

According to the PLAS, the financial mechanism used by the SAG for purposes of the PLAS objectives was to acquire land through purchases, expropriation or auctions for land redistribution purposes. Once the land has been acquired, the SAG can make it available to beneficiaries, who will lease the property with an option to purchase. The beneficiaries would receive a "qualifying grant", based on the LRAD grant, to purchase the land, which would be offset against the purchase price determined by the DRDLR. If the grant is insufficient, other sources of funding such as credit funding would be considered.¹⁹² The PLAS also envisaged that planning costs for agricultural projects would be funded by DRDLR and the Department of Agriculture, Forestry and Fisheries (DAFF) in terms of CASP. The settlement planning costs would be funded by the Department of Housing.¹⁹³

However, with the introduction of the Framework for the Recapitalisation and Development Programme (RADP), the author has been informed that the grants made available to beneficiaries would be made available in terms of the Framework for RADP.

3.1.1.4 *Framework for Recapitalisation and Development Programme (RADP)*

The RADP is aimed at providing financial support as well as development support for the SALRP.¹⁹⁴

recording the exact date of implementation. Telephonic enquiries to PLAAS (Programme for Land and Agrarian Studies) on 5 May 2011 also confirmed this.

¹⁹⁰ Implementation Plan for the Proactive Land Acquisition Strategy, Version 1, May 2006 para 7.2(a) – (c) available at <http://www.info.gov.za/view/DownloadFileAction?id=80209> (accessed 31 January 2011).

¹⁹¹ Implementation Plan for the Proactive Land Acquisition Strategy (2006) Version 1 para A 1.1.

¹⁹² See the discussion on credit funding in paragraph 3.3.1 below.

¹⁹³ Implementation Plan for the Proactive Land Acquisition Strategy (2006) Version 1 para 5.2.

¹⁹⁴ Department: Rural Development and Land Reform 'Policy Framework for the Recapitalisation and Development Programme of the Department of Rural Development and Land Reform' 24 March 2011 para 4.1 – 4.2.

In terms of the Framework for the RADP, 25 percent of the RADP's budget is earmarked for PLAS, which is making grant funding available for the SALRP.¹⁹⁵ The funding model of the RADP is, however, not only grant-based and a combination of grants and private sector investments is envisaged.¹⁹⁶ This is different from both the SLAG and the LRAD Programme, which were primarily grant focussed and evidence of the shift in approach to funding the SALRP.

The funding that an individual land redistribution project will receive will be based on the relevant business plan presented in respect of the project.¹⁹⁷ This is a departure from the LRAD grant. A sliding scale of DRDLR assistance is envisaged over the lifetime of the project, namely from the first year the project will be 100 percent funded by the DRDLR with a grant until eventually in year 6 of the project the DRDLR ceases funding of the project.¹⁹⁸

3.1.1.5 *Comprehensive Agricultural Support Programme (CASP)*

The CASP, introduced in 2004/05, is specifically aimed at providing post-settlement support to beneficiaries of land reform. The post-settlement support takes the form of grants.¹⁹⁹ ²⁰⁰ The grant is also made available to other producers who have acquired land through private means.²⁰¹

CASP represents the 'bulk of funding' that is explicitly available for capital expenditure to support small-scale farmers.²⁰²

The CASP funding mechanism envisages the following:

- a) a 'sunrise' package for savings and lending groups,²⁰³ and

¹⁹⁵ Department: Rural Development and Land Reform 'Policy Framework for the Recapitalisation and Development Programme of the Department of Rural Development and Land Reform' 24 March 2011 para 5.

¹⁹⁶ Department: Rural Development and Land Reform 'Policy Framework for the Recapitalisation and Development Programme of the Department of Rural Development and Land Reform' 24 March 2011 para 7.

¹⁹⁷ Department: Rural Development and Land Reform 'Policy Framework for the Recapitalisation and Development Programme of the Department of Rural Development and Land Reform' 24 March 2011 para 3.

¹⁹⁸ Department: Rural Development and Land Reform 'Policy Framework for the Recapitalisation and Development Programme of the Department of Rural Development and Land Reform' 24 March 2011 para 8.

¹⁹⁹ Comprehensive Agricultural Support Programme (CASP) Policy available at <http://www.nda.agric.za/docs/CASP/casp.htm> (accessed 4 February 2011).

²⁰⁰ Hall R & Aliber M 'The case for re-strategising spending priorities to support small-scale farmers in South Africa' (2010) 17 PLAAS (Institute for Poverty, Land and Agrarian Studies) Working Paper 9.

²⁰¹ Comprehensive Agricultural Support Programme (CASP) Policy.

²⁰² Hall R & Aliber M 'The case for re-strategising spending priorities to support small-scale farmers in South Africa' (2010) 17 PLAAS Working Paper.

²⁰³ These include: 'member-based financial self-help groups, village banks or financial service cooperatives, project funding (business plan development), funding of capacity building and training, funding of mentoring services, funding for infrastructure and cooperative development and development of rural financial networks.' Comprehensive Agricultural Support Programme (CASP) Policy para 6.2.

b) a 'sunrise' subsidy scheme which will include the following: transaction cost subsidy, credit guarantee scheme, interest rate subsidy, insurance premium subsidy and venture capital.²⁰⁴

Unlike SLAG, LRAD and the RADP, the CASP does not have a disbursement limitation; thus, there is no 'cap' on the maximum amount of public support an individual beneficiary or project can receive.²⁰⁵

3.1.1.6 *Municipal Commonage Grants*

This grant is made available to primary municipalities or local authorities to: i) acquire land in order to extend or create a commonage; ii) provide infrastructure on the land to be acquired; or iii) on existing commonages to provide qualifying persons grants for productive use of the 'land resources'.²⁰⁶

²⁰⁷ ²⁰⁸ Ownership would be retained by the municipality which would lease the land to qualifying applicants.²⁰⁹

3.2 **Land tax**

Although a land tax on rural land was envisaged in the early days of land reform in order to raise 'rural local government revenue and as a policy instrument to complement a non-confiscatory land reform programme', after investigation and much opposition a land tax was not implemented.²¹⁰ ²¹¹

It has also been raised again recently; however, to date South Africa has not taken steps to implement a land tax.²¹²

3.3 **Private sector**

Over time the SAG has also looked to the private sector to supplement the limited institutional and funding capacity of the SALRP. Partnerships with the private sector were also envisaged in The *White Paper of South African Land Policy* of 1997²¹³ and is currently also envisaged in the RADP.²¹⁴

²⁰⁴ Comprehensive Agricultural Support Programme (CASP) Policy para 6.2.

²⁰⁵ Hall R & Aliber M 'The case for re-strategising spending priorities to support small-scale farmers in South Africa' (2010) 17 PLAAS Working Paper 15.

²⁰⁶ Municipal Commonage: Policy and Procedures 12/1997.

²⁰⁷ The *White Paper on South African Land Policy* of 1997 para 4.24.1.

²⁰⁸ s10(1)(c) Provision of Land and Assistance Act 126 of 1993.

²⁰⁹ Grant and Services Policy 2001 Version 7 para 1.1(d).

²¹⁰ The *White Paper on South African land policy* of 1997 par 3.4.

²¹¹ Karumbidza BJ "Redistributionist' versus 'Productionist' Land Reform' 29.

²¹² Hofstatter S 'Land: 'first refusal' plan stirs a storm' *Farmers Weekly* 27 March 2007 available at [http://www.farmersweekly.co.za/index.php?p\[IGcms_nodes\]\[IGcms_nodesUID\]=4613fe371f02bdeb2578eac2156a934a](http://www.farmersweekly.co.za/index.php?p[IGcms_nodes][IGcms_nodesUID]=4613fe371f02bdeb2578eac2156a934a) (accessed 24 April 2011).

²¹³ The *White Paper of South African Land Policy* of 1997 para 4.9.3.

3.3.1 Credit - Financial Institutions

In addition to grant funding, the SALRP is also funded by credit.^{215 216}

One of the financial institutions that provides credit is the Land and Agricultural Development Bank of South Africa (Land Bank). The Land Bank's products include long-term mortgage loans, special mortgage loans, instalment sale finance, livestock loans, working capital and medium-term loans. In the land redistribution arena, it primarily advances loans, in the form of a special mortgage bond for farmers, to supplement grant funding.²¹⁷ The special mortgage interest, at the time of writing, is a set rate of 10 percent.²¹⁸

In 2007 the Micro Agricultural Finance Institutions of South Africa (MAFISA) was launched. The aim of MAFISA was to improve access to finance for farmers, especially small-scale farmers who do not have conventional land-based collateral.

MAFISA is currently administered by the Land Bank as the agent to DAFF, but DAFF is the principal and source of the funding. In terms of the MAFISA credit policy, the finance that is made available is limited to production loans, small equipment loans and livestock purchase loans, each up to R500 000 per person.²¹⁹ Viability of the project is a criterion for advancing the loan, based on cash flow, and beneficiaries must have a minimum repayment capacity of at least 120 percent, with an optimum of 150 percent.²²⁰

Khula Enterprises, a parastatal development finance institution, was set up in 1999 'as a revolving credit facility'.²²¹ It hosts the Khula Land Reform Empowerment Facility. This facility works on the basis of leveraging loans from commercial banks to finance certain land reform projects, particularly share-equity schemes.²²² It also administered LRAD grants for disbursement through share-equity schemes. Khula Enterprises makes a maximum loan of R10 000 000 per project or R800 000 available per individual to buy and own

²¹⁴ See the discussion at paragraph 3.1.1.4 above.

²¹⁵ Lahiff E 'Land redistribution in South Africa' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 175.

²¹⁶ The Centre for Development and Enterprise 'Land reform in South Africa: Getting back on track' (2008) 16 CDE Research 30.

²¹⁷ Jacobs P, Lahiff E & Hall R 'Land Redistribution' (2003) 1 PLAAS Occasional Paper 22.

²¹⁸ <http://www.landbank.co.za/> (accessed 4 February 2011).

²¹⁹ Mafisa Credit Policy 2009 (Version 5.1) paras 5.1, 5.2, 5.3, 5.4 and 5.5.

²²⁰ Mafisa Credit Policy 2009 (Version 5.1) para 6.2.

²²¹ <http://www.khula.org.za/content780.html> (accessed 4 February 2011).

²²² Jacobs P, Lahiff E & Hall R 'Land redistribution' (2003) 1 PLAAS Occasional Paper Series 22.

land for agricultural production purposes. Khula Enterprises also advances loans for beneficiaries to acquire shares in agricultural production enterprises, including share-equity schemes.²²³

Other institutions, like Ithala Development Finance Corporation, have also offered loans to land redistribution beneficiaries within the Kwa-Zulu Natal province.²²⁴

LRAD beneficiaries have also applied to commercial banks for loans in respect of share-equity schemes.^{225 226}

3.3.2 Recapitalisation and Development Programme (RADP)

As mentioned above, the RADP funding model envisages private sector investments.²²⁷ In this regard, tripartite agreements between beneficiaries, the DRDLR and private sector 'strategic partners' (who are encouraged to make investments) are envisaged.^{228 229} The types of strategic partners envisaged include individuals and companies of any race who are able to make capital investments.²³⁰ Contract farming and share-equity scheme type arrangements are envisaged to facilitate the investment.²³¹

4 HOW ARE SOUTH AFRICAN LAND REDISTRIBUTION PROJECTS STRUCTURED?

The manner in which the SALRP is funded in South Africa is tied to the manner in which the individual projects are designed and how it is structured. This structuring is generally referred to as 'business models'. The author submits

²²³ <http://www.khula.org.za/content780.html> (accessed 4 February 2011).

²²⁴ Jacobs P, Lahiff E & Hall R 'Land redistribution' (2003) 1 PLAAS Occasional Paper Series 22.

²²⁵ ABSA and Standard Bank have been the most active in this regard.

²²⁶ It has been reported that First National Bank has sought donor funding from the likes of USAID to support their loan portfolio. In terms of this initiative the USAID Guarantee Scheme provides a partial guarantee on First National Bank's loan portfolio of R300-million to support increased lending to black emerging farmers and agribusinesses over the next seven years. The Centre for Development and Enterprise 'Land reform in South Africa: Getting back on track' (2008) 32 fn 81 and 82. SA Info 'Banking on SA's emerging farmers' *South Africa: Brand South Africa* 20 November 2007 available at

<http://www.southafrica.info/business/trends/empowerment/agriculture-201107.htm> (accessed 7 February 2011).

²²⁷ Department: Rural Development and Land Reform 'Policy Framework for the Recapitalisation and Development Programme of the Department of Rural Development and Land Reform' para 8.

²²⁸ Recapitalisation and Development Programme Policy 2011 – 2012 presented to the Select Committee on Land and Environmental Affairs 12 April 2011 7 available at

http://www.pmg.org.za/files/docs/110412recapitalisation-edit_0.pdf (accessed 5 May 2011).

²²⁹ Opening address by the Minister of Rural Development and Land Reform, G Nkwinti (MP) during the Pro-active Land Acquisition Strategy workshop 30 December 2010 available at

<http://www.info.gov.za/speech/DynamicAction?pageid=461&sid=15374&tid=26041> (accessed 30 March 2011).

²³⁰ Recapitalisation and Development Programme Policy 2011 – 2012 presented to the Select Committee on Land and Environmental Affairs 12 April 2011 6 available at

http://www.pmg.org.za/files/docs/110412recapitalisation-edit_0.pdf (accessed 5 May 2011).

²³¹ Department: Rural Development and Land Reform 'Policy Framework for the Recapitalisation and Development Programme of the Department of Rural Development and Land Reform' para 8.

that the business models are merely commercial legal principles applied to structure a commercial transaction; thus, a business model is the end product of a commercial structuring exercise.

Some commentators hold the view that land redistribution business models in South Africa are premised on 'how to get the land' (that is the supply of land and the mode of acquisition) and acquiring a capital asset.^{232 233} These business model types have been criticised because they do not consider 'how land is to be used' and 'how production is to be organised'.²³⁴ .

Hall explains that the business model options are based on the reliance on grants that are small compared to the price of farmland, the failure to confront the size and structure of farm holdings in the commercial farming areas through subdivision, and the emphasis in planning on the need to maintain existing production regimes on commercial farms.²³⁵

The *White Paper on South African Land Policy* of 1997 envisaged the share-equity scheme, lease and buy-back scheme, share milk scheme and contract farming schemes.²³⁶

Some commentators maintain that there are three principal modes of land redistribution, namely government assisted land transfers, private land purchases and share-equity schemes.²³⁷ The author is of the view that there can be various types of business models, depending on the facts and variables of transaction. Notwithstanding this, the business model types in South Africa can generally be grouped into the following main categories:^{238 239}

4.1 individual production with 'individuals, families or small groups obtaining farms and farming them as a single commercial entity';

²³² Hall R (ed) 'Land Reform: How, and For Whom? Land Demand, Targeting and Acquisition' in *Another Countryside? Policy Options for Land and Agrarian Reform in South Africa* (2009) 70.

²³³ Hall R (ed) 'Land reform for what? Land use, production, and livelihoods' in *Another Countryside? Policy Options for Land and Agrarian Reform in South Africa* (2009) 25.

²³⁴ Hall R (ed) 'Land reform for what? Land use, production, and livelihoods' in *Another Countryside? Policy Options for Land and Agrarian Reform in South Africa* (2009) 24.

²³⁵ Hall R (ed) 'Land reform for what? Land use, production, and livelihoods' in *Another Countryside? Policy Options for Land and Agrarian Reform in South Africa* (2009) 25.

²³⁶ The *White Paper of South African Land Policy* of 1997 para 4.9.3.

²³⁷ Halliday S 'Land Reform: Summaries of Pertinent Articles on South African Land Reform available at sites.google.com/site/simondhalliday/summary.pdf (accessed 25 January 2011).

²³⁸ Hall R (ed) 'Land reform for what? Land use, production, and livelihoods' in *Another Countryside? Policy Options for Land and Agrarian Reform in South Africa* (2009) 25.

²³⁹ Lahiff E 'Business models in Land Reform' (2007) 27 PLAAS (Programme for Land and Agrarian Studies) Research Report.

- 4.2 group access to land for large-scale agriculture, with 'large groups obtaining farms and farming collectively'; and
- 4.3 joint ventures and contractual arrangements which include 'large groups obtaining farms and farming collectively as a single commercial entity' and variations thereof.

Another type of business model that has emerged, pursuant to the PLAS, is the SAG purchasing land and then leasing it to beneficiaries.²⁴⁰

The individual production and joint venture business models have been encouraged and are probably the most common in South Africa.²⁴¹ The business models can take different variations, depending on the parties, funding and other variables involved.

Joint venture business models are the most common business models applied to a land redistribution transaction where private sector funding is involved.

In the author's view, it is also the most flexible of the business models, flexible to facilitate and accommodate different types of funding, including investments.

Joint ventures have been around prior to 1994.²⁴² Mayson has noted that joint ventures are the models 'championed' by the World Bank. This is not surprising, given the World Bank's involvement in the design of the SALRP.

Joint venture arrangements can take various forms, depending on, inter alia, the nature of the transaction, the funding involved; the legal structures that need to be established; the nature of the business on the land, that is the type of agriculture; the ownership structure of the landowner; the employment relationship between the farmer and the farm worker; the different roles that the farmer and farm worker play in the business.²⁴³ These factors inform the legislation that would apply and the suite of transactions required to implement the land redistribution project. Thus, the ultimate business model can be a hybrid business model that combines different business models.

²⁴⁰ Groenewald Y 'Land reform still just 'trundling along' *Mail & Guardian Online* 22 February 2010 available at <http://www.mg.co.za/article/2010-02-22-land-reform-still-just-trundling-along> (accessed 2010).

²⁴¹ Hall R (ed) 'Land reform for what? Land use, production, and livelihoods' in *Another Countryside? Policy Options for Land and Agrarian Reform in South Africa* (2009) 25.

²⁴² Mayson D 'Joint Ventures' (2003) 7 PLAAS (Programme for Land and Agrarian Studies) Evaluating land and agrarian reform in South Africa Occasional Paper Series 1.

²⁴³ Mayson D 'Joint ventures' (2003) 7 PLAAS Occasional Paper Series 11.

Joint ventures also take various forms and can be categorised into the following categories: contract or outgrower schemes; municipal commonage schemes; share-produce or sharecropping schemes; company-supported schemes and share-equity schemes.²⁴⁴

There is a lot of overlap between these different types of joint ventures, but a high level description of each of these follows below.

The contract or outgrower scheme model works on the basis that the producer/farmer (the land redistribution beneficiary) must supply the product to the company, who commits to buying the product as well as giving other support. The terms and conditions (including service levels) regulating the relationship between the farmer and the company are all recorded in an agreement. Mayson notes that one drawback of this business model is that although there is land ownership; there may not necessarily be control by the land redistribution beneficiary. He cautions that it is important to guard against companies gaining excessive control and to ensure that the farmers are able to use their land rights for additional livelihood or income strategies.²⁴⁵

Municipalities have become more involved by proactively creating, funding and supporting initiatives with small-scale farmers using their position to draw in other actors – specifically white commercial farmers. This is essentially municipal commonage. Although placed under the joint venture umbrella by Mayson, it is essentially a lease arrangement between a municipality and certain beneficiaries. It is also funded by the SAG, albeit at local government level as the municipality has ensured that the beneficiaries receive grant funding.²⁴⁶

Share-produce or sharecropping schemes work on the basis that the farmer and beneficiary form a partnership in terms whereof the beneficiary leases the land from the farmer. However, instead of paying rental in the ordinary sense, the beneficiary farmer pays the landlord farmer 'a share of the output', for example the crops. Mayson highlights that sharecropping arrangements

²⁴⁴ These categories, from a legal definition point of view do not strictly speaking fall under joint ventures, but given that it can be characterised by partnership, it is not completely inaccurate.

²⁴⁵ Mayson D 'Joint ventures' (2003) PLAAS Occasional Paper Series 7.

²⁴⁶ Mayson D 'Joint ventures' (2003) 7 PLAAS Occasional Paper Series 18.

depend on unequal power relations between the farmer and the beneficiary, similar to labour tenancy and, as such, are thus not common in South Africa.²⁴⁷

Company-supported schemes are typically share-equity schemes initiated by the farm owner. Thus, the farm owner would approach the DRDLR indicating that it wishes to establish a scheme for land redistribution purposes. The projects are funded primarily by private sector funding. Mayson has referred to these models as 'benevolent arrangements'.²⁴⁸

According to Mayson, share-equity schemes are the most common joint venture in which the DRDLR grants are invested. The author would agree with this as she has primarily used this model to structure the land redistribution projects she has been involved in. Share-equity schemes have come under fire to the point where a moratorium was placed on them as recently as 2009. Amidst uncertainties with the share-equity model, share-equity schemes have once again been given the green light and the moratorium has been lifted.²⁴⁹ Share-equity schemes are also one of the 'strategic partners' envisaged by the RADP.²⁵⁰

Share-equity schemes are funded from a combination of grant funding, credit and the private sector. Share-equity schemes in agriculture are arrangements in which farm workers, small-scale farmers or other disadvantaged people acquire shares in a commercial farm or an agricultural processing company.²⁵¹ The beneficiaries are generally employees of the existing farm owner or business operating entity. The beneficiaries generally form a legal entity that serves as the special purpose (investment) vehicle (SPV), either a trust or private company (depending on, inter alia, the number of beneficiaries) who acquires the shares in the entity owning the farm. The beneficiaries would then either be beneficiaries of the trust or shareholders of the company.

In the author's experience, share-equity schemes could be structured as follows: beneficiaries apply for and are awarded grants for purposes of acquiring land as well as shareholding in an operating company. Once they

²⁴⁷ Mayson D 'Joint ventures' (2003) 7 PLAAS Occasional Paper Series 21.

²⁴⁸ Mayson D 'Joint ventures' (2003) 7 PLAAS Occasional Paper Series 28.

²⁴⁹ SAPA 'Go-ahead for farm equity schemes' *SouthAfrica.Info* 19 November 2010 available at <http://www.southafrica.info/news/business/15171.htm> (accessed 7 February 2011).

²⁵⁰ Department: Rural Development and Land Reform 'Policy Framework for the Recapitalisation and Development Programme of the Department of Rural Development and Land Reform' para 8.

²⁵¹ Mayson D 'Joint ventures' (2003) 7 PLAAS Occasional Paper Series 97.

receive the grants, they jointly, by pooling their grants, establish an SPV. Depending on other variables and whether the beneficiaries are farm workers, their employer could subdivide a portion of the land it owns and sell it to the SPV. Thus land is redistributed to beneficiaries, who then become (indirect) land owners. The SPV could then lease the land acquired to the farmer or neighbouring farmers in return for rental income.

Another variation could be that, in addition to owning the land, the SPV could also acquire shares in the operating company owned by the farmer. Thus the SPV would be entitled to rental income as well as dividends in the operating company.

Other variations could include the beneficiaries applying for and being awarded grants for purposes of acquiring the business of a farmer, which owns land, as a going concern. Once they receive the grant, they establish the SPV. Thus the SPV would acquire land and 100 percent of the shareholding in the company. The SPV could then conclude a management agreement with the farmer who will manage the farm operations at a fee.

A further variation could be the beneficiaries apply for and are awarded grants for purposes of setting up an SPV that would acquire a majority shareholding in an operational land-owning company. The land-owning company could be an existing company, in which case the beneficiaries would either buy shares from the other shareholders or more shares could be issued, depending on the corporate structure of the company, with the net effect being that the SPV acquires a majority shareholding or a new company, in which case the SPV and the private party would acquire newly issued shares in the company. The company would then acquire the land.

It can be seen from the above that, in practice, the share-equity schemes are a combination of commercial legal transactions.

Hall, Kleinbooi and Mvambo note, as a criticism of share-equity schemes, that the beneficiaries generally acquire a minority share.²⁵² However, in the author's experience, the opposite is true, especially with regard to the BBBEE requirements that the DRDLR has to comply with. These requirements would

²⁵² Hall R, Kleinbooi K & Mvambo, N 'What land reform has meant and could mean to farm workers in South Africa' Theme: Farm workers and land reform in southern Africa Centre for Rural Legal Studies' paper presented at the SARP conference on Land Reform and Poverty Alleviation in Southern Africa Pretoria, 4 - 5 June 2001 7.

not be achieved if the land redistribution beneficiaries do not have a controlling share in the land owning company.

The various business models have many advantages and disadvantages. The advantages are that there is some form of skills transfer and access to capital, expertise and markets to beneficiaries who would otherwise not have the opportunity.²⁵³ Mayson argues that share-equity schemes give beneficiaries an opportunity far better than any other way of investing their grants.²⁵⁴ Some of the common disadvantages centre on lack of control and sharing of profits and losses, particularly in share-equity schemes.²⁵⁵ Mayson argues that share-equity schemes are open to exploitation of the land redistribution beneficiary because of the power imbalance and the complexity of the contractual arrangements.²⁵⁶ Added to this, the lack of post-transfer monitoring of the projects means that there is no way to curb the effects of the power imbalance.

According to Mayson, other factors hindering the joint ventures are the dominance of white farmers, the current lack of involvement of workers in the establishment of the schemes (and the lack of options presented to them), the risky nature of the schemes and the lack of independent access to land.²⁵⁷

A more overarching problem highlighted by Hall, Kleinbooi and Mvambo is the fact that share-equity schemes are sometimes initiated by farm owners to obtain a 'capital injection' into an ailing business, with the land redistribution objective being sidelined.²⁵⁸ This sentiment is echoed by Mayson, who adds that 'power relations' determine what happens after implementation.²⁵⁹

5 PROBLEMS EXPERIENCED WITH THE SALRP

'WHAT ON EARTH IS GOING on in land reform? Since the ANC's decision in 2009 to make land and rural development one of its five election priorities, expectations have been high that a miserably failing land reform programme would, under the Zuma administration, receive an injection of bold new thinking, an expanded budget, increased

²⁵³ Lahiff E 'Business models in land reform' (2007) 27 PLAAS Research Report 8.

²⁵⁴ Mayson D 'Joint ventures' (2003) 7 PLAAS Occasional Paper Series 16.

²⁵⁵ Lahiff E 'Business models in land reform' (2007) 27 PLAAS Research Report 8.

²⁵⁶ Mayson D 'Joint ventures' (2003) 7 PLAAS Occasional Paper Series 9.

²⁵⁷ Mayson D 'Joint ventures' (2003) 7 PLAAS Occasional Paper Series 16.

²⁵⁸ Hall R, Kleinbooi K & Mvambo, N 'What land reform has meant and could mean to farm workers in South Africa' Theme: Farm workers and land reform in southern Africa Centre for Rural Legal Studies' paper presented at the SARP conference on Land Reform and Poverty Alleviation in Southern Africa Pretoria, 4 - 5 June 2001 7.

²⁵⁹ Mayson D 'Joint ventures' (2003) 7 PLAAS Occasional Paper Series 16.

capacity and more effective integration with other government programmes. None of these has yet materialised.²⁶⁰

Notwithstanding the various achievements of the past 15 years of increased land transfers and increase in budget and improved delivery since inception,²⁶¹ it is generally accepted that land redistribution in South Africa has been slow.²⁶² By the end of 2004 only 3 percent of agricultural land had been transferred to beneficiaries.²⁶³

In the PLAAS status report on land and agricultural policy in South Africa, 2010, Greenberg writes, citing Aliber and Kleinbooi in the work they conducted in 2009, that the likelihood of the SAG achieving the 30 percent target budget by 2025 is impossible considering the progress to date and considering that more funding would be required.

The author is aware that the SALRP is plagued by various problems. These include the lack of good quality arable agricultural land available for redistribution;²⁶⁴ ²⁶⁵ the commercial focus of land redistribution, from its poor origins of transformation;²⁶⁶ ²⁶⁷ the imbalances of power in the agricultural sector;²⁶⁸ the need to address poverty; job creation; household food security;²⁶⁹ the lack of institutional capacity to manage transactions and the budget for its intended purpose;²⁷⁰ ²⁷¹ ²⁷² ²⁷³ constitutional concerns highlighted by some commentators who argue that section 25 of the Constitution protects the right to property and conflicts with the SAG's right to expropriate land for redistribution

²⁶⁰ Cousins B & Hall R 'Plotting a new course for land reform and rural development' (2010) 16 *Amandla!*

²⁶¹ Jacobs P, Lahiff E & Hall R 'Land redistribution' (2003) 1 PLAAS Occasional Paper Series 6 – 11.

²⁶² The Centre for Development and Enterprise 'Land reform in South Africa: Getting back on track' (2008) 16 CDE Research 17.

²⁶³ Ntsebeza L 'Land redistribution in South Africa: the property clause revisited' in Ntsebeza L & Hall R (eds) *The Land Question in South Africa. The Challenge of Transformation and Redistribution* (2007) 119.

²⁶⁴ Weideman M *Land Reform, Equity and Growth in South Africa: A Comparative Analysis* (unpublished LLD thesis, University of Witwatersrand, 2006) 96 citing Schoeman JL & Scotney DM 'Agricultural potential as determined by soil terrain and climate' 1987 86 *South African Journal of Science*.

²⁶⁵ Jacobs P, Lahiff E & Hall R 'Land redistribution' (2003) 1 PLAAS Occasional Paper Series 26.

²⁶⁶ Kostiv P *The Progress of Land Reform in South Africa 1994 - 2008: Two Case Studies from KwaZulu-Natal* (unpublished MA thesis, University of KwaZulu-Natal, 2008) citing Greenberg S 'Land reform and transition in South Africa' (2003) *Transformation* 52.

²⁶⁷ Hall R 'A political economy of land reform in South Africa' (2004) 31 *Review of African Political Economy* 9 - 10.

²⁶⁸ Kariuki S 'Creating the black commercial farmers in South Africa' (2004) 68.

²⁶⁹ Jacobs P, Lahiff E & Hall R 'Land redistribution' (2003) 1 PLAAS Occasional Paper Series 15 - 26.

²⁷⁰ The Centre for Development and Enterprise 'Land reform in South Africa: Getting back on track' (2008) 16 CDE Research 17 - 24.

²⁷¹ Hall R 'A political economy of land reform in South Africa' (2004) 31 *Review of African Political Economy* 219.

²⁷² Greenberg S 'Status report on land and agricultural policy in South Africa' (2010) 40 PLAAS (Institute for Poverty, Land and Agrarian Studies) Research Report 5.

²⁷³ Lahiff E 'Land redistribution in South Africa' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 188 – 189.

purposes;²⁷⁴ badly designed projects²⁷⁵ and unworkable business plans;²⁷⁶ inadequate policy design; land use not taken into account when structuring land redistribution transactions;²⁷⁷ bureaucratic processes;²⁷⁸ the low political priority of land redistribution;²⁷⁹ and generally problems associated with implementation.^{280 281}

However, given the limited scope of this thesis and the fact that the rationale for the research is borne out of the budgetary problems experienced within the SALRP, this section will highlight some of the problems associated with the budgetary problems.

Financing of agriculture, in general, in South Africa is a concern.²⁸² This is no different for the SALRP. A successful land redistribution programme requires adequate funding to avoid a slow-down in implementation, which ultimately results in the new farmers' 'chances of success being undermined'.²⁸³ Redistribution also entails more than just funding land acquisition; land costs are only 30-40 percent of the total costs of land reform, and this does not include post-settlement support costs.²⁸⁴

5.1 'Willing Buyer, Willing Seller' (WBWS)

There is a general consensus amongst commentators that the WBWS model is not the suitable model for South Africa and that it is closely tied with the budgetary problems.²⁸⁵ Hall argues that because South Africa has adopted the WBWS model, the SAG bears the responsibility for the purpose of funding or

²⁷⁴ Ntsebeza L 'Land redistribution in South Africa: The property clause revisited' in Ntsebeza L & Hall R (eds) *The Land Question in South Africa. The Challenge of Transformation and Redistribution* (2007) 129.

²⁷⁵ Hall R (ed) *Another Countryside? Policy options for land and agrarian reform in South Africa* (2009) 6.

²⁷⁶ Lahiff E 'State, market or the worst of both? Experimenting with market-based land reform in South Africa' (2007) 30 PLAAS (Programme for Land and Agrarian Studies) Occasional Paper 15 - 16.

²⁷⁷ Hall R 'Land reform in South Africa: Successes, challenges and concrete proposals for the way forward' Land reform in South Africa: Constructive aims and positive outcomes – Reflecting on experiences on the way to 2014, Konrad-Adenauer-Stiftung Seminar Report No 20 presented on 26–27 August 2008 at Roode Vallei Country Lodge, Pretoria South Africa 21.

²⁷⁸ Jacobs P, Lahiff E & Hall R 'Land redistribution' (2003) 1 PLAAS Occasional Paper Series 26.

²⁷⁹ Hall R (ed) *Another Countryside? Policy options for land and agrarian reform in South Africa* (2009) 2.

²⁸⁰ De Jager T 'Reflecting on experiences in land reform and proposals on alternatives' Land reform in South Africa: Constructive aims and positive outcomes – Reflecting on experiences on the way to 2014, Konrad-Adenauer-Stiftung Seminar Report No 20 presented on 26–27 August 2008 at Roode Vallei Country Lodge, Pretoria South Africa 2.

²⁸¹ Jacobs P, Lahiff E & Hall R 'Land redistribution' (2003) 1 PLAAS Occasional Paper Series 19 – 25.

²⁸² SACAU 2010 Policy Conference Report 10 available at

<http://www.sacau.org/hosting/sacau/SacauWeb.nsf/SACAU%202010%20Policy%20Conference%20Report%20FINAL.pdf> (accessed 14 April 2011).

²⁸³ Binswanger-Mkhize H, Bourguignon C & Van den Brink R (eds) 'Introduction and summary' in *Agricultural land Redistribution. Towards a Greater Consensus* (2009) 36.

²⁸⁴ Binswanger-Mkhize H, Bourguignon C & Van den Brink R (eds) 'Introduction and summary' in *Agricultural land Redistribution. Towards a Greater Consensus* (2009) 36.

²⁸⁵ Kariuki S 'Creating the black commercial farmers in South Africa' (2004) 63 – 65.

subsidising the purchasing of land, which holds various limitations and frustrations for acquiring land.^{286 287} She maintains that there is actually a contradiction in South Africa between the amounts made available by the SAG in grants versus how much is actually required to acquire land at high market prices, which is further constrained by the SAG moving away from encouraging the pooling of resources by beneficiaries, which has been the case historically.²⁸⁸

Land activists see the WBWS model as expensive and cumbersome but also unjust, given that land was forcibly appropriated by the racial minority in the past.²⁸⁹ Greenberg points out that, according to the DRDLR and some land activists, the main challenge to the SALRP is the cost of land that has been inflated, which is tied to the WBWS model that the SAG has adopted. However, he does counter this by indicating that the setting of the land price is not a unilateral act by the party who owns it and thus there is an argument to be made for both points of view.²⁹⁰

The CDE has found that high land prices may not necessarily be the problem and that land prices have not in fact risen faster than inflation.²⁹¹ It maintains that the WBWS model should not be used as a 'scapegoat' in all instances. They make the point that even where land is cheap, land redistribution recipients are still only receiving low-quality small farms available to inexperienced farmers.²⁹²

Thwala has observed, citing the National Land Committee, 2001/2002, that the WBWS model requiring 'fair and just' compensation for existing land owners (who redistribute land) places a funding constraint on the SALRP.²⁹³

²⁸⁶ Hall R 'A political economy of land reform in South Africa' (2004) 31 *Review of African Political Economy* 219.

²⁸⁷ Hall R 'Transforming rural South Africa? Taking stock of land reform' in Ntsebeza L & Hall R (eds) *The Land Question in South Africa. The Challenge of Transformation and Redistribution* (2007) 87 – 89.

²⁸⁸ Hall R 'Transforming rural South Africa? Taking stock of land reform' in Ntsebeza L & Hall R (eds) *The Land Question in South Africa. The Challenge of Transformation and Redistribution* (2007) 99.

²⁸⁹ Cousins B 'Land reform in post-apartheid South Africa – a disappointing harvest. Livelihoods after land reform: the poverty impacts of land redistribution in southern Africa' available at <http://www.lalr.org.za/news/land-reform-in-post-apartheid-south-africa-2013-a-disappointing-harvest-by-ben-cousins> (accessed 3 February 2011).

²⁹⁰ Greenberg S 'Status report on land and agricultural policy in South Africa' (2010) 40 PLAAS Research Report 4.

²⁹¹ The Centre for Development and Enterprise 'Land reform in South Africa: Getting back on track' (2008) 16 CDE Research 27.

²⁹² The Centre for Development and Enterprise 'Land reform in South Africa: Getting back on track' (2008) 16 CDE Research 46.

²⁹³ Thwala W 'The land question and sustainable development in South Africa: Issues and challenges' (2010) 5 *African Journal of Agricultural Research* 3557.

Whether or not the WBWS model is appropriate for the SARLP is beyond the scope of this thesis. However, it is difficult to ignore the logic that market-related land prices could place a burden on the fiscus.

5.2 Funding approach

Hall has also remarked that the 'fragmented approach' to funding and post-settlement support, as a result of the differences between institutions regarding application processes, planning and priority frameworks and budgeting systems, is 'a central obstacle to improving support to new, small and disadvantaged farmers'.²⁹⁴ Greenberg also holds this view.²⁹⁵

5.3 The budget

The SARLP's budgetary constraints have also received much attention from the media since 1997.²⁹⁶ ²⁹⁷ There have been reports that the DRDLR could not meet the land redistribution target of 2014.²⁹⁸ There have also been other reports that budget constraints were the result of inflated land prices causing delays in land reform.²⁹⁹

There have also been concerns that the land redistribution budget allocated would be inadequate to purchase the land necessary for effective land redistribution.³⁰⁰

The *White Paper on South African Land Policy* of 1997³⁰¹ and various commentators have raised concerns that the land reform budget allocation of less than 1 percent of the national budget is insufficient.³⁰²

²⁹⁴ Hall R (ed) 'Dynamics in the commercial farming sector' in Ntsebeza L & Hall R (eds) *The Land Question in South Africa. The Challenge of Transformation and Redistribution* (2007) 129.

²⁹⁵ Greenberg S 'Land Reform and Transition in South Africa' (2003) 52 *Transformation: Critical Perspectives on Southern Africa* 42.

²⁹⁶ Southey C 'Heavy yoke drags initial redistribution plans down' *Financial Mail* 31 October 1997 available at <http://secure.financialmail.co.za/97/1031/busec/land.htm> (accessed 5 February 2011).

²⁹⁷ Hofstatter S 'New farmers want funding overhaul' *Business Day* 2 November 2009 available at <http://www.businessday.co.za/articles/Content.aspx?id=85652> (accessed 2 February 2011).

²⁹⁸ The Minister was quoted as saying: 'We cannot raise R75-billion by 2014 to acquire the 82-million hectares of land that we have targeted ... we just don't have the money'. Zigomo M 'Minister says SA won't meet land-reform target' *Mail & Guardian Online* 26 February 2010 available at <http://www.mg.co.za/article/2010-02-26-minister-says-sa-wont-meet-landreform-target> (accessed 21 September 2010).

²⁹⁹ Hofstatter S 'Minister warns land reform beneficiaries' *Business Day* 5 March 2009 available at <http://www.businessday.co.za/Articles/Content.aspx?id=60784> (accessed 4 February 2011).

³⁰⁰ Ntsebeza L 'Land rights and democratisation: Rural tenure reform in South Africa's former bantustans' (2003) 52 *Transformation: Critical Perspectives on Southern Africa* 79.

³⁰¹ The *White Paper on South African Land Policy* of 1997 para 3.26.

³⁰² Andrews M 'Struggling for a life in dignity' in Ntsebeza L & Hall R (eds) *The Land Question in South Africa. The Challenge of Transformation and Redistribution* (2007) 211.

Commentators such as Hall and Lahiff noted substantial funding is needed for the SALRP and that budget allocation is 'of central importance' to the SALRP³⁰³ and that in 2004 land reform budgetary constraints became a 'real limitation' to the South African land reform programme.³⁰⁴ They based their view on an assessment conducted of land reform budgetary trends in the first ten years of democracy. They found, inter alia, that: i) the budget was for redistribution and restitution was not more than 0.5 percent of the total national budget; and ii) there was a trend to over-commit when a budget was not yet available; iii) although the land reform budget rose gradually, there has been a decline in funds available for the acquisition of land and related costs ('transfers and subsidies').³⁰⁵ They, in fact, predicted that 'Current trends in the land reform budget suggest that official targets will not be met'.³⁰⁶ Regrettably, this has materialised.

The author, in her own limited experience, has found this to be the case as recently as 2010 when she was involved in various land redistribution projects. She found that although projects were approved, because of a lack of funding or over-commitment of the DRDLR's budget, these projects could not be implemented and in many instances various service providers were not paid for services rendered.³⁰⁷

In a separate paper, Hall labelled the land reform budget as having become 'a key constraint' to what is holding the land redistribution back in South Africa.³⁰⁸ Referring to the 2007 land redistribution budget, she maintained that even if below market compensation was to be given in the WBWS environment, the budget allocated would be insufficient and further increases in public funding would be needed.³⁰⁹

Cousins, although not of the belief that budget constraints has been the main reason for the lack of redistribution, maintains that under-funding of land

³⁰³ Hall R & Lahiff E 'Budgeting for land reform' (2004) 13 PLAAS (Programme for Land and Agrarian Studies) Policy Brief Debating land reform and rural development 1.

³⁰⁴ Hall R & Lahiff E 'Budgeting for land reform' (2004) 13 PLAAS Policy Brief 2.

³⁰⁵ Hall R & Lahiff E 'Budgeting for land reform' (2004) 13 PLAAS Policy Brief 1 – 3.

³⁰⁶ Hall R & Lahiff E 'Budgeting for land reform' (2004) 13 PLAAS Policy Brief 4.

³⁰⁷ Levin R 'Towards a national implementation strategy for land redistribution' in Cousins B (ed) *At The Crossroads: Land and Agrarian Reform in South Africa into the 21st Century* (2000) 72.

³⁰⁸ Hall R 'Transforming rural South Africa? Taking stock of land reform' in Ntsebeza L & Hall R (eds) *The Land Question in South Africa. The Challenge of Transformation and Redistribution* (2007) 87 – 89.

³⁰⁹ Hall R 'Transforming rural South Africa? Taking stock of land reform' in Ntsebeza L & Hall R (eds) *The Land Question in South Africa. The Challenge of Transformation and Redistribution* (2007) 102.

redistribution is one of the main reasons that the SALRP has not taken off as it should.³¹⁰ In his estimation, approximately R1 billion per annum would be needed for the SAG to reach its land redistribution targets. He is sceptical whether this could happen.³¹¹

The CDE have identified government funding of land redistribution as a major challenge. They reason that one of the problems is the inability of DRDLR to spend its allocated budget. Secondly, supposing that the DRDLR does spend its budget, they argue that there is a 'mismatch' between the size of its budget and the likely cost of meeting its land reform goals.³¹² They contend that although an increase in budget is needed for a successful SALRP, this alone will not suffice. They recommend that the budget be spent well and the involvement of the private sector investment be sought to aid the increase in budget and to provide the capacity and leverage to ensure the money is well spent.³¹³

While cautioning against the adverse effects of lack of budget for land redistribution, Van den Brink, Thomas and Binswanger-Mkhize are confident that the SAG would be able to fund the SALRP from its own budget. However, they agree that the non-land acquisition activities suffer because these activities are under-funded.³¹⁴

Given the historic deregulation of the commercial agricultural sector,³¹⁵ the emerging black farmers, being the land redistribution beneficiaries, do not enjoy the same subsidies or assistance as their historic white counterparts. Hall makes the point that the SAG's initiatives to address this and to support land reform beneficiaries have failed because they have been seriously under-

³¹⁰ Cousins B 'Agrarian Reform and the "two economies": Transforming South Africa's countryside' in Ntsebeza L & Hall R (eds) *The Land Question in South Africa. The Challenge of Transformation and Redistribution* (2007) 220 – 245.

³¹¹ Cousins B 'Agrarian reform and the "two economies": Transforming South Africa's countryside' in Ntsebeza L & Hall R (eds) *The Land Question in South Africa. The Challenge of Transformation and Redistribution* (2007) 224.

³¹² The Centre for Development and Enterprise 'Land reform in South Africa: Getting back on track' (2008) 16 CDE Research 22.

³¹³ The Centre for Development and Enterprise 'Land reform in South Africa: Getting back on track' (2008) 16 CDE Research 54.

³¹⁴ Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 217.

³¹⁵ See the discussion at chapter 1 paragraph 2 outlining the historic deregulation of South Africa's commercial agricultural sector.

funded and the redress was 'project focussed' and not 'market focussed' as it was during the apartheid era.^{316 317}

Notwithstanding all these views expressed over time, the DRDLR's budget for the SALRP has not been increased substantially and this has contributed to the slow progress of the SALRP.

5.4 **Significance of land redistribution**

The 'meagre' budget allocation has also been regarded as evidence that land reform is not prioritised in South Africa and that the political will of the ANC in this regard is lacking.³¹⁸ The author submits that the lack of political will detracts from the significance of land redistribution and informs the public's view of the SAG's intention and motivation. On the other hand, considering that land redistribution is fairly regulated, it could be argued that this is a reflection of the SAG's political will by ensuring that the framework for any action will be taken in this context. The author is, however, not convinced of the latter. Unless the issue of political will is properly addressed, it will continue to hamper the progress of the SALRP.

5.5 **Grant structure**

The SALRP grant structure or reliance on grants has also been identified as one of the elements that contribute to a 'mismatch' between applicants' needs and the land available and hampering land redistribution projects from going ahead in the WBWS environment.³¹⁹

Even though they have been phased out, the SLAG and LRAD have also come under scrutiny and the problems with the SALRP have also been attributed to these grant funding mechanisms.

5.5.1 **SLAG**

The problems with the SLAG centred on, amongst other problems: limited grants constraining households from acquiring land; excessive bureaucracy and lengthy project cycles; reliance on outside consultants to formulate project

³¹⁶ Hall R (ed) *Another Countryside? Policy options for land and agrarian reform in South Africa* (2009) 127.

³¹⁷ Cousins B 'Why land invasion will happen here too' available at www.oxfam.org.uk/resources/learning/landrights/downloads/saziminv.rtf (accessed 21 February 2011).

³¹⁸ Ntsebeza L 'Land rights and democratisation: Rural tenure reform in South Africa's former Bantustans' (2003) 52 *Transformation: Critical Perspectives on Southern Africa* 71.

³¹⁹ Hall R (ed) 'Land reform: How, and for whom? Land demand, targeting and acquisition' in *Another Countryside? Policy Options for Land and Agrarian Reform in South Africa* (2009) 65.

plans without real participation by the beneficiaries themselves; low levels of complementary support services; over-reliance on market forces; payment of inflated prices for marginal land; lack of any significant contribution to the development of semi-commercial and commercial black farmers; and limited impact on rural employment or transformation of agricultural land holdings. The lack of partnership and integration between the SAG departments themselves as well as with non-governmental service providers, NGOs and the private sector were also identified as hampering SLAG.^{320 321} This, in turn, hampered the progress of the SALRP.

5.5.2 LRAD Programme

Problems particular to the LRAD Programme include the fact that although it had more stringent eligibility criteria than SLAG, it did not deal with the problems identified in SLAG.³²² These include, inter alia:³²³ loss of institutional capacity as a result of the moratorium placed on land redistribution when the SAG was making the change from SLAG to LRAD; lack of consultation in adopting policy, lack of institutional capacity to implement the programme; the disconnect between departments, resulting in unclear inter-departmental role and responsibility allocation; the neglected position of farm workers and labour tenants as a consequence of the policy shift; the actual project process, from inappropriate beneficiary selection leading to loss of 'institutional legitimacy'; and the over-ambitious targets set.

Cumbersome approval mechanisms, a rigid and inflexible grant structure, reliance on current land owners to initiate projects, unwieldy group schemes and the imposition of inappropriate 'business plans' on poor communities have also been cited as problems associated with LRAD.^{324 325}

³²⁰ Presentation by the Minister for Agriculture and Land Affairs, Republic of South Africa, Ms AT Didiza for the International Conference on Agrarian Reform and Rural Development, Brazil, March 2006 22.

³²¹ Jacobs P, Lahiff E & Hall R 'Land redistribution' (2003) 1 PLAAS Occasion Paper Series 4.

³²² Jacobs P, Lahiff E & Hall R 'Land redistribution' (2003) 1 PLAAS Occasion Paper Series 26.

³²³ Weideman M *Land Reform, Equity and Growth in South Africa: A Comparative Analysis* (unpublished LLD thesis, University of Witwatersrand, 2006) 256 – 257 based on an interview with former Minister of Agriculture Derek Hanekom and citing Cousins B 'Didiza's recipe for disaster' *Mail & Guardian* 18 – 24 August 2000 & Cousins B 'Meaningful land reform must involve people at the grassroots' *Sunday Independent Reconstruct* 20 February 2000.

³²⁴ Kariuki S 'Creating the black commercial farmers in South Africa' (2004) 4.

³²⁵ Kariuki S 'Creating the black commercial farmers in South Africa' (2004) 54.

Now that LRAD has been 'phased out', it is hoped that some, if not all, of these problems will be addressed. However, problems have already been experienced with PLAS.

5.5.3 PLAS and RADP

Although PLAS has only been introduced recently, there have already been reports of problems with it.

Cousins and Hall are of the view that PLAS is problematic because it lacks proper area-based planning and there is no guidance offered to officials as to what type of land acquisition to prioritise – they are merely authorised to spend money to acquire land in terms of the methods of acquisition specified above.³²⁶

Other problems are tied to the RADP. It has been reported that the DRDLR is buying land from insolvent black farmers who were supposed to receive grants from the DRDLR, at below market value, to assist them with their financial problems and then leasing it back to the black farmers. Kleinbooi argues that this 'dispossession', together with the lease component, goes against the very nature of land redistribution as ownership and has the makings of nationalisation. Another concern with this is that it would prevent investment in the land because the farmers would not be able to obtain credit.³²⁷

5.5.4 CASP

Hall and Aliber explain that when the first review was conducted of the CASP, it was found not to be as comprehensive as it intended to be.³²⁸ In considering the problems with CASP, it has been observed that budget increases and budget allocations to the agricultural sectors since 2005 have not really addressed the under-investment experienced by black agriculture in South Africa.³²⁹ Hall and Aliber have also found that under CASP, the SAG is offering up to 100 percent grants to commercial ventures — rather than providing partial

³²⁶ Cousins B & Hall R 'Plotting a new course for land reform and rural development' (2010) 16 *Amandla!* 22.

³²⁷ Kleinbooi K 'What is happening with land reform?' available at <http://anothercountryside.wordpress.com/2010/10/27/%E2%80%98m-losing-my-land-to-the-department-of-land-affairs%E2%80%99/> (accessed 5 May 2011).

³²⁸ Hall R & Aliber M 'The case for re-strategising spending priorities to support small-scale farmers in South Africa' (2010) 17 PLAAS Working Paper 11.

³²⁹ Hall R & Aliber M 'The case for re-strategising spending priorities to support small-scale farmers in South Africa' (2010) 17 PLAAS Working Paper 4.

subsidies and leveraging commercial farmers' own resources — while often providing zero percent to subsistence producers.³³⁰

They argue that it is not necessarily the lack of budget that causes the problems but rather the 'misallocation thereof' in respect of the CASP.³³¹ They hold the view that an increase in the CASP budgets is not the solution. Their view is that the problem lies in the vision of CASP being: 'excessively oriented to supporting individual farmers; excessively channelled into land reform projects (which needs a dramatic design overhaul, in the absence of which CASP support to them will continue to be a case of 'throwing good money after bad'); and dependent on an extension service that is itself equipped to serve only few small-scale farmers and cannot be feasibly scaled up'.³³²

5.6 Post settlement support

It was noted at the SACA 2010 Conference that although South Africa's 'land policy is good', emerging farmers must be adequately supported when they are put on the land'.³³³ This lack of post-settlement support has plagued the SALRP and is an issue that various commentators have observed as 'crippling' the success of land redistribution projects.³³⁴ Kariuki maintains that lack of post-settlement support is one of the 'greatest challenges' of the SALRP.³³⁵ Hall has also expressed the view that the lack of post-settlement support adds to this 'dysfunctional and disconnected' institutional co-ordination and is a further reason for the lack of land redistribution in South Africa.³³⁶

Notwithstanding the problems identified in respect of the CASP, it is hoped that the CASP will in time address these post-settlement support challenges.

5.7 Credit institutions

Kariuki explains that where LRAD projects have been part debt funded, the risk of failure is quite high because the beneficiaries have to finance the debt from the first day of operation, which is practically impossible without post-settlement

³³⁰ Hall R & Aliber M 'The case for re-strategising spending priorities to support small-scale farmers in South Africa' (2010) 17 PLAAS Working Paper 15– 16.

³³¹ Hall R & Aliber M 'the case for re-strategising spending priorities to support small-scale farmers in South Africa' (2010) 17 PLAAS Working Paper 17.

³³² Hall R & Aliber M 'The case for re-strategising spending priorities to support small-scale farmers in South Africa' (2010) 17 PLAAS Working Paper 18.

³³³ SACA 2010 Policy conference report 10.

³³⁴ Kariuki S 'Creating the black commercial farmers in South Africa' (2004) 51.

³³⁵ Kariuki S 'Creating the black commercial farmers in South Africa' (2004) 30.

³³⁶ Hall R 'Transforming rural South Africa? Taking stock of land reform' in Ntsebeza L & Hall R (eds) *The Land Question in South Africa. The Challenge of Transformation and Redistribution* (2007) 87 – 89.

support or realising any profits.^{337 338} Jacobs, Lahiff and Hall note that, due to the negative impact of defaulting farmers, the Land Bank's role in advancing credit has declined.³³⁹

The problems faced by financial institutions themselves also have a negative impact on land redistribution funding. For example, even though the risk for beneficiaries is that they stand to lose the land when they cannot service their debt, the Land Bank's coffers also stand to run dry because of these bad debts.³⁴⁰ Fraud within the senior ranks of the Land Bank³⁴¹ also affects its ability to operate optimally. It has also been reported that Ithala Development Finance Corporation has suffered at the hand of mismanagement and legislative non-compliance,³⁴² leading to it operating at a loss of millions.³⁴³

Some recommendations to address the budgetary constraints have been expressed by commentators. These include: cutting the compensation paid to land owners from market price to productive value as a means to reduce the overall cost of redistributing land; investment in the economy and ways of bringing the private sector to invest resources to address this challenge to land redistribution needs to be explored; and other interventions such as direct support to small farmers – in the form of subsidised credit and ploughing services as options.³⁴⁴

These recommendations may seem obvious but, considering that they were made in 2003 and have not been implemented, the solution is not that simple. Given the complexity of the issue of land redistribution in South Africa, it is understandable to some extent; the question is how long this will remain palatable to the landless?

³³⁷ Kariuki S 'Creating the black commercial farmers in South Africa' (2004) 41.

³³⁸ Although this is unusual in respect of the terms of repayment, this is based on research conducted in Mpumalanga and an interview with a Mr Chris Williams, Director, the Transvaal Rural Action Committee, Mpumalanga on 19 April 2004.

³³⁹ The Centre for Development and Enterprise 'Land reform in South Africa: Getting back on track' (2008) 16 CDE Research 23.

³⁴⁰ Mail & Guardian Online 'Tight market conditions add to Land Bank problems' *Mail & Guardian Online* 17 August 2009 available at <http://www.mg.co.za/article/2009-08-17-tight-market-conditions-add-to-land-bank-problems> (accessed 5 February 2011).

³⁴¹ The Centre for Development and Enterprise 'Land reform in South Africa: Getting back on track' (2008) 16 CDE Research 23.

³⁴² Hofstatter S & Wa Afrika, M 'Ithala Bank faces ruin KZN lender treated like 'piggy bank' *Times* 3 October 2010 available at <http://www.timeslive.co.za/business/article686185.ece/Ithala-Bank-faces-ruin> (accessed 7 February 2011).

³⁴³ Mbanjwa B 'Ithala Bank operating at a loss' *Independent Online News* 17 March 2010 available at <http://www.iol.co.za/news/south-africa/ithala-bank-operating-at-a-loss-1.476660> (accessed 7 February 2011).

³⁴⁴ Jacobs P, Lahiff E & Hall R 'Land redistribution' (2003) 1 PLAAS Occasional Paper Series 26 - 28.

6 CONCLUSION

The SALRP is fairly well-regulated or, at least, has a relatively stable body of rules. This regulation is advantageous as it ensures that the necessary rules are in place for the implementation of the SALRP, which investors find comforting and can serve as a means of attracting investment.³⁴⁵ As costly as this could have been (given the expertise that it would have required in drafting it), the legislative framework has not encouraged funding for the SALRP and does not provide potential alternative sources of funding.

The SALRP has been primarily government grant-funded. The grant structure has changed over time and the latest grants seem to have an investment flavour to them. Whether this will play out in practice is debateable as there have been some teething problems. The SALRP has also been funded by contributions from beneficiaries and private sector funding in the form of credit from financial institutions and equity or capital investments by the private sector. These private sector investments require commercial structuring in order to facilitate them, what have been termed 'business models'. Although these business models have almost been made out to be sources of funding, they are commercial legal principles applied to the variables of a transaction. The business models themselves are not sources of funding but rather a means to facilitate funding or investment into the SALRP.

The challenges facing the SALRP are subject to debate amongst commentators. However, these challenges can be divided into the following five categories: land; political issues; food security; poverty alleviation; institutional issues; and budgetary or funding constraints. The literature is divided on what the main problem with the SALRP is. The budgetary constraints can, however, not be discounted as being one of the most important challenges facing the SALRP and a key determinant of a successful SALRP.

The fact that the funding of the SALRP is linked to how the underlying commercial transactions of the individual land redistribution projects are structured, that is the business models, has potential for attracting potential alternative sources of funding. Although there are different types of business models, they are flexible 'structures'. Depending on the commercial principles

³⁴⁵ See the discussion on the FDI regulatory framework in chapter 6 at paragraph 3.

applicable and the type of funding at hand, there is a solution to facilitate funding.

South Africa is not the only country to have attempted the implementation of a land redistribution programme or to have answered the question of how to fund it. Based on various grounds of comparison, which will be elaborated on, the next chapter will review the Zimbabwean and Brazilian land redistribution programmes. It will concentrate on how these programmes have been funded in order to evaluate whether their experiences hold potential alternative sources of funding for the SALRP.



CHAPTER 4: LAND REDISTRIBUTION PROGRAMMES IN ZIMBABWE AND BRAZIL: A COMPARATIVE REVIEW

1 INTRODUCTION

This chapter is a comparative review between South Africa, Zimbabwe and Brazil. The purpose of this chapter is to determine whether Zimbabwe and Brazil's land redistribution programmes reveal any potential alternative sources of funding for the SALRP.

The chapter will not discuss the various social movements and politicisation of the land issues that influenced the land question in these countries, as well as general lessons South Africa can learn from these countries to improve the SALRP.

The chapter includes both the simultaneous and successive comparative methods. The first part of the chapter outlining the rationale for the comparison is written using both the simultaneous and successive methods of comparison. This is done to draw attention to the various connections and differences used to compare and contrast the three countries.

The successive parts, reviewing how Zimbabwe and Brazil have regulated and funded their land redistribution programmes, are written using the successive method of comparison to focus on each country in a bit more detail.

2 WHY A COMPARATIVE ANALYSIS BETWEEN SOUTH AFRICA, ZIMBABWE AND BRAZIL'S LAND REDISTRIBUTION PROGRAMMES?

2.1 Agricultural sector

Zimbabwe and Brazil's land redistribution programmes are linked to their respective agricultural sectors, in the same way that the SALRP is linked to its agricultural sector. The agricultural sectors of Zimbabwe and Brazil also play an important role in their respective economies, in much the same way and for similar reasons as South Africa.³⁴⁶ Zimbabwe's farming sector makes a

³⁴⁶ The Finance Gazette 'Agric key to Zim's future' *The Financial Gazette* 17 March 2011 available at <http://www.financialgazette.co.zw/comment/7593-agric-key-to-zims-future.html> (accessed 25 April 2011).

particularly large contribution to its GDP, at 17.94 percent.³⁴⁷ In Brazil primary agriculture accounts for 6.08 percent of its GDP.^{348 349}

Another similarity between these countries is the dualistic nature of their agricultural sectors.³⁵⁰

2.2 History

Although Zimbabwe and Brazil are different to South Africa in many respects, all are proponents of land redistribution, with social and economic objectives.³⁵¹

Although the timing of land redistribution initiatives in each of South Africa, Zimbabwe and Brazil differed, in all three countries the need for land redistribution was borne out of their respective colonial legacies of dispossession of agricultural land and the impoverishment of rural people.^{352 353}

Lebert, however, notes that the conditions in Zimbabwe were different.³⁵⁴ The same holds true for Brazil. In Zimbabwe it was the failed gold rush that led the British settlers to dispossess agricultural land from the indigenous people. In Brazil the Portuguese colonisers created land issues characterised by a class struggle, with a skewed land distribution favouring aristocratic groups and denying 'non-elite' members of the white poor population access to land and later slaves.³⁵⁵

³⁴⁷ http://www.google.com/publicdata?ds=wb-wdi&met=nv_agr_totl_zs&idim=country:ZWE&dl=en&hl=en&q=zimbabwe+agriculture+gdp (accessed 25 April 2011).

³⁴⁸ http://www.google.com/publicdata?ds=wb-wdi&met=nv_agr_totl_zs&idim=country:BRA&dl=en&hl=en&q=brazil+agriculture+gdp (accessed 25 April 2011).

³⁴⁹ In 2005, the Organisation for Economic Co-Operation and Development recorded the primary agriculture of Brazil as contributing 8 per cent of Brazil's GDP. Organisation for Economic Co-Operation and Development 'Agricultural Policy Reform in Brazil' 2005 Organisation for Economic Co-Operation and Development Policy Brief 1.

³⁵⁰ FIAN International 'Agrarian reform in Brazil' 1 available at <http://www.fian.org/resources/documents/others/agrarian-reform-in-brazil/pdf> (accessed 25 April 2011).

³⁵¹ Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 15.

³⁵² Cousins B 'Why land invasion will happen here too'.

³⁵³ Lahiff E 'The politics of land reform in Southern Africa' (2003) 19 Institute of Development Studies Sustainable Livelihoods in Southern Africa Programme Research Paper 1.

³⁵⁴ Lebert T 'An introduction to land and agrarian reform in Zimbabwe' in Rosset P, Patel R & Courville M (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 41.

³⁵⁵ Navarro Z 'Expropriating land in Brazil' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 269.

2.3 Objectives of land redistribution programmes

A further rationale for the comparison is that, overall, the land redistribution programme objectives of all three countries included restoring balance in land ownership by removing racial or class inequalities, shifting the ownership of quality agricultural land, improved patterns of income distribution and, to some extent, addressing rural poverty and food security.³⁵⁶ Zimbabwe, in particular, with the introduction of the Fast Track Land Reform Programme (FTLRP) in 2000, included the creation of black commercial farmers and small-scale commercial farmers as part of its stated objectives.³⁵⁷ Interestingly, and as noted in chapter 3, at South Africa's 2005 National Land Summit, South Africa's land redistribution programme policy was an effort to 'fast track land reform'.³⁵⁸ Navarro remarks that Land reform then was seen as 'a fundamental policy that would liquidate the political domination of land elites; contribute to improved patterns of income distribution in rural areas; and, in particular, boost industrialization in Brazil after the formation of an enlarged internal market'.³⁵⁹

A further reason underpinning the comparison is the fact that both Zimbabwe and Brazil have at one phase of their land redistribution programmes or other, although motivated by different issues, applied a version of the MLAR for their land redistribution programmes, like South Africa.

2.4 Challenges

South Africa, Zimbabwe and Brazil have experienced similar challenges in implementing their respective land redistribution programmes. Notably, just like the SALRP is currently being labelled as 'slow', Zimbabwe and Brazil's land redistribution programmes have also been regarded as 'slow' at one stage or another, with it gaining momentum in different ways. In Brazil's case, it gained momentum after 1996, due to opposition party and social movement pressures from organisations such as the Landless Workers' Movement (*Movimento dos Trabalhadores Rurais Sem Terra* (MST)). Thus the momentum was gained

³⁵⁶ Pazvakavambwa S & Hungwe V 'Land redistribution in Zimbabwe' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 149.

³⁵⁷ Pazvakavambwa S & Hungwe V 'Land Redistribution in Zimbabwe' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 149.

³⁵⁸ Ntsebeza L & Hall R (eds) *The Land Question in South Africa: The Challenge of Transformation and Redistribution* (2007) 15.

³⁵⁹ Navarro Z 'Expropriating land in Brazil' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 269.

because land redistribution was on the political agenda of the Brazilian central government's list for investment.³⁶⁰

One main common challenge between the SALRP and the Zimbabwean and the Brazilian land redistribution programmes, is that they have been plagued by funding constraints.^{361 362 363}

2.5 A closer look

2.5.1 Zimbabwe

In both Zimbabwe and South Africa the objective of the land redistribution programmes, inter alia, is to target the landless poor.³⁶⁴ A compelling reason to review the Zimbabwean land redistribution programme is the fact that in recent years in the media and the academic circles there has been concern that the SALRP would develop into the Zimbabwean experience.³⁶⁵ Notwithstanding this critique though, at the same time it should be noted that Zimbabwe has also conceptualised its land redistribution programme into more than land transfers, but rather 'a broader agriculture-driven national strategy for economic growth and development'.³⁶⁶

There are some notable differences between the SALRP and the Zimbabwean land redistribution programme. First, South Africa is highly industrialised compared to Zimbabwe, which is not.³⁶⁷ In addition, although the ratio of maladministration of land in Zimbabwe was less severe than it is in South Africa, the demand for the return of land to the dispossessed majority of indigenous and local people was central to the national liberation struggle of Zimbabwe and featured prominently in the policies of post-dependent state.³⁶⁸ South Africa adopted a negotiated land reform approach, while Zimbabwe's experience on the other hand has increasingly been marked by violence

³⁶⁰ Navarro Z 'Expropriating land in Brazil' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 276.

³⁶¹ Navarro Z 'Expropriating land in Brazil' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 285.

³⁶² Sauer S 'The World Bank's land reform Brazil' in Rosset P, Patel R & Courville M (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 186.

³⁶³ Sauer S 'The World Bank's land reform Brazil' in Rosset P, Patel R & Courville M (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 184.

³⁶⁴ Cousins B 'Why land invasion will happen here too'.

³⁶⁵ Cousins B 'Why land invasion will happen here too'.

³⁶⁶ Pazvakavambwa S & Hungwe V 'Land Redistribution in Zimbabwe' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 149 - 150.

³⁶⁷ Cousins B 'Why land invasion will happen here too'.

³⁶⁸ Lahiff E 'The politics of land reform in Southern Africa' (2003) 19 Institute of Development Studies Research Paper 23.

against land owners, farmers and others and 'authoritarianism' in an effort to address the unequal redistribution of land.^{369 370} Zimbabwe's land redistribution programme was liberal and state-centred, unlike South Africa's variation of the MLAR model, which is meant to be private sector-driven.³⁷¹

Consequently, Zimbabwe's approach to land redistribution has been described by more than one commentator as 'explosive'³⁷² and 'highly politicised'.^{373 374} This, balanced with the results achieved by its land redistribution programme, makes Zimbabwe an interesting case study for South Africa.

Some commentators say that the early land redistribution initiatives of Zimbabwe were successful. Others note that, much in the same way as South Africa, it was slow and constrained by various challenges^{375 376} and criticised it for the fact that the poorer households have received less support.³⁷⁷ Much in the same way that this has been attributed to high land prices in South Africa, Moyo also attributes this phenomenon in Zimbabwe to high land prices and makes the point that the process was led by land owners as opposed to demand-led.³⁷⁸

The general consensus amongst commentators is that after 17 years of independence the Zimbabwean land redistribution programme failed to address the 'land question in Zimbabwe'.³⁷⁹

Unlike in South Africa, the Zimbabwean land redistribution programme was affected by various economic crises. Lahiff describes the period from 2000 as

³⁶⁹ Lahiff E 'The politics of land reform in Southern Africa' (2003) 19 Institute of Development Studies Research Paper 3.

³⁷⁰ Lahiff E 'The politics of land reform in Southern Africa' (2003) 19 Institute of Development Studies Research Paper 32.

³⁷¹ Moyo S 'The land question in southern Africa: A comparative review' in Ntsebeza L & Hall R (eds) *The Land Question in South Africa. The Challenge of Transformation and Redistribution* (2007) 73.

³⁷² Moyo S 'The land question in southern Africa: A comparative review' in Ntsebeza L & Hall R (eds) *The Land Question in South Africa. The Challenge of Transformation and Redistribution* (2007) 61.

³⁷³ Moyo S 'The land question in southern Africa: A comparative review' in Ntsebeza L & Hall R (eds) *The Land Question in South Africa. The Challenge of Transformation and Redistribution* (2007) 77.

³⁷⁴ Pazvakavambwa S & Hungwe V 'Land Redistribution in Zimbabwe' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 152.

³⁷⁵ Pazvakavambwa S & Hungwe V 'Land Redistribution in Zimbabwe' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 146.

³⁷⁶ Lebert T 'An introduction to land and agrarian reform in Zimbabwe' in Rosset P, Patel R & Courville M (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 49.

³⁷⁷ Lahiff E 'The politics of land reform in Southern Africa' (2003) 19 Institute of Development Studies Research Paper 24.

³⁷⁸ Moyo S 'The Land and Agrarian Question in Zimbabwe' 8 at http://www.networkideas.org/feathm/dec2004/conference_papers/land_agrarian_question_zimbabwe_sm.pdf (29 August 2010).

³⁷⁹ Pazvakavambwa S & Hungwe V 'Land Redistribution in Zimbabwe' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 149.

a 'sustained meltdown'.³⁸⁰ This resulted in budgetary shortfalls, increase in poverty and massive food shortages, compounded by the drought experienced by Zimbabwe between 2001 and 2002. This was further compounded by the political crises experienced in Zimbabwe.³⁸¹

The funding challenges of the Zimbabwean land redistribution programme manifested in having an inadequate national budget.^{382 383} According to Lebert, the GoZ's domestic budget for its land redistribution programme was strained by 1983.³⁸⁴

As Moyo notes: 'Poor economic results and the failure of the State to raise consistent external financial support from international financial institutions meant that the State would not live up to its development promise'.³⁸⁵

Another problem experienced is that the land legislation was being challenged by farmers.³⁸⁶

Another shared challenge is that of the quality of land available for redistribution. Pazvakavambwa and Hungwe have also highlighted that Zimbabwe's 'almost-exclusive use' of the WSWB meant that the GoZ had very limited control over the amount, location and quality of land acquired and most of the land used for land redistribution was not 'prime land'.³⁸⁷

2.5.2 Brazil

Many parallels have been drawn between South Africa and Brazil as emerging economies.³⁸⁸

South Africa and Brazil are also part of G3 or India-Brazil-South Africa Dialogue Forum (IBSA), Brazil, India, China and South Africa (BRICS) and Brazil, South

³⁸⁰ Lahiff E 'The politics of land reform in Southern Africa' (2003) 19 Institute of Development Studies Research Paper 26.

³⁸¹ Lahiff E 'The politics of land reform in Southern Africa' (2003) 19 Institute of Development Studies Research Paper 26.

³⁸² Cousins B 'Why land invasion will happen here too'.

³⁸³ Pazvakavambwa S & Hungwe V 'Land Redistribution in Zimbabwe' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 155.

³⁸⁴ Lebert T 'An introduction to land and agrarian reform in Zimbabwe' in Rosset P, Patel R & Courville M (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 49.

³⁸⁵ Moyo S 'The land question in southern Africa: A comparative review' review' in Ntsebeza L & Hall R (eds) *The Land Question in South Africa. The Challenge of Transformation and Redistribution* (2007) 76.

³⁸⁶ Pazvakavambwa S & Hungwe V 'Land Redistribution in Zimbabwe' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 147.

³⁸⁷ Pazvakavambwa S & Hungwe V 'Land Redistribution in Zimbabwe' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 146.

³⁸⁸ Wooldridge A 'The emerging emerging markets. Businesses will learn to look beyond the BRICs' *The Economist* 22 November 2010 available at <http://www.economist.com/node/17493411> (accessed 8 March 2011).

Africa, India and China Group (BASIC),^{389 390 391} evidencing their common interests at different levels. Brazil and South Africa together with India have formed the IBSA Trust Fund.³⁹² The purpose of the IBSA Trust Fund is to: 'identify replicable and scalable projects that can be disseminated to interested developing countries as examples of best practices in the fight against poverty and hunger'.³⁹³

Brazil, like South Africa, has a decentralised approach to its land redistribution programme, by and large aligned with the World Bank's guidelines to land redistribution.³⁹⁴ As with Zimbabwe, a major difference with the land redistribution programmes is that South Africa adopted a negotiated land reform approach, while Brazil's land reform process has been marred by violence.³⁹⁵

One of the challenges experienced by Brazil is that between 1955 and 1964, Brazil could not implement its land redistribution programme for two reasons, namely because of the fact that it was not on the Brazilian government's agenda and, secondly, because expropriation required fair market value compensation, which was not practical at the time.³⁹⁶ Brazil's expropriation also came under fire from owners of large holdings of land, challenging expropriation, resulting in long and costly legal battles, for the Brazilian government.³⁹⁷

³⁸⁹ Daltorio T 'South Africa: A profitable path to emerging nations' wealth' *Investment U Research* 25 March 2010 available at <http://www.investментu.com/2010/March/south-africas-emerging-market.html> (accessed 6 March 2011).

³⁹⁰ http://www.ibsa-trilateral.org/index.php?option=com_content&view=article&id=29&Itemid=79. (accessed 7 March 2011).

³⁹¹ The Economist 'The BRICs. The trillion-dollar club. Brazil, Russia, India and China matter individually. But does it make sense to treat the BRICs—or any other combination of emerging powers—as a block?' *The Economist* 15 April 2010 available at <http://www.economist.com/node/15912964> (accessed 8 March 2011).

³⁹² http://www.ibsa-trilateral.org/index.php?option=com_content&view=article&id=29&Itemid=79 (accessed 7 March 2011).

³⁹³ http://www.ibsa-trilateral.org/index.php?option=com_content&view=article&id=29&Itemid=79 (accessed 7 March 2011).

³⁹⁴ Sauer S 'The World Bank's land reform Brazil' in Rosset P, Patel R & Courville M (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 179.

³⁹⁵ Comparato FK 'The Economic Order in the Brazilian Constitution of 1988' (1990) 38 *The American Journal of Comparative Law* 768.

³⁹⁶ Navarro Z 'Expropriating land in Brazil' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 269.

³⁹⁷ Navarro Z 'Expropriating land in Brazil' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 277.

Another, albeit not positive, similarity is the fact that some commentators have noted that the land redistribution programmes in both Brazil and South Africa have been found to be 'poorly integrated with broader development support'.³⁹⁸

In the same way that the lack of post-implementation monitoring has been a weakness of the SALRP process, the success of Brazil's land redistribution programme has also been challenged by the lack of systematic and continuous monitoring.³⁹⁹

In the face of this, coupled with the diminishing demand for access to land, there have been suggestions reported that land reform in Brazil should be 'shelved' and the landless should receive a monthly financial contribution instead.⁴⁰⁰ Navarro has criticised this suggestion on the basis that a financial contribution would not take into account the other social factors that flow from land redistribution.⁴⁰¹

Navarro found that in some areas the demand for land outweighs availability, resulting in land prices increasing, constraining the MLAR strand of the land redistribution programme.⁴⁰² Sauer adds that this, coupled with the shortage of funding and the fact that the actual beneficiaries do not negotiate the land purchase transaction, results in buyers purchasing cheaper farms that are far from markets and have poor soil.⁴⁰³

Sauer's field research reveals that the Brazilian land redistribution programme has also been plagued by a shortage of funds and the lack of technical assistance caused by the World Bank withholding funds for infrastructure, insufficient funding and/or delays in releasing grant funding for production.⁴⁰⁴ This has further resulted in lack of production and beneficiaries barely making

³⁹⁸ Quan J 'Land reform and rural territories: Experiences from Brazil and South Africa' 3 citing Deininger K 'Land Policies for Growth and Poverty Reduction: A World Bank policy research report' (2003) available at <http://pubs.iied.org/pdfs/14559IIED.pdf> (accessed 24 March 2011).

³⁹⁹ Sparovek G & Maule R 'Negotiated Agrarian Reform in Brazil' Brazil' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 307.

⁴⁰⁰ Navarro Z 'Expropriating land in Brazil' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 287.

⁴⁰¹ Navarro Z 'Expropriating land in Brazil' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 285.

⁴⁰² Sparovek G & Maule R 'Negotiated Agrarian Reform in Brazil' Brazil' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 307.

⁴⁰³ Sauer S 'The World Bank's land reform Brazil' in Rosset P, Patel R & Courville M (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 185.

⁴⁰⁴ Sauer S 'The World Bank's land reform Brazil' in Rosset P, Patel R & Courville M (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 184.

ends meet⁴⁰⁵ and potential beneficiaries wanting to participate in the land redistribution programme not being able to. This participation problem is further compounded by the fact that some potential beneficiaries do not know the rules of participation.⁴⁰⁶ Linked to the funding problems is the concern that beneficiaries to whom loans are advanced would not be able to repay the loans they have taken.⁴⁰⁷

The 'rent a crowd' phenomenon, which has been observed in respect of the SALRP,⁴⁰⁸ has also surfaced in Brazil as a challenge to the success of its land redistribution programme. Sauer maintains that it is 'diametrically opposed to 'free-market philosophy' and 'community empowerment'.⁴⁰⁹

3 LEGAL BASIS FOR ZIMBABWE AND BRAZIL'S LAND REDISTRIBUTION PROGRAMMES

3.1 Zimbabwe

In both Zimbabwe and Brazil the legal framework that supports their land redistribution programmes is defined in numerous statutes.

In Zimbabwe, like in South Africa, the need for land redistribution emerged out of racial segregation, which was also entrenched in legislation.⁴¹⁰ The Land Appointment Act of 1930 prohibited race groups⁴¹¹ from acquiring land in areas designated for other races. The Land Appointment Act of 1930 reserved the majority of arable land for white settlers (about 50.8 percent) and about 30 percent of the land situated in less arable land was allocated to the indigenous African population.⁴¹²

The Lancaster House Agreement of December 1979 introduced the WBWS model of land reform in Zimbabwe. Expropriation was only allowed in respect

⁴⁰⁵ Sauer S 'The World Bank's land reform Brazil' in Rosset P, Patel R & Courville M (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 189.

⁴⁰⁶ Sauer S 'The World Bank's land reform Brazil' in Rosset P, Patel R & Courville M (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 186.

⁴⁰⁷ Sparovek G & Maule R 'Negotiated Agrarian Reform in Brazil' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 306.

⁴⁰⁸ Hall R (ed) 'Land reform for what? Land use, production, and livelihoods' in *Another Countryside? Policy Options for Land and Agrarian Reform in South Africa* (2009) 27.

⁴⁰⁹ Sauer S 'The World Bank's land reform Brazil' in Rosset P, Patel R & Courville M (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 187.

⁴¹⁰ The Land Appointment Act of 1930 was the equivalent of the Native Land Act 27 of 1913 in South Africa.

⁴¹¹ That is, blacks and whites.

⁴¹² Lebert T 'An introduction to land and agrarian reform in Zimbabwe' in Rosset P, Patel R & Courville M (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 42

of “under-utilised” land at full market based compensation.⁴¹³ This curbed land redistribution efforts in Zimbabwe and meant it essentially took the form of ‘resettlement’.⁴¹⁴ The Lancaster House Agreement expired in April 1990.

Pursuant to the Lancaster House Agreement, the right to property was entrenched in the Constitution of Zimbabwe.⁴¹⁵ In 1990 the Constitution of Zimbabwe was amended to provide for expropriation.^{416 417}

The Land Acquisition Act of 1986 gave the GoZ the first option to purchase farms coming onto the market. In addition, it provided for compulsory acquisition, that is expropriation of land deemed under-utilised or derelict. This approach was not successfully pursued during the first phase of land reform in Zimbabwe.⁴¹⁸

In terms of the Land Acquisition Act of 1992 the GoZ was empowered to designate land and other immovable property for expropriation by it, impose land taxes, reduce the size of farms and regulate, inter alia, the ownership by foreigners.⁴¹⁹

The Constitution of Zimbabwe Amendment Act of 2000 empowers the GoZ to expropriate land.

Zimbabwe’s land redistribution suite of legislation interestingly also includes the Rural Land Occupiers (Protection from Eviction) Act 13 of 2001 which was passed to protect land redistribution beneficiaries who occupied land before it was officially transferred to the GoZ.

Zimbabwe had taken many legislative steps to advance its land redistribution programme. However, even though the steps taken ostensibly had constitutional sanction, because of the far-reaching consequences, the land redistribution programme was open to legal challenge.^{420 421}

⁴¹³ Palmer R ‘Land reform in Zimbabwe, 1980-1990’ (1990) 89 *African Affairs* 166.

⁴¹⁴ Palmer R ‘Land reform in Zimbabwe, 1980-1990’ (1990) 89 *African Affairs* 167.

⁴¹⁵ Naldo GJ ‘Land reform in Zimbabwe: Some legal aspects’ (1993) 31 *The Journal of Modern African Studies* 586.

⁴¹⁶ Naldo GJ ‘Land reform in Zimbabwe: Some legal aspects’ (1993) 31 *The Journal of Modern African Studies* 586.

⁴¹⁷ Constitution of Zimbabwe Act 11 of 1990.

⁴¹⁸ Lebert T ‘An introduction to land and agrarian reform in Zimbabwe’ in Rosset P, Patel R & Courville M (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 46.

⁴¹⁹ Naldo GJ ‘Land reform in Zimbabwe: Some legal aspects’ (1993) 31 *The Journal of Modern African Studies* 589.

⁴²⁰ *Mike Campbell (Pvt) Ltd and Others v Republic of Zimbabwe* (2/2007) [2008] SADCT 2 (28 November 2008).

⁴²¹ Pazvakavambwa S & Hungwe V ‘Land Redistribution in Zimbabwe’ in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 147.

3.2 Brazil

The basic legal framework of Brazil's land redistribution programme is the Land Statute of 1964 (Law 5604). The main objective of this legislation was to devise ways of dealing with unproductive rural estates. In addition, according to Navarro, it created conditions to force agricultural modernization and increasing access to land for the rural poor and introduced a land tax.⁴²² This Land Statute of 1964 also recorded the modality for establishments in rural areas. In this regard, land owners had to declare the details of the properties owned by them and the properties were subsequently categorised into different types of landholdings according to predetermined criteria.⁴²³

Land redistribution is also entrenched in the Constitution of Brazil. The Constitution of Brazil empowers the Brazilian government to expropriate land for, inter alia, land redistribution purposes.⁴²⁴ The Constitution of Brazil was amended in 1964, inter alia, changing the way that expropriated land owners were compensated. It also legislated that land owners would not be able to challenge the decisions to expropriate their land.⁴²⁵ The latest edition of the Constitution of Brazil, ratified on 5 October 1988, maintains the Brazilian government's right to expropriate and redefine properties available for land expropriation to separate them from those protected from the action.⁴²⁶

Subsequent decrees also define 'faster legal procedures' for expropriation of rural land for purposes of the land reform programme.⁴²⁷ It was hoped that these procedures would facilitate the juridical arrangements or, at least, litigation involved with expropriation.⁴²⁸

⁴²² Navarro Z 'Expropriating land in Brazil' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 271.

⁴²³ Navarro Z 'Expropriating land in Brazil' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 271.

⁴²⁴ Comparato FK 'The economic order in the Brazilian Constitution of 1988' (1990) 38 *The American Journal of Comparative Law* 768 – 769.

⁴²⁵ Navarro Z 'Expropriating land in Brazil' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 271.

⁴²⁶ Zaverucha J 'The 1988 Brazilian Constitution and its authoritarian legacy: Formalizing democracy while gutting its essence' available at <http://lasa.international.pitt.edu/LASA97/zaverucha.pdf> (accessed 25 April 2011).

⁴²⁷ Decree 8629 of 1993 and Law 76 of 1993.

⁴²⁸ Navarro Z 'Expropriating land in Brazil' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) - 275.

The Law 25 was promulgated in 1997 by the Brazilian government and established the Land Bank and Land Fund, which resulted in the funding for the Brazilian land redistribution programme being constitutionally guaranteed.^{429 430}

4 HOW HAVE ZIMBABWE AND BRAZIL FUNDED THEIR LAND REDISTRIBUTION PROGRAMMES?

4.1 Zimbabwe

The initial land redistribution or resettlement programme of Zimbabwe, commencing in the late 1970s start of 1980s, based on the Lancaster House Agreement was funded by British government funding of approximately UK£20 million, which had to be matched by the GoZ (something it was not always able to do).^{431 432} Pazvakavambwa and Hungwe explain that funding took the form of a reimbursable expenditure grant.⁴³³

Zimbabwe also employed the subdivision of government owned or acquired land during the 1980s as a means to allocate more land for common grazing land and the provision of required infrastructure to serve multiple properties.⁴³⁴

The funding was subject to various conditions, such as the WBWS model being applied, matching funding by the GoZ, detailed planning and surveying of land before settlement.⁴³⁵ Furthermore, the British government funding could only be used for land purchases and related costs. Any expropriation undertaken by the GoZ needed to be self-funded.⁴³⁶

Karumbidza observes that the funding for Zimbabwe's land reform was tied to 'specific land reform policies and targets', with the British government being the main source of the funding.⁴³⁷

⁴²⁹ Sparovek G & Maule R 'Negotiated Agrarian Reform in Brazil' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 296.

⁴³⁰ Sparovek G & Maule R 'Negotiated Agrarian Reform in Brazil' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 305.

⁴³¹ Lebert T 'An introduction to land and agrarian reform in Zimbabwe' in Rosset P, Patel R & Courville M (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 45.

⁴³² Palmer R 'Land reform in Zimbabwe, 1980-1990' (1990) 89 *African Affairs* 168.

⁴³³ Pazvakavambwa S & Hungwe V 'Land redistribution in Zimbabwe' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 141.

⁴³⁴ Hall R (ed) 'Land reform for what? Land use, production, and livelihoods' in *Another Countryside? Policy Options for Land and Agrarian Reform in South Africa* (2009) 39.

⁴³⁵ Lebert T 'An introduction to land and agrarian reform in Zimbabwe' in Rosset P, Patel R & Courville M (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 51.

⁴³⁶ Pazvakavambwa S & Hungwe V 'Land redistribution in Zimbabwe' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 141.

⁴³⁷ Karumbidza BJ 'Redistributionist' versus 'Productionist' Land Reform' 24.

According to Lebert, this resulted in the land acquired being of a 'marginal quality' and at a high price.⁴³⁸ The funding later became the cause of dispute between the GoZ and British government.

Pursuant to the Constitution of Zimbabwe Act 11 of 1990, fair compensation for expropriation was removed from the Constitution of Zimbabwe.⁴³⁹

By 1997, the British government ceased funding the Zimbabwean land redistribution. The World Bank could also not assist as at the time its policies did not allow funding of land purchases. The World Bank merely recommended the introduction of a land tax, and did not support Zimbabwe's land reform programme directly.⁴⁴⁰ Zimbabwe has not implemented a land tax,⁴⁴¹ but it has been reported as recently as February 2011 that the Institute of Environmental Studies at the University of Zimbabwe are calling for the introduction of a land tax to 'deal with farmers that are holding on to under-utilised land'.⁴⁴²

Thus by 2000, with the introduction of the FTLRP, although some subsidies were granted by the GoZ, the GoZ received virtually no other funding for its land redistribution programme and beneficiaries had to fund themselves.⁴⁴³ Unlike in South Africa with its LRAD Programme, beneficiaries did not receive grants and did also not need to make a contribution.

As part of its efforts to fund the land redistribution programme, the GoZ also established credit for beneficiaries for cropping and cattle stocking through its Agricultural Development Bank of Zimbabwe.

According to Moyo, Zimbabwe's FTLRP phase was a consequence of various stakeholders and the failure of the international development community to agree to the terms of a 'collaborative and internationally financed land reform programme'.⁴⁴⁴

⁴³⁸ Lebert T 'An introduction to land and agrarian reform in Zimbabwe' in Rosset P, Patel R & Courville M (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 51.

⁴³⁹ Naldo GJ 'Land reform in Zimbabwe: Some legal aspects' (1993) 31 *The Journal of Modern African Studies* 586.

⁴⁴⁰ Pazvakavambwa S & Hungwe V 'Land redistribution in Zimbabwe' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 150.

⁴⁴¹ Schleicher A 'Zimbabwe's land program' *Online Newshour* 14 April 2004 available at http://www.pbs.org/newshour/bb/africa/land/gp_zimbabwe.html (accessed 8 March 2011).

⁴⁴² Zimbabwe Investment and Business News 'Gov must introduce land tax penalty' *News Day* 13 February 2011 available at <http://zimvest.com/%E2%80%98govt-must-introduce-land-tax-penalty%E2%80%99> (accessed 8 March 2011).

⁴⁴³ Pazvakavambwa S & Hungwe V 'Land redistribution in Zimbabwe' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 53.

⁴⁴⁴ Moyo S 'The land question in southern Africa: A comparative review' in Ntsebeza L & Hall R (eds) *The Land Question in South Africa. The Challenge of Transformation and Redistribution* (2007) 77.

Moyo maintains that land reform, as a whole, in Zimbabwe was under-funded by the GoZ and international donors.⁴⁴⁵ He remarks pointedly that Zimbabwe's mass expropriation, in the face of funding problems, shocked the international community, but not enough to finance it. Instead, donors offered various reasons for their inability to make financial aid available to fund Zimbabwe's land reform programme, such as a more market-led approach, poverty reduction and improved governance.⁴⁴⁶

Zimbabwe also recognised that one way of funding its land redistribution programme was through foreign investment. As a means to generate foreign investment, the GoZ concluded Bilateral Investment Promotion and Protection Agreements (BIPPAs). The BIPPAs are agreements between the GoZ and foreign governments, essentially a BIT that provided that any investment made by either government in the other would be protected from expropriation and the affected party would be compensated in its preferred currency.⁴⁴⁷

This search for foreign investment has, however, raised a contentious issue in the land redistribution context for Zimbabwe, namely the risk that foreigners want to use this as a mechanism to control land.⁴⁴⁸

In addition, although Zimbabwe has been able to attract foreign investment, as a result of Zimbabwe's land reform programme, resulting in a disregard of the terms and conditions of these BIPPA's, the GoZ has found itself having to defend litigation brought against it by foreign investors, claiming that the GoZ land reform programme was in breach of a BIPPA.^{449 450451}

Pazvakavambwa and Hungwe recommend that Zimbabwe should provide incentives for investments in agriculture so that investment funds can be made

⁴⁴⁵ Moyo S 'The land and agrarian question in Zimbabwe' 17.

⁴⁴⁶ Moyo S 'The Land and Agrarian Question in Zimbabwe' 17.

⁴⁴⁷ Pazvakavambwa S & Hungwe V 'Land redistribution in Zimbabwe' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 154.

⁴⁴⁸ Moyo S 'The land question in southern Africa: A comparative review' in Ntsebeza L & Hall R (eds) *The Land Question in South Africa. The Challenge of Transformation and Redistribution* (2007) 67.

⁴⁴⁹ Zimbabwe Daily News 'BIPPA farms: govt seeks "amicable" solution' *Zimbabwe Daily News* 15 December 2009 available at <http://www.zimbabwesituation.org/?p=5035> (accessed 17 April 2011).

⁴⁵⁰ *Mike Campbell (Pvt) Ltd and Others v Republic of Zimbabwe* (2/2007) [2008] SADCT 2 (28 November 2008).

⁴⁵¹ The SADC tribunal has held that the GoZ's land reform policy, by way of 'land grabs' was 'unlawful and 'discriminatory'. This decision is also significant because it held that that 'SADC law' should prevail over domestic laws and constitutions and 'all decisions made by the court should be binding and enforceable within all member states'. KJW 'SADC law binding' *The Zimbabwean* 13 April 2011 available at http://www.thezimbabwean.co.uk/index.php?option=com_content&view=article&id=38881:sadc-law-binding&catid=69:sunday-top-stories&Itemid=30 (accessed 14 April 2011).

available to the 'new' commercial farmers, in particular, for infrastructure to put its land redistribution programme 'back on track'.⁴⁵²

Other commentators, such as Van Den Brink, Thomas Binswanger, Bruce and Byamugisha, note that the Zimbabwean land redistribution programme has shown that the drastic approach, although less costly at the outset, could result in disinvestment, which has greater economic impact and is ultimately more costly for the country in the long run.⁴⁵³

Although BIPPA's attract agricultural investment, and commentators have made the point that investment in agriculture can be made available to the emerging farmers, the author has not found evidence of these investments supplementing the GoZ's budget for its land redistribution programme.

It has been reported that the GoZ is launching a fund to raise an agricultural trust to raise funds in support of small-scale farmers as an effort to promote agricultural development. Details of the nature of the funding that will be raised have not been made available but it has been reported that commercial banks would be approached.⁴⁵⁴ Whether this initiative is successful or gets off the ground at all remains to be seen.

Lastly, it has been reported this year that South Africa and Zimbabwe are the only African nations not considered 'safe havens' for foreign investment.⁴⁵⁵ Reports such as these do not bode well for investment into these countries. However, it remains to be seen what impact this finding will have on investment in South Africa and Zimbabwe.

4.2 Brazil

The first MLAR land redistribution project in Brazil, namely the Land Reform and Poverty Alleviation Pilot Project, was funded by the World Bank to the tune of approximately USD200 million. The World Bank funding of the Brazilian land

⁴⁵² Pazvakavambwa S & Hungwe V 'Land redistribution in Zimbabwe' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 162 – 163.

⁴⁵³ Van den Brink R (ed), Thomas G & Binswanger H et al *Consensus, Confusion and Controversy. Selected Land Reform Issues in Sub-Saharan Africa* (World Bank Working Papers) (2006) 33.

⁴⁵⁴ Zimvest 'Agricultural Trust to raise funds for small-scale farmers' *The Herald Harare* 7 April 2011 available at <http://zimvest.com/agricultural-trust-to-raise-funds-for-small-scale-farmers> (accessed 25 April 2011).

⁴⁵⁵ Christie S 'SA, Zim not safe for investments – Cairo conference' *Farmers Weekly* 30 April 2011 available at [http://www.farmersweekly.co.za/index.php?p\[I\]Gcms_nodes\[I\]Gcms_nodesUID\]=8fe07ad4bb304e2cb0573c8d1d79963f](http://www.farmersweekly.co.za/index.php?p[I]Gcms_nodes[I]Gcms_nodesUID]=8fe07ad4bb304e2cb0573c8d1d79963f) (accessed 24 April 2011).

reform was aimed at poverty alleviation.⁴⁵⁶ These monies were subsequently redirected to finance the establishment of the Land Credit Program for Fighting Rural Poverty.⁴⁵⁷

With the establishment of the Land Bank and Land Fund, Brazil's land redistribution programme was less dependent on World Bank funding.⁴⁵⁸ Subsequent MLAR land redistribution projects were funded by loans (by its Land Bank), the World Bank making credit available to beneficiary associations to purchase land as well as grant funding by Brazilian government. The loans were applied to the purchasing of the land and the grant funding is applied to cover related physical and social infrastructure costs.^{459 460 461}

Currently, Brazil's land redistribution programme is primarily funded by the Brazilian government (from Brazil's national budgets) and is 'independent of international financing'.^{462 463} The land redistribution program is currently funded in terms of what is known as the National Program of Land Credit (*Programa Nacional de Crédito Fundiário*), comprising, amongst others, land credit (Land Bank and Land Credit), which is co-financed by the World Bank, and the consolidation of family-based agriculture.^{464 465}

Notably, unlike in South Africa, beneficiaries are not required to make any 'own contribution' to receive government funding.

As part of its efforts to increase agricultural productivity, Brazil introduced a land tax. The land tax was imposed on non-used land. However, according to some commentators, this land tax has been difficult to collect for reasons

⁴⁵⁶ Sauer S 'The World Bank's land reform Brazil' in Rosset P, Patel R & Courville M (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 183.

⁴⁵⁷ Sauer S 'The World Bank's land reform Brazil' in Rosset P, Patel R & Courville M (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 180.

⁴⁵⁸ Sparovek G & Maule R 'Negotiated agrarian reform in Brazil' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 296.

⁴⁵⁹ Navarro Z 'Expropriating land in Brazil' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 279.

⁴⁶⁰ Navarro Z 'Expropriating land in Brazil' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 279.

⁴⁶¹ Sparovek G & Maule R 'Negotiated agrarian reform in Brazil' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 296.

⁴⁶² Sparovek G & Maule R 'Negotiated agrarian reform in Brazil' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 296.

⁴⁶³ According to Navarro between 2002 and 2006, the federal government invested approximately USD2 billion to promote land. Navarro Z 'Expropriating land in Brazil' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 278.

⁴⁶⁴ Navarro Z 'Expropriating land in Brazil' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 280.

⁴⁶⁵ Sauer S 'The World Bank's land reform Brazil' in Rosset P, Patel R & Courville M (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 183.

associated with the Brazilian government itself failing to collect the tax and the farmers not providing information to the revenue services.⁴⁶⁶

Navarro notes that the Brazilian negotiated land redistribution programme has been the less costly due to expropriation. However, in contrast to this general view, it has been found that the opposite holds true.⁴⁶⁷

Brazil also has some form of post-settlement support for its land redistribution programme, such as, for example, the National Program to Support Family-Based Agriculture which can be used to cover seeds and fertilizers in the first two years.⁴⁶⁸

Expropriation in Brazil requires fair compensation. Compensation takes the form of public bonds paid in advance as opposed to fair market value cash payments, although compensation in cash is made for “useful and necessary improvements”⁴⁶⁹ or unless otherwise provided for in the constitution.⁴⁷⁰ The bonds could be fully redeemed only 20 years after issue (their values are periodically updated in accordance with indexes of inflation).⁴⁷¹

The reforms in Brazil’s agricultural sector helped establish a more stable investment climate.⁴⁷² Recently, Brazil has been attracting more private equity global investors into its agriculture sector.⁴⁷³ Notwithstanding these developments, the author is not aware of agricultural investment initiatives in Brazil specifically geared towards land redistribution.

Amidst these developments and rise in agricultural investment, the Brazilian government is taking steps to limit the land acquisition and ownership by

⁴⁶⁶ Navarro Z ‘Expropriating land in Brazil’ in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 272.

⁴⁶⁷ Navarro Z ‘Expropriating land in Brazil’ in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 280 citing Marques V 2007 “Aspectos orçamentários e financeiros da reforma agrarian no Brasil (2000–2005)” Ministério do Desenvolvimento Agrário/INCRA, Brasília, Brazil.

⁴⁶⁸ Navarro Z ‘Expropriating land in Brazil’ in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 283.

⁴⁶⁹ Comparato FK ‘The economic order in the Brazilian Constitution of 1988’ (1990) 38 *The American Journal of Comparative Law* 768 – 769.

⁴⁷⁰ Comparato FK ‘The economic order in the Brazilian Constitution of 1988’ (1990) 38 *The American Journal of Comparative Law* 762.

⁴⁷¹ Navarro Z ‘Expropriating land in Brazil’ in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 271.

⁴⁷² Organisation for Economic Co-Operation and Development ‘Agricultural Policy Reform in Brazil’ 2005 Organisation for Economic Co-Operation and Development Policy Brief 1.

⁴⁷³ McNellis P ‘Foreign investment in developing country agriculture – the emerging role of private sector finance’ (2009) 28 Food and Agriculture Organisation of the United Nations Commodity and Trade Policy Research Working Paper 15.

foreign investors.^{474 475} It has been reported that the proposed rules would restrict governments, state-owned companies and speculators from owning farmland. The report notes that it could be specifically aimed at keeping Chinese state-owned companies out.⁴⁷⁶

The president of the Brazilian government's land and agrarian reform agency (Instituto Nacional de Colonização e Reforma Agrária (INCRA)) has also been recorded as saying that the rationale behind the curtailing of foreign ownership is to address the fact that foreigners are buying the 'best' land, which in turn increases the cost of land, burdening the Brazilian government's efforts to redistribute land to the poor because of the high land cost.⁴⁷⁷

It appears thus that foreign investment in Brazil's agricultural sector has not necessarily had a positive effect on the Brazilian land redistribution programme.

5 HOW HAVE ZIMBABWE AND BRAZIL STRUCTURED THEIR LAND REDISTRIBUTION PROGRAMMES?

5.1 Zimbabwe

Zimbabwe's land redistribution programme evolved from the colonial period, to the 'early resettlement phase',⁴⁷⁸ post-independence in the 1980s to 1999 and the FTLR phase commencing in 2000. The manner in which the land redistribution projects were structured varied. In the same way that the funding of the SALRP is linked to how the individual projects are structured; the structuring of Zimbabwe's land redistribution projects is also linked to how it is funded.

During the 'early resettlement phase' when the British government funded Zimbabwe's land redistribution programme, Zimbabwe applied the WBWS model. The initial business model was essentially pure land transfers from farm owners to the GoZ, who in turn made land available to land redistribution

⁴⁷⁴ International Business Times 'Brazil clamps down on foreign ownership of agricultural land' *International Business Times* 21 March 2011 available at <http://africa.ibtimes.com/articles/124853/20110321/brazil-clamps-down-on-foreign-ownership-of-agricultural-land.htm> (accessed 30 March 2011).

⁴⁷⁵ Ewing R 'Analysis-Brazil ups stakes for foreign investors in farmland' *Reuters* 24 August 2010 <http://farmlandgrab.org/post/view/14999> (accessed 25 April 2011).

⁴⁷⁶ Knowledge@Wharton 'Brazil sets up new roadblocks for agricultural investments – Especially from China' *Knowledge@Wharton* 9 March 2011 available at <http://knowledgetoday.wharton.upenn.edu/2011/03/brazil-sets-up-new-roadblocks-for-agricultural-investments-%E2%80%93-especially-from-china-2/> (accessed 25 April 2011).

⁴⁷⁷ Christie N 'Foreign investment in Brazil faces future regulation' *Nubrics.com* 11 October 2007 available at <http://www.nubricks.com/archives/380/investment-brazil-regulation/> (accessed 25 April 2011).

⁴⁷⁸ Pazvakavambwa S & Hungwe V 'Land redistribution in Zimbabwe' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 141.

beneficiaries who comprised the landless, war veterans, the poor and commercial farm workers.⁴⁷⁹

Zimbabwe has not introduced business model innovations like South Africa, such as share-equity schemes and other legal vehicles to structure its land redistribution projects.⁴⁸⁰ Unlike in South Africa, which has been criticised by commentators for not structuring the SALRP according to land use, the Zimbabwean Land Reform and Resettlement Program (LRRP) was modelled on extensive land use patterns.⁴⁸¹

Zimbabwe essentially used four models for land redistribution, Models A to D for resettlement during the 'early resettlement phase'.⁴⁸² Model A comprised the grouping together of beneficiaries as 'communities' and then giving them 'individual' allocations of approximately five hectares with village settlements and communal grazing. Model B involved the formation of co-operative groups who were allocated farms with developed infrastructure. Model C was essentially the 'outgrower' business model. Farms with export potential and those producing major industrial crops were converted into core estates with outgrowers. Model D created allocations for communal grazing of cattle. According to Pazvakavambwa and Hungwe, the models were implemented with varying levels of success, with models C and D being abandoned.⁴⁸³

Another business model applied during this British government funded period was the 'right of first refusal'. This right of first refusal model worked on the basis that all land offered for sale first had to be offered to the GoZ before it could be sold to third parties. If the GoZ did not invoke its right of first refusal, the land in question could be sold on the open market.⁴⁸⁴ The right of first refusal applied in respect of the SALRP ostensibly worked on the same basis.

During the 1990s, the GoZ also introduced what they termed 'compulsory state-led land acquisitions' or what is commonly known as expropriation from the

⁴⁷⁹ Lebert T 'An introduction to land and agrarian reform in Zimbabwe' in Rosset P, Patel R & Courville M (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 46.

⁴⁸⁰ Cousins B 'Why land invasion will happen here too'.

⁴⁸¹ Lebert T 'An introduction to land and agrarian reform in Zimbabwe' in Rosset P, Patel R & Courville M (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 48.

⁴⁸² Pazvakavambwa S & Hungwe V 'Land redistribution in Zimbabwe' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 142 - 143.

⁴⁸³ Pazvakavambwa S & Hungwe V 'Land redistribution in Zimbabwe' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 142 - 143.

⁴⁸⁴ Pazvakavambwa S & Hungwe V 'Land redistribution in Zimbabwe' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 142.

1990s. This is currently the model of land redistribution applied.⁴⁸⁵ According to Lebert, this was partly in response to 'the failures and weaknesses' of the WBWS model.⁴⁸⁶

When the British government funding dried up and other donor funding could not be sourced, and Zimbabwe introduced its FTLRP, the GoZ resorted to expropriation. This expropriation, which has commonly been referred to as 'land invasions', commentators such as Lebert described as 'people-driven acquisitions' and what Moyo refers to as a 'community land occupation approach', became a significant feature of Zimbabwe's land redistribution programme.⁴⁸⁷

Cousins maintains that 'Zimbabwean-style land invasions' will in his view take place in South Africa at some point in the future, despite the great differences between the political economies of the two countries. He maintains that, with the implementation of its LRAD Programme, the SALRP is following in the footsteps of Zimbabwe because it is trying to accelerate the creation of black commercial farmers.⁴⁸⁸

Even though the LRAD programme has been phased out, it has been replaced by another grant structure that is aimed at creating black commercial farmers and revitalising the SALRP. There have also been reports of sporadic land invasions^{489 490} and murmurings of this in the media.⁴⁹¹ Thus, on the face of it, expropriation cannot be completely ruled out for the SALRP.⁴⁹²

⁴⁸⁵ Lebert T 'An introduction to land and agrarian reform in Zimbabwe' in Rosset P, Patel R & Courville M (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 53

⁴⁸⁶ Lebert T 'An introduction to land and agrarian reform in Zimbabwe' in Rosset P, Patel R & Courville M (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 56.

⁴⁸⁷ Lebert T 'An introduction to land and agrarian reform in Zimbabwe' in Rosset P, Patel R & Courville M (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 49.

⁴⁸⁸ Cousins B 'Why land invasion will happen here too'.

⁴⁸⁹ The Zimbabwe Mail 'ANC planning Zimbabwe style land invasions after World Cup' *The Zimbabwe Mail* 30 March 2010 available at <http://www.thezimbabwemail.com/zimbabwe/4904-anc-planning-zimbabwe-style-land-invasions-after-world-cup.html> (accessed 9 May 2011).

⁴⁹⁰ Independent Online News 'Land battle sparks new fears of invasions' *Independent Online News* 26 November 2004 available at <http://www.iol.co.za/news/south-africa/land-battle-sparks-new-fears-of-invasions-1.228014> (accessed 9 May 2011).

⁴⁹¹ SAPA 'ANCYL wants 'radical' land reform' 30 April 2010 available at <http://www.news24.com/SouthAfrica/News/ANCYL-wants-radical-land-reform-20100430> (accessed 11 May 2011).

⁴⁹² However, see the discussion in chapter 5 at paragraph 4.

5.2 Brazil

Land redistribution in Brazil is structured in one of two ways: expropriation and since 1996 also in terms of the WBWS model.^{493 494 495}

The WBWS modelled land redistribution strand of Brazil's land redistribution programme is similar to the SALRP. Land redistribution projects are by and large structured by beneficiaries forming group structures that receive financing to purchase suitable agricultural properties after negotiations with sellers.

Like South Africa, Brazil embarked on the WBWS MLAR, on the advice of the World Bank. In Brazil's case, this was done to counter the land occupations and conflict resulting from the Brazilian Movement of the Landless Rural Workers (MSC) who mobilised millions of landless peasants in the Brazilian countryside to force the Brazilian government to expropriate land from large land owners to the rural poor.^{496 497}

Sauer writes that the manner in which the Brazilian WBWS MLAR strand of the land redistribution programme has been structured has received much criticism, ranging from whether it meets land redistribution programme objectives and questioning the legitimacy of the financial mechanism objectives.⁴⁹⁸

6 CONCLUSION

This chapter has shown that, notwithstanding marked differences between South Africa's, Zimbabwe's and Brazil's policies and political landscapes, there are some similarities, such as a similar historical background of dispossession, which set the stage for their land redistribution. All three countries' land redistribution programmes have been hampered by similar problems, in particular lack of adequate funding.

⁴⁹³ Navarro Z 'Expropriating land in Brazil' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 278.

⁴⁹⁴ Sparovek G & Maule R 'Negotiated Agrarian Reform in Brazil' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 294.

⁴⁹⁵ Sauer S 'The World Bank's land reform Brazil' in Rosset P, Patel R & Courville M (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 178.

⁴⁹⁶ Kenfield I 'Broadening the discourse of "Negotiated Land Reform". A comparison between Land Reform Project in South Africa and Brazil' 1 available at <http://www.landaction.org/gallery/KenfieldICARRDPaper.doc> (accessed 27 August 2010).

⁴⁹⁷ Kenfield I 'Broadening the discourse of "Negotiated Land Reform". A comparison between land reform project in South Africa and Brazil' 2.

⁴⁹⁸ Sauer S 'The World Bank's land reform Brazil' in Rosset P, Patel R & Courville M (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 177.

Both the Zimbabwean and Brazilian experiences highlight that adequate funding is needed for a successful land redistribution programme.⁴⁹⁹ The Brazilian land redistribution experience has highlighted that ‘an effective partnership with stakeholders’ can result in successful implementation of land redistribution.⁵⁰⁰

It emerges that, apart from the fiscus, credit and donor grant funding, which South Africa is already applying, FDI, subdivision, expropriation, World Bank donor funding (and perhaps other bilateral and multilateral donors), land taxes (provided the latter is implemented correctly) and foreign agricultural investment could be potential alternative sources of funding for the SALRP.

The next chapter will consider and analyse the suitability of these and other potential alternative sources of funding land for the SALRP.



⁴⁹⁹ Pazvakavambwa S & Hungwe V ‘Land redistribution in Zimbabwe’ in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 155.

⁵⁰⁰ Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 36.

CHAPTER 5: POTENTIAL ALTERNATIVE SOURCES OF FUNDING LAND REDISTRIBUTION PROGRAMMES

1 INTRODUCTION

Chapters 3 and 4 explained how South Africa, Zimbabwe and Brazil have regulated and funded their land redistribution initiatives. It emerged that South Africa relies heavily on government grant funding, with limited funding provided by way of credit and contributions from beneficiaries to fund the SALRP. Zimbabwe and Brazil do not have the 'own contribution' source but have relied on the fiscus, donor funding and expropriation to fund their land redistribution programmes.

From these chapters, various sources of funding can be identified. Whether they are suitable for South Africa's land redistribution programme is open to debate. The first section of this chapter discusses these potential alternative sources of funding.

It has been reported that the SAG wants to attract foreign capital investment for its food processing sectors.⁵⁰¹ More recently, land redistribution projects in South Africa have also been regarded as agricultural investment opportunities.⁵⁰² It has also been argued that one way to alleviate the SAG's SALRP's funding burden is through 'substantial investment', not only in acquiring land but also infrastructure and 'post-transfer support'.⁵⁰³ Given this and the dynamics between the agricultural sector and land redistribution as discussed in chapter 1, the author argues that agriculture investment is a potential alternative source of funding the SALRP.

The topic of agricultural investment and the trends in agricultural investment is vast. Given the limited scope of this thesis, it is impossible to address each and every aspect in great detail. It is also not possible to examine the trends in developed, developing and least developed countries. Given that South Africa has been categorised as a developing country, this chapter is limited to

⁵⁰¹ Carey G 'South Africa, Mozambique seek Saudi infrastructure, agriculture investment' *Bloomberg* 4 December 2010 available at <http://www.bloomberg.com/news/2010-12-04/south-africa-mozambique-seek-saudi-agriculture-food-investment.html> (accessed 18 March 2011).

⁵⁰² Vermeulen S & Cotula L 'Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders' 4.

⁵⁰³ Hall R 'A political economy of land reform in South Africa' (2004) 31 *Review of African Political Economy* 220.

outlining the agricultural investment trends in developing countries. This will be followed by a discussion of the various different sources within the agricultural investment sphere and their suitability for the SALRP will be analysed.

2 SUBSIDIES

In chapter 3 it was highlighted that pre-1994 white farmers received considerable agricultural subsidies, which were removed by the late 1990s.

The *White Paper on South African Land Policy* of 1997 records that land reform beneficiaries expected the SAG to raise subsidised finance and interest subsidies as was made available to commercial farmers' pre-1994. At the time, the SAG was of the view that such subsidies would place a strain on the fiscus; moreover that it would increase the demand for land, increasing the market price of land without the productive worth.⁵⁰⁴

Thus new emerging commercial black farmers borne out of the SALRP are not given the same state support as their white counterparts had enjoyed, making the task more challenging. Of course, land grants, constituting financial assistance from the SAG to the beneficiaries, are also a type of subsidy. However, this is not without problems and can become expensive.^{505 506}

There has reportedly been a shift from "anti-agriculture bias" to governments being encouraged to play a stronger role in supporting 'policy and economic conditions to support the growth of agriculture along a more equitable path'.⁵⁰⁷ According to PLAAS, pursuant thereto, subsidies for small farmers are 'back on the agenda for states concerned with rural poverty'.⁵⁰⁸

This links up with the relationship between land redistribution and agriculture. However, notwithstanding this shift, subsidies in agriculture are generally accepted quite controversial, especially because of the potentially trade distorting effects it can have.

⁵⁰⁴ The *White Paper on South African Land Policy* of 1997 para 4.5.6.

⁵⁰⁵ See the discussion in chapter 3 at paragraph 5.5.

⁵⁰⁶ Borras S & McKinley T 'The unresolved land reform debate: Beyond state-led or market-led models' (2006) 2 International Poverty Centre Policy Research Brief 2.

⁵⁰⁷ Hall R (ed) 'Land reform for what? Land use, production, and livelihoods' in *Another Countryside? Policy Options for Land and Agrarian Reform in South Africa* (2009) 48.

⁵⁰⁸ Hall R (ed) 'Land reform for what? Land use, production, and livelihoods' in *Another Countryside? Policy Options for Land and Agrarian Reform in South Africa* (2009) 48.

The author submits that, unless these agricultural subsidies come from a source other than the SAG's coffers, the burden on the SALRP's budgetary constraints would not necessarily be alleviated.

3 SUBDIVIDING AGRICULTURAL LAND

Lahiff argues that one of the reasons that the WBWS model is the most contentious problem for South Africa is because of its failure to subdivide large holdings.⁵⁰⁹ However, although the Subdivision of Land Act 70 of 1970 places restrictions on the subdivision of agricultural land, land reform projects are exempted from these restrictions.⁵¹⁰ This exemption essentially provides for the 'fast tracking' of the SALRP through making more land available for redistribution.

It has been argued that subdivision of land would assist in making land available in smaller parcels suited to the needs of potential beneficiaries, either by land owners subdividing their land and selling smaller parcels of land or the SAG itself acquiring large tracts of land and subdividing it so that smaller parcels of land can be redistributed.⁵¹¹ The difficulty is, though, that smaller land parcels may mean 'small projects', which means 'little money'.⁵¹² However, this could potentially dampen the market price of land for redistribution, alleviating the budget pressures of the SAG. Thus, even though the subdivision of agricultural land does not constitute a potential source of alternative funding in the strict sense, it could alleviate the SALRP's budgetary constraints because of smaller pockets of land being redistributed at lesser cost.

4 EXPROPRIATION

Although not necessarily a direct source of funding, it has been argued that expropriation could alleviate the burden on government to fund land redistribution.⁵¹³ It has also emerged as a means of lowering the cost of

⁵⁰⁹ Lahiff E 'Land redistribution in South Africa' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 178.

⁵¹⁰ S10(3) Provision of Land and Assistance Act 126 of 1991.

⁵¹¹ Hall R (ed) 'Land reform for what? Land use, production, and livelihoods' in *Another Countryside? Policy Options for Land and Agrarian Reform in South Africa* (2009) 39.

⁵¹² Hall R (ed) 'Land reform for what? Land use, production, and livelihoods' in *Another Countryside? Policy Options for Land and Agrarian Reform in South Africa* (2009) 39.

⁵¹³ Deininger K 'Land Policies for Growth – poverty reduction: key issues and challenges ahead' UN, F19 PC Idea Inter-regional Special Forum on the Building of Land Information Policies in the Americas Agila Scalientes, Mexico 26 – 27 October 2004 17.

undertaking land redistribution in both the Zimbabwean and Brazilian experience. As such, the author categorises it as a potential alternative source of funding land redistribution. It is also a 'well-known' option of financing land redistribution in East Asia.⁵¹⁴

Some commentators maintain that expropriation below market value is one way that land owners can contribute to land reform.⁵¹⁵ Lahiff argues that one of the reasons that the WBWS model is the most contentious problem for South Africa is because it failed to initiate expropriation as an element to balance the acquisition of land.⁵¹⁶

The author, however, is not convinced of this argument and submits that whether expropriation could alleviate a government's burden of funding land redistribution programme is debateable as it will depend on how the expropriation is compensated and how the ancillary costs such as legal process costs are funded. As some commentators have pointed out, the legal process can be 'lengthy and costly', which adds to the costs of expropriation.⁵¹⁷ Case in point is the way Zimbabwe went about its expropriation; resulting in legal battles that outweighed the value of the process and resulted in scaring off investors.⁵¹⁸

Others, like Hall, echo this reservation and have argued that even if the SAG implemented non-market methods of land acquisition, or expropriation at below market value along with private sector commitments and resources, additional government funding would still be required in order for the SAG to afford the SALRP.⁵¹⁹

⁵¹⁴ Borrás S & McKinley T 'The unresolved land reform debate: Beyond state-led or market-led models' (2006) 2 International Poverty Centre Policy Research Brief 2.

⁵¹⁵ Van den Brink R (ed), Thomas G & Binswanger H et al *Consensus, Confusion and Controversy. Selected Land Reform Issues in Sub-Saharan Africa* (World Bank Working Papers) (2006) 40.

⁵¹⁶ Lahiff E 'Land redistribution in South Africa' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 178.

⁵¹⁷ Van den Brink R (ed), Thomas G & Binswanger H et al *Consensus, Confusion and Controversy. Selected Land Reform Issues in Sub-Saharan Africa* (World Bank Working Papers) (2006) 33.

⁵¹⁸ Van den Brink R (ed), Thomas G & Binswanger H et al *Consensus, Confusion and Controversy. Selected Land Reform Issues in Sub-Saharan Africa* (World Bank Working Papers) (2006) 33.

⁵¹⁹ Hall R 'Transforming Rural South Africa? Taking stock of land reform' in Ntsebeza L & Hall R (eds) *The Land Question in South Africa. The Challenge of Transformation and Redistribution* (2007) 102.

In South Africa expropriation would require compensation that is 'just and equitable, reflecting an equitable balance between the public interest and the interests of those affected'⁵²⁰ and should be 'agreed to by those affected or decided or approved by a court'.⁵²¹

A formula has been suggested which acts as a guideline for the manner in which 'just and equitable compensation' could be determined.⁵²² The formula fundamentally suggests that historical factors such as subsidies should be deducted from the market value of the property. There is a debate as to whether 'just and equitable compensation', using this formula, would result in a market value of the property⁵²³ or whether it would be below market value.⁵²⁴

This formula holds various challenges, least of all how past agricultural subsidies are to be deducted. Further, if past agricultural subsidies are taken into account, what about other issues, such as the value that has been lost as a result of dispossessing black commercial farmers? A full analysis of this debate is beyond the scope of this thesis. What is important is if 'just and equitable' compensation is interpreted to mean compensation at market value, it would not serve the purpose of alleviating the pressure on the SAG's budget unless, for example, the Constitution was amended to expressly provide otherwise.⁵²⁵ If, however, 'just and equitable' compensation was interpreted as being below market value, expropriation could alleviate the SALRP budgetary constraints.

If the property expropriated belongs to foreigners, it would not only be governed by local legislation but also by BITs⁵²⁶ and the compensation would not only be for the loss of land but could also be for the loss of operational income.⁵²⁷ Expropriation in an environment where foreign investors have made agricultural investments in land could mean that the SAG would be facing more

⁵²⁰ s25(3) Constitution of the Republic of South Africa, 1996.

⁵²¹ S25(2)(b) Constitution of the Republic of South Africa, 1996.

⁵²² Ntsebeza L 'Land redistribution in South Africa: the property clause revisited' in Ntsebeza L & Hall R (eds) *The Land Question in South Africa. The Challenge of Transformation and Redistribution* (2007) 122. This view is based on the 'Gildenhuys formula' devised by Judge Gildenhuys.

⁵²³ Ntsebeza L 'Land redistribution in South Africa: The property clause revisited' in Ntsebeza L & Hall R (eds) *The Land Question in South Africa. The Challenge of Transformation and Redistribution* (2007) 122.

⁵²⁴ Hall R 'Transforming Rural South Africa? Taking stock of land reform' in Ntsebeza L & Hall R (eds) *The Land Question in South Africa. The Challenge of Transformation and Redistribution* (2007) 100.

⁵²⁵ Borrás SM & Franco JC 'How land policies impact land-based wealth and power transfer' (2008) 3 Oslo Governance Centre Brief 1.

⁵²⁶ See the discussion regarding the FDI regulatory framework in chapter 6 at paragraph 3.

⁵²⁷ Smaller C & Mann 'A thirst for distant lands: Foreign investment in agricultural land and water' 16 available at http://www.iisd.org/pdf/2009/thirst_for_distant_land.pdf (accessed 28 March 2011).

compensation than the market value of land which they would have budgeted for, which can have a negative impact on the already challenged budget. The SAG would have to ensure that they put the necessary plans in place for such an eventuality.

Implementing expropriation is a difficult political decision. Movements in this direction would be hamstrung by tensions between AgriSA and the SAG and the debates about nationalisation, threats of expropriation at no compensation⁵²⁸ and fears that the SALRP would end up like Zimbabwe's.⁵²⁹ If South Africa considers this as an option, as part of its SALRP funding strategy, the SAG must ensure that it obtains the buy-in of all stakeholders, in particular organised agriculture.

5 LAND TAX

A land tax imposed on land owners by government has been suggested as another means of governments funding their land redistribution programmes.⁵³⁰

⁵³¹ As mentioned in chapter 3, South Africa considered the introduction of a land tax but, like in Zimbabwe and Brazil, this was never implemented. This was a result of organised agriculture organisations, such as South African Agricultural Union (SAAU) and the National African Farmers' Union (NAFU), lobbying against it.⁵³²

As an alternative to his argument that expropriation can alleviate government's burden in respect of funding land redistribution, Deininger suggests the introduction of a land tax to address a government's lack of adequate sources of revenue that hinders their ability to respond to land issues.⁵³³ He also argues that a land tax has the following advantages: it causes minimal

⁵²⁸ SAPA 'Agri SA slams Malema over land call' *Mail & Guardian Online* August 2010 available at <http://www.news24.com/SouthAfrica/News/Agri-SA-slams-Malema-over-land-call-20100827> (accessed 14 April 2011).

⁵²⁹ Cousins B 'Why land invasion will happen here'.

⁵³⁰ Borras S & McKinley T 'The unresolved land reform debate: Beyond state-led or market-led models' (2006) 2 International Poverty Centre Policy Research Brief 2.

⁵³⁰ The International Bank for Reconstruction and Development / The World Bank 'Agriculture Investment Sourcebook' 391 available at www.worldbank.org/agsourcebook (accessed 30 August 2010).

⁵³⁰ Deininger K 'Land Policies for Growth – poverty reduction: key issues and challenges ahead' 17.

⁵³⁰ Deininger K 'Land Policies for Growth – poverty reduction: key issues and challenges ahead' 12.

⁵³⁰ Deininger K 'Land Policies for Growth – poverty reduction: key issues and challenges ahead' 19.

⁵³⁰ Borras S & McKinley T 'The unresolved land reform debate: Beyond state-led or market-led models' (2006) 2.

⁵³¹ Van den Brink R (ed), Thomas G & Binswanger H et al *Consensus, Confusion and Controversy. Selected Land Reform Issues in Sub-Saharan Africa* (World Bank Working Papers) (2006) 40.

⁵³² Karumbidza BJ 'Redistributionist' versus 'Productionist' land reform' 30.

⁵³³ Deininger K 'Land Policies for Growth – poverty reduction: key issues and challenges ahead' 12.

distortions, encourages more intensive land use and can strengthen the accountability of local government to the public.⁵³⁴

Lahiff argues that another reason that the WBWS model is the most contentious problem for South Africa is because it failed to introduce a land tax to discourage speculation and bring down land prices.⁵³⁵

Even though a land tax can be a good source of revenue for a government, implementing a land tax is a difficult political decision⁵³⁶ and, if not administered correctly and not dealt with adequately from a political point of view, it would serve no purpose. Deininger recommends that the land tax mechanism be designed properly in order for it to be beneficial and to work optimally.⁵³⁷

The author is of the view that a land tax would need to be considered with much of the same sensitivity as expropriation. In the author's view, with the current political tensions regarding land issues in South Africa⁵³⁸ and the changes of the SALRP grant structure encouraging private sector investment, with the introduction of the RADP,⁵³⁹ the climate is still not yet ripe for a land tax to be implemented.

6 STAKEHOLDER CONTRIBUTIONS AND DONOR FUNDING

Moyo notes, and as was illustrated in the previous chapter, internationally the WBWS model typically relies on government grants and/or loan funding to help beneficiaries purchase land through voluntary sales.⁵⁴⁰

Although they maintain that government's own fiscal resources should be the primary source of funding, Van den Brink, Thomas, Binswanger, Bruce and Byamugisha note that donor funding is another source of funding.⁵⁴¹

⁵³⁴ Deininger K 'Land Policies for Growth – poverty reduction: key issues and challenges ahead' 19.

⁵³⁵ Lahiff E 'Land Redistribution in South Africa' (2009) in South Africa' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* 178.

⁵³⁶ The International Bank for Reconstruction and Development / The World Bank 'Agriculture Investment Sourcebook' 391.

⁵³⁷ Deininger K 'Land Policies for Growth – poverty reduction: key issues and challenges ahead' 19.

⁵³⁸ De Lange D 'Malema: White people are criminals' *Independent Online News* 8 May 2011 available at <http://www.iol.co.za/news/politics/malema-white-people-are-criminals-1.1065708> (accessed 8 May 2011).

⁵³⁹ See the discussion in chapter 3 at paragraph 3.1.1.4.

⁵⁴⁰ Moyo S 'Designing and implementing redistributive land reform: The southern African experience' in Binswanger-Mkhize HP, Bourguignon C & Van den Brink R (eds) *Agricultural Land Redistribution: Towards a Greater Consensus* (2009) 353.

⁵⁴¹ In Kenya and Algeria former land owners were compensated for their farms by British and French governments. The World Bank also funded the Kenyan land reform programme with loan financed complementary investments and the land reform is hailed as 'highly successful', as well as the land reform programmes in Brazil, Guatemala, India, Malawi and the Philippines. Van den Brink R (ed), Thomas G & Binswanger H et al *Consensus, Confusion and Controversy. Selected Land Reform Issues in Sub-Saharan Africa* (World Bank Working Papers) (2006) 41.

Borras and McKinley also argue that multilateral and bilateral donors can make a big contribution to land redistribution. They note that these were 'prominent features' of the success stories of Japan, the Republic of Korea and Taiwan'.⁵⁴²

Karumbidza has raised some concerns with donor funding. In advancing his argument, he points out that foreign aid in development usually leads to the donor countries having 'leverage' on the policy direction and discourse of the recipient countries, and much of the time with 'deleterious effects'.⁵⁴³ He, however, concludes that the donor negotiated land reforms have ensured adequate financial compensation for current land owners who transfer whole and subdivided farms to resettlement programmes, at the expense of increasing public debt incurred to finance such transfers.⁵⁴⁴ On balance, though, he highlights that the policy direction taken by the SAG was not a result of force by the donors or lenders, but a result of its policy direction towards creating conditions conducive for attracting foreign investment.⁵⁴⁵

Thus, notwithstanding the concerns raised, if the SAG continues to hold its position of not allowing its policies to be influenced by donors, this could still remain a viable way for the SAG to complement its budget available for the SALRP.

7 BILATERAL AND MULTILATERAL DONORS

According to the Independent Evaluation Group (IEG), agriculture in Africa has been supported by multilateral donors such as the World Bank, IFAD, FAO and African Development Bank (AfDB) and bilateral donors such as Development Co-operation Directorate (DCD – DAC).⁵⁴⁶

⁵⁴² Borras S & McKinley T 'The unresolved land reform debate: Beyond state-led or market-led models' (2006) 2 International Poverty Centre Policy Research Brief 3.

⁵⁴³ Karumbidza BJ "Redistributionist' versus 'Productionist' Land Reform' 1.

⁵⁴⁴ Karumbidza BJ "Redistributionist' versus 'Productionist' Land Reform' 31.

⁵⁴⁵ Karumbidza BJ "Redistributionist' versus 'Productionist' Land Reform' 31.

⁵⁴⁶ The International Bank for Reconstruction and Development / The World Bank 'World Bank Assistance to Agriculture in Sub-Saharan Africa: An IEG Review' 11 available at http://stuffedandstarved.org/drupal/files/ag_africa_eval.pdf (accessed 9 March 2011).

7.1 Development Cooperation Directorate- Development Assistance Committee (DCD-DAC)

The DCD-DAC has also noted an increased awareness of the contribution of agriculture and investments in agriculture.⁵⁴⁷ However, the Organization for Economic Co-Operation and Development (OECD), under which the DCD-DAC falls, does not grant funds or advance loans.⁵⁴⁸ Thus, DCD-DAC would not constitute a potential donor funder of the SALRP.

7.2 World Bank

In 2007 the IEG conducted a review of the World Bank's assistance to agriculture within Sub-Saharan Africa (SSA). They found that between 1991 and 2006 the World Bank supported 262 projects in the agriculture sector of Africa.⁵⁴⁹ The World Bank's assistance to the agricultural sector in Africa has been driven by the aim of alleviating rural poverty and promoting rural development.⁵⁵⁰

The World Bank⁵⁵¹ is acutely aware that if Africa is to achieve the MDGs, agriculture must be used more effectively for development.⁵⁵² Pursuant to this commitment, the World Bank has developed a separate strategy for agriculture in Africa, namely its Africa Action Plan for 2010-12, in recognition of the agricultural sector as a potential driver of growth⁵⁵³. SSA is one of the priority areas, with 'raising agricultural productivity for smallholders' being a key focus.⁵⁵⁴

The main focus of the World Bank in relation to land related investments has been formalising land rights through registration and improving access to

⁵⁴⁷ http://www.oecd.org/document/16/0,3746,en_2649_34621_36562128_1_1_1_1,00.html (accessed 20 March 2011).

⁵⁴⁸ http://www.oecd.org/pages/0,3417,en_36734052_36761854_1_1_1_1,00.html (accessed 20 March 2011).

⁵⁴⁹ The International Bank for Reconstruction and Development / The World Bank 'World Bank Assistance to Agriculture in Sub-Saharan Africa AN IEG Review' 25.

⁵⁵⁰ The International Bank for Reconstruction and Development / The World Bank 'World Bank Assistance to Agriculture in Sub-Saharan Africa an IEG Review' 4.

⁵⁵¹ The World Bank includes the following five agencies: International Bank for Reconstruction and Development (IBRD), International Development Association (IDA), International Finance Corporation (IFC), Multilateral Investment Guarantee Agency (MIGA) and International Centre for Settlement of Investment Disputes (ICSID).

⁵⁵² http://siteresources.worldbank.org/EXTASSAGRISUBSAHAFR/Resources/mr_text.pdf (accessed 9 March 2011).

⁵⁵³ The International Bank for Reconstruction and Development / The World Bank 'World Bank Assistance to Agriculture in Sub-Saharan Africa AN IEG Review' xxv.

⁵⁵⁴ The International Bank for Reconstruction and Development / The World Bank 'World Bank Agriculture Acton Plan for 2010 – 2012' 35 available at <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTARD/0,,contentMDK:22330055~menuPK:1307965~pagePK:210058~piPK:210062~theSitePK:336682,00.html> (accessed 30 August 2010).

land.⁵⁵⁵ The World Bank recognises that land redistribution is important to promote competition in agriculture.⁵⁵⁶ Thus, as pointed out previously, aside from supporting agriculture in Africa, the World Bank has emerged as a potential source of funding land reform.⁵⁵⁷

The World Bank identified that, amongst other issues, 'incomplete land reform' was a key constraint to developing agriculture in Africa.⁵⁵⁸ The World Bank is open to supporting MLAR, the development of viable 'productive' agricultural enterprises, and well-conceived and executed land reform programmes based on compulsory acquisition of land or redistribution.⁵⁵⁹

The World Bank has three kinds of financing options for land reform. The land reform financing options include: grant funding; loan funding; or a combination of the two. Grant funding is preferred to loan funding to acquire land purchases and investments.⁵⁶⁰ It is also able to disburse funds against land purchases as well as credit for technical assistance or grants to fund business plans.⁵⁶¹

Until recently, because of policy constraints, the World Bank's financial contribution to MLAR has been limited to supporting the 'non land acquisition costs'.⁵⁶² Recent policy changes allow the World Bank to fund land acquisition for land reform purposes if: i) it can be demonstrated that the land purchase is an efficient means of acquiring land; ii) the land is purchased by beneficiaries in terms of MLAR; iii) the program results in increased productivity; iv) there is a strategy to deal with market distortions; and v) there are plans in place to make management arrangements covering the use of funds, monitoring and

⁵⁵⁵ The International Bank for Reconstruction and Development / The World Bank 'Agriculture Investment Sourcebook' 387.

⁵⁵⁶ The International Bank for Reconstruction and Development / The World Bank 'Agriculture Investment Sourcebook' 2.

⁵⁵⁷ In Kenya and Algeria former land owners were compensated for their farms by British and French governments. The World Bank also funded the Kenyan land reform programme with loan financed complementary investments and the land reform is hailed as 'highly successful', as well as the land reform programmes in Brazil, Guatemala, India, Malawi and the Philippines. Van den Brink R (ed), Thomas G & Binswanger H et al *Consensus, Confusion and Controversy. Selected Land Reform Issues in Sub-Saharan Africa* (World Bank Working Papers) (2006) 41.

⁵⁵⁸ The International Bank for Reconstruction and Development / The World Bank 'World Bank Assistance to Agriculture in Sub-Saharan Africa an IEG Review' 13.

⁵⁵⁹ The International Bank for Reconstruction and Development / The World Bank 'Agriculture Investment Sourcebook' 403.

⁵⁶⁰ The International Bank for Reconstruction and Development / The World Bank 'Agriculture Investment Sourcebook' 405.

⁵⁶¹ The International Bank for Reconstruction and Development / The World Bank 'Agriculture Investment Sourcebook' 394.

⁵⁶² The International Bank for Reconstruction and Development / The World Bank 'World Bank Assistance to Agriculture in Sub-Saharan Africa an IEG Review' 28.

evaluation, and analysis of political risk.⁵⁶³ India and Malawi are among the first countries in which the World Bank has funded the acquisition of land.⁵⁶⁴

In addition, those losing land can be compensated according to the Bank's Safeguard Policy on Involuntary Resettlement. Brazil has made use of this mechanism, with the Federal Government being funded by the World Bank, enabling it to acquire large blocks of land compulsorily for its state land reform program.⁵⁶⁵ Thus the World Bank could also fund land redistribution by means of providing expropriation compensation finance.

Another way of attracting FDI through the World Bank is with the Multilateral Investment Guarantee Agency (MIGA). MIGA is geared towards promoting FDI into developing countries, such as African countries.⁵⁶⁶ MIGA achieves its objective by 'providing political risk insurance for foreign investments in developing countries and dispute resolution services for guaranteed investments to prevent disruptions to developmentally beneficial projects'.

Under its Small Investment Program (SIP), MIGA is able to provide guarantees to investments in the non-financial sector, provided the investment relates to the establishment of a small or medium enterprise (SME), or made into an existing SME, in a developing member country. The terms are that the SME must fulfil two out of three of the following criteria: no more than 300 employees; total annual sales should not be more than US\$15 million; and/or total assets should not be more than USD15 million.⁵⁶⁷

MIGA has issued a guarantee of US\$5.4 million to the Industrial Development Corporation of South Africa (IDC) covering its non-shareholder loan for the project. The guarantees provide coverage against the risks of transfer restriction, expropriation, and war and civil disturbance for a period of up to ten years.⁵⁶⁸ The project has somewhat of a land redistribution flavour to it in that

⁵⁶³ The International Bank for Reconstruction and Development / The World Bank 'Agriculture Investment Sourcebook' 389 - 404.

⁵⁶⁴ Van den Brink R (ed), Thomas G & Binswanger H et al *Consensus, Confusion and Controversy. Selected Land Reform Issues in Sub-Saharan Africa* (World Bank Working Papers) (2006) 41.

⁵⁶⁵ The International Bank for Reconstruction and Development / The World Bank 'Agriculture Investment Sourcebook' 394.

⁵⁶⁶ http://www.miga.org/about/index_sv.cfm?stid=1736 (accessed 15 March 2011).

⁵⁶⁷ http://www.miga.org/guarantees/index_sv.cfm?stid=1661 (accessed 15 March 2011).

⁵⁶⁸ http://www.miga.org/sectors/index_sv.cfm?stid=1536§id=1 (accessed 15 March 2011).

outgrowers will be organised into co-operatives to ensure that the local community is also involved and developed.⁵⁶⁹

MIGA guarantees have also been granted in respect of investments into South African agricultural products. One such project is the investment by MKV Holdings LLC of the United States in Kanu Vineyards (Pty) Ltd in South Africa, a wine-making and export company. MKV Holdings LLC received a MIGA guarantee of US\$7.86 million for a period of up to ten years, guaranteeing its investment in Kanu Vineyards (Pty) Ltd against the risks of transfer restriction, expropriation, and war and civil disturbance.⁵⁷⁰

8 FOREIGN AGRICULTURAL INVESTMENT

8.1 Agricultural investment

There is no formal definition for agricultural investment as such. Agricultural investment is defined with reference to land acquisition but also varying levels of equity acquisition in agricultural operating companies or land owning companies. For purposes of this thesis, 'land acquisition' refers to both land purchases and alternative means of acquiring land.

Some commentators are of the view that agricultural investment can be divided into two broad categories: investing in agricultural funds available on the market; and investing directly into agricultural land.⁵⁷¹

FAO argues that agricultural investment should extend beyond 'physical capital', but rather include human capital.⁵⁷²

⁵⁶⁹ http://www.miga.org/sectors/index_sv.cfm?stid=1536§id=1 (accessed 15 March 2011).

⁵⁷⁰ http://www.miga.org/sectors/index_sv.cfm?stid=1536§id=1 (accessed 15 March 2011).

⁵⁷¹ Garner D 'The best agricultural investment of 2010?' *Ezine Articles* 29 January 2010 available at <http://ezinearticles.com/?The-Best-Agricultural-Investment-of-2010?&id=3663197> (accessed 8 March 2011).

⁵⁷² FAO 'Agricultural investment and productivity in developing countries' available at <http://www.fao.org/docrep/003/x9447e/x9447e03.htm#e> (accessed 15 March 2011).

8.2 Agricultural investment trends in developing countries

'The world is experiencing a grain rush. With increasing frequency, wealthy, food-importing countries and private investors are acquiring farmland overseas.'⁵⁷³

Notwithstanding the vital role investment plays in agriculture, in particular to alleviate poverty and enhance food security, investment in the agricultural sector of developing countries has been limited.⁵⁷⁴ Recently though, amidst reservations that investment in agriculture is viewed as 'risky',⁵⁷⁵ a growing interest and awakening in foreign agricultural investment has been observed in developing countries.

Private sector agribusiness investment in SSA is also picking up, mostly directed towards 'high-value crops' and 'non-traditional products'.⁵⁷⁶

It has been observed that the private sector is leading these investments (funded by government or sovereign wealth funds (SWFs)) as well as government to government investments and investments by SWFs (to a lesser degree).^{577 578} The main institutional private sector investors comprise SWFs in partnership with private firms, as well as state owned enterprises (SOEs), microfinance providers and investment managers (which include pension funds, hedge funds, private equity and banking institutions and financial institutions).⁵⁷⁹

Notwithstanding this trend, Hallam of the FAO has observed a downward trend in official development assistance to agriculture.⁵⁸⁰

It has been noted that the geographic focus of agricultural investment interest has shifted to Africa and Brazil, with Brazil being recognised as the 'new frontier' for new farmland development in the world.^{581 582}

⁵⁷³ Kugelman M & Levenstein SL (eds) *Land Grab? The Race for the World's Farmland* (2009) 1.

⁵⁷⁴ Miller C, Richter S & McNellis P et al 'Agricultural investment funds for developing countries' 1.

⁵⁷⁵ Miller C, Richter S & McNellis P et al 'Agricultural investment funds for developing countries' 12.

⁵⁷⁶ Mhlanga N 'Private sector agribusiness investment in Sub-Saharan Africa. Agricultural management' 23 – 25 available at www.fao.org/ag/ags/publications/docs/AGSF.../K7443e.pdf updated to http://www.fao.org/fileadmin/user_upload/ags/publications/K7443e.pdf (accessed 2 September 2010).

⁵⁷⁷ Hallam D 'International investments in agricultural production' in Kugelman M & Levenstein S (eds) *Land Grab? The Race for the Worlds' Farmland* (2009) 30.

⁵⁷⁸ Highquest Partners United States 'Private financial sector investment in farmland and agricultural infrastructure' (2010) 33 OECD Food, Agriculture and Fisheries Working Paper 1.

⁵⁷⁹ McNellis P 'Foreign investment in developing country agriculture – the emerging role of private sector finance' (2009) 28 FAO Working Paper 5.

⁵⁸⁰ Hallam D 'International investments in agricultural production' in Kugelman M & Levenstein S (eds) *Land Grab? The Race for the Worlds' Farmland* (2009) 37.

These observations are from different research perspectives and by various commentators and research organisations such as the United Nations Conference on Trade and Development (UNCTAD), the International Institute for Sustainable Development (IISD), Institute for Agriculture and Trade Policy (IATP), the IIED,⁵⁸³ IFAD,⁵⁸⁴ FAO,^{585 586 587} Swiss Agency for Development and Cooperation (SDC)⁵⁸⁸, OECD⁵⁸⁹ and the World Bank.⁵⁹⁰

There are a number of factors that have triggered the increase in foreign investment in developing country agriculture. The growing phenomenon has been attributed to the recovery in respect of FDI generally after the economic crisis.⁵⁹¹ Other reasons for increased foreign agricultural investment include the perceived availability of land in Africa,⁵⁹² the need for investors to diversify their investment strategies and seek out other assets and opportunities to invest in,⁵⁹³ growing interest in biofuels⁵⁹⁴ and alternative energy sources,⁵⁹⁵ return on investment generally,^{596 597} return on investment on emerging carbon markets,⁵⁹⁸ population growth,⁵⁹⁹ increasing rates of urbanisation,⁶⁰⁰ and

⁵⁸¹ Highquest Partners United States 'Private financial sector investment in farmland and agricultural infrastructure' (2010) 33 OECD Working Paper 13.

⁵⁸² Hallam D 'International investments in agricultural production' in Kugelman M & Levenstein S (eds) *Land Grab? The Race for the Worlds' Farmland* (2009) 30.

⁵⁸³ Cotula L, Vermeulen S & Leonard R 'Land grab or development opportunity? Agricultural investment and international land deals in Africa' 19 available at <http://pubs.iied.org/pdfs/12561IIED.pdf> (accessed 28 March 2011).

⁵⁸⁴ Cotula L, Vermeulen S & Leonard R et al 'Land grab or development opportunity? Agricultural Investment and International Land Deals in Africa' 19.

⁵⁸⁵ McNellis P 'Foreign investment in developing country agriculture – the emerging role of private sector finance' (2009) 28 FAO Working Paper 1.

⁵⁸⁶ Miller C, Richter S & McNellis P et al 'Agricultural investment funds for developing countries' 35.

⁵⁸⁷ Mhlanga N 'Private sector agribusiness investment in Sub-Saharan Africa' 1.

⁵⁸⁸ Cotula L, Vermeulen S & Leonard R et al 'Land grab or development opportunity? Agricultural investment and international land deals in Africa' 19.

⁵⁸⁹ <http://www.oecd-ilibrary.org/docserver/download/fulltext/5km7nznjlr8v.pdf?expires=1297145346&id=0000&accname=quest&checksum=C5C94CE87D3687190B985F088DEC8F8EC> (accessed 8 February 2011).

⁵⁹⁰ United Nations Conference on Trade and Development 'World Investment Report 2010: Investing in a low-carbon economy' available at http://www.unctad.org/en/docs/wir2010_en.pdf (accessed 23 March 2011) (hereinafter referred to as 'World Investment Report 2010').

⁵⁹¹ United Nations Conference on Trade and Development 'World Investment Report 2010' 2.

⁵⁹² Cotula L, Vermeulen S & Leonard R et al 'Land grab or development opportunity? Agricultural investment and international land deals in Africa' 59.

⁵⁹³ Highquest Partners United States 'Private financial sector investment in farmland and agricultural infrastructure' (2010) 33 OECD Working Paper 5.

⁵⁹⁴ Mhlanga N 'Private sector agribusiness investment in Sub-Saharan Africa. Agricultural management' 2 - 5.

⁵⁹⁵ Smaller C & Mann 'A thirst for distant lands: Foreign investment in agricultural land and water' 4.

⁵⁹⁶ McNellis P 'Foreign investment in developing country agriculture – the emerging role of private sector finance' (2009) 28 FAO Working Paper 10.

⁵⁹⁷ Mhlanga N 'Private sector agribusiness investment in Sub-Saharan Africa' 2 - 5.

⁵⁹⁸ Cotula L, Vermeulen S & Leonard R et al 'Land grab or development opportunity? Agricultural investment and international land deals in Africa' 58.

⁵⁹⁹ Vermeulen S & Cotula L 'Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders' 13.

⁶⁰⁰ Vermeulen S & Cotula L 'Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders' 13.

developmental reasons.⁶⁰¹ The widely held view is that the trend can be attributed to food security concerns of investor countries who have limited water and arable land to maintain agricultural production in their own countries.^{602 603}

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From the host developing country's perspective, foreign agricultural investment has been encouraged in the hope that the FDI will build infrastructure, bring new technology, create employment, and give smallholder farmers more choice, access and control, and support local systems.⁶¹¹

These investments are however a catch-22. The reason for this is because the food insecure countries are leasing or selling land to rich countries to alleviate their future food security challenges, while at the same time the host countries often have food security concerns of their own.⁶¹²

In Africa it has been found that it is not only 'market forces' that have given rise to this trend in agricultural investment and the large-scale land acquisitions that are coupled with it, but rather that governments in countries with 'high agricultural potential' and 'competitive advantage' are encouraging renewed commercial investment from domestic and foreign investors. One such example is the government of Ethiopia, who reportedly in July 2009 marked out 1.6 million hectares of land, extendable to 2.7 million hectares, for investors willing to develop commercial farms.⁶¹³ Other examples include Ghana, Malawi, Mozambique, Malawi, Nigeria, Tanzania and Uganda, which have

⁶⁰¹ Miller C, Richter S & McNellis P et al 'Agricultural investment funds for developing countries' 29.

⁶⁰² McNellis P 'Foreign investment in developing country agriculture – the emerging role of private sector finance' (2009) 28 FAO Working Paper 5.

⁶⁰³ Miller C, Richter S & McNellis P et al 'Agricultural investment funds for developing countries' 9 - 10.

⁶⁰⁴ Mhlanga N 'Private sector agribusiness investment in Sub-Saharan Africa' 2 - 5.

⁶⁰⁵ Hallam D 'International investments in agricultural production' in Kugelman M & Levenstein S (eds) *Land Grab? The Race for the Worlds' Farmland* (2009) 27.

⁶⁰⁶ Spieldoch A & Murphy S 'Agricultural land acquisitions: Implications for food security and poverty alleviation' in Kugelman M & Levenstein S (eds) *Land Grab? The Race for the Worlds' Farmland* (2009) 42.

⁶⁰⁷ Cotula L, Vermeulen S & Leonard R et al 'Land grab or development opportunity? Agricultural investment and international land deals in Africa' 38.

⁶⁰⁸ Vermeulen S & Cotula L 'Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders' 13.

⁶⁰⁹ Smaller C & Mann 'A thirst for distant lands: Foreign investment in agricultural land and water' 4.

⁶¹⁰ Zvomuya F 'Agricultural investment: The key to food security' *Farmers Weekly* 20 November 2006 available at http://www.farmersweekly.co.za/index.php?p|IGcms_nodes|IGcms_nodesUID|=b9af7a1dcc1a216292f58f2de9ce6344 (accessed 24 April 2011).

⁶¹¹ Spieldoch A & Murphy S 'Agricultural land acquisitions: Implications for food security and poverty alleviation' in Kugelman M & Levenstein S (eds) *Land Grab? The Race for the Worlds' Farmland* (2009) 41.

⁶¹² Hallam D 'International investments in agricultural production' in Kugelman M & Levenstein S (eds) *Land Grab? The Race for the Worlds' Farmland* (2009) 27.

⁶¹³ Cotula L, Vermeulen S & Leonard R et al 'Land grab or development opportunity? Agricultural investment and international land deals in Africa' 22 - 27.

actively encouraged foreign private sector participation in agriculture, even in the production of their staple crops.⁶¹⁴

Some food importing countries have also created policy incentives for land acquisitions overseas as part of their broader national food security strategies. They are of the view that this trend falls within the broader context of 'expanding economic relations between Africa and the rest of the world'.⁶¹⁵

In advancing the argument of land reform giving rise to sustainable agriculture, it is argued that sustainable agriculture requires long-term investment in land to preserve it for present and future generations. Without secure access to or control over land, farmers do not have the incentive or the power to make such an investment.⁶¹⁶

At the 5th Africa Economic Forum held in Cape Town on 9 March 2011, this sentiment that agriculture in Africa requires investment both from the private and public sector was echoed by Jorge Maia, head of the research and information department at the IDC.⁶¹⁷

In light of the relationship and dynamics between the agriculture sector and land redistribution, as well as these recent agricultural investment trends, the author is of the view that agricultural investment should not be ignored in trying to find potential alternative sources of funding for the SALRP.

8.2.1 Sovereign Wealth Funds (SWFs)⁶¹⁸

Agricultural investment trends also reveal that SWF's are taking to investing in agriculture.^{619 620}

SWFs are state-owned institutions and are generally long term investments.⁶²¹

The structure of the investment for these SWFs in recent years has been to

⁶¹⁴ Mhlanga N 'Private sector agribusiness investment in Sub-Saharan Africa' 37 - 40.

⁶¹⁵ Cotula L, Vermeulen S & Leonard R et al 'Land grab or development opportunity? Agricultural investment and international land deals in Africa' 25.

⁶¹⁶ Lead 'The Sustainability of Societies in Transition: Agrarian Reform and Sustainable Agriculture in Moldova' available at <http://casestudies.lead.org/index.php?cscid=126> (accessed 17 February 2011).

⁶¹⁷ Mannak M 'Food price hikes 'may trigger farming investment'' *Business Live* 9 March 2011 available at <http://www.businesslive.co.za/incoming/2011/03/09/food-price-hikes-may-trigger-farming-investment> (accessed 18 March 2011).

⁶¹⁸ SWFs are special purpose vehicles created and owned by the central government to achieve certain financial objectives. They are usually established from "balance of payments surpluses, official foreign currency operations, the proceeds of privatisations, fiscal surpluses, and/or receipts resulting from commodity exports". Cotula L, Vermeulen S & Leonard R et al 'Land grab or development opportunity?' (2009) 29 - 30.

⁶¹⁹ United Nations Conference on Trade and Development 'World Investment Report 2010' 95.

⁶²⁰ McNellis P 'Foreign investment in developing country agriculture – the emerging role of private sector finance' (2009) 28 FAO Working Paper 3.

enter into partnerships of some kind with private institutions and investors in order to make joint investments abroad.⁶²²

A study on land acquisitions has found that generally they are supported by governments promoting investments overseas. It has been observed that the forms of government FDI support include: government-to-government land acquisition deals (although not common), SWF equity investments, SOE and SWF non-equity investments, and governments establishing development funds which they use to provide financial services to SOEs and other companies.⁶²³ SWFs may also acquire minority shareholdings in foreign public listed companies and more recently make direct investments in land and governments establishing development funds which they use to provide financial services to SOEs and other companies. Governments also provide non-financial services to SOEs and private companies.^{624 625}

It has also been observed that food importing countries, such as Saudi Arabia, driven by food security concerns have created 'policy incentives' for agricultural investment in the form of land acquisitions in foreign countries overseas as part of broader national food security strategies'.⁶²⁶

It has also been found that in some cases SOEs invest in 'primary agricultural production' in foreign countries.⁶²⁷ An example of an SOE investing in the agricultural sector of an African country is that of Zad Holding Company on SOE of Qatar establishing a joint venture to produce food in Sudan for export to Arab markets.⁶²⁸

In the author's view, SWFs or SOEs are potential alternative source of funding the SALRP. If pursued by the SAG, the SAG's approach should be to leverage

⁶²¹ McNellis P 'Foreign investment in developing country agriculture – the emerging role of private sector finance' (2009) 28 FAO Working Paper 4.

⁶²² McNellis P 'Foreign investment in developing country agriculture – the emerging role of private sector finance' (2009) 28 FAO Working Paper 3.

⁶²³ Cotula L, Vermeulen S & Leonard R et al 'Land grab or development opportunity? Agricultural investment and international land deals in Africa' 27.

⁶²⁴ Cotula L, Vermeulen S & Leonard R et al 'Land grab or development opportunity? Agricultural investment and international land deals in Africa' 27.

⁶²⁵ SWFs may operate through a subsidiary operational company, or through entering into shared-governance joint ventures with private sector companies or with other governments' state-owned enterprises or investment funds. McNellis P 'Foreign investment in developing country agriculture – the emerging role of private sector finance' (2009) 28 FAO Working Paper 4.

⁶²⁶ Vermeulen S & Cotula L 'Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders' 23.

⁶²⁷ Cotula L, Vermeulen S & Leonard R 'Land grab or development opportunity? Agricultural investment and international land deals in Africa' 36.

⁶²⁸ Cotula L, Vermeulen S & Leonard R et al 'Land grab or development opportunity? Agricultural Investment and International Land Deals in Africa' 36.

off the comparative advantage it has in respect of its agricultural sector, over food importing countries, to explore ways that these countries may offer funding to the SALRP.

8.2.2 Banking institutions

Foreign agricultural banking institutions are focusing on rural Africa, but from a retail banking perspective. It has also been found that banking institutions are tightening up their lending criteria and collateral requirements.⁶²⁹

Given this trend and the stringent financing requirements, the author is of the view that foreign banking institutions are not likely to be major role players in the funding of the SALRP.

8.2.3 Microfinance institutions

Microfinance institutions are filling the lending gap left by the commercial banks in respect of agriculture in developing countries. Microfinance providers are also increasingly making small loans to poor clients without the clients providing security for the loan.⁶³⁰ Thus, they finance the lower end of the market that the commercial banks cannot finance. These microfinance institutions have, in turn, been financed by large commercial banks, such as Citigroup and BNP Paribas.⁶³¹ Both Citigroup and BNP Paribas have a commercial presence in South Africa.

Credit would not be a new phenomenon in the SALRP. However, South Africa may wish to explore these options to ascertain whether the terms of credit could be more favourable than those of local banks currently advancing finance to South African land redistribution projects.

⁶²⁹ McNellis P 'Foreign investment in developing country agriculture – the emerging role of private sector finance' (2009) 28 FAO Working Paper 19 – 20.

⁶³⁰ McNellis 'Foreign investment in developing country agriculture – the emerging role of private sector finance' (2009) 28 FAO Working Paper 20.

⁶³¹ McNellis P 'Foreign investment in developing country agriculture – the emerging role of private sector finance' (2009) 28 FAO Working Paper 7 -8.

8.2.4 Investment managers

Investment managers have also come onto the agricultural investment scene. Investment managers include pension funds, hedge funds, private equity and venture capital groups.⁶³²

Private equity firms, compared to other investment managers, appear to be more flexible and more active in Africa.

Examples of private equity firms that have invested in Africa and SSA include the African Agricultural Land Fund (African AgriLand Fund), the China Africa Development Fund (CADF),^{633 634} the African Agriculture Fund (AAF) managed by the Phatisa Group, and the Africa Enterprise Challenge Fund (AECF).⁶³⁵

The African Agricultural Land Fund (African AgriLand Fund) was created by a London based hedge fund, Emergent Asset Management, in partnership with South African agricultural traders, Graininvest.⁶³⁶ The rationale for this fund is food security.^{637 638}

The South African Department of Trade and Industry and the China-Africa Development Fund (CADF) signed a memorandum of understanding (MOU) in 2009. In terms of the MOU, the areas of co-operation at this stage only include mining, energy, infrastructure and information and communications technology.⁶³⁹ However, given China's intention to invest in Africa, there is nothing precluding South Africa from exploring an agricultural investment opportunity. Although CADF has invested in agriculture in other African countries, it has not yet invested in South African agriculture.⁶⁴⁰

⁶³² McNellis P 'Foreign investment in developing country agriculture – the emerging role of private sector finance' (2009) 28 FAO Working Paper 10.

⁶³³ McNellis P 'Foreign investment in developing country agriculture – the emerging role of private sector finance' (2009) 28 FAO Working Paper 16.

⁶³⁴ McNellis P 'Foreign investment in developing country agriculture – the emerging role of private sector finance' (2009) 28 FAO Working Paper 14.

⁶³⁵ 'Platform for African – European Partnership in Agricultural Research for Development Funds raising capital for African agriculture' available at <http://paepard.blogspot.com/2011/01/funds-raising-capital-for-african.html> (accessed 9 March 2011).

⁶³⁶ McNellis P 'Foreign investment in developing country agriculture – the emerging role of private sector finance' (2009) 28 FAO Working Paper 13.

⁶³⁷ McNellis 'Foreign investment in developing country agriculture – the emerging role of private sector finance' (2009) 28 FAO Working Paper 13.

⁶³⁸ <https://www.emergentasset.com/?func=PageAfricanLandFund> (accessed 21 March 2011).

⁶³⁹ Campbell K 'China-Africa Development Fund opens SA office' *Engineering News* 16 March 2009 available at <http://www.engineeringnews.co.za/article/china-africa-development-fund-opens-sa-office-2009-03-16> (accessed 16 March 2011).

⁶⁴⁰ <http://www.cadfund.com/en/Column.asp?ColumnId=13> (accessed 9 March 2011).

The AAF focuses on food production and they also offer a technical assistance component.⁶⁴¹

Most of these private equity funds have purely commercial requirements or goals and for this reason may not be suitable investment vehicles for the SALRP with its social objectives.

The AECF is an interesting innovation from traditional private equity funds and operates from the East and Central Africa, West Africa as well as southern Africa, with its base in Johannesburg.^{642 643} The AECF is funded by the Australian Government Aid Program, the Consultative Group to Assist the Poor (CGAP), the UK Department for International Development (DFID), IFAD, and the Netherlands Ministry of Foreign Affairs (NMFA).⁶⁴⁴ The AECF is also tied to AGRA, who is funded by the Rockefeller Foundation and the Bill & Melinda Gates Foundation.⁶⁴⁵

According to the website, it aims to provide 'grants and interest free loans to businesses who wish to implement innovative, commercially viable, high impact projects in Africa'.⁶⁴⁶ The main aim of the AECF is innovation and, to this end, the projects they fund must have 'a positive impact on the rural poor in Africa, delivering increased employment and income, reduced costs, and/or improved productivity'.⁶⁴⁷ Beneficiaries are selected pursuant to a 'competition'. Given the AECF's objective of impacting on the rural poor and the significance of the SALRP being based in poverty alleviation, there should be no reason why South African land redistribution projects could not enter the competition and that this fund could not be a potential alternative source of funding for the SALRP. Even if the projects are not successful in the competition, at the very least awareness might be created of the SALRP's need for funding.

⁶⁴¹ Phatisa 'African Agriculture Fund first closes on US\$ 135 Million' 29 November 2010 available at [http://www.phatisa.co.za/images/file/Announcement%20Final%20-%20AAF%20First%20close%20\(concise\).pdf](http://www.phatisa.co.za/images/file/Announcement%20Final%20-%20AAF%20First%20close%20(concise).pdf) (accessed 9 March 2011).

⁶⁴² http://www.aecfafrica.org/index.php?option=com_content&view=article&id=18&Itemid=32 (accessed 9 March 2011).

⁶⁴³ <http://www.aecfafrica.org/> (accessed 9 March 2011).

⁶⁴⁴ http://www.aecfafrica.org/index.php?option=com_content&view=article&id=12&Itemid=26 (accessed 21 March 2011).

⁶⁴⁵ http://www.aecfafrica.org/index.php?option=com_content&view=article&id=12&Itemid=26 (accessed 21 March 2011).

⁶⁴⁶ <http://www.aecfafrica.org/> (accessed 9 March 2011).

⁶⁴⁷ http://www.aecfafrica.org/index.php?option=com_content&view=article&id=65&Itemid=100003 (accessed 9 March 2011).

8.2.5 Agricultural Investment Funds (AIFs)⁶⁴⁸

The increasing trend of investment in agriculture is also as a result of a new phenomenon of foreign investors investing in developing world agriculture through AIFs.^{649 650} AIFs used to finance agricultural projects include setting up of a 'whole scheme' that involves the purchase of land, equipment and storage facilities.⁶⁵¹ Some AIFs complement their finance with technical assistance (which includes training on business expertise, business management, expertise, technology training and transfer, financial literacy training for borrowers and corporate) to strengthen the business capacity of the projects they invest in.⁶⁵² This trend has been attributed to the macro-investment trend in the "emerging market asset class".⁶⁵³

Many AIFs are set up as public private partnerships (PPPs).⁶⁵⁴ This entails investment by private sector and public sector. PPPs are not a new concept in South Africa at a national or local government level. However, it has mostly been used in relation to investment in the tourism sector. The combination of public and private funds is not new to the SALRP, as discussed in chapter 3, the SAG is encouraging private investment, albeit it local private investment. Further, the notion of 'strategic partners' is also envisaged by the SAG. Thus the author is of the view that, subject to legislative and policy requirements, PPPs with public and foreign private sector funding could be a viable option for funding the SALRP.

Interestingly, there are about ten AIFs operating in SSA.⁶⁵⁵ In order for AIFs to be a means of investing in agriculture and a potential alternative source of funding for the SALRP, AIFs that are not purely commercial and have a social or development focus for developing countries would need to be considered. Most AIFs have a return on investment focus; few have an 'altruistic focus'.⁶⁵⁶

⁶⁴⁸ There is no general or commonly accepted definition for AIFs. AIFs are essentially investment funds that have a specific focus on the agricultural sector. FAO defines AIFs as a 'means to pool the capital of different types of investors and to provide capital to different agricultural stakeholders'. Miller C, Richter S & McNellis P et al 'Agricultural investment funds for developing countries' 2.

⁶⁴⁹ Miller C, Richter S & McNellis P et al 'Agricultural investment funds for developing countries' 11.

⁶⁵⁰ Mhlanga N 'Private Sector Agribusiness Investment in Sub-Saharan Africa' 21-22.

⁶⁵¹ Miller C, Richter S & McNellis P et al 'Agricultural investment funds for developing countries' 29.

⁶⁵² Miller C, Richter S & McNellis P et al 'Agricultural investment funds for developing countries' 31.

⁶⁵³ Miller C, Richter S & McNellis P et al 'Agricultural investment funds for developing countries' 11.

⁶⁵⁴ Miller C, Richter S & McNellis P et al 'Agricultural investment funds for developing countries' 11.

⁶⁵⁵ Miller C, Richter S & McNellis P et al 'Agricultural investment funds for developing countries' 22.

⁶⁵⁶ Miller C, Richter S & McNellis P et al 'Agricultural investment funds for developing countries' 3.

Thus further research into the various funds that are out there or how the SAG can partner with other investors to set up an AIF will be required.

An in-depth review of the various AIFs specifically targeting the SSA is beyond the scope of the thesis, but three examples of AIFs that operate in Africa will be briefly introduced. These are the African Agricultural Capital (AAC) (the first agribusiness-focused investment fund), African Seed Investment Fund (ASIF) and Root Capital.

The AAC investment structure takes the form of debt, equity or quasi-equity instruments.⁶⁵⁷ The AAC is focussed on investment in private sector agriculture in East Africa. As such, it does not present a viable option for South Africa. However, what is instructive about this fund is that its donors are the Rockefeller Foundation, the Gatsby Charitable Foundation and Volksvermogen NV,⁶⁵⁸ with the Gatsby Charitable Foundation and Volksvermogen NV being shareholders.⁶⁵⁹ These organisations could well be approached as potential donor funders of the SALRP.

ASIF aims to provide venture capital to small and medium-sized seed companies in southern and eastern Africa, with the aim of improving the delivery of quality certified seeds to smallholder farmers.⁶⁶⁰

Root Capital is an NPO investment fund providing debt finance for 'grassroots businesses in rural areas of developing countries'.^{661 662} It provides 'capital, financial education and market connections to small and growing businesses that build sustainable livelihoods and transform rural communities ...'⁶⁶³ It also offers short-term trade credit loans up to one year or long-term fixed asset loans up to five years.⁶⁶⁴ Root Capital has supported ecotourism and spice production projects in South Africa specifically.⁶⁶⁵

A R3 billion institutional investor focus agri-fund has also been established in South Africa. The Futuregrowth Agri-Fund was launched by Futuregrowth

⁶⁵⁷ <http://www.aac.co.ke/web/investment-portfolio.html> (accessed 9 March 2011).

⁶⁵⁸ <http://www.aac.co.ke/web/> (accessed 9 March 2011).

⁶⁵⁹ <http://www.aac.co.ke/web/about-aac.html> (accessed 9 March 2011).

⁶⁶⁰ Miller C, Richter S & McNellis P et al 'Agricultural investment funds for developing countries' 29.

⁶⁶¹ Miller C, Richter S & McNellis P et al 'Agricultural investment funds for developing countries' 25.

⁶⁶² http://www.rootcapital.org/what_we_do.php (accessed 9 March 2011).

⁶⁶³ <http://www.rootcapital.org/> (accessed 9 March 2011).

⁶⁶⁴ http://www.rootcapital.org/where_financialservices.php (accessed 9 March 2011).

⁶⁶⁵ http://www.rootcapital.org/where_we_work.php (accessed 9 March 2011).

Asset Management and UFF Asset Management.⁶⁶⁶ The aim of the fund is to create a market-driven response to land reform, which they regard as remaining a key economic and social issue in South Africa.⁶⁶⁷ According to the relevant investment manager, the fund will typically purchase a farm, retain the workforce and appoint a professional operator with a strong marketing and distribution network, which includes long-standing sales contracts with supermarkets and buyers, thus linking the farm directly to the markets. Access to working capital will be sourced by the operator. According to the investment manager, the model has been successfully implemented in the fruit export business.⁶⁶⁸

The growth in AIFs has been rapid and most funds have not been in existence for long. As a result, there is not enough data available to measure the development of AIFs.⁶⁶⁹ Some commentators have cautioned that AIFs have not been fully recognised as an “asset class” and there is still scepticism about it being very high risk.⁶⁷⁰

Setting up investment funds generally can be costly and time-consuming and this is no different with AIFs. Africa Invest, for example, spent 18 months trying to set up Africa Transformational Agri Fund and had to abandon the initiative because of the loss of a key investor.⁶⁷¹ Thus, before embarking on negotiations to set up an AIF, serious consideration of all the risk factors involved must be taken into account to ensure that the risks have been addressed.⁶⁷²

8.3 How have these investments been facilitated or structured?

The renewed interest in agricultural investment by private institutions, AIFs, SWFs and other types of investors has mainly focussed on purchasing farmland in lower- and middle-income countries or what the media has termed

⁶⁶⁶ I-net Bridge ‘R3bn agri-fund to tackle agricultural development’ *Business Day* 24 March 2010 available at www.businessday.co.za/articles/contents.aspx?id=104470 (accessed 8 March 2011).

⁶⁶⁷ HWB Communications on behalf of Futuregrowth Asset Management ‘R3-billion agri-fund to tackle agricultural development and deliver market returns’ *HWB Communications* 24 March 2010 available at <http://www.hwb.co.za/media-article.php?id=219> (accessed 21 March 2011).

⁶⁶⁸ I-net Bridge ‘R3bn agri-fund to tackle agricultural development’ *Business Day* 24 March 2010 available at www.businessday.co.za/articles/contents.aspx?id=104470 (accessed 8 March 2011).

⁶⁶⁹ Miller C, Richter S & McNellis P et al ‘Agricultural investment funds for developing countries’ 34.

⁶⁷⁰ Miller C, Richter S & McNellis P et al ‘Agricultural investment funds for developing countries’ 44.

⁶⁷¹ Miller C, Richter S & McNellis P et al ‘Agricultural investment funds for developing countries’ 30.

⁶⁷² Miller C, Richter S & McNellis P et al ‘Agricultural investment funds for developing countries’ 30 – 31.

'land grabbing'.^{673 674675 676 677 678 679} Some commentators, such as the IIED, FAO, IFAD and SDC, have criticised these transactions as not being models that promote agricultural investment and 'maximise opportunities for local smallholders'.⁶⁸⁰

These land purchase transactions have also attracted the attention of the media; however, many intended deals announced have not actually been implemented.⁶⁸¹

AIFs farmland acquisitions take the form of investors consolidating small plots of land into larger productive units, while introducing new technologies and investing in additional infrastructure and equipment.⁶⁸²

Private equity firms seek to acquire a majority shareholding in mature companies they invest in. The capital deployed is also mostly debt and the strategy includes 'leveraged buy-outs, venture capital, growth capital, distressed investments and mezzanine capital'.⁶⁸³ The investment is short term or long term, depending on the relevant strategy.⁶⁸⁴ Other private equity fund investments are structured by the fund initially acquiring a minority shareholding in a company, while trying to acquire more shareholding⁶⁸⁵ or a significant shareholding together with other meaningful shareholder rights or both. Other business models applied include management buy-outs and buy-ins, acquisitions, expansions, development of 'greenfield operations, equity investments and partnerships with outgrowers'.⁶⁸⁶

⁶⁷³ Vermeulen S & Cotula L 'Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders' 14.

⁶⁷⁴ Vermeulen S & Cotula L 'Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders' 95.

⁶⁷⁵ McNellis P 'Foreign investment in developing country agriculture – the emerging role of private sector finance' (2009) 28 FAO Working Paper 1.

⁶⁷⁶ McNellis P 'Foreign investment in developing country agriculture – the emerging role of private sector finance' (2009) 28 FAO Working Paper.

⁶⁷⁷ Mhlanga N 'Private Sector Agribusiness Investment in Sub-Saharan Africa' 21.

⁶⁷⁸ Spieldoch A & Murphy S 'Agricultural land acquisitions: Implications for food security and poverty alleviation' in Kugelman M & Levenstein S (eds) *Land Grab? The Race for the World's Farmland* (2009) 40.

⁶⁷⁹ McNellis P 'Foreign investment in developing country agriculture – the emerging role of private sector finance' (2009) 28 FAO Working Paper 3.

⁶⁸⁰ Smaller C & Mann 'A thirst for distant lands: Foreign investment in agricultural land and water' 5 - 11.

⁶⁸¹ Cotula L, Vermeulen S & Leonard R et al 'Land grab or development opportunity? Agricultural investment and international land deals in africa' (2009) 38.

⁶⁸² Miller C, Richter S & McNellis P et al 'Agricultural investment funds for developing countries' 19.

⁶⁸³ McNellis P 'Foreign investment in developing country agriculture – the emerging role of private sector finance' (2009) 28 FAO Working Paper 14.

⁶⁸⁴ McNellis P 'Foreign investment in developing country agriculture – the emerging role of private sector finance' (2009) 28 FAO Working Paper 14.

⁶⁸⁵ Miller C, Richter S & McNellis P et al 'Agricultural investment funds for developing countries' 24.

⁶⁸⁶ <http://www.phatisa.co.za/images/file/Fact%20sheet%20-%20November%202010.pdf> (accessed 9 March 2011).

Venture capital initiatives falling within the private equity category invest in new or emerging companies and, although they acquire representation, it is generally not a majority shareholding.⁶⁸⁷

There has also been a trend to focus on managing leased farmland as opposed to acquiring the farmland and offering their services to absentee land owners.⁶⁸⁸

Various commentators have suggested that land rental within the context of land redistribution is an alternative to land purchases, but still has the effect of creating agricultural productivity and poverty alleviation.⁶⁸⁹ This land lease model has been found to be the preferred mode of investment in Africa because outright ownership is not necessarily possible due to various legalities involved. Accordingly, long term concessions with central governments, which include commitments by investors to provide financial support for social projects between five to 15 year periods, have emerged as an applied business model.⁶⁹⁰

One example of the private sector pursuing land investments is the failed attempt by Daewoo Conglomerate of South Korea to acquire 1.3 million hectares of land in Madagascar in order to produce maize for export to South Korea. This is commonly referred to as “the Daewoo Affair”.^{691 692} This transaction was fraught with various problems, said to have arisen from a lack of buy-in by smallholder farmers and other local stakeholders, and related transparency concerns.^{693 694}

⁶⁸⁷ McNellis P ‘Foreign investment in developing country agriculture – the emerging role of private sector finance’ (2009) 28 FAO Working Paper 20.

⁶⁸⁸ This has been observed in Brazil. Highquest Partners United States ‘Private financial sector investment in farmland and agricultural infrastructure’ (2010) 33 OECD Working Paper 13.

⁶⁸⁹ Deininger K ‘Land Policies for Growth – poverty reduction: key issues and challenges ahead’ 20.

⁶⁹⁰ Highquest Partners United States ‘Private financial sector investment in farmland and agricultural infrastructure’ (2010) 33 OECD Working Paper 11.

⁶⁹¹ Cotula L, Vermeulen S & Leonard R et al ‘Land grab or development opportunity? Agricultural investment and international land deals in Africa’ (2009) 37.

⁶⁹² Ingwe R, Okoro J & Ukwai JK ‘The new scramble for Africa: How large-scale acquisition of Sub-Saharan Africa’s land by multinational corporations and rich countries threatens sustainable development’ (2010) 12 *Journal of Sustainable Development in Africa* 30.

⁶⁹³ Ingwe R, Okoro J & Ukwai JK ‘The new scramble for Africa: How large-scale acquisition of Sub-Saharan Africa’s land by multinational corporations and rich countries threatens sustainable development’ (2010) 12 *Journal of Sustainable Development in Africa* 30.

⁶⁹⁴ Kugelman M & Levenstein SL (eds) *Land Grab? The Race for the World’s Farmland* (2009) 1.

8.4 Alternatives to land purchases

Amidst this land purchase trend and because of issues and risks associated therewith, some commentators have turned their focus to researching alternative ways of structuring agricultural investments that do not involve land acquisitions by foreigners so that 'land rights remained vested with local farmers' but that may also achieve food security objectives.^{695 696 697} This is not a new phenomenon and there has been a shift since as far back as the 1980s from pure land purchases to other modes, such as contract farming, to facilitate foreign investment.⁶⁹⁸

Hallam notes that the nature of the transaction is dependent on economies of scale. He explains that where economies of scale are significant, or where major infrastructural investments such as roads and ports are needed, the preferred method of investment is land purchases or long term leases. Where economies of scale are not significant, business models or contractual arrangements such as the outgrower model may be used to structure these agricultural investments. A combination of land purchases or long-term leases and contractual arrangements or 'mixed models' is also possible.⁶⁹⁹ In her experience, the author has more often than not structured land redistribution projects with local private sector investors on a similar basis. However, based on her experience, the author believes that the type of agriculture plays a big role in determining the manner in which land redistribution projects are structured.

The IIED, FAO, IFAD and SDC also found that there were alternatives to land purchases, namely contract farming, management contracts, tenant farming and sharecropping, joint ventures and farmer-owned business.⁷⁰⁰ Their report also included land redistribution projects or what they refer to as 'land based

⁶⁹⁵ Vermeulen S & Cotula L Vermeulen S & Cotula L 'Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders' 24.

⁶⁹⁶ Hallam D 'International investments in agricultural production' in Kugelman M & Levenstein S (eds) *Land Grab? The Race for the Worlds' Farmland* (2009) 34 - 37.

⁶⁹⁷ Cotula L & Leonard R 'Alternatives to land acquisitions: Agricultural investment and collaborative business models' 111.

⁶⁹⁸ Smaller C & Mann 'A thirst for distant lands: Foreign investment in agricultural land and water' 1.

⁶⁹⁹ Hallam D 'International investments in agricultural production' in Kugelman M & Levenstein S (eds) *Land Grab? The Race for the Worlds' Farmland* (2009) 34 – 35.

⁷⁰⁰ Vermeulen S & Cotula L 'Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders' 4.

joint ventures'.⁷⁰¹ They also found that among the different types of business models reviewed there is not one single, best model or more advantageous model for each and every case. Thus, as in the case of the SALRP, hybrid models have emerged.⁷⁰²

Although business models have almost been categorised as alternative sources of agricultural investment per se, and although the author agrees that they are alternatives to divesting local smallholders or farmers of their land rights, the author does not regard the IIED, FAO, IFAD and SDC's argument as innovative as they might want to suggest. First, because although not labelled as 'making the most of agricultural investment' or 'alternatives to land acquisition' business models are not new innovations and have been applied in the SALRP, as shown in chapter 3; this is how the private sector's contribution to land redistribution is currently facilitated. Second, although there is not a divestment of land rights, depending on the business model used to structure the commercial transaction, there could still be a divestment of ownership which could have the same net effect as a land acquisition. When private or institutional investors acquire major or controlling shareholdings in companies that may be land owning companies, they effectively acquire the land. Thus, the author is of the view that the business models *can be* alternative to land acquisitions because, depending on what the transaction variables are, the net result might be land acquisition.

It has been highlighted that, notwithstanding the business models employed in countries without additional funding, the ventures would not be commercially successful.⁷⁰³ The IIED, FAO, IFAD and SDC found that, if not solely funded by grant funding, the agricultural land investments structured in terms of business models, especially the joint venture business models, are funded by development agencies, grants and/or credit from commercial banks as well as the private sector, that is the commercial farmer.⁷⁰⁴ To illustrate the point, they

⁷⁰¹ Vermeulen S & Cotula L 'Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders' 61.

⁷⁰² Vermeulen S & Cotula L 'Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders' 88 -89.

⁷⁰³ Vermeulen S & Cotula L 'Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders' 63 – 72.

⁷⁰⁴ Vermeulen S & Cotula L 'Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders' 63 - 64.

highlight various joint venture schemes⁷⁰⁵ which would not have been possible without substantial loans to both community and commercial joint venture partners by commercial banks.^{706 707}

What is new for South Africa is that there are business models that are not currently part of its suite of business models.^{708 709}

A high level review of the different models applied in each country reveals the following:

In the Ghanaian example⁷¹⁰ a co-operative model was shared, with ownership vesting in the members of the co-operative, being the farmers. Thus they have influence over management decisions and various participation forums. The members bear the risk, but also benefit from the rewards.⁷¹¹ The members have to seek the necessary funding for the project as well as business and/or funding partners.

Although the model has various strengths, some of the weaknesses include: the high cost of maintaining the democratic participation structures; the costs associated with monitoring and the difficulty in organising members; and the joint liability of members meeting fair trade standards.⁷¹²

The model applied in the Ugandan project⁷¹³ was that of a typical contract farming scheme or outgrower model.⁷¹⁴ Although the benefits appear to

⁷⁰⁵ Bonagude-Manzini of South Africa; Divine Chocolate of Ghana that got off the ground with start-up finance and support from organisations such as Christian Aid and Comic, a bank guarantee by the UK Department for International Development combined with a loan from a major UK commercial bank, and Nshili Tea Corporation of Rwanda that was supported by IFAD.

⁷⁰⁶ Vermeulen S & Cotula L 'Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders' 68 - 69.

⁷⁰⁷ Vermeulen S & Cotula L 'Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders' 95.

⁷⁰⁸ Cotula L & Leonard R 'Alternatives to land acquisitions: Agricultural investment and collaborative business models'. These business models include the Ghanaian farmer owned business model, the contract farming model of Uganda, the joint venture business model of Mozambique, the National Smallholder Farmers Association of Malawi supporting smallholders in Malawi, India with its variations of franchisee/contract farming and joint venture and hybrid business models applied in India, the hybrid business model applied in Tanzania and the 'inclusive' business model of Madagascar. Interestingly, South Africa also participated in sharing its 'sale and leaseback' business model applied in the Mondi land restitution project.

⁷⁰⁹ Cotula L & Leonard R 'Alternatives to land acquisitions: Agricultural investment and collaborative business models'.

⁷¹⁰ Kuapa Kokoo Farmers Union.

⁷¹¹ Cotula L & Leonard R (eds) 'Alternatives to land acquisitions: Agricultural investment and collaborative business models' 13 - 15.

⁷¹² Cotula L & Leonard R (eds) 'Alternatives to land acquisitions: Agricultural investment and collaborative business models' 16.

⁷¹³ Kinyara Sugar factory.

⁷¹⁴ The land is owned by the outgrowers and the company owns the production equipment. The outgrower and company conclude an agreement regulating their relationship. Pursuant to this contractual arrangement, the company undertakes to support the outgrowers in production activities and other contractually agreed activities. The outgrowers undertake to sell all their products to the company, which pays the outgrowers the contractually

outweigh the problems, the outgrowers have little influence in how much they can benefit.⁷¹⁵ The weakness with this model applied to this particular project includes lack of competition, given that the company is the only legitimate buyer in the district. Thus the company can inflate the charges and, if the outgrowers do not make enough land available, the company may have to run the processing facility under capacity.⁷¹⁶

In India one of the business models shared was that of a franchise model applied by Nandan Biomatrix Limited (NBL). Franchisees, who are locals, are appointed to assist in the management of contract farming and in buy-back of jatropha seed produce post-harvesting. The franchisee would also be responsible for providing and coordinating services to the farmers.⁷¹⁷ Thus it is a variation of the contract farming model. NBL also facilitates the provision of finance by public sector banks. NBL also provides insurance to cover the jatropha crop. NBL also gives the farmers training, technical know-how and knowledge, typical in a franchise arrangement.⁷¹⁸ Interestingly, the risks associated with the crop are borne by NBL (through the insurance cover). As for reward, the farmers received a performance-linked commission. Although the farmers own the land, they have no influence in the business operations of NBL and this is perhaps the main weakness of this model.⁷¹⁹

The Malawian example shared was not a business model as such, but rather explained the role of the National Smallholder Farmers Association of Malawi (NASFAM). NASFAM is a private company wholly owned by over 100,000 smallholders and essentially provides lobbying and other support services to its 'members'.⁷²⁰

The Tanzanian business model shared was that of a combination of the combined large-scale farming with outgrower scheme, what is referred to as a

agreed price. Cotula L & Leonard R (eds) 'Alternatives to land acquisitions: Agricultural investment and collaborative business models' 26.

⁷¹⁵ Cotula L & Leonard R (eds) 'Alternatives to land acquisitions: Agricultural investment and collaborative business models' 38 – 39.

⁷¹⁶ Cotula L & Leonard R (eds) 'Alternatives to land acquisitions: Agricultural investment and collaborative business models' 39.

⁷¹⁷ Cotula L & Leonard R (eds) 'Alternatives to land acquisitions: Agricultural investment and collaborative business models' 55.

⁷¹⁸ Cotula L & Leonard R (eds) 'Alternatives to land acquisitions: Agricultural investment and collaborative business models' 57.

⁷¹⁹ Cotula L & Leonard R (eds) 'Alternatives to land acquisitions: Agricultural investment and collaborative business models' 60.

⁷²⁰ Cotula L & Leonard R (eds) 'Alternatives to land acquisitions: Agricultural investment and collaborative business models' 65 – 66.

“hybrid”, applied in its sugar industry.⁷²¹ Challenges associated with this hybrid model include the lack of influence by the outgrowers in the business of the company and so called “land grabbing” by foreign land owners.⁷²²

The Madagascan examples were essentially contract farming schemes, but with a land purchase or lease component. As a result of various challenges, the projects were not implemented.⁷²³

The Mozambican business model involved investor community partnerships, but is specific to Mozambique because of its “land use and benefit right” system.⁷²⁴ Although the principles of negotiating with local communities are good, given the dependency on the land policy, the author is of the view that it may not necessarily be a model that can be easily replicated.

A high level review of these models, however, does not do justice to the subject matter. An in-depth review into the business operations, land rights policies and other transaction variables would need to be conducted in respect of these business models in order to determine whether they could be replicated for purposes of the SALRP.

In the same way that the manner in which the SALRP is structured is closely linked to how it is funded, the manner in which agricultural investment is funded determines how it is structured. The investigation into different business models does give rise to different ways to structure investments in land deals, which could attract different potential investors. However, these business models are merely commercial legal tools of structuring commercial transactions in general and not potential alternative sources of funding for land redistribution.

8.5 Public Sector

The public sector has, albeit it with limited success, played an important role in shaping conditions for agricultural investment by the private sector. This has been done through, for example, the New Partnership for Africa’s Development

⁷²¹ Cotula L & Leonard R (eds) ‘Alternatives to land acquisitions: Agricultural investment and collaborative business models’ 73.

⁷²² Cotula L & Leonard R (eds) ‘Alternatives to land acquisitions: Agricultural investment and collaborative business models’ 76 -77.

⁷²³ Cotula L & Leonard R (eds) ‘Alternatives to land acquisitions: Agricultural investment and collaborative business models’ 88.

⁷²⁴ Cotula L & Leonard R (eds) ‘Alternatives to land acquisitions: Agricultural investment and collaborative business models’ 95.

(NEPAD), the Comprehensive Africa Agriculture Development Programme (CAADP) and the Alliance for a Green Revolution in Africa (AGRA).⁷²⁵

8.5.1 Regional

NEPAD has also identified the need for investment in the African agricultural sector⁷²⁶ and has identified agricultural productivity as one of eight priority areas for Africa.⁷²⁷ In 2006 it launched the NEPAD-OECD Africa Investment Initiative with the OECD.⁷²⁸ Among other objectives and benefits, the initiative is also aimed at partnership with the OECD, which offers African countries a vehicle for co-operation with the world's major investing countries.⁷²⁹

NEPAD's agricultural programme framework is CAADP.⁷³⁰ The aim of CAADP is to improve and promote agriculture across Africa.⁷³¹ NEPAD, the Regional Economic Communities and the African Union, together with a number of donors and African governments, have set up the CAADP Multi-Donor Trust Fund (MDTF) which is aimed at financial support for CAADP. The key focus areas are: i) extending the area under sustainable land management; ii) improving rural infrastructure and trade-related capacities for market accesses; iii) increasing food supply and reducing hunger; and iv) improving agricultural research, technology dissemination and adoption.⁷³² At the time of writing, South Africa had not signed the CAADP Compact and, as such, would not benefit from the CAADP MDTF.⁷³³

AGRA on the other hand is working with financial institutions to make low-interest loans available to key agro-dealers, fertilizer wholesalers and seed

⁷²⁵ Mhlanga N 'Private sector agribusiness investment in Sub-Saharan Africa' 3.

⁷²⁶ <http://www.nepad.org/foodsecurity/agriculture/about> (accessed 9 March 2011).

⁷²⁷ The International Bank for Reconstruction and Development / The World Bank 'Management Response' available at http://siteresources.worldbank.org/EXTASSAGRISUBSAHAFFR/Resources/mr_text.pdf (accessed 9 March 2011).

⁷²⁸ NEPAD-OECD Africa Investment Initiative available at http://www.oecd.org/document/51/0,3746,en_2649_34893_36167091_1_1_1_1,00.html (accessed 9 March 2011).

⁷²⁹ About the NEPAD-OECD Africa investment initiative available at http://www.oecd.org/document/41/0,3746,en_2649_34893_45337193_1_1_1_1,00.html (accessed 9 March 2011).

⁷³⁰ <http://www.nepad.org/foodsecurity> (accessed 9 March 2011).

⁷³¹ <http://www.nepad.org/foodsecurity> (accessed 9 March 2011).

⁷³² Mhlanga N 'Private sector agribusiness investment in Sub-Saharan Africa' 35.

⁷³³ <http://www.nepad.org/system/files/Table%201%20Countries%20with%20Investment%20Plans%20CADDP%20ve r2.pdf> (accessed 9 March 2011).

companies — and to make financing available for warehouse receipt systems, farmer groups and agro-processing facilities.⁷³⁴

The nature of AGRA funding is credit. AGRA has, for example, in partnership with Equity Bank, IFAD and the Kenyan Ministry of Agriculture, created a loan facility of US\$50 million, which was backed with a US\$5 million cash guarantee fund, which made affordable credit available to 2.5 million farmers and 15 000 agricultural value chain operators. This was also done in Tanzania in partnership with the National Microfinance Bank.⁷³⁵ AGRA currently supports nearly 100 programmes and partnerships in 13 African countries. South Africa is, however, not one of these countries.⁷³⁶

The African Business Roundtable and NEPAD, with support and funding from the World Bank, have developed the NEPAD Infrastructure Investment Facility (NIIF) to help meet the continent's infrastructure challenges.⁷³⁷ The NIIF is a private sector-led facility providing capacity building and other services to African businesses and public authorities to develop successful infrastructure projects.⁷³⁸ The NIIF, as such, is not a source of funding, but rather acts as an intermediary or facilitator to assist countries to obtain the funding and other services they need.

The GAFSP is a multilateral mechanism, *inter alia*, aimed at addressing the under-funding of country and regional agriculture. It is funded by financial contributions. The GAFSP has been funded by Australia, the Bill & Melinda Gates Foundation, Canada, Ireland, South Korea, Spain and the United States. Total commitments as at 22 April 2010 equal about US\$925 million, pledged over three years.^{739 740} More funds may become available in 2011. However, it is only operational in Bangladesh, Ethiopia, Haiti, Mongolia, Niger, Rwanda, Sierra Leone and Togo.⁷⁴¹

⁷³⁴ Mhlanga N 'Private sector agribusiness investment in Sub-Saharan Africa' 36.

⁷³⁵ Mhlanga N 'Private sector agribusiness investment in Sub-Saharan Africa' 36.

⁷³⁶ Mhlanga N 'Private sector agribusiness investment in Sub-Saharan Africa' 36.

⁷³⁷ Mhlanga N 'Private sector agribusiness investment in Sub-Saharan Africa' 36.

⁷³⁸ Mhlanga N 'Private sector agribusiness investment in Sub-Saharan Africa' 36.

⁷³⁹ <http://www.gafspfund.org/gafsp/content/frequently-asked-questions#Where%20does%20the%20funding%20for%20GAFSP%20come%20from?> (accessed 15 March 2011).

⁷⁴⁰ The GAFSP was officially launched on 22 April 2010.

⁷⁴¹ <http://www.gafspfund.org/gafsp/content/gafsp-partners> (accessed 15 March 2011).

South Africa is a regional member of the AfDB and has received funding from the AfDB for its Medupi Power Project.⁷⁴² Furthermore, the AfDB Agriculture Sector Strategy 2010 - 2014 does mention, albeit not in detail, that the AfDB would support land reform.⁷⁴³ Tied to the AfDB is the African Development Fund (ADF). The ADF provides 'concessional funding' for projects and programs, as well as technical assistance for studies and capacity-building activities.⁷⁴⁴ The type of funding is also credit-based and the ADF provides interest free loans with a 50-year repayment period and a 10-year grace period, subject to other finance charges.

Following a 2001 Summit directive of SADC Ministers of Lands to develop a strategy for land reform in the region, the SADC Regional Land Reform Technical Support Facility (SRLRTSF) was established.⁷⁴⁵ The objectives of the SRLRTSF are to 'mobilize technical and financial support for Member States to develop and/or implement pro-poor land and agrarian reform policies and programmes in support of their national development plans'.⁷⁴⁶ Thus, although it would not be able to provide direct support, it could assist with the SAG drafting of land redistribution funding enabling policies. However, the SRLRTSF has experienced funding and personnel problems, which have hampered it from becoming operational.⁷⁴⁷

8.5.2 Developmental Agencies: IFAD and USAID

It has been suggested that development agencies may assist local communities to participate in agricultural investment by providing finance equity, and more generally provide grants and bank guarantees to business ventures that embody more inclusive models of facilitating agricultural investment.^{748 749}

⁷⁴² <http://www.afdb.org/en/countries/southern-africa/> (accessed 20 March 2011).

⁷⁴³ Agriculture Sector Strategy 2010 – 2014 Agriculture and Agro-Industry Department and Operational Resources and Policies Department 13 available at <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/Agriculture%20Sector%20Strategy%2010-14.pdf> (accessed 20 March 2011).

⁷⁴⁴ <http://www.afdb.org/en/about-us/african-development-fund-adf/> (accessed 20 March 2011).

⁷⁴⁵ http://www.afdevinfo.com/htmlreports/org/org_67496.html (accessed 21 February 2011).

⁷⁴⁶ Southern African Development Community 'The Establishment of the SADC Land Reform Support Facility' available at <http://www.sadc.int/fanr/environment/landreform/docs/SADC%20Land%20Reform%20Support%20Facility%20 brochure%202008.pdf> (accessed 4 April 2011).

⁷⁴⁷ Southern African Development Community Annual Report April 2009 – March 2010 62 – 63 available at <http://www.sadc.int/fanr/docs/FANR%20PROGRESS%20REPORT%202009-10%20Final.pdf> (accessed 4 April 2011).

⁷⁴⁸ Vermeulen S & Cotula L 'Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders' 95.

In the case of IFAD,⁷⁵⁰ there was a call from the chairman in 2008 to support agriculture in Africa.

As part of recognising the need for investment in African agriculture, USAID have implemented projects such as Current Farmer-to-Farmer (FTF) Program, FY 2009 – FY 2013.⁷⁵¹ South Africa is, in fact, a beneficiary of institutional strengthening under the Special Program Support Project of the FTF.⁷⁵²

8.6 South-South investment

South-South investment trends have also been noted in the agricultural investment sphere.⁷⁵³ ⁷⁵⁴ Examples of these include India having soybean projects in Brazil, China owning approximately 23 farms in Zambia and Mauritian investment in Mozambique for production of food.⁷⁵⁵ Highquest noted a link developing between Brazil and Africa. This has been attributed to Africa having 'the same potential for professional talent as that of Brazil but with much lower land cost'.⁷⁵⁶

The IBSA Trust Fund is a trilateral arrangement between Brazil, India and South Africa.⁷⁵⁷ It is funded by each IBSA country contributing US\$1 million per year to the IBSA Fund. It works on the basis that governments needing funding submit requests in the form of proposals to the IBSA representatives around the world. The United Nations Development Program is the fund manager and the Board of Directors' secretariat of the Special Unit for South-South Cooperation.⁷⁵⁸

Funding is granted if the proposals submitted meet the following criteria: poverty and hunger reduction; national ownership and leadership; South-South

⁷⁴⁹ Vermeulen S & Cotula L 'Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders' 95.

⁷⁵⁰ 'IFAD's President calls for increased investment in agricultural research and market access for smallholders at African Green Revolution Conference' Press release No.: *IFAD/38/08* available at <http://www.ifad.org/media/press/2008/38.htm> (accessed 9 March 2011).

⁷⁵¹ http://www.usaid.gov/our_work/agriculture/farmer_to_farmer_active_programs.htm (accessed 9 March 2011).

⁷⁵² http://www.usaid.gov/our_work/agriculture/farmer_to_farmer_active_programs.htm (accessed 9 March 2011).

⁷⁵³ Spieldoch A & Murphy S 'Agricultural land acquisitions: Implications for food security and poverty alleviation' in Kugelman M & Levenstein S (eds) *Land Grab? The Race for the Worlds' Farmland* (2009) 42.

⁷⁵⁴ Highquest Partners United States 'Private financial sector investment in farmland and agricultural infrastructure' (2010) 33 OECD Working Paper 5.

⁷⁵⁵ Spieldoch A & Murphy S 'Agricultural land acquisitions: Implications for food security and poverty alleviation' in Kugelman M & Levenstein S (eds) *Land Grab? The Race for the Worlds' Farmland* (2009) 42.

⁷⁵⁶ Highquest Partners United States 'Private financial sector investment in farmland and agricultural infrastructure' (2010) 33 OECD Working Paper 5.

⁷⁵⁷ <http://tcdc2.undp.org/IBSA/Default.aspx> (15 March 2011).

⁷⁵⁸ http://www.ibsa-trilateral.org/index.php?option=com_content&view=article&id=29&Itemid=79 (accessed 6 March 2011).

cooperation; use of IBSA country capacities; strengthening local capacity; ownership; sustainability; identifiable impact; replicability; and innovation'.⁷⁵⁹ The nature of the funding is grant funding.⁷⁶⁰

Interestingly, South Africa's land reform programme has resulted in South Africa's commercial farming sector expanding into the rest of Africa.⁷⁶¹ There has also been a trend of South African banks, who are 'primary lenders to agriculture', acquiring shareholdings in other African countries.⁷⁶²

9 CONCLUSION

This chapter sought to identify and examine potential alternative sources of funding for the SALRP. The main traditional sources of funding land redistribution programmes identified and examined included the fiscus, donor funding, subsidies, land taxes and expropriation.

Drawing on the relationship between agriculture and land redistribution, it was shown that there has been an increase in agricultural investment, with a renewed focus on Africa internationally and regionally. The main driver behind these investments is food security concerns; poverty alleviation, return on investment, population growth and increasing rates of urbanisation being secondary drivers.

Accordingly, foreign agricultural investment was identified as a potential alternative source of funding for the SALRP.

Land acquisition emerged as the trend for making these investments in agriculture. Land acquisition transactions by means of land purchases are not always implemented due to sensitivities and complexities around divesting local land owners, in particular smallholders, of their land rights.

There are alternatives that do not divest the land owner of its land rights. In the absence of outright land purchases, the type of capital deployed includes equity and loan funding to acquire shareholding. The alternatives involve the use of business models to structure the agricultural investment and the injection of

⁷⁵⁹ http://www.ibsa-trilateral.org/index.php?option=com_content&view=article&id=29&Itemid=79 (accessed 6 March 2011).

⁷⁶⁰ Email received from Francisco Simplicio of the UNDP on 21 March 2011.

⁷⁶¹ Hall R 'The next Great Trek? South African commercial farmers move north' paper presented at the International Conference on Global Land Grabbing 6 - 8 April 2011.

⁷⁶² Hall R 'The next Great Trek? South African commercial farmers move north' paper presented at the international conference on Global Land Grabbing 6 - 8 April 2011 14.

funding but with locals retaining the agricultural land ownership. The alternatives are by and large the business models employed by the SALRP involving private sector or other funding.

NEPAD and the international development agencies of the United Nations, namely IFAD and USAID, have also renewed their commitment and support to agricultural investment in developing countries. The World Bank has also renewed its commitment to investing in agriculture and its policies have shifted to allow it to fund land acquisition for land redistribution purposes. These multilateral and bilateral donors could be options for South Africa to consider, subject of course to the terms and conditions being acceptable to the SAG.

Given the SALRP's objective of redistributing land, outright land purchases would not be feasible, but the alternative business model facilitated funding would be. Of the structures identified, the author submits that private equity funds such as the AECF and AIFs with a social focus would be the most feasible structures for the SAG to explore as a means to fund the SALRP.

Finding potential alternative sources of funding a land redistribution programme is a complex issue. There are various issues and challenges that would need to be considered and addressed.

Foreign investment in land has recently been the subject of much controversy; this is no different for South Africa. For this reason, the next chapter will discuss two problems that would impact on the SAG considering foreign agricultural investment as a potential alternative source of funding the SALRP.

CHAPTER 6: FOREIGN AGRICULTURAL INVESTMENT: PROBLEMS AND OPPORTUNITIES

1 INTRODUCTION

In Chapter 5 certain potential alternative sources of funding land redistribution were identified and examined. Foreign agricultural investment was identified, in particular, as a potential alternative source of funding land redistribution.

There are various factors influencing foreign agricultural investment generally, both for the investor and host countries.^{763 764 765 766} There are also various risks associated with investing in agriculture, such as production risks as a result of external factors like the weather,⁷⁶⁷ market risk, financial risk, institutional risk and political risk,⁷⁶⁸ and a myriad of other financing risks.⁷⁶⁹

There are also other potential problems, such as balancing food security issues of both the foreign nations as well as the host countries; balancing 'unequal bargaining power' during negotiations;⁷⁷⁰ disputed land rights resulting in investors and locals 'getting bogged down in disputes',⁷⁷¹ land use issues,^{772 773} and the absence of comprehensive information regarding agricultural investment, in particular land-based agricultural investments.^{774 775 776}

⁷⁶³ Mhlanga N 'Private sector agribusiness investment in Sub-Saharan Africa. Agricultural management' 23 – 25.

⁷⁶⁴ Spieldoch A & Murphy S 'Agricultural land acquisitions: Implications for food security and poverty alleviation' in Kugelman M & Levenstein S (eds) *Land Grab? The Race for the Worlds' Farmland* (2009) 39 – 54.

⁷⁶⁵ Meinen-Dick R & Markelova H 'Necessary nuance: Toward a code of conduct in foreign land deals' in Kugelman M & Levenstein S (eds) *Land Grab? The Race for the Worlds' Farmland* 59 – 65.

⁷⁶⁶ Vermeulen S and Cotula L 'Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders' 23.

⁷⁶⁷ Miller C, Richter S & McNellis P et al 'Agricultural investment funds for developing countries' 12 - 13.

⁷⁶⁸ Miller C, Richter S & McNellis P et al 'Agricultural investment funds for developing countries' 12 - 13.

⁷⁶⁹ 'Module 8 Investments in Rural Finance for Agriculture' available at

<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTARD/EXTAGISOU/0,,contentMDK:20945358~menuPK:2758538~pagePK:64168445~piPK:64168309~theSitePK:2502781,00.html>

⁷⁷⁰ Mhlanga N 'Private sector agribusiness investment in Sub-Saharan Africa. Agricultural management' 21.

⁷⁷¹ Cotula L, Vermeulen S & Leonard R et al 'Land Grab or Development Opportunity? Agricultural investment and international land deals in africa' (2009) 104.

⁷⁷² Hall R 'Land reform in South Africa: Successes, challenges and concrete proposals for the way forward' Land Reform in South Africa: Constructive aims and positive outcomes – Reflecting on experiences on the way to 2014, Konrad-Adenauer-Stiftung Seminar Report No 20 presented on 26 – 27 August 2008 at Roode Vallei Country Lodge, Pretoria South Africa 21.

⁷⁷³ Spieldoch A & Murphy S 'Agricultural land acquisitions: Implications for food security and poverty alleviation' in Kugelman M & Levenstein S (eds) *Land Grab? The Race for the Worlds' Farmland* (2009) 45.

⁷⁷⁴ Hallam D 'International investments in agricultural production' in Kugelman M & Levenstein S (eds) *Land Grab? The Race for the Worlds' Farmland* (2009) 28.

⁷⁷⁵ Smaller C & Mann 'A thirst for distant lands: Foreign investment in agricultural land and water' 5.

⁷⁷⁶ Mhlanga N 'Private sector agribusiness investment in Sub-Saharan Africa' 1.

The aforementioned potential problems are valid and would demand the SAG's consideration if it considers foreign agricultural investment as a potential alternative source of funding the SALRP. However, a full discussion and analysis of these problems extends beyond the ambit of this thesis. The discussion will thus be limited to two problems, namely South Africa's position regarding foreign land ownership and the FDI regulatory environment.

2 SOUTH AFRICA'S POSITION REGARDING FOREIGN LAND OWNERSHIP

'Large scale agricultural investment is needed, provided that the plight of the locals in developing countries are not worsened and the historical, political and development issues are carefully considered and managed.'⁷⁷⁷

2.1 Problem

Commentators such as Cotula have observed that very large land deals inevitably impact on existing land rights of the local people.⁷⁷⁸ This could be no different for South Africa and a potentially big hurdle for the SALRP.

In 2007 the then Minister of the DRDLR commissioned the Panel of Experts on the Development of Policy Regarding Land Ownership by Foreigners in South Africa (Panel) to investigate and examine the question of foreign ownership of land in South Africa. Based on some of their findings,⁷⁷⁹ the panel made several recommendations, some of which apply to land redistribution. These include: i) compulsory disclosure of nationality, race and gender and other information so that the SAG is able to keep better records of foreign ownership; ii) special ministerial approval (with or without conditions) for certain changes in land use in general and for disposal of certain categories of land to foreigners – 'especially where such change of use or disposal to foreigners have the potential to negatively impact on the state's constitutional obligations to effect land reform...'; iii) the establishment of a permanent Inter-Ministerial/-

⁷⁷⁷ Spieldoch A & Murphy S 'Agricultural land acquisitions: Implications for food security and poverty alleviation' in Kugelman M & Levenstein S (eds) *Land Grab? The Race for the Worlds' Farmland* (2009) 52.

⁷⁷⁸ Cotula L 'Why it makes more sense to invest in farmers than farmland' 2 available at <https://www.iied.org/pubs/display.php?o=17082IIED> (accessed 10 August 2010).

⁷⁷⁹ Report and Recommendations by the Panel of Experts on the Development of Policy Regarding Land Ownership by Foreigners in South Africa presented to the Minister of Agriculture and Land Affairs, Hon. Lulu Xingwana, August 2007 7. The panel found inter alia that foreign natural persons own around 3 per cent of land in the categories of erven (land used for residential housing), agricultural holdings, farm land and sectional titles. They noted that the percentage was 'significantly higher' in coastal and game farming areas.

Departmental Oversight Committee should be established to monitor trends in foreign ownership of land and changes in land use, and to recommend appropriate corrective interventions to the SAG; iv) outright prohibition on foreign ownership in classified/protected areas; v) limited temporary moratorium on the disposal of state land to foreigners; vi) the SAG and all organs of state ought to lead by example in implementing the regulatory regime on foreign land ownership and a general prohibition on disposal or change in land ownership which may undermine land reform and compromise the sovereignty of the state; and vii) the SAG may consider medium- and long-term leases of public land as a viable mechanism for acquisition of land use by foreigners.⁷⁸⁰

The concerns raised regarding the pitfalls of foreign ownership of land are not unfounded.⁷⁸¹ The author is of the view that it would be prudent for South Africa to prepare for the risks that could unfold. However, not all investments in agriculture by foreigners are 'illegitimate' and it has been suggested that it can result in positive benefits for rural communities.⁷⁸²

This report and the recommendations seemed to have been suspended for some time, but has resurfaced; is receiving increasing attention in South Africa and has progressed to the point where the SAG are contemplating placing restrictions on foreign ownership of land in South Africa.^{783 784 785 786} The author submits that it is this pending reality that could make foreign agricultural investment by means of land acquisition quite controversial and make the SALRP more complex than it is.

⁷⁸⁰ Report and Recommendations by the Panel of Experts on the Development of Policy Regarding Land Ownership by Foreigners in South Africa presented to The Minister of Agriculture And Land Affairs, Hon. Lulu Xingwana, August 2007 8 -11.

⁷⁸¹ See the discussion in chapter 5.

⁷⁸² Liversage H 'Responding to 'land grabbing' and promoting responsible investment in agriculture' 5 available at http://us-cdn.creamermedia.co.za/assets/articles/attachments/31891_land_grabbing_ifad.pdf (accessed 23 April 2011).

⁷⁸³ See the discussion on the Green Paper of Land Reform in chapter 3 at paragraph 2.8.

⁷⁸⁴ SAPA 'Changes in foreign ownership of SA land' *Mail & Guardian Online* 17 August 2010 <http://www.mg.co.za/article/2010-08-17-changes-in-foreign-ownership-of-sa-land> (accessed 30 March 2011). The DRDLR was reported as saying that foreigners would not be able to own land without the consent of local communities.

⁷⁸⁵ Isaac H 'South Africa could curb foreign land ownership President Zuma says measure likely to fasten land transfer reforms to black majority' *African Business Review* 10 January 2011 available at <http://www.africanbusinessreview.co.za/tags/south-african-president-jacob-zuma/south-africa-could-curb-foreign-land-ownership> (accessed 1 April 2011).

⁷⁸⁶ Overseas Property Mall 'South Africa moves to ban foreign property ownership' *IB Times* 1 March 2011 available at <http://www.ibtimes.com/articles/117410/20110301/south-africa-moves-to-ban-foreign-property-ownership.htm> (accessed 1 April 2011).

The SAG has taken a stance that 'deepening of capitalist relations within the agricultural sector and its deracialisation, together with foreign investment, is to pave the way for economic growth'.⁷⁸⁷

The challenge would be to find alternatives to land ownership by foreigners while still attracting foreign agricultural investment into South Africa's agriculture sector that could also present potential alternative sources of funding the SALRP and not perpetuate South Africa's history of dispossession.⁷⁸⁸ This would be subject to upholding the beneficiaries' land rights, public interest and the SALRP objectives.

2.2 Opportunity

It has been suggested that foreign agricultural investments facilitated by business models are alternatives to outright land purchases.⁷⁸⁹

In advancing their argument for more inclusive business models for promoting investment in agriculture, the IIED, FAO, IFAD and SDC made three broad recommendations, namely that: i) there should be improved understanding of the business models that can be used to structure agricultural investment; ii) national and local policies should be improved so that it can support the local smallholders and promote the inclusive business models and iii) 'action' is required at an international level for more guidance on agricultural investment on how to apply the business models to maximise agricultural investment.⁷⁹⁰

The author agrees with this line of reasoning and submits that one of the key elements in overcoming the foreign ownership of land restrictions, while at the same time attracting foreign agricultural investment, lies in the use of the correct business model, that is this requires applying the applicable commercial principles skilfully. Careful consideration would need to be given to the various business model options vis-à-vis the transaction variables to structure a suitable and appropriately designed business model (whether a single or hybrid model). It has been pointed out that inappropriately designed business models can fail because 'the local farmer only has "nominal influence" over key

⁷⁸⁷ Hall R 'A political economy of land reform in South Africa' (2004) 31 *Review of African Political Economy* 221.

⁷⁸⁸ Makunike C 'Large-scale agricultural investment in Africa: Points to ponder' in Kugelman M & Levenstein S (eds) *Land Grab? The Race for the World's Farmland* (2009) 86 - 89.

⁷⁸⁹ Cotula L 'Why it make more sense to invest in farmers than in farmland' 2.

⁷⁹⁰ Vermeulen S and Cotula L 'Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders' 91 – 97.

decisions and little profit or dividends to show for their efforts'.⁷⁹¹ Thus this would also have to be taken into account in structuring the transaction.

President Zuma has also indicated in his address at the ANC's 99th anniversary: 'In order to have more land available for land reform ... foreigners will be allowed to lease land but ownership will revert to South Africans'.⁷⁹² This is in line with the recommendations made by the Panel.

Leases are one type of business model. Although this has been criticised,⁷⁹³ South Africa has been promoting lease agreements as part of the SALRP. One way of addressing this would be to redistribute land to the beneficiaries and allow the beneficiaries to lease the land to foreign investors.

It has been observed that another business model that has become popular, as an alternative to land acquisition in the small scale farming sector, is the contract grower model. Makunike maintains that some of the challenges in respect of this business model are that: i) it does not suit all crops; ii) investors do not have the patience to commit to this type of model in the long term because of the 'in-depth' research required; iii) the 'paradigm shift' that investors have to undergo when partnering with small scale farmers; and iv) working closely with the community that cannot simply be employed and dismissed at will and who may also require training and related technical other support.⁷⁹⁴ Aside from these challenges, which the author submits can manifest in local private sector investments as well, the author would add compliance with local legislation as another challenge.

The author has herself been involved in land redistribution projects with a foreign investment component. The author is also aware of other land redistribution projects, such as the Solms-Delta land redistribution project.^{795 796}

⁷⁹¹ Cotula L 'Why it make more sense to invest in farmers than in farmland' 2.

⁷⁹² Statement of the National Executive Committee of the African National Congress on the occasion of the 99th Anniversary of the ANC available at <http://www.thepresidency.gov.za/pebble.asp?relid=3179> (accessed 1 April 2011).

⁷⁹³ Kleinbooi K 'What is happening with land reform?' available at <http://anothercountryside.wordpress.com/2010/10/27/%E2%80%98m-losing-my-land-to-the-department-of-land-affairs%E2%80%99/> (accessed 5 May 2011).

⁷⁹⁴ Makunike C 'Large-scale agricultural investment in Africa: Points to ponder' in Kugelman M & Levenstein S (eds) *Land Grab? The Race for the Worlds' Farmland* (2009) 92.

⁷⁹⁵ As explained in chapter 1 at paragraph 5, due to the limited nature of this thesis the author adopted a literature based research methodology. As a result, the author has not conducted interviews and case studies and has not personally verified the exact details of the transaction. Solms-Delta 'Community development in the Cape Winelands' available at <http://www.solms-delta.co.za/2010/01/community-development-in-the-cape-winelands/> (accessed 14 November 2010).

⁷⁹⁷ These projects were all structured as share-equity schemes with the investor acquiring a minority shareholding. The author has also found that this business model, with slight modifications, suits most types of agriculture and private investors are more amenable to this type of business model.

The author submits that a further key element to overcoming the challenge would be the type of investor. The type of investor ultimately determines the type of investment that will be made.

The author submits further that finding agricultural investors that: are socially responsible; would want to play a role in the SALRP; would want to provide capital to programmes such as the SALRP and are amenable to business models such as outgrower models or business models where they acquire shareholding that is not equal or more than majority shareholding in an entity without compromising the commercial sense, ultimately drives the investment.

The SAG would do well to keep this in mind while it refines its position on foreign land ownership and it may consider embarking on an exercise of assessing the different business models in detail. It should analyse: 'contractual arrangements and economic and financial structure; how a particular business model came to be chosen compared with alternative options; what conditions made the operation of that business model possible; what factors constrained it and how they were addressed by the company and smallholders; socio-economic performance and outcomes, including economic performance and the actual impacts on local livelihoods, incomes and empowerment'.⁷⁹⁸

In doing so, it would hopefully ensure that agricultural investment is not hamstrung but rather creates an opportunity for attracting foreign agricultural investment to serve as a potential alternative source of funding for the SALRP.

⁷⁹⁶ 'Carte Blanche: Solms-Delta community' available at <http://winetimes.co.za/2010/11/14/carte-blanche-solms-delta-community/> (accessed 22 April 2011).

⁷⁹⁷ Van Wyk M 'Picking the fruits of our labour: Equity-sharing schemes on wine farms in South Africa' available at http://www.consultancyafrica.com/index.php?option=com_content&view=article&id=470:picking-the-fruits-of-our-labour-equity-sharing-schemes-on-wine-farms-in-south-africa&catid=90:optimistic-africa&Itemid=295 (accessed 14 November 2010).

⁷⁹⁸ Vermeulen S & Cotula L 'Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders' 91 - 92.

3 FDI REGULATORY FRAMEWORK

3.1 Problem

No investment, in particular FDI, operates outside of a regulatory environment. Investment in agriculture or agricultural land is no exception. Land acquisition transactions fall into the bilateral and regional investment agreements framework.⁷⁹⁹ Serious consideration must be given to the legal implications before embarking on foreign agricultural investments.⁸⁰⁰

According to the IISD, host states usually have 'insufficient or unclear' domestic law concerning, inter alia, land rights and the international law framework provides 'hard rights' for foreign investors. They contend that this 'layering' has significant impacts.⁸⁰¹

The sources of law that would relate to foreign investment in land redistribution would be South African domestic law, international investment contracts and the international treaty law on investment.⁸⁰² Generally, the latter takes the form of bilateral investment treaties (BITs).

Chapter 3 illustrated that South Africa has adequate legislation dealing with land redistribution. Although South Africa has signed several BITs with various potential investor countries, it has limited local investment law legislation and the rules are recorded in several pieces of legislation.⁸⁰³

The IISD highlight that, although domestic law would be the primary law, international investment contracts and BITs would prevail over domestic law, unless the BIT was silent on certain provisions.⁸⁰⁴

BITs typically include provisions protecting the investor against expropriation; non-discrimination provisions which require host countries to treat foreign investors no less favourably from their domestic counterparts (the so-called principle of 'national-treatment' (NT)) and which preclude host countries from discriminating between its foreign trading partners (the so-called principle of 'most-favoured-nation treatment' (MFN)); and on treatment standards like 'fair

⁷⁹⁹ Smaller C & Mann H 'A thirst for distant lands: Foreign investment in agricultural land and water'.

⁸⁰⁰ Smaller C & Mann 'A thirst for distant lands: Foreign investment in agricultural land and water' 19.

⁸⁰¹ Smaller C & Mann H 'A thirst for distant lands: Foreign investment in agricultural land and water' 8.

⁸⁰² Smaller C & Mann H 'A thirst for distant lands: Foreign investment in agricultural land and water' 8.

⁸⁰³ The *Bilateral Investment Treaty Policy Framework Review* (GN 961 in GG 32386 of 7 July 2009) 6 referred to South Africa's investment approach to both inward and outward Foreign Direct Investment (FDI) as being informed by a 'patchwork of general policy considerations'.

⁸⁰⁴ Smaller C & Mann H 'A thirst for Distant Lands: Foreign investment in agricultural land and water' 9.

and equitable treatment', 'full protection and security', rights to export the products produced, safeguards, national security and dispute settlement.^{805 806}

International investment contracts also contain provisions relating to local procurement and what are referred to as 'stabilisation clauses', which are aimed at addressing changes in domestic law for the duration of an investment. The local procurement provisions require the investor to contribute to the local community in 'economic terms'.⁸⁰⁷ Stabilisation clauses typically take the form of 'freezing', 'economic equilibrium' and 'hybrid clauses'. Freezing clauses require the host state not to make changes to its domestic law that will affect the investment; economic equilibrium clauses allow changes in the domestic law but the host government has to compensate the investor for complying with them; and hybrid is, as the name suggests, a combination of the two.⁸⁰⁸ According to the 2008 United Nations Special Representative of the Secretary General on Business and Human Rights and IFC, international investment contracts with Africa have the most 'far-reaching' stabilisation clauses.⁸⁰⁹

In considering different cases in South Africa, Zimbabwe and Namibia, Peterson and Garland argue that foreign agricultural investment by way of land acquisition subject to BITs may actually complicate efforts by the SAG to pursue the SALRP objectives.⁸¹⁰ In support of their argument, they point out that BITs signed by South Africa do not contain a reference to the importance of land reform. Thus there is no congruency between the two legislative frameworks.

Peterson and Garland also allude to another risk being the possibility of local agricultural investment vehicles transacting with foreign investors, and structuring their investments in such a manner that such investment vehicles are regarded as FDI, which means that such investment vehicle would be

⁸⁰⁵ Smaller C & Mann H 'A thirst for distant lands: Foreign investment in agricultural land and water' 11 – 13.

⁸⁰⁶ Cotula L, Vermeulen S & Leonard R et al 'Land Grab or Development Opportunity? Agricultural investment and international land deals in Africa' 88 - 89.

⁸⁰⁷ Smaller C & Mann H 'A thirst for Distant Lands: Foreign investment in agricultural land and water' 16.

⁸⁰⁸ Shemberg A 'Stabilization clauses and human rights a research project conducted for IFC and the United Nations Special Representative to the Secretary General on business and human rights' vii available at [http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/p_StabilizationClausesandHumanRights/\\$FILE/Stabilization+Paper.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/p_StabilizationClausesandHumanRights/$FILE/Stabilization+Paper.pdf) (28 March 2011).

⁸⁰⁹ Smaller C & Mann H 'A thirst for distant lands: Foreign investment in agricultural land and water' 10.

⁸¹⁰ Peterson LE & Garland R 'Bilateral Investment Treaties and Land Reform in Southern Africa' 5 available at http://www.dd-rd.ca/site/PDF/publications/BITS_land_reform_en.pdf (Accessed 27 August 2010).

afforded protection under a BIT.⁸¹¹ This is a bit of a jaundiced view, but admittedly it cannot be ruled out as a risk completely.

The author submits that of the non-discrimination principles, the NT principle could be most problematic for foreign agricultural investment in the SALRP. The rationale behind this is that compliance with the NT principle could restrict the SAG from imposing conditions on foreign investors to further its land redistribution targets. This has been observed in the land tenure context.⁸¹²

Other restrictions could include BBBEE targets. The NT principle vis-à-vis the BBBEE Act has been tested. In the matter between Italy mining investors and South Africa, a group of Italian mining investors challenged South Africa's BEE legislation on the basis that it breached the South Africa – Italy BIT.⁸¹³ This matter gives an indication of how the FDI disputes could be handled within the South Africa land reform context.⁸¹⁴

The IISD also point out that BITs often also include 'pre-establishment rights', which are an extension of the NT provisions. It essentially requires foreign investors to invest in agricultural land on the same terms and conditions as local investors, accompanied by provisions prohibiting governments from imposing 'performance requirements' on investors.⁸¹⁵ This could pose a problem for agricultural investment in the SALRP because it potentially restricts the SAG from imposing targets such as procurement or local employment targets on foreign investors, which can have a more far-reaching impact on the livelihoods of the beneficiaries and the local communities.

Where local procurement targets are set, it would be governed by domestic law. However, there is also the issue whether the local community would be able to enforce them or whether it would only be the contracting government that would have that right.⁸¹⁶ The author proposes that in the South African context the answer to this issue may be the privity of contract rule, which in essence provides that the terms of a contract can only be enforced by the parties thereto. Thus, if the SAG wanted to extend these rights to the local

⁸¹¹ Peterson LE & Garland R 'Bilateral Investment Treaties and Land Reform in Southern Africa' 5.

⁸¹² Spieldoch A & Murphy S 'Agricultural land acquisitions: Implications for food security and poverty alleviation' in Kugelman M & Levenstein S (eds) *Land Grab? The Race for the Worlds' Farmland* (2009) 45.

⁸¹³ Peterson LE & Garland R 'Bilateral Investment Treaties and Land Reform in Southern Africa' 7.

⁸¹⁴ Peterson LE & Garland R 'Bilateral Investment Treaties and Land Reform in Southern Africa' 7.

⁸¹⁵ Smaller C & Mann H 'A Thirst for Distant Lands: Foreign investment in agricultural land and water' 13.

⁸¹⁶ Smaller C & Mann H 'A Thirst for Distant Lands: Foreign investment in agricultural land and water' 16.

community, the local communities would have to be parties to the relevant international investment agreement or these provisions could be extended to the beneficiaries by accepting these provisions as benefits to a third party, what is also known as a *stipulatio alteri*. Unfortunately, given the nature of these agreements, this may not be simple to achieve and due consideration would have to be given to all the implications and legal rules at play.

The inclusion of stabilisation clauses could mean that the SAG would be precluded from introducing legislation that may emphasise the importance of land redistribution or land reform as a whole. This is a real risk for South Africa because of its fragmented investment legislation and would defeat the purpose of exploring foreign agricultural investment opportunities for the SALRP. It also means that the SAG would need to keep a close eye on all its other legislation incorporating investment provisions, so as to avoid finding itself in a situation of breach.⁸¹⁷ The IISD maintain that identifying the linkages and addressing it expressly, including by limiting any stabilisation clauses, are 'essential ingredients' to address this.⁸¹⁸ Although this recommendation is reasonable, it may prove more difficult to implement, considering the institutional capacity challenges experienced in the DRDLR briefly highlighted in chapter 3.

Another issue arising from the FDI legal framework is the concern that it gives rise to a situation of unequal bargaining power between (wealthy) investor multinational corporations, (wealthy) investor countries and host country governments and the host country people.⁸¹⁹ The concern is that it reinforces the disadvantages suffered by smallholder producers who lack bargaining power access to markets, resources and land rights. This is compounded by the fact that communities are divided and there are differing class levels within the local communities themselves.⁸²⁰ This concern is not unfounded and the Daewoo Affair serves as an example of what can happen if this situation is allowed.

⁸¹⁷ Smaller C & Mann H 'A Thirst for Distant Lands: Foreign investment in agricultural land and water' 17.

⁸¹⁸ Smaller C & Mann H 'A Thirst for Distant Lands: Foreign investment in agricultural land and water' 17.

⁸¹⁹ Spieldoch A & Murphy S 'Agricultural land acquisitions: Implications for food security and poverty alleviation' in Kugelman M & Levenstein S (eds) *Land Grab? The Race for the Worlds' Farmland* (2009) 43.

⁸²⁰ Spieldoch A & Murphy S 'Agricultural land acquisitions: Implications for food security and poverty alleviation' in Kugelman M & Levenstein S (eds) *Land Grab? The Race for the Worlds' Farmland* (2009) 43.

A further problem identified by the IISD is that BITs may actually provide investors with additional rights in respect of securing its operations, such as providing water in the agricultural investment space.⁸²¹

The challenge for South Africa would thus be to carefully manage the problems that the FDI regulatory framework presents in order to facilitate agricultural investment for its agricultural sector and the SALRP.

3.2 Opportunity

Arising from, inter alia, the need to conduct an assessment of the risks posed by the BITs,⁸²² the most promising development in addressing the FDI regulatory issues lies in the fact that South Africa has initiated a process of reviewing its BITs.^{823 824} The objective of the review is to ‘... make recommendations to Cabinet in respect of the policy and legal considerations which will impact on any future decisions taken by the executive in respect of the protection and promotion of investments, both from an inward and outward foreign direct investment perspective’.⁸²⁵

The Bilateral Investment Treaty Policy Framework Review notice notes, soberly, that the outcome of the review will not necessarily be a ‘panacea for all other FDI problems’.⁸²⁶ The author approves of this cautious approach and regards this as a positive step towards addressing the FDI regulatory problems. This indicates that the SAG has become vigilant when negotiating international investment agreements and is ensuring that its domestic law contains clear provisions regarding these issues.

An instructive finding by the IISD is that generally international law does not give foreign investors (automatic) rights to invest in land in another state; it is a matter of domestic law.⁸²⁷ This is quite important in the South African context and could address the issue raised by Peterson and Garland that BITs signed by South Africa do not contain a reference to the importance of land reform as it would enable the SAG to apply its domestic law in a controlled manner, keeping land rights issues of the SALRP at the forefront and, so doing, ensure

⁸²¹ Smaller C & Mann H ‘A Thirst for Distant Lands: Foreign investment in agricultural land and water’ 16 – 17.

⁸²² The *Bilateral Investment Treaty Policy Framework Review* (GN 961 in GG 32386 of 7 July 2009) 5.

⁸²³ United Nations Conference on Trade and Development ‘World Investment Report 2010’ 85.

⁸²⁴ The *Bilateral Investment Treaty Policy Framework Review* (GN 961 in GG 32386 of 7 July 2009).

⁸²⁵ The *Bilateral Investment Treaty Policy Framework Review* (GN 961 in GG 32386 of 7 July 2009).

⁸²⁶ The *Bilateral Investment Treaty Policy Framework Review* (GN 961 in GG 32386 of 7 July 2009) 3.

⁸²⁷ Smaller C & Mann H ‘A Thirst for Distant Lands: Foreign investment in agricultural land and water’ 14.

that the significance of land redistribution is maintained vis-à-vis foreign agricultural investment.

Two of the major recommendations of Kugelman, Lovenstein, Hallam, Spieldoch, Murphy, Makunike, Meinzen-Dick, Markelova and Montemayor include: i) developing a clear and comprehensive farmland investment framework that reflects national and local interests; and ii) not outsourcing ultimate responsibility for rural development policies to foreign investors.⁸²⁸ Coupled with the farmland investment framework is monitoring and governments should ensure that local land rights are protected, especially against dispossession.⁸²⁹

South Africa currently has an investment framework regulating private sector investment into land reform, but it does not currently include a foreign investment component. Expanding the investment framework to include foreign investment may be a way of addressing some issues in the BITs.

The IISD cautions that the host government must ensure that 'legitimate expectations' should not be created and periodic reviews of 'additional rights' granted to foreign investors should be undertaken to ensure that additional protection is not given to the foreign investors that may conflict with the rights of locals.⁸³⁰ This links in with the Bilateral Investment Treaty Policy Framework Review undertaken by the SAG and the author would endorse this advice for periodic reviews.

The SAG may also wish to leverage off the work done in respect of the Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources (the Principles) in an effort to mitigate risks associated with agricultural investment.⁸³¹ ⁸³² These Principles have been criticised⁸³³ ⁸³⁴ and there is doubt that it would be complied with.⁸³⁵

⁸²⁸ Kugelman M & Lovenstein SL (eds) *Land Grab? The Race for the World's Farmland* (2009) 18 – 19.

⁸²⁹ Kugelman M & Lovenstein SL (eds) *Land Grab? The Race for the World's Farmland* (2009) 20 – 21.

⁸³⁰ Smaller C & Mann H 'A Thirst for Distant Lands: Foreign investment in agricultural land and water' 16 – 17.

⁸³¹ FAO, IFAD, UNCTAD & the World Bank Group 'Principles for responsible agricultural investment that respects rights, livelihoods and resources' available at http://siteresources.worldbank.org/INTARD/214574-1111138388661/22453321/Principles_Extended.pdf (accessed 17 March 2011).

⁸³² United Nations Conference on Trade and Development 'World Investment Report 2010' 91.

⁸³³ La Via Campesina FIAN Land Research Action Network GRAIN 'Stop land grabbing now!! Say NO to the principles of "responsible" agro-enterprise investment promoted by the World Bank' 12 available at <http://www.landaction.org/spip/spip.php?article499> (accessed 17 March 2011).

⁸³⁴ FIAN International 'Why we oppose the principles for responsible agricultural investment (RAI)' available at <http://www.fian.org/resources/documents/others/why-we-oppose-the-principles-for-responsible-agricultural-investment/pdf> (accessed 17 March 2011).

Nonetheless, the Principles promote: recognising and respecting existing rights to land and associated natural resources; investments that do not jeopardize food security but rather strengthen it; processes for accessing land and other resources and making associated investments that are transparent, monitored, and ensure accountability by all stakeholders, within a proper business, legal, and regulatory environment; ensuring that all those materially affected by an agricultural investment are consulted, and agreements from consultations are recorded and enforced.^{836 837}

It has been suggested that there are three areas that would be of importance in order to achieve these Principles, namely: '(i) analysis to identify ways in which agricultural investment can be used to best contribute to national strategies for development and poverty reduction and how incentives for different actors can be structured to achieve this; (ii) legal, regulatory, and institutional changes required from governments and ways in which they can most effectively strengthen their capacity to secure land rights, enforce rules, and empower local stakeholders; and (iii) ways for the private sector to incorporate social and environmental concerns specific to this type of investments in project identification and implementation'.⁸³⁸ Once these action areas have been finalised and refined, they would present a good opportunity for South Africa to streamline its own strategy and processes in respect of agricultural investment generally, but also in respect of the SALRP.

4 CONCLUSION

This chapter examined the problems of South Africa's position regarding foreign ownership of land and the FDI regulatory framework that South Africa would need to consider if it explored foreign agricultural investment as a potential alternative means of funding the SALRP.

There are limited ways that these problems and the associated challenges can be turned into opportunities. South Africa's position regarding foreign ownership of land and its history of dispossession that gave rise to the need for

⁸³⁵ Cotula L 'Why it make more sense to invest in farmers than in farmland' 1.

⁸³⁶ FAO, IFAD, UNCTAD and the World Bank Group 'Principles for responsible agricultural investment that respects rights, livelihoods and resources'.

⁸³⁷ Liversage H 'Responding to 'land grabbing' and promoting responsible investment in agriculture' 7- 9 available at http://us-cdn.creamermedia.co.za/assets/articles/attachments/31891_land_grabbing_ifad.pdf (accessed 23 April 2011).

⁸³⁸ FAO, IFAD, UNCTAD and the World Bank Group 'Principles for responsible agricultural investment that respects rights, livelihoods and resources' 21.

land redistribution rule out agricultural investment in the form of land purchases for the SALRP. However, applying a different business model, such as leases between the land redistribution beneficiaries and foreign investors, may be the key to addressing this problem.

The fact that the significance of land reform is not recorded in BITs, coupled with other issues such as the NT principle, could be problematic for South Africa if it invited foreign agricultural investment into the SALRP. These problems could be overcome but may require policy changes and creating room for foreign agricultural investment in the DRDLR's investment framework.



CHAPTER 7: CONCLUSION AND RECOMMENDATIONS

1 INTRODUCTION

With a view to addressing the budgetary constraints that have plagued the SALRP since 1994, the objective of the thesis was to research, examine and evaluate whether there are potential alternative funding methods, mechanisms or approaches available, as alternatives or complementary to government grant funding, as a means of funding the SALRP in the agricultural sector.

This chapter summarises the main findings of the research conducted and sets out the author's recommendations based on these findings.

2 MAIN FINDINGS

In order to answer the thesis question, the historical context of land redistribution and the relationship between land redistribution and the agricultural sector were evaluated. The main finding was that land redistribution and agriculture are intertwined and that this serves a basis for exploring potential alternative sources of funding the SALRP from an agricultural investment perspective.

This was followed by an assessment of the legal basis for land redistribution; how it is funded and structured as well as the problems experienced by the SALRP. It was found that the SALRP is primarily grant funded, with private sector funding being encouraged. The SALRP is, however, plagued by budgetary and other constraints, manifesting in various structures. However, the regulatory environment is fairly robust and can thus support investment into the SALRP. This could comfort and encourage potential investors, which would contribute to addressing these budgetary constraints. South Africa also makes use of business models to structure land redistribution projects, which is essential in facilitating funding for the SALRP. Because business models are essential legal commercial principles applied to transaction variables, business models are a neat solution to facilitating funding of any nature.

An assessment of how Zimbabwe and Brazil funded their land redistribution programmes, to determine whether these programmes could offer potential alternative sources of funding for the SALRP, was also conducted. The main

finding in this regard was that partnering with stakeholders, FDI, expropriation, World Bank donor funding (and perhaps other bilateral and multilateral donors), land taxes (provided the latter is implemented correctly) and foreign agricultural investment could be potential alternative sources of funding the SALRP.

Drawing on the previous chapters, the discussion culminated in the identification and analysis of various potential sources of funding for the SALRP. It was found that the manner in which the SALRP is funded is on par with traditional international trends. It was illustrated that different institutions and potential donors have funded agricultural investments premised on poverty alleviation and food security, in which the significance of the SALRP also lies. One of the main findings, though, is that there has been a trend in agricultural investment in developing countries, but especially in Africa, driven by food security concerns. Given the role of South Africa's agricultural sector; it was argued that foreign agricultural investment could be considered as the preferred potential alternative source of funding the SALRP.

However, the nature of these investments centres on land acquisition, which may negate the objectives of the SALRP. Thus attracting foreign agricultural investment into the SALRP would not be without problems. Two main problems were highlighted, namely South Africa's position regarding foreign land ownership and the FDI regulatory environment. The author argued that there are ways of addressing these problems and turning them into opportunities. These lie in approaching agricultural investment cautiously, attracting investors with a social conscience and using business models strategically without undermining the objectives of the SALRP. With regard to the FDI environment, the opportunity lies in leveraging off principles of responsible investment and strengthening its own BIT policy framework, which the SAG has undertaken.

Thus, overall the thesis question was answered and various potential alternative sources of funding were identified, ranging from subsidies, donor funding, subdivision of agricultural land, bilateral and multilateral donor funding to foreign agricultural investment. Although not a direct source of funding, expropriation was also discussed because, whether expropriation is compensated at market value, below market value or at all, impacts on the budget of the relevant land redistribution programme. Foreign agricultural

investors include SWFs, AIFs and SOEs, with the nature of transactions taking the form of land purchases or alternative ways of acquiring rights to land through business models.

3 RECOMMENDATIONS

Based on the findings above, the author submits that foreign agricultural investment could be the most feasible potential alternative source of funding for the SALRP. Accordingly, but cognisant of the SAG's challenge of balancing further investment, the public interest and the SALRP's objectives, the author recommends that the SAG deviate from traditional sources of funding the SALRP and explore foreign agricultural investment as a potential alternative source of funding for the SALRP.

In this regard, the author makes the following recommendations:

3.1 Business models

South Africa already has various business models in place which, combined with its regulatory environment, makes it flexible enough to accommodate FDI. Thus South Africa has the commercial and legal framework in place to accommodate FDI. Furthermore, given that leases, which are regarded as a type of business model, are supported by the SAG, it could be the initial business model used to facilitate foreign agricultural investment in the SALRP. This would need to be subject to, inter alia, the lease only being introduced once land has been redistributed and ownership has been transferred to beneficiaries.

3.2 AECF

The AECF, in terms of its competition, funds successful projects that have 'a positive impact on the rural poor in Africa, delivering increased employment and income, reduced costs, and/or improved productivity'.⁸³⁹ The SAG should also consider innovations such as this and enter land redistribution projects into the AECF 'competition'.

⁸³⁹ http://www.aecfafrica.org/index.php?option=com_content&view=article&id=65&Itemid=100003 (accessed 9 March 2011).

3.3 Donors

Various donors and donor institutions were identified and their various investment rationales were highlighted. The author recommends that the SAG consider drafting funding proposals and requests to these donor institutions, aligning the relevant significance of the SALRP to the funding or investment rationale of the relevant institution or investor, without diminishing the rationale of redressing dispossession. Policy changes in the World Bank regarding the funding of land acquisition for land redistribution purposes also present the SAG with a funding opportunity. The author recommends that the SAG consider using its longstanding relationship with the World Bank, that was integral in the SALRP being based on the WBWS model, and take advantage of the World Bank's renewed commitment to investing in African agriculture and its policy changes to create an alternative potential alternative source of funding for the SALRP.

3.4 Recommendations for further research

Although the body of research available on foreign agricultural investment is growing and it can be a potential alternative source of funding, it is not straightforward. Furthermore, none of the potential alternative sources of funding reviewed in this thesis were specifically in relation to land redistribution programmes. Thus further research would be required to map foreign agricultural investment directly to land redistribution. Coupled to this, the author found that there were many recent developments in the SAG with regard to investment, agriculture and economics. The scope and timeline for completion of this thesis, however, did not allow for reviewing these developments. The author recommends that the SAG put together a team of experts to research this issue further.

3.5 Strengths, Weaknesses, Opportunities and Threats (SWOT) analysis of business models

The author recommends that the SAG put together a panel of experts comprising policymakers, academics and commercial lawyers to conduct a SWOT analysis on the various business models applied in other countries, highlighted in this thesis, in order to determine which model will best achieve the SALRP objectives.

3.6 **Farmland Investment Framework**

The author recommends that the existing private investment strategy should be expanded to include FDI and agricultural investment as a whole. Alternatively, South Africa should develop a farmland investment framework, policy or strategy. This Farmland Investment Framework should dovetail with the SAGs agricultural policy.

3.7 **BITs review**

It was pointed out that the BITs do not deal with the significance of land reform. The author therefore recommends that, as part of its Bilateral Investment Treaty Policy Framework Review, the SAG should consider incorporating the significance of land reform into these revisions to ensure that these BITs contain provisions that can provide some protection for the SAG and local farmers in the face of FDI in agriculture and land redistribution transactions.

3.8 **Policies**

The author also recommends that the current land reform/land redistribution policies should be reviewed to ensure that they take any developments in agricultural investment into account.

If the SAG implemented foreign agricultural investment as a potential alternative source of funding the SALRP, it would not have to reinvent the wheel as there are existing funds and donors it could readily approach. The food security concerns of foreign investors, vis-à-vis the role of South Africa's agricultural sector, create a platform for South Africa to leverage off its comparative advantage in this sector and, so doing, attract foreign investors to invest in agriculture and the SALRP. Complementing this is the fact that South Africa has a "progressive" land redistribution framework, BITs in place that could facilitate FDI, sophisticated and resourceful professionals who would be able to understand and implement any funding model and produce creative business models to facilitate the funding. The author is of the view that South Africa's agricultural comparative advantage, legislative, policy and business model frameworks and skills and resources, in combination with the shift in donor policies and trends in foreign land investment, facilitate the possibility that foreign agricultural investment could contribute to alleviating the budgetary constraints currently experienced by the SALRP.

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