Notes

*529 LAND AND LIBERATION: LESSONS FOR THE CREATION OF EFFECTIVE LAND REFORM
POLICY IN SOUTH AFRICA

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The importance of the lack of land redistribution cannot be overstated. Historian Paul Cimbala writes, "Once established on property of their own, [former slaves] believed, they would be truly free to pursue additional goals [such as wealth accumulation and political participation] without constantly worrying about offending those who otherwise have been paying them wages." W.E.B. Du Bois argued that if White America had made good on the promise of land repatriation to Blacks, "it would have been the basis of real democracy in the United States." [FN1]

Dalton Conley, in his book Being Black and Living in the Red, quotes other African-American scholars on the impact that land redistribution, the promised 40 acres and a mule, might have had on the economic state of the African- American community and race relations in America. He *530 asserts that giving land, the most tangible of assets, to the newly freed slaves would have given them a basis for creating wealth and helped to overcome the economic disparity that is the source of much racial tension. The failure of the U.S. government to make good on its promise of redistribution combined with decades of exclusionary economic practices helped to perpetuate the socio-economic marginalization of Blacks and tension between the races in America.

The frustration of being marginalized in a country where you are a numerical and racial minority, where the government therefore does not necessarily represent your interests, is obviously severe. The marginalization of Blacks has periodically sparked race riots in some of America's inner cities. [FN2] However, Black Americans can only begin to fathom the sense of betrayal felt by Blacks in post-colonial Africa; the experiences of a numerical and racial majority marginalized by a government, which is supposed to represent the majority's interests.

INTRODUCTION

Under colonial rule, millions of Africans were dispossessed and exploited by the European powers. [FN3] A socio-economic structure was established where White settlers controlled the vast majority of land and other resources while Black Africans were left to live in poverty, serving only as a source of cheap labor. [FN4] As colonialism gave way to independence in the second half of the twentieth century, the newly freed Africans, particularly in rural areas, were full of hope that the transitional governments would immediately dismantle this socio-economic structure and restore property to Black Africans and facilitate their rise out of poverty. Many also believed that economic parity would serve as a means of promoting *531 reconciliation between privileged Whites and impoverished BlackAfricans. [FN5]

What most Black Africans did not realize was that the conditions of the transfer of power forced many new African governments to recognize land rights created under colonial rule as legitimate. [FN6] Furthermore, after the murder of Patrice Lumumba in Zaire, many African leaders feared reprisal from Western powers that may have perceived radical socio-economic restructuring as Communism. [FN7] In places such as Zimbabwe there was also the threat of attacks from military forces still controlled by White settlers. Thus African governments could not simply take land as the colonists had done years before. In response, various creative programs were developed to facilitate the redistribution of land, most enjoying very limited success.

In South Africa, the legacy of Apartheid left eighty-seven percent of the country's land in the hands of the White minority while Blacks were forced to live in the squalor of over-crowded townships. [FN8] Following the transition to true democracy, many Blacks expected the African National Congress (ANC) led government to take steps to eliminate the disparity in land ownership and create opportunities for Blacks to overcome poverty on a massive scale. [FN9] The Reconstruction and Development Program (RDP), created in 1994, promised to redistribute 30% of agricultural land within five years. Unfortunately, by 2000, less than 3% of targeted lands *532 had been redistributed. It would seem that land reform was not high on the list of priorities of South African politicians; this was evidenced by the fact that less than 0.4% of the South African government's budget was being allocated to redistribution programs. [FN10]

Violent land invasions in Zimbabwe refocused the South African government's attention on the need for land reform. As poverty and unemployment rose in South Africa, so did tensions between White commercial farmers and rural Black communities. There has been an increase in stock-theft and grazing of African communal livestock on White farms. In one area, it was reported that there were 5000 squatters on White farms. [FN11] Between January and August of 2000 there were 586 attacks on White farmers producing 288 injuries and 88 killings, more than twice the number of deaths in the Zimbabwe land invasions. [FN12]

In the summer of 2001, several thousand Black South Africans, instigated by the Pan Africanist Congress (PAC), an opposition political party, invaded a farm in Bredell. [FN13] On July 10th, the High Court of Pretoria ordered the squatters to vacate the land within 48 hours. Two days later, pursuant to the court order, the local sheriff began forcefully evicting the squatters, demolishing their makeshift homes. [FN14] Minister of Land Affairs, Thoko Didiza, was quoted as saying that the eviction order, "reaffirm[ed] the democratic principles of the country." [FN15] However, the comments of the squatters left homeless by the court order seemed to reflect the frustration many Black South Africans feel over the unresolved land issue. One man complained, "This government is failing its own people because it is dragging its feet in addressing the land issue." [FN16] Another stated, "I am very disappointed with this government. I fought for my land and now where is it? The ANC is hurting landless and poor people." [FN17] Meanwhile, analysts asserted that the Bredell invasion was "a *533 warning to the Government to address the problem, which it inherited from the apartheid regime." [FN18]

Based upon the premise that **land reform** is essential to creating socio- economic equality, easing racial tensions and stemming the tide of violence in **South Africa,** this note will provide suggestions for effective **land reform** policy. To accomplish this, this Note will examine the paths taken by several other transitional African governments in

land reform policy. It will attempt to extract practical lessons from their experiences and apply them towards the development of effective **land** redistribution policy in **South Africa.** Part I of this note will provide a historical overview of colonialism and **land** law in **Africa.** Part II will examine the post-colonial **land reform** policy in Kenya, Tanzania and Zimbabwe and part III will attempt to extract lessons from the experiences in these countries. Part IV will seek to apply these lessons towards the development of effective **land reform** policy in **South Africa.** Finally, Part V will again stress the need for **land reform** as a means of creating economic equity and racial harmony.

I. Colonialism in **Africa:** A Historical Overview

A. Invasion

In 1875, with the exceptions of Algeria and The Cape **(South Africa),** European settlements in **Africa** promoted the "imperialism of free trade." [FN19] They were a system of low-cost, informally controlled, coastal trading posts designed to further Europe's mercantile economy. Many even paid tribute to African rulers for the right to exist in their territory. [FN20] Around this time, the rising power of unified Germany and Italy, as well as the imperialist designs of Leopold II in Belgium, initiated a power struggle among European states. The result was a scramble for colonial possessions in Africa, which were viewed not only as sources of wealth but also as symbols of world power. For many Europeans, their perceived superiority was validated by the conquest of "inferior races." [FN21] To mediate this scramble, the Berlin Conference was convened in 1884-1885. It established rules for the settlement of disputes over colonial holdings in the Congo and Niger basins. Among those rules was the "effective occupation doctrine," which required the establishment of a "visible infrastructure on the *534 ground of garrisons that affirmed imperial presence" in addition to the assertion of sovereignty. [FN22]

To save costs, many European governments delegated colonial sovereignty to private companies. In exchange for establishing effective occupation, these companies were given trade monopolies within their domain. It was expected that private control of African territories would eventually give way to imperial sovereignty. The British relied mainly upon the Royal Niger Company, the British East Africa Company and the British South Africa Company. The Belgians relied on Anversoise and the Anglo-Belgian India Rubber Company, which was notorious for its atrocities in the Congo. [FN23]

The European perception of Africans as "savages" helped to justify the subjugation of the continent. [FN24] Some asserted that colonial rule, no matter how brutally it was established and maintained, would ultimately benefit the Africans by bringing civilization and salvation. In fact, colonial invasions were often accompanied by Christian missions to "save the souls" of the Africans. [FN25] Their agendas were hardly the same, however; it was Protestant missionaries in the Congo that first reported on the atrocities of colonial invasions. [FN26]

Africans were by no means passive in the face of European aggression: there were large rebellions in Algeria in 1871, 1876, 1879 and 1881 to 1884; the South African Zulu wars took place in 1879 and 1906; in 1905, there was the Maji-Maji revolt in Tanganyika; the Ndebele and Shona revolts occurred in 1896 and 1897 in Rhodesia; in 1898, there was the hut-tax war in Sierra Leone; and in British Somaliland, there was a resistance movement which lasted from 1900 to 1920. There were also many rebellions in Angola and the Congo. [FN27] However, only Ethiopia was able to repel the European onslaught, defeating and embarrassing the Italian army in the Battle of Adowa. [FN28]

B. Colonial **Land** Law.

Before colonialism, the concept of permanent, indefeasible **land** rights amounting to freehold estates was alien to most of **Africa,** *535 particularly in Sub-Saharan **Africa.** [FN29] In many places, **land** belonged to the entire community, not to individuals. [FN30] While in other areas, **land** belonged to the sovereign. [FN31] In both cases, tribal chiefs or clan elders distributed **land** to peasants for farming and building homes. For

pastoralists who grazed their cattle over wide ranges, **land**, like water or air, belonged to no one and everyone. The common thread among these African systems of **land tenure** was that boundaries were not clearly defined, and there was no physical documentation of who had rights to the **land**.

To legalize expropriations in African colonies, the British declared that African **land** rights were usufruct, meaning that they only existed when **land** was in use. Therefore, any vacant **land** could be declared Crown **land** (property of the European Sovereign) and expropriated for White settlers. When the British **South** African Company raided Ndebele **land**, the Privy Council went on to declare that usufruct rights did not amount to ownership under common law and Ndebele tillers therefore had no private rights to **land** worthy of protection. [FN32] The Germans, in what became Tanzania, simply declared that **land**, where ownership could *536 not be documented was ownerless. [FN33] In countries such as Uganda where the primary aim was not settlement, African **land tenure** systems were treated as a form of feudalism. Local rulers and their underlings were given freehold estates and the rest of the **land** was declared crown **land**. [FN34] During colonial rule, White settlers adopted numerous statutory schemes to reserve the most fertile **land** for themselves. For instance, the Kenya Highlands Order of 1939, essentially reserved 3 million acres of the best farmland for White settlers, [FN35] and the **Land** Acts in **South Africa** reserved almost 87% of the country's surface area for Whites. [FN36] Supposedly due to pressure from international human rights advocates, so- called "native reserves" were created and treaties were signed with various tribes to protect African **land** rights. Unfortunately, reserves were usually too small and always on the most barren **land**. The Masaai in Kenya, like most African tribes, learned the hard way that European treaties were for Africans to respect and for White settlers to ignore. [FN37]

C. Independence

After World War II, the myth of European invincibility was severely weakened. In addition, colonial security forces, many made up primarily of Africans, had been drained by the demand for manpower during the war. Africans who had contributed to the war effort, voluntarily or not, were not content to return home and accept the old status quo. [FN38] Meanwhile, international distaste for colonialism was rising. The U.N. Charter, drafted in San Francisco in 1945, included references in Articles 1 and 55 to "equal rights and self-determination of peoples." [FN39] Since the socio-economic structure of African colonial states was based upon the subordination of the rights of Black Africans to secure privilege for White settlers, these provisions were problematic for colonial masters. In addition, Article 73 required colonial masters to "develop the capacity [of colonial subjects] *537 to administer themselves, to take account of the political aspirations of the populations and to aid them in the progressive development of their free political institutions." [FN40]

Successful revolutions in Southeast Asia showed African nationalists the potential of guerrilla warfare. Using these tactics, a small army with less sophisticated weaponry could overcome a larger, better-equipped and better- trained enemy. Victory was gained not by winning battles, but through a series of small strikes designed to demoralize enemy troops and force the enemy to exhaust his resources. [FN41] It was this strategy that was employed in the Algerian Revolution, which began in 1954. The technically superior French forces left, largely because their government could no longer afford to fight. The Mau Mau guerrillas in Kenya forced the colonial security forces to request the help of regular British troops. Portugal dispatched nearly two hundred thousand troops and diverted half of its budget to put down revolutions that began in Angola in 1961 and spread to Guinea-Bissau and Mozambique by 1964. [FN42]

Faced with the threat of revolution and international pressure to decolonize, European powers made preparations to transfer power. Italy was bound by international covenant to give up Somalia within ten years of World War II. Spain, after joining the U.N. in 1955, faced pressure to abide by Article 73, and in 1958 declared its African colonies to be provinces. In 1968, it released Equitorial Guinea (though the new African president soon

became a tyrant) and in 1976 it gave Western Sahara to Morocco. Portugal, after a military coup in 1974, was simply too weak to hold on to African possessions. After much conflict, Belgium gave in to Congolese demands for independence in 1960. The British found itself negotiating with former "enemies" such as Jomo Kenyatta, Kwame Nkrumah and Hastings Banda, to bring about a peaceful transfer of power. The French were fixated on the idea of federalism, offering enfranchisement, French citizenship and parliamentary representation to Africans in exchange for remaining "junior partners" with France. This was particularly successful in Sub-Saharan Africa. After Sub-Saharan states moved to true independence they maintained relatively close ties with France. [FN43]

D. The South African Experience
The European invasion of South Africa began in 1652 with the arrival of Dutch traders. The Dutch East India Company established Cape Town essentially as a trading post; however, by the 1760s, with the number of White settlers increasing, legislation was passed to limit the rights of *538 Blacks. After years of conflict with Dutch settlers, the British gained complete control of Cape Town by 1806, pushing the Dutch east and north, where they took land from indigenous communities, heightening racial tension. Although they were defeated by the British in the Boer War (1899-1902), Dutch settlers were given partial independence from Britain in 1910 and then complete independence in 1932. [FN44]
Separatist policies began around 1902 with the creation of several Zulu reserves. The Native Lands Act of 1913, which prohibited Blacks from owning non-agricultural land (approximately 93% of South African land), made Blacks perpetual tenants. The Natives Urban Land Act of 1923, which prohibited Blacks from living in urban areas, and the Native Trust Land Act of 1936, which restricted Blacks from White rural areas, effectively separated Blacks from Whites. [FN45]
In 1948 the Apartheid system of racial separation was created. Urban areas were divided into racial zones and reserves were consolidated into ten townships. It was not until 1978 that "the first minor segregation laws" would be repealed due to domestic Black resistance and international pressure from the United States and the United Nations. [FN46]
Perhaps realizing that no country can continue to exist in the midst of such turmoil, the Apartheid government, under President F. W. De Klerk began making preparations for the transition to democracy in the early 1990s. Several political prisoners, including Nelson Mandela, were released and many separatist statutes were repealed, including the 1913 and 1936 Land Acts. Conventions to discuss the establishment of multi-racial, democratic rule were held in 1991 and 1993. This culminated in democratic elections in 1994, in which Nelson Mandela was elected president. [FN47]

II. Post-Colonial Land Reform

A. Resettlement in Kenya
The almost decade long struggle for freedom by Kenya's Mau Mau rebels came to an end in 1960 with the British agreeing to negotiate the terms of independence. A conference at Lancaster House in London was *539 convened to draft a new constitution. All discriminatory legislation was abolished, including the Highlands Order of 1939. Many fearful White farmers were anxious to sell their land and return to Britain, while hopeful African farmers were anxious to own fertile agricultural property. [FN48]
The new Kenyan government agreed to adopt the market-based, "willing buyer, willing seller" system of land reform devised by R.J.M. Swynnerton in 1954. Under this system, the government would buy the land of departing White settlers at the fair market price and then provide loans so that Blacks could then purchase the land from the Kenyan government. The Kenyan government's agreeing to this program was based partly on the commitment of the British and the World Bank to help with funding. [FN49]
The Kenyan land resettlement program has two main schemes: A "low-density" scheme and a "high-density" scheme. The low-density scheme mirrored the Swynnerton Plan,

which was aimed at the creation of a class of Black commercial farmers. Participants in the "low-density" scheme had to have a high level of agricultural expertise and had to bring much of their own capital; this resulted in plan participants that were already relatively well off and well educated. High-density schemes, also called million acre schemes, came a little later and were aimed at creating opportunities for the landless masses. Unfortunately, the World Bank was unwilling to provide funds to assist the participants who had little agricultural expertise and no capital base. Moreover, the Kenyan government began to recognize the constraints on its own budget. In spite of the lack of funding, some high-density participants managed to become successful commercial farmers. [FN50]

The Swynnerton Plan also sought to give Africans formal land titles, thereby creating European style freehold and leasehold estates. The purpose of this was to provide security of tenure, which many believed would stimulate agricultural investment, and create a free market in land. [FN51] Unfortunately, most of these benefits never materialized--in many places only the elite took advantage of the title registration process, while customary land-tenure systems were maintained in poor communities. The elite often laid claim to unused tracts of land to the exclusion of weaker, less-informed groups, particularly pastoralists who used seemingly vacant land for grazing cattle. [FN52]

*540 B. Villigization in Tanzania

In 1923, faced with a League of Nations mandate requiring the protection of indigenous land rights, the British declared "the whole of the lands in Tanganyika [now Tanzania] whether occupied or unoccupied to be public lands." [FN53] This meant that control and management of all land was vested in the British Crown through their representative in Tanzania, the Governor. When Tanzania gained independence in 1961, the land vested in the President, then Julius Nyerere. In 1962 Nyerere abolished all freehold estates and converted government leases into rights of occupancy. [FN54]

In 1967, Nyerere decided that Tanzania would follow a socialist path for development. Considered essential to that path was the creation of so- called ujamaa (Swahili for brotherhood) villages, which were based on traditional African values of "mutual respect, sharing of basic goods and services held in common, and the obligation of every body to work." It was also intended to centralize scattered rural communities, thereby making it easier to provide public services such as water, electricity and education. [FN55]

Although originally intended to function as a voluntary program, villigization was made compulsory by 1973. Force was often used to move those who would not go into a communal village voluntarily, and houses were destroyed to prevent people from moving back. In addition, villigization experienced a multitude of problems; villages sometimes displaced people already living in the area; many villages were poorly planned and many of the promised government services never materialized; people were often sent to villages and told to build new houses themselves. By 1976, at least 5 million Tanzanians lived in ujamaa villages. Ironically frustration with village life led to a rise in urban migration. Notwithstanding the myriad of difficulties, some acknowledge that because of villigization, certain rural communities did experience an increased quality of life because of improved access to education and other social services. [FN56] This suggests that villigization was not necessarily a *541 bad idea. Rather, forced participation and poor planning may have resulted in its limited success.

C. Turmoil in Zimbabwe

Zimbabwe's experience with colonialism is perhaps the most similar to South Africa's. White settlers, led by Ian Smith, declared unilateral independence from Britain in 1965. Smith's repressive regime resisted both international pressures to institute democratic rule, and attacks from African guerillas. In their fight to hold onto power, Smith's Regime tortured Black civilians and even bombed refugee camps. [FN57] At Lancaster House in 1979, the British once again sought to broker an agreement between White settlers and Black revolutionaries. Among other things, rebel leader Robert Mugabe and his allies

agreed to recognize the legitimacy of White settlers' land rights and use the "willing buyer, willing seller" model for land reform as was done in Kenya. Like Kenya, the new government's acceptance of this stipulation was based in part on British commitments to help purchase land. [FN58]

There were other considerations that kept the government from instituting radical land reforms. One of Mugabe's leading allies and advisors was Frelimo in Mozambique, who, based upon his experience, had concluded that White expertise was needed for post-war reconstruction. [FN59] In addition, because of international sanctions during the Smith regime, White commercial farmers produced 90% of the country's food. [FN60] Since many Black peasant farmers had been displaced by the war, the country could not depend on Blacks to fill the void if White farmers left; radical land reform could have meant widespread famine. [FN61]

*542 A moderate resettlement program aimed at settling Black households on White farms was developed; in 1980, the government announced its plan to resettle 18,000 Black families in 5 years. By 1982, this estimate had risen to 162,000 families. Unfortunately, it was around this time that the number of willing sellers fell dramatically. The White landowners seemed to realize that they had nothing to fear from the Black government and were thus no longer scrambling to sell their land and leave. At the same time, the government was under pressure from the World Bank to cut spending in order to reduce its budget deficit. By 1989, a total of 52,000 families had been resettled--a far cry from the 1982 estimate. [FN62]

At independence, 6000 White farmers owned 42% of the land. [FN63] By 1989, the country's 4319 commercial farmers--which by then included a few Blacks-- owned 29% of the land. [FN64] Many members of the Black political elite, now notoriously corrupt, had secured land for themselves and had thus become invested in the status quo. [FN65] At least ten government ministers were members of the Commercial Farmers Union (CFU). [FN66] It seemed that the issue of land reform was no longer a political priority. Politicians, however, recognized that it was an important issue to the masses, and rhetoric concerning the need for redistribution always accompanied election campaigns. [FN67]

In 1992, two years after the expiration of the Lancaster House agreement, the Land Acquisition Act was passed to allow the government more power to regulate and expropriate land. [FN68] In 1998, in what many saw as a move to save his political career, Mugabe created a land redistribution program that allowed expropriation without compensation; however, in February 2000 he lost a referendum that would have expanded his power to expropriate farms. Some have opined that the rejection of Mugabe's program precipitated the farm invasions led by Chenjerai Hunzvi and his war veterans. [FN69] Overall 40 people--34 Blacks and 6 Whites--died in land invasions and approximately 900 White-owned farms were *543 occupied by Black squatters. [FN70] On November 11th, 2001, Mugabe, perhaps realizing that his political career depended upon drastic land reform, used his presidential powers to "side-step the judiciary," and ordered 2900 White farmers to give up their land by August 2002. Presently 1800 White families remain on homesteads in defiance of the eviction order. Mugabe has suggested that he will be willing to go to war to enforce the order, stating, "Those who think . . . Ian Smith can rally the white farmers for another war should think again while they have the chance." [FN71]

III. Lessons

A. Kenya

Overall, between 1961 and 1975, the Kenyan resettlement program settled 66,319 Black African families on 1325 White commercial farms. [FN72] At first glance Kenya's resettlement program seems like a success story. In fact, the World Bank continues to hold up Kenya as a model for successful land reform. [FN73] However, since the goal of land reform is not simply changing the racial composition of large landowners but promoting economic equity among all races, Kenya is hardly the ideal model. Many critics

caution that the Swynnerton Plan, with its stringent income and educational requirements and its aim of extinguishing customary land holdings, was originally designed to create a Black African elite, not economic equity. [FN74] Indeed the low-density scheme, which stuck to the Swynnerton plan only succeeded in substituting the White elite with a Black elite with an equally vested interest in the colonial status quo.

With the removal of income and educational requirements, the high-density scheme seemed to have great potential for creating economic opportunities for the poor and landless. However, it seems that the scheme's success was limited by the market-based system agreed to at Lancaster House. As time went on and White fears of reprisal were calmed, the number of willing sellers was insufficient for the scheme to have any real *544 impact. Those Whites that did sell land only offered the least fertile portions of their property. [FN75]

The lack of support from the World Bank for high-density schemes illustrates the problems of depending on organizations such as these. The World Bank and the International Monetary Fund have always tended to withdraw support when a government chooses policy that does not reflect their recommendations. [FN76] Furthermore, it is important to remember that they are essentially banks and are concerned with the repayment of their loans. This explains why they would not fund a program where the participants had no capital base (collateral).

B. Tanzania

The experience with Villigization in Tanzania illustrates several issues of implementation. While communal living may have worked among tribes and clans that considered themselves family, the creation of artificial communities by force lacked this unifying factor. This shows the dangers of romanticizing "the way things were" particularly without a full understanding of the social mechanisms that made certain customs work in traditional societies.

The need for careful planning and the provision of sufficient support services in any resettlement program is evident. If people who lack expertise are expected to build homes or farms, the government needs to provide the infrastructure (i.e. water works, electricity etc.) and expertise (help with construction, irrigation etc). The government must also promise only what it knows it can deliver. The failure to provide promised services was a constant source of frustration in villages. In some cases, villagers even sabotaged production in frustration. [FN77] This also leads to the realization that paternalistically forcing a program on poor people, supposedly for their own good, only breeds resentment.

C. Zimbabwe

Zimbabwe serves as the primary example of what not to do in land reform. It demonstrates the inadequacy of market-based land reform in societies that require massive restructuring in land distribution. [FN78] The *545 unwillingness of White landowners to sell once they realized that Blacks were not seeking revenge meant that not enough land was available to buy. Even if there were willing sellers, the increased land prices that usually accompany political stability increases the possibility that the government may not be able to afford land at the fair market price anyway. [FN79]

The dangers of political apathy to the land question are also evident in Zimbabwe. Decades of doing little or nothing to rectify economic marginalization are bound to frustrate the masses. [FN80] Playing politics with an issue that is so fundamentally linked to the livelihoods of so many people is bound to create resentment towards the government as well as those seen as the beneficiaries of injustice (i.e. Whites). As seen in Zimbabwe, this frustration often explodes into violence. [FN81] This illustrates that if a government neglects to address issues of socio-economic disparity through peaceful, legal channels, the masses will try to address the issue through extra-legal channels.

*546 IV. Avoiding a **Land** Crisis in **South Africa**

A. Post-Apartheid **Land Reform**

The **South** African Department of **Land** Affairs (DLA), headed by Derek Hanekon, was created in 1994 to deal with **land** distribution issues. The Department of Agriculture remained under the control of its Apartheid era minister Kraai Van Neikerk until 1996 when it was combined with the DLA. [FN82] **Land reform** policy under the DLA focused on three areas: (1) Restitution; (2) Redistribution; and (3) **Tenure Reform.** [FN83] **Land** restitution focuses on adjudicating the claims of individuals or communities that were dispossessed by racist laws or practices after June 19, 1913--claims for restitution had to be lodged by December 1998. By the deadline, 63,455 claims were filed--the discovery that some claim forms encompassed several claims, increased this number to 68,878. As of June 2001, only 18% of claims filed had been settled. [FN84] Many felt that the pace of the restitution program is far too slow.

To speed up the restitution process, the DLA began settling urban claims first because these claimants were more likely to accept financial compensation instead of land. This trend is disturbing because rural claims tend to represent entire communities while urban claims usually represent individual families. Though rural claims make up only 28% of total claims, they represent 90% of the people claiming land under the restitution process. [FN85] In addition, critics argue that providing financial compensation instead of land ignores what should be the real goal, which is providing a means of creating sustainable wealth. [FN86]

South Africa's land-redistribution program followed a similar market- based model as Kenya and Zimbabwe. Grants and loans were provided for qualifying households to buy land on the open market, which meant that willing White sellers (who set the price) were required for Blacks to acquire land. Like Zimbabwe, there was the problem of lack of government funding (DLA gets 0.4% of the government's budget and often doesn't use all of it). [FN87] Like Villigization in Tanzania, there was often *547* a lack of pre-settlement planning and post-settlement services. In addition, in some cases business plans were forced on participants.

Following the 1999 election, Thoko Didiza became the new Minister of Agriculture and Land Affairs. In 2000, Didiza initiated a controversial shift in land reform policy from rural poverty alleviation to establishing a class of Black commercial farmers. [FN88] The Commercial Farmer Program (CFP) was created as the cornerstone of this policy. The CFP is functionally similar to Kenya's low-density schemes in that participation requires a minimum level of agricultural expertise and income. [FN89] Some commentators believe, based upon the Kenyan experience, that the CFP will only create a Black South African elite without dealing with the economic marginalization of the majority of the population. [FN90] To make matters worse, no additional funds have been made available for the CFP, leading many to assume that it will fall short on implementation anyway.

Tenure reform is probably the most complex and most neglected area of South African land-reform policy. Under apartheid, land in Black *548* townships was the property of the state, with allocation being left to tribal authorities, mimicking traditional tenure systems. As apartheid was coming to an end, the National Party transferred ownership of land to tribal leaders supposedly for the benefit of the tribe. As a result, in places such as the former Lebowa homeland, corrupt tribal leaders were able to create what was essentially a feudal fiefdom. [FN91]

The South African constitution provides that, "[a] person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress." [FN92] After the fall of apartheid, a string of legislation was passed to protect the rights of customary landholders. In 1997, the DLA began drafting a bill that would vest property rights in those that occupied communal land, but Didiza scrapped the draft in 1999. [FN93] While there are currently rumors that the bill will be resurrected, there is little evidence to suggest that these efforts have the support of the Minister. [FN94] Tribal authorities opposed the new bill as a threat to their power. In a few areas Communal Property Associations and Communal Trusts were created to

manage and allocate land. These are systems where non-governmental organizations hold land in trust supposedly for the benefit of the community. However, the DLA in its 1999 review questioned the ability of trusts to "hold and manage land." [FN95] Furthermore, critics argue, these new systems are highly susceptible to corrupt tribal leaders and politicians because they lack mechanisms to hold leaders accountable to land users. [FN96]

*549 B. What Can Be Done?

The first step is the most basic, the South African government must make land reform a priority. Aside from the issue of redressing past injustices, land redistribution is essential to overcoming a legacy of socio-economic exclusion. The failure to do so can perpetuate racial tensions that often explode in the form of violence (such as the recent land invasions in Zimbabwe or the Watts and L.A. riots in the U.S.). [FN97] Given the importance of this issue to the future peace and stability of the nation, the fact that the South African Defense Force (SADF) has fifteen times the budget of the DLA is unconscionable. [FN98]

The government must abandon market-based redistribution mechanisms, which always seem to limit the scale of land redistribution programs. There simply are not enough willing sellers to fulfill the land needs of the poor. In fact, at the International Conference on Agrarian Reform and Rural Development in December 2000, there was almost unanimous rejection of market-based land reform as "blind both to politics and to power relations on land." [FN99] A shift to a need-based reform model is necessary to bring about land redistribution on a large enough scale for it to have an impact on Black poverty and landlessness. This means that the government must evaluate the land needs of the poor, not only for farming and grazing but also for building homes, and take affirmative steps to fill those needs.

Though government owned land can fulfill some of this need, at some point they will have to take land from White landowners. This could be done statutorily, making use of the takings clause of the South African constitution which allows for the expropriation of property "in the public interest" [FN100] which "includes the nation's commitment to land reform, and . . . reforms [intended] to bring about equitable access to all South Africa's natural resources." [FN101] To remain in compliance with international norms and the South African constitution, the government must still provide compensation. This can prove expensive and therefore limit the scope of land redistribution. The price does not, however, have to be the current fair market value, which usually rises with the advent of democracy. The constitution allows for the consideration of "the history of the acquisition *550 and use of the property" in the determination of just compensation. [FN102] To keep costs to a minimum, this could be interpreted as allowing compensation only for improvements made to the land (such as houses or irrigation systems) since it was expropriated from African owners or, as was done in Kenya, the market value prior to democratic rule. A more extreme interpretation would be that compensation should be the current equivalent value of what the present owners' predecessors paid to Africans for the land, which in almost all cases would be nothing.

Obviously government takings are going to produce conflict. Regardless of compensation, Whites are bound to resist the destruction of decades of economic privilege. For the most part, some conflict is unavoidable but perhaps it can be minimized. One possible way to lessen internal conflict is by primarily targeting land held by absentee owners (the number of which is increasing in South Africa) for expropriation. Since these people are already overseas, their interest in the future of the country is manifestly diminished. In addition, their absence in South Africa minimizes the turmoil that they could create locally.

As South Africa is not uniform, needs are likely to vary from region to region and community to community. For example, tribes that have traditionally been cattle keepers can be introduced to modern cattle ranching or dairy farming rather than forced into growing crops. A decentralized system of evaluation will therefore be necessary to determine local needs. It is also probably a good idea to include some community leaders

in the evaluation process. Input from the community itself may help to avoid the perception that programs are being forced on people by the government. Tanzania showed us the resentment this perception can breed. However, care must be taken to ensure that these leaders don't suggest programs that will only bolster their power and wealth without helping the people.

Tanzania taught us the crucial importance of the careful and the provision of support services to assist in the development planning of new Black settlement programs. Giving Blacks land is only the first step. The government must provide education and agricultural training as well as create a sufficient infrastructure, including help with construction, where none exist. Without these services, many settlements will have little hope of becoming viable productive communities.

Finally, the issue of tenure reform presents several complex issues. How can the government best protect the rights of customary landholders? As seen in Kenya, trying to extinguish customary tenure in favor of freehold estates is largely ineffective and can do more harm than good. Many fear that the freedom of alienation that comes with the creation of freehold estates will allow individual tribe members to sell tribal land to *551 outsiders (particularly Whites) to the detriment of the community. At the same time, traditional tenure systems that left allocation entirely up to the chief or elders are easily corruptible. Some medium is needed that make tribal leaders accountable to the community for the protection of traditional land rights.

One option is to adopt the legal framework outlined in the Tanzania case of Attorney General v. Lohay, where land rights are vested in the community or community authorities and individual customary rights are deemed rights of occupancy, which are property rights protected by the law. [FN103] Occupants would have standing to bring suit against the state, which includes tribal authorities, in defense of rights of occupancy secured under customary law. Of course, the judicial process is long and costly; to overcome this obstacle, perhaps the DLA can create regional oversight committees to arbitrate land disputes and provide assistance to people bringing claims.

Another option is statutorily defining customary holdings as defeasible estates that revert back to the tribe if the owner attempts to transfer or sell land to someone outside the community or dies without leaving any heirs (which is quite possible in the age of HIV). This would allow individual occupants to will land to heirs or transfer it to others within the tribe, but prevent sales to outsiders. This does not necessarily mean registering titles, but rather treating customary holdings as defeasible estates under common law. Individual security of title would thus be created, while alienation that may adversely affect the community as a whole would be prevented.

*552 CONCLUSION

"To give a man his freedom and to leave him in wretchedness and ignominy is nothing less than to prepare a future chief for a revolt of the slaves." [FN104]

It cannot be stressed enough the important role that land reform can play not only in ending economic disparities, but also in ending racial tensions. Perhaps more than any other human rights abuse, dispossession of land will directly affect the lives of disadvantaged and oppressed communities for generations to come. Entire communities are forced to be perpetual tenants or to live in the squalor of over-crowed slums with little hope of escape. In societies where poverty is the result of a history of racially based socio- economic exclusion, one of the main reasons that poor Blacks continue to resent Whites is that Whites are perceived as the continued beneficiaries and Blacks the continued victims of injustice and oppression. History has shown that this resentment often explodes in the form of violence, be it riots, land invasions or full-scale revolution. [FN105] The redistribution of land opens up doors for the poor Blacks to create wealth of their own thereby alleviating feelings of being marginalized and oppressed. It is only at this point, when all races are on equal footing, economically as well as politically, that true healing can begin.

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[FN1]. Dalton Conley, Being Black and Living in the Red: Race, Wealth and Social Policy in America 33 (1999).

[FN2]. See Shannon Elizabeth Rush, Sharing Space: Why Goodwill Isn't Enough, 32 Conn. L. Rev. 1, 34.
The Watts riots in the 1960s illustrate the profound rage blacks felt about their subordination … Watts was followed by at least 250 more riots in 1967, a forceful message by black America that it had enough of white denial, white privilege, and persistent inequality … white America was given another Watts-type message in the 1992 Los Angeles riots.
Id.

[FN3]. See Robin Palmer, Robert Mugabe and the Rules of the Game, (July 2000) at http://www.oxfam.org.uk/landrights/RuleGame.rtf [hereinafter Rules of the Game]. Under colonial rule in Zimbabwe, Namibia and South Africa "millions of people were uprooted from their ancestral lands, often with deliberate cruelty, and always without being paid any compensation." Id. at 1.

[FN4]. See Lauren G. Robinson, Rationales for Rural Land Redistribution in South Africa, 23 Brook. J. Int'l L. 465, 466-67 (stating that dispossessed blacks in South Africa were left in poverty and "coerced into a system of cheap migrant labor").

[FN5]. But cf. Samuel Kariuki, Creating the Black Farmer, Daily Mail & Guardian, Sept. 26, 2000 ("in countries undergoing a transition to democracy, land is often a mechanism used to mediate the dialectics of reconciliation and transition over and above the need to effect meaningful and radical agrarian transportation").

[FN6]. See Rules of the Game, supra note 3, at 1. Speaking of the agreements made by new democratic regimes in Africa, Palmer states, "these compromises justified, legalized and froze in time all that had gone before--a century of white land grabbing in Zimbabwe and Namibia, even longer in South Africa." Id.

[FN7]. Palmer explains that the capitulation on the land issue in Zimbabwe can be linked to
the often pathological Western fears that Africa might turn Communist. A line can be traced from the murder of Lumumba, through support for fascist Portugal's continued control of its colonies, support for Moi in Kenya and Savimbi in Angola, to the historic compromise with Robert Mugambe (and allies) in Lancaster House in 1979.
Id.

[FN8]. See Robinson supra note 4, at 475 (stating that South African Land Acts only allowed Blacks access to 13.6% of the country's surface area).

[FN9]. Edward Lahiff, Land Reform in South Africa: Is it Meeting the Challenge? 1 (Program for Land and Agrarian Studies, Policy Brief No. 1, Sept. 2001) at http://www.oxfam.org.uk/landrights/PLAAS1.doc ("With the transition to democracy, expectations were high that an African National Congress (ANC)-led government would effect a fundamental transformation of property rights that would address the history of dispossession and lay the foundation for the upliftment or the rural and urban poor.").

[FN10]. See Kariuki, supra note 5.

[FN11]. Heather Boyle, Note, The Land problem: What Does the Future Hold for South

Africa's Land Reform Program? 11 Ind. Int'l & Comp. L. Rev. 665, 666.

[FN12]. Attacks are Aimed at Driving Us Off Land: Farmers, South African Press Ass'n., Nov. 7, 2000, available at 2000 WL 27207505.

[FN13]. See Land Grabs Will Escalate: TAU, South African Press Ass'n., July 9, 2001, (stating that squatters invaded farms at Bredell with backing of the Pan Africanist Congress) available at 2001 WL 22187837.

[FN14]. Squatters Blast Government and PAC, World Reporter, July 13, 2001, available at 2001 WL 23466528 [hereinafter Squatters Blast Government and PAC].

[FN15]. Minister Firm on Bredell Removals, World Reporter, July 11, 2001, available at 2001 WL 23466499.

[FN16]. Squatters Blast Government and PAC, supra note 14.

[FN17]. See id.

[FN18]. See Revisit Land Debate, World Reporter, July 18, 2001, available at 2001 WL 23466562.

[FN19]. See Crawford Young, The African Colonial State in Comparative Perspective 82 (1994) (summarizing the rise of colonialism in Africa).

[FN20]. See id.

[FN21]. This was attributed partly to "Social Darwinists" who saw conquest of other races as "the most convincing possible demonstration of [their] own racial superiority." See id. at 98.

[FN22]. See id. at 96.

[FN23]. See id. at 103.

[FN24]. See id. at 98.

[FN25]. Africa was seen by many Christian evangelists in the late 18th century as "the largest field of unharvested souls." See id. at 85.

[FN26]. See id.

[FN27]. See id. at 99.

[FN28]. See id. at 89.

[FN29]. See J. H. M. Beattie, The Kibanja System of Land Tenure in Bunyoro, Uganda, in 1 Readings in African Law 324, 326 (E. Cotran & Neville N. Rubin eds., 1970).

[FN30]. See Amodu Tijani v. The Secretary Southern Nigeria, [1921] 2 App. Cas. 399, 404 (P.C. 1921) (appeal taken from Nigeria).
Crucial to understanding native land law is the fact that the notion of individual ownership is quite foreign to native ideas. Land belongs to the community, the village or the family, never to the individual. All the members of the community, village or family have an equal right to the land, but in every case, the Chief or Headman of the community or village, or head of the family, has charge of the land, and in loose modes of speech is

sometimes called the owner. He is to some extent in the position of a trustee, and as such holds the land for the use of the community or family. He has control of it, and any member who wants a piece of it to cultivate or build a house upon, goes to him for it. But the land so given still remains the property of the community or family and the Chief or Head man cannot make any important disposition of the land without consulting the elders of the community or family, and their consent must in all cases be given before a grant can be made to a stranger. This is a pure native custom along the whole length of this coast, and wherever we find, as in Lagos, individual owners, this is again due to the introduction of English ideas. But the native idea still has a firm hold on the people, and in most cases, even in Lagos, land is held by the family. This is so even in cases of land purporting to be held under Crown grants and English conveyances. The original grantee may have held as an individual owner, but on his death his entire family claims an interest, which is always recognized, and thus the land becomes again family land. My experience in Lagos leads me to the conclusion that except where land has been bought by the present owner, there are very few natives who are individual owners of land.

[FN31]. See Beattie, supra note 29, at 326. Mukama Kabarega, the last ruler of the Bunyoro kingdom in Uganda before the British invasion, owned all the land and everything in it. Id.

[FN32]. See H.W.O. Okoth-Ogendo, Property and Land-use Analysis: An Essay in the Political Economy of Ideas, in African Law and Legal Theory 291, 297 (1995).

[FN33]. See H.W.O. Okoth-Ogendo, Land Policy Development in East Africa: A Survey of Recent Trends 2 (Paper presented at the DFID Workshop on 'Land Rights and Sustainable Development in Sub-Saharan Africa' Feb. 16-19, 1999) at http://www.oxfam.org.uk/landrights/EAFOVER.rtf [hereinafter Land Policy].

[FN34]. See id. Agreements with the British colonial administration in Uganda "gave local rulers and their functionaries estates equivalent to the English fee simple, subject however, to certain obligations in respect of customary law tenants." Id.

[FN35]. See P.D. Abrams, Kenya's Land Re-settlement Story: How 60,000 African Families were Settled on 1325 Large Scale European Owned Farms (1979).

[FN36]. See Robinson supra note 4, at 475.

[FN37]. See Land Policy, supra note 33, at 3 ("And as the Maasai were to discover to their detriment, not even 'treaties' similar to those concluded elsewhere in Central and Southern Africa, were capable of offering protection.").

[FN38]. See Young supra note 19, at 185.

[FN39]. See U.N. Charter art. 1 and 55.

[FN40]. See U.N. Charter art. 73.

[FN41]. See Young supra note 19, at 190.

[FN42]. See id. at 203.

[FN43]. See id. at 182-204. (providing an overview of African independence movements).

[FN44]. See Robinson, supra note 4, at 469 ("The British captured the Cape in 1795. Although the Dutch regained the territory in 1803, it was lost to the British who retained control through 1910.").

[FN45]. See Emily Bourdeaux Smith, Note, South Africa's Land Reform Policy and International Human Rights Law, 19 Wis. Int'l L.J. 267, 268-69 (2001).

[FN46]. See id. at 270. Notwithstanding the South African government's repeal of minor segregation laws in 1978, "the government made no significant changes to laws regulating land ownership until 1990." Id.

[FN47]. See Robinson, supra note 4, at 483.

[FN48]. See Abrams, supra note 35.

[FN49]. See id.

[FN50]. See Kariuki, supra note 5 (explaining the consequences of low- and high-density schemes in Kenya).

[FN51]. See Julian Quan, The Poverty Impacts of Land Titling in Kenya (Mar. 2000) at http://www.oxfam.org.uk/landrights/jqkenya.rtf.

[FN52]. See Julian Quan, The Importance of Land Tenure to Poverty Eradication and Sustainable Development in Africa: Summary of Findings 2 (Sept. 1997) (explaining that "titling has in fact weakened the position of the poor, causing land insecurity for subsidiary claimants ... Land titling has also dispossessed pastoralists") at http://www.oxfam.org.uk/landrights/QUANPOV.rtf.

[FN53]. See Land Policy, supra note 33, at 2.

[FN54]. Id. at 3.

[FN55]. See Christy Cannon Lorgen, The Experience of Villagisation: Lessons from Ethiopia, Mozambique and Tanzania 18 (Jan. 1999) at http://www.oxfam.org.uk/landrights/Fullreport.rtf.

[FN56]. See id. at 21-22 (explaining that villigisation is often imposed on rural areas to facilitate the delivery of services such as health care and education, which improve the quality of life for villagers).

[FN57]. See Michael Holman, A Shaky Grip on Zimbabwe's Moral High Ground, Financial Times, Apr. 13, 2000.

[FN58]. See Rules of the Game, supra note 3, at 1 ("In this 'crucial capitulation' forced on him by Britain but also by Mozambique (Which hosted his guerrilla army), Mugabe accepted the infamous 'willing seller, willing buyer' formula for land reform, trusting that the British would come forward with the generous funding they seemed to promise.").

[FN59]. See Robin Palmer, Land Reform in Zimbabwe 1980-1990, 89 African Affairs 163, 167 (Apr. 1990) [hereinafter Land Reform in Zimbabwe]. Palmer explains that:
When Frelimo eventually fought its way to power in 1974/5, there followed a mass exodus of Portuguese settlers from Mozambique. Frelimo, which had done nothing to discourage this exodus at the time, soon came to regret it, and the very firm advice given to Mugabe's new government in 1980 was that it should strive hard to retain white expertise and skill, notably on the land.
Id.

[FN60]. See id.

[FN61]. See id. This is far less of an issue in South Africa however because of "the relatively small direct contribution that agriculture makes to the economy (around five percent of GNP)." See Ben Cousins, Why Land Invasions Will Happen Here Too ... 2 (Apr. 2000) at http:// www.oxfam.org.uk/landrights/SAViminv.rtf [hereinafter Why Land Invasions Will Happen Here Too].

[FN62]. See Land Reform in Zimbabwe, supra note 59, at 169.

[FN63]. See id. at 165.

[FN64]. See id. at 169.

[FN65]. See id. at 174.

[FN66]. See id. at 175.

[FN67]. See id. at 175.

[FN68]. See Sipho Sibanda, **Land Reform** and Poverty Alleviation in **South Africa (**Paper presented at the SARPN conference on **Land Reform** and Poverty Alleviation in Southern **Africa** held at the Human Sciences Research Council, Pretoria) http://www.oxfam.org.uk/landrights/SAstudy.rtf.

[FN69]. See Rules of the Game, supra note 3, at 1.

[FN70]. Thomas W. Mitchell, The **Land** Crisis in Zimbabwe: Getting Beyond the Myopic Focus Upon Black & White, 11 Ind. Int'l & Comp. L. Rev. 587, 588; see also Rachel L. Swarns, Plenty of Pain to Share in Zimbabwe **Land Reform,** N.Y. Times, Oct. 7, 2001, §1A, at 4 (reporting on the Black invasion of White- owned farms in Zimbabwe).

[FN71]. Adrian Blomfield, Mugabe Says He's Ready for War Over Farms, Wash. Times, Aug. 13, 2002, at A11 available at 2002 WL 2915943.

[FN72]. See Abrams, supra note 35, at 69.

[FN73]. See Robin Palmer, The World Bank, Civil Society and Land Reform (Aug. 2000) ("Kenya was held up as the model to emulate, even though the cracks in the very expensive Kenyan model have long been glaringly apparent") at http://www.oxfam.org.uk/landrights/Wbcivsoc.rft [hereinafter The World Bank].

[FN74]. See Kariuki, supra note 5.

[FN75]. See id.; see also Land Reform in Zimbabwe, supra note 59, at 169- 70.

[FN76]. See The World Bank, supra note 73 (explaining that "the Bank has an extremely chequered history on land reform, manifesting a dangerous combination of arrogance and ignorance, coupled with an unwillingness to listen seriously to others").

[FN77]. See Lorgen, supra note 55, at 22.

[FN78]. See The World Bank, supra note 73. Palmer observes that:
As for the "new" and much-hyped model of "market-assisted" land reforms, which involve governments taking a more hands-off approach, they have conspicuously failed to address either political realities or power relations on the ground. In Brazil they have done nothing to break the power of the large landlords, while in post-apartheid South

Africa their scope for securing sustainable rural livelihoods for poor people has proved to be extremely limited.
Id.

[FN79]. See Land Reform in Zimbabwe, supra note 59, at 169-70.
The initial burst of buying in 1981 [to 1983] comprised virtually all the whole farms which had been abandoned during the war years, mostly in the war zones of the north-east, plus the farms belonging to those who feared the worst from the new black government and decided to sell up and leave just before or just after independence. Not all of the land purchased at this time was suitable for resettlement. After this brief 'boom', very few entire farms or blocks of land became available, which obviously made advance planning much more difficult. There was also an increasing tendency on the part of the White farmers who stayed on after independence to hold onto the productive core of their farms and to offer for sale only the most marginal parts, which they were happy to dispose of, especially when land prices steadily began to rise as a result of political stability.
Id.

[FN80]. See Adam Yarmolinsky, 82 Harv. L. Rev. 1793, 1795 (1969) (reviewing Report of the National Advisory Commission on Civil Disorders and Supplemental Studies for National Advisory Commission on Civil Disorders (1968)). According to Yarmolinsky, "the Report demonstrates that riots develop primarily out of accumulated resentment against economic and social inequities." Id.; see also Rush, supra note 2.

[FN81]. See Yarmolinsky, supra note 80.

[FN82]. See Ruth Hall & Gavin Williams, Land Reform in South Africa: Problems and Prospects 1 (Dec. 2000) ("The National Department of Agriculture (NDA) inherited from the apartheid past ways of thinking, institutional structures, links to 'organised [i.e. white] agriculture' and, initially, key staff and even, from 1994-1996, its Minister.") at http://www.oxfam.org.uk/landrights/HallWill.doc.

[FN83]. See Lahiff, supra note 9, at 1.

[FN84]. See id. at 3.

[FN85]. See id.

[FN86]. See Robinson, supra note 4, at 484.

[FN87]. See Lahiff, supra note 9, at 1.
The Department of Land Affairs (DLA) has routinely failed to spend its budget (less than one-quarter of one percent of the national total), resulting in reduced funding being made available by the treasury for 2001/02. This has generally been attributed to severe lack of capacity-- particularly in terms of quality and quantity of staffing--in national and provincial offices of DLA and the Commission on the Restitution of Land Rights (CRLR).
Id.

[FN88]. See Hall & Williams supra note 82.
In 2000, under a new minister, Thoko Didiza, the Ministry produced a new redistribution policy: An Integrated Programme of Land Redistribution and Agricultural Development in South Africa. Its language and proposals shifted the emphasis away from the previous focus of DLA policy statements on alleviating the plight of the rural poor to the NDA's new concern to promote agricultural production and commercial farming by establishing a class of black commercial farmers.
Id.

[FN89]. See id. at 2. (explaining that the CFP was "aimed at those with five, or ten, years experience in agriculture and agricultural diplomas"); see also Why Land Invasions Will Happen Here Too, supra note 61, at 3 ("The beneficiaries will be relatively well off, aspirant farmers with 'sufficient net financial worth' (i.e. capital of their own).").

[FN90]. See Kariuki, supra note 5. Kariuki predicts that:
Creating a class of black commercial farmers will in essence dovetail into existing patterns of social inequality, as exemplified in the dichotomised agricultural sector, with a divide between small and large-scale farmers. Most importantly, creating a stratum of black commercial farmers without unlocking the imbalances of power in favor of all within the agri-economy will only perpetuate the existing agrarian structures biased in favor of white commercial farmers.

[FN91]. See Ben Cousins, The New Land Law: A Return to the Apartheid Era? (Nov. 2001) at http://www.oxfam.org.uk/landrights/newlaw.rtf [hereinafter The New Land Law]
The deals were brokered directly between chiefs, the Lebowa cabinet and the government, without popular consultation. This has resulted in widespread abuse and corruption by the chiefs. In theory the land belongs to the whole "tribe"; in practice it if operated as a feudal fiefdom. The rule of law has been replaced by a "rule of fear" .
Id. at 2.

[FN92]. See SA Const. §25 (6).

[FN93]. See The New Land Law, supra note 91, at 1.

[FN94]. See Edward Lahiff, Tenure Reform Back on the Agenda? 1-2 (stating that it is clear that the third draft of the "Land Rights Bill" did not have the approval of the "Department or the Minister and Delegates") at (Dec. 2001) http://www.oxfam.org.uk/landrights/Agenda.rtf [hereinafter Tenure Reform Back on the Agenda].

[FN95]. See Hall & Williams supra, note 82, at 10.

[FN96]. See id. at 6. ("These [community trusts and communal property associations] may in some cases provide a fictive legal framework behind which political entrepreneurs, civic organizations, or traditional authorities control the allocation of resources rather than an effective mechanism for holding decision-makers accountable to their 'communities.'").

[FN97]. See Rush, supra note 2; cf. Yarmolinsky, supra note 80 (discussing how social and economic inequities can lead to violence).

[FN98]. Expenditure estimates for 2001 show that the South African Government allotted less than 0.4% of expenditures to Land Affairs while allotting almost 6% to Defense. See South African Government Budget, available at http://www.budget.gov.za.

[FN99]. See Robin Palmer, Report on International Conference on Agrarian Reform and Rural Development (ICARRD), December 5-8, 2000 2 (Jan. 2001) at http://www.oxfam.org.uk/landrights/Agarref.rtf.

[FN100]. SA Const. §25 (2)(a).

[FN101]. See SA Const. §25 (4)(a).

[FN102]. SA Const. §25 (3)(b).

[FN103]. Attorney General v. Lohay Akonaay and Joseph Lohay, [1995] T.L.R. 80, 90 (Tanz. High Ct.). The respondents, father and son, had owned land in Arusha under customary law. The Tanzanian government dispossessed them during a villigization scheme called "Operation Vijiji." In 1990 they sued for recovery of the land and regained possession of it by court decree. In 1992, while the government's appeal was still pending the legislature passed the Regulation of Land Tenure Act, which extinguished all customary land rights. The High Court of Tanzania found that customary land rights were not rights of ownership but rights of occupancy. However, it was also found that these rights of occupancy were nonetheless property rights that were protected by the constitution, which required compensation for government land expropriation.

[FN104]. See Rush, supra note 2 (quoting Alexis de Tocqueville, Democracy in America 373-74 (Henry Reeve trans., Arlington House 1966) (1835)).

[FN105]. See Rush, supra note 2; see also Yarmolinsky supra, note 80.
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