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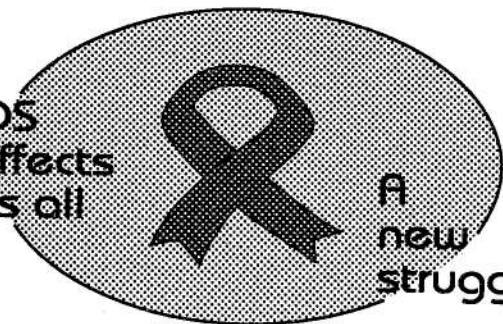
Vol. 423

PRETORIA, 15 SEPTEMBER 2000

No. 21562

**We all have the power to prevent AIDS**

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affects  
us all



A  
new  
struggle

**Prevention is the cure**

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DEPARTMENT OF HEALTH

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### GOVERNMENT NOTICE

Land Affairs, Department of

Government Notice

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## GOVERNMENT NOTICE

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DEPARTMENT OF LAND AFFAIRS

No. 920

15 September 2000

### CONSOLIDATED ENVIRONMENTAL IMPLEMENTATION AND MANAGEMENT PLAN

The Department of Land Affairs' *First Edition Consolidated Environmental Implementation and Management Plan* is hereby published for public information.

This report is the Department of Land Affairs' *First Edition Consolidated Environmental Implementation and Management Plan*, as required by the National Environmental Management Act (Act 107 of 1998), Chapter 3: *Procedures for Cooperative Governance*.

The Committee for Environmental Coordination adopted the Department of Land Affairs' *First Edition Consolidated Environmental Implementation and Management Plan* on 21 July 2000.

The *First Edition Consolidated Environmental Implementation and Management Plan* can be obtained from website: <http://land.pwv.gov.za>

Enquiries may be directed to:

The Director-General  
Department of Land Affairs  
(For attention: Ms Ruth Beukman)  
Private Bag X 833  
PRETORIA

0001

Fax number: (012) 312 9348

e-mail: [rpbeukman@sgbhq.pwv.gov.za](mailto:rpbeukman@sgbhq.pwv.gov.za)

June 2000

First Edition

**Consolidated Environmental  
Implementation and Management Plan 2000**

**DEPARTMENT OF LAND AFFAIRS**



Department of Land Affairs  
Departement van Grondskake  
Kgoro ya tsa Naga  
Umanyango wezomhlabo



## DLA CONSOLIDATED EI&MP

### EXECUTIVE SUMMARY

#### Introduction

This report is the Department of Land Affairs' (DLA) *First Edition Consolidated Environmental Implementation and Management Plan (EI&MP)*, as required by the National Environmental Management Act (Act 107 of 1998). Its main purpose is to "coordinate and harmonise the environmental policies, plans and programmes" of DLA in order to minimise duplication and promote consistency in fulfilling functions with other organs of state.

In addressing sustainable development, land and developmental issues cannot be separated, especially when trying to achieve social equity and welfare. Improving the quality of life and achieving sustainable development in Land Reform involves all three spheres of government and various departments. Thus, coordination between spheres and departments is essential. This First Edition Consolidated EI&MP therefore represents the important first step in identifying areas of duplication, gaps and recommendations on addressing these issues. This achieved through a process of constructive engagement between DLA and other relevant organs of state.

As a result, this report focuses on DLA's priority functional areas in terms of the environment, and highlights the processes that need to be initiated. It is not a comprehensive plan describing DLA's existing policies, plans and programmes, and including targets (and monitoring indicators) for implementation, because these have yet to be developed. It must be re-emphasised that this is not a plan for integrated environmental management, but rather a plan to foster cooperative governance and align the exercising of DLA's functions regarding the environment, with other relevant departments and organs of state. As such it concentrates on DLA's policies, plans and programmes, indicating how these comply with the NEMA principles, rather than focussing on other departments policies (which will be addressed in the EIP and/or EMP of the relevant department or province).

It is important to note that the Department of Land Affairs is currently undergoing significant restructuring and policy revisions. Consequently, on the finalisation of the DLA processes the potentially revised and adapted provisions shall be made available and detailed in the Annual Reporting which is required by NEMA (section 16(1)(b)) prior to the Second Edition Report.

#### Mandate and Functions of the Department of Land Affairs

The DLA's mission is to enact, establish and maintain an equitable and sustainable land dispensation in support of reconstruction, socio-economic growth and development. For the purposes of this report, the Land Reform and Spatial Planning functions are of primary interest.

#### Land Reform

The DLA is responsible for ensuring that Land Reform and land administration services are delivered effectively and speedily through accessible and efficient institutions. DLA has defined its Land Reform core business as "the delivery of land rights", with DLA's role

officially ending upon transfer of the land. Land Reform "functions which may affect the environment", are Land Restitution, Redistribution and Tenure.

### *Spatial Planning*

Planning is constitutionally a responsibility of all three spheres of government, each playing a different role. The National Department of Land Affairs is responsible for policy and legislation on land development planning and land management, and to provide support to Provincial and Local government in their implementation of national policy and legislation. The National government is primarily responsible for setting policy norms and standards but is not responsible for implementation. Consequently this report will deal with the policy, plans and programmes.

Constitutionally provinces are responsible for provincial and regional planning, and municipalities are responsible for local planning. The DLA is therefore responsible for setting of national norms and standards however Provincial and Local Authorities are responsible for implementation and management. Due to planning being a Provincial competency land development applications are made with respect to provincial and local legislation and by the use of National norms and standards (Chapter 1 Principles). This report will consequently deal with the national responsibility (policy and norms and standards) whereas implementation and management it is anticipated to be dealt with in the Provincial EIP reports. Similarly provincial planning acts and Local Authority ordinances will need to be covered by the relevant reports.

The DLA, as listed by NEMA, exercises both "functions which may affect the environment" and "functions involving the management of the environment". Functions, which may affect the environment, are largely associated with Land Reform, while functions which involve the management of the environment have been categorised as those components dealing with Land Development Facilitation, Spatial Planning and State Land Management. Other Departmental functions are not described in detail in this report, since they are not seen as having a potentially directly "significant" affect on the environment.

### **EIP Component (Land Reform)**

DLA has numerous land reform policies, plans and products for each specific component of the Land Reform Programme, namely, Restitution, Redistribution and Tenure. The relevant Chapters and sections provide details as required by NEMA. The DLA's role in Land Reform is to provide the necessary policies and mechanisms to redress legislation and policies that were racially discriminatory under the apartheid era. In brief:

- Tenure reform deals with land rights where people are living now.
- Restitution deals with land rights where people used to live in the past, often involving people choosing to return to their original tenure system.
- Redistribution deals with land rights where people will live after acquiring new land, involving people choosing a tenure system appropriate to their needs on their new land.

The implementation of Land Reform programme is based on a generic Project Cycle, which consists of four phases, namely: Project Identification; Feasibility Assessment and Project Business Planning; Approvals and Land Transfer and Development Support. Interdepartmental Committees are integral to the phases but are dependent on active

participation of the members to address developmental issues. The DLA's role ends once the land has been transferred to the land beneficiaries.

The following table summarises the DLA Land Reform policies, plans and programmes and partners. The specific departments and organs of state are particular to the specific Land Reform project and its location.

*Land Reform Policies, Plans and Programmes*

| Land Reform Function | Relevant Policies and Legislation                    | Plans and Programmes (activities)                                                                                                                   | Partners                                        |
|----------------------|------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------|
| Restitution          | Restitution of Land Rights Act 22 of 1994            | 6 Phased approached on page 33<br>DLA-DANCED project<br>environmental interventions                                                                 | All relevant Departments<br>and Organs of state |
| Redistribution       | Provision of Land and Assistance Act 126 of 1993     | Commonages<br>Farmer equity schemes<br>Group Products<br>Individual/family farms<br>Settlement<br>DLA-DANCED project<br>environmental interventions | All relevant Departments<br>and Organs of state |
| Tenure               | Extension of Security of Tenure Act of 1998          | Tenure security                                                                                                                                     | National, Provincial and Local Authorities      |
|                      | Interim Protection of Informal Rights Act 31 of 1996 | Tenure security                                                                                                                                     | National, Provincial and Local Authorities      |
|                      | Upgrading of Land Tenure Rights Act of 1991          | Tenure security                                                                                                                                     | National, Provincial and Local Authorities      |
|                      | Land Reform Labour Tenants Act of 1996               | Tenure security                                                                                                                                     | National, Provincial and Local Authorities      |
|                      |                                                      | Tenure security                                                                                                                                     | National, Provincial and Local Authorities      |

The following table summarises DLA functions and activities and information contained within the report related to the Land Reform Programme, which address the NEMA Principles.

*Compliance with NEMA Principles*

| NEMA Principles                  |                                                                                                               | DLA Functions                                                                                                 |                                                                                                               |
|----------------------------------|---------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|
| Restitution                      | Restitution                                                                                                   | Redistribution                                                                                                | Tenure                                                                                                        |
| Sustainable development          | Feasibility studies<br>Linkages to LDO<br>Plans<br>Design of Development                                      | Feasibility studies<br>Linkages to LDO<br>Plans<br>Design of Development                                      | Tenure integral to sustainable development<br>Design of Development<br>Plans                                  |
| Integration into decision making | Design of Development<br>Plans<br>Linkages to LDO                                                             | Design of Development<br>Plans<br>Linkages to LDO                                                             | Land ownership and title deeds are key to decision making                                                     |
| Participation                    | Participation is integral to all of DLA functions<br>DLA-DANCED project<br>conducts capacity building         | Participation is integral to all of DLA functions<br>DLA-DANCED project<br>conducts capacity building         | Participation is integral to all of DLA functions<br>DLA-DANCED project<br>conducts capacity building         |
| Environ. Justice and equity      | Land Reform policy is key to equity and justice issues                                                        | Land Reform policy is key to equity and justice issues<br>DLA Food Safety net programme                       | Land Reform policy is key to equity and justice issues                                                        |
| Ecological Integrity             | Conduct Natural Resource Base Assessment studies                                                              | Conduct Natural Resource Base Assessment studies                                                              |                                                                                                               |
| International                    | Partner to internal convention programmes<br>inter-governmental coordination and cooperation<br>is key to DLA | Partner to internal convention programmes<br>inter-governmental coordination and cooperation<br>is key to DLA | Partner to internal convention programmes<br>inter-governmental coordination and cooperation<br>is key to DLA |



The formulation of sustainable development indicators by DLA for Land Reform is problematic, because DLA is only responsible for the planning and transfer of land. Therefore, the indicators that may be used should reflect the incorporation of sustainable development principles in the planning (and decision making) process, rather than the actual use of the land. This latter component is a joint responsibility of Local Government, Provincial Government and National Government line function departments, and should therefore be reflected in the relevant EIPs. For purposes of this report sustainable development indicators have been provided in Annexure A, however, these are limited due to the above reasons. The DLA-DANCED project will be drafting an environmental policy which will be available in March 2001 from which it may be possible to design sustainable development indicators for future use in the DLA Consolidated E&M reporting process. These will be made available in the annual reporting process to the CEC.

Nevertheless, DLA is developing Quality of Life indicators to assess the Land Reform process, and some of these may be included as indicators for the DLA Consolidated E&M. However, it is premature to identify particular indicators for this edition of the plan as they are only in the process of being designed for environmental purposes.

### **EMP Component (Spatial Planning and State Land Management)**

This report highlights that the DLA is responsible only for formulating national policy and legislation for land development, while provincial government and local authorities are primarily responsible for implementation of proactive spatial planning and land development management. The DFA introduced an interim planning system for South Africa, which is policy led and normative in nature. This system forms the basis on which Provinces can develop their own planning laws. The DFA and the Green Paper on Development and Planning currently provide the legislative framework, including norms and standards for spatial planning (proactive planning), which provincial government may use to develop land development legislation and regulations. Planning and management of land development in South Africa must be in accordance with the Chapter 1 Principles of the DFA: Principles for Land Development.

The DFA addresses land development planning at a local authority level by requiring the compilation of LDOs. LDOs set out the qualitative and quantitative objectives of the relevant authority in terms of the access to and standard of services for land development (land development management), the growth and form of the area and associated development strategies. LDOs are concerned with promoting equity, efficiency, protecting the public good, ensuring the appropriate use of scarce resources and protecting the environment, which are all consistent with the NEMA Integrated Environmental Management (IEM) principles. The DLA however does not currently play an evaluation or monitoring role, which will be addressed in the forthcoming White paper on Development and Planning. It is important to note that the Green Paper on Development and Planning specifies that the spatial planning function includes both proactive strategic planning and land development management.

The State is the biggest landowner in South Africa, details of which are contained within the report. The DLA in partnership with other government agencies is responsible to ensure the release of state land as a resource for sustainable development. DLA functions with respect

to active monitoring or management of state land, once leases or servitudes have been granted, is very limited. There is further also a lack of clarity around the active management of state land particularly when communities who are the *de facto* "owners" of the land beneficially occupy it. The DLA is, as a matter of urgency, addressing its management role and is seeking to resolve the required institutional arrangements with various National and Provincial departments.

The following table provides a summary of the DLA land authorisations and the decision making authority.

*Summary Table of DLA Land authorisations*

| Name of Act                                | Nature of authorisation         | Decision making authority                   |
|--------------------------------------------|---------------------------------|---------------------------------------------|
| Physical Planning Act, 1991                | Land use decisions              | Decision making power assigned to Provinces |
| Development Facilitation Act, 1995         | Land development decision       | Development Tribunals                       |
| Provision of Land and Assistance Act, 1993 | Designation (land use)          | Minister of Land Affairs                    |
| Extension of Security of Tenure Act, 1998  | Land use (off farm settlements) | Minister of Land Affairs                    |

The following table summarises the EMP functions as performed by DLA.

*Table describing Policies, Plans and Programmes*

| DLA Function          | Relevant Policies and Legislation                                                  | Plans and Programmes (activities)             | Partners                                                        |
|-----------------------|------------------------------------------------------------------------------------|-----------------------------------------------|-----------------------------------------------------------------|
| Spatial Planning      | Development Facilitation Act 67 of 1995<br>Green Paper on Development and Planning | Land Development Objectives<br>DFA Principles | All relevant Departments and Organs of state                    |
| Land Development      | Development Facilitation Act 67 of 1995<br>Green Paper on Development and Planning | Land Development Objectives<br>DFA Principles | Local Authorities, All relevant Departments and Organs of state |
| State Land Management | Development Facilitation Act 67 of 1995                                            | Land Development Objectives<br>DFA Principles | All relevant Departments and Organs of state                    |

### *Compliance with DLA policies*

DLA's function with respect to spatial planning (proactive planning) and land development (land development management) is to develop national norms and standards, which are implemented and monitored by Local Authorities and Provincial Government. Therefore, it is not appropriate for the DLA Consolidated E&MP to report on compliance, as this should be done in the Provincial EIPs. This situation may change through the White Paper (on development and planning) process, and if this occurs, the Annual Reports and second edition Consolidated Plan will include compliance.

The table below summarises DLA functions and activities and information contained within the report related to land development, which address the NEMA Principles.

Table of Compliance with NEMA Principles

| NEMA Principles                  | DLA Functions                                                                      |                                                                                    |                                                               |                                                               |
|----------------------------------|------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|---------------------------------------------------------------|---------------------------------------------------------------|
|                                  | Spatial Planning (Proactive planning)                                              | Land Development (Land Development Management)                                     | State Land Management                                         |                                                               |
| Sustainable development          | Application of Environmental based DFA Principles                                  | Application of Environmental based DFA Principles                                  | Application of Environmental based DFA Principles             |                                                               |
| Integration into decision making | DFA Principles require integration                                                 | DFA Principles require integration                                                 |                                                               |                                                               |
| Participation                    | DFA Principles require full participation                                          | DFA Principles require full participation                                          | DFA Principles require full participation                     |                                                               |
| Environ. Justice and equity      | DFA Principles are based on 1) Human centered & 2) Natural resource base integrity | DFA Principles are based on 1) Human centered & 2) Natural resource base integrity |                                                               |                                                               |
| Ecological integrity             | DFA Principles are based on 1) Human centered & 2) Natural resource base integrity | DFA Principles are based on 1) Human centered & 2) Natural resource base integrity | EIA's are required to be performed for proposed development   | Inter-governmental coordination and cooperation is key to DLA |
| International                    | Inter-governmental coordination and cooperation is key to DLA                      | Inter-governmental coordination and cooperation is key to DLA                      | Inter-governmental coordination and cooperation is key to DLA | Inter-governmental coordination and cooperation is key to DLA |

### Monitoring

A similar argument must be made for monitoring of spatial planning (proactive planning) and land development (land development management), as DLA does not currently have a monitoring-auditing role. Sustainable development indicators appropriate for these functions should be developed by the relevant Provincial Governments and included in their EIPs as they are the implementing agents. Sustainable development indicators of a policy nature are provided in Annexure A.

### Summary of points which relate to Purpose and Objectives of E&MPs (NEMA Chapter 3)

The DLA Consolidated E&MP report has synthesized information pertinent to the potential duplication, fragmentation and gaps that currently exist within the ambit of cooperative governance and DLA responsibilities in environmental management.

- **Duplication:** In summary there is currently limited but notable duplication of functions. Local Government Transitional Act, which requires Integrated Development Plans (IDP) to be compiled. IDPs are very similar to Land Development Objectives (LDOs). Spatial planning is an integral part of the IDP process at municipal (Local government) level. The DLA has however resolved this duplication issue through The Green Paper on Development and Planning, which proposes to integrate the two requirements into a single process.
- Potential duplication also exists in the planning approval process currently contained within the Planning legislation and the EIA legislation. The DLA seeks to align the two processes in order to ensure a more sustainable and better quality decision-making



process. The DLA is currently in discussions with DEA&T through the White Paper process to resolve the issues.

**Fragmentation:** In summary the document highlights and details the very complex and fragmented nature of spatial planning in South Africa. The Green Paper on Development and Planning is focussed on resolving the current situation. A White Paper shall be produced in the latter part of 2000. The National Department of Land Affairs has taken the lead in setting national norms and standards for spatial planning, but does not currently play a monitoring nor implementation role. Provincial and Local Authorities are responsible for implementation and management.

**Gaps:** In summary there are several gaps that have been identified in this report. The identified gaps fall outside of the jurisdiction of the DLA and require cooperative governance with other departments to be resolved. The most significant gaps are as follows:

- Land Reform is perceived as the sole responsibility of DLA rather than a cooperative governance responsibility of all organs of state involved in reconstruction and development, each playing a specific and necessary role;
- Formalised and accountable linkages, and involvement, of Local Authorities and the departments of Environmental Affairs, Agriculture, and Water Affairs and Forestry in the planning of Land Reform projects. Although an interdepartmental committee (for example the statutory PPAC) exists, departments do not regularly attend or are not held accountable for decisions taken;
- Formalised and accountable involvement of all relevant departments National, Provincial and Local government in the project cycle of Land Reform projects;
- The enforcement and monitoring of DLA principles and requirements for land development applications to be compliant with DEA&T EIA legislation and requirements. The DLA does not have enforcement or monitoring jurisdiction. The Green Paper proposes to address some of the issues;
- The monitoring and evaluation of LDOs which, although must be compliant with the DFA Chapter 1 Principles, is currently not being performed. The Green Paper addresses several of the concerns but does require the cooperation of cooperative governance partners;
- With reference to state land in particular, the following has been highlighted:
  - Monitoring and management responsibility gaps of state land which have been issued with mining leases by the Department of Minerals and Energy;
  - Monitoring and enforcement of EIAs on state land; and
- Finally, the Department of Provincial and Local Government is not required to compile NEMA Chapter 3 reports and therefore the necessary planning processes and legislation under the jurisdiction of that department will not be addressed within this First Edition and CEC reporting processes.

## Recommendations for Institutional Cooperation

The following recommendations summarise the main institutional issues around cooperative governance and environmental management that are not relevant for the purposes of IEM in Chapter 5. There is a need for an:

- Integrated Planning System, as proposed by the Green Paper on Development and Planning;

The second proposal in the report identifies an approval process which, although dealt with separately by the two departments is aligned in terms of procedure. Streamlining of the

Proposals for spatial planning are detailed in the report, the most important of which is the alignment of planning authorisations and environmental authorisations. Implementation of the authorisations is conducted at Provincial and Local levels, outside of the DLA ambit, however National DLA through setting of policy and norms and standards is required to facilitate and put in place mechanisms to align the two processes. Consequently two detailed proposals are made in this regard for consideration in the cooperative governance arena of the CEC. The preferred option of which is the following.

#### *Proposals for Spatial Planning (in terms of EMP)*

DLA and DEA&T jointly draft land reform specific regulations which are issued by DLA in terms of existing Land Reform legislation. Potential implications of self-regulation for the DLA are that it provides additional motivation for DLA to provide resources and build capacity for this function. This environmental management function would need to be reported upon as the EMP of DLAs Consolidated E&MP report and would need to be audited annually. This implies a form of self regulation by DLA and an auditing role for the DEA&T. Auditing would then become part of the annual reporting process associated with the DEA&T Consolidated E&MP.

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#### *Recommendations for Land Reform (in terms of EIP)*

Chapter 5 of the report details recommendations for Land Reform and proposals for Spatial Planning, providing options and preferences for both. Which are summarised as follows:

#### **Recommendations and Proposals in terms of Chapter 5 of NEMA**

- Enhancement of capacity of National government to enforce the above planning system and to monitor the implementation of the DFA Chapter 1 principles;
- New institutional frameworks for Land Reform where the District Council are the drivers. Capacity and budgets would need to be transferred to the District Council to support the delegation of powers;
- A review and possible amending of the Conservation of Agricultural Resources Act (Act 43 of 1983) so as to align it effectively and make it more applicable to Land Reform; and Enforcement of relevant legislation by the provincial departments, especially Agriculture and Environmental Affairs;
- Training and education for government officials, beneficiaries and service providers in Environment and Land Reform, and DFA Chapter 1 principles; and
- NEMA Chapter 5 guidelines needs to be developed to ensure quality and not quantity.

processes will be initiated by firstly, attaining environmental approval and thereafter, planning approval. Consequently applications will only be considered once environmental approval has been acquired. Although the potential slowness of this option is of concern if sufficient resources are not available within the Environmental Department, the alignment of the processes is a strong positive feature in the cooperative governance partnership.

#### *DANCED Guidelines*

The DLA-DANCED project guidelines will integrate environmental planning into the Land Reform process. The project is currently in progress and will be finalised in March 2001 at which time the products will become available. Reporting on the integration process will therefore be possible for the first annual report to the CEC. The guideline documents are aligned to the IEM principles and procedures. Greater involvement of the National and Provincial DEA&T officials is however required for more in-depth comment and technical input.

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# ACRONYMS AND GLOSSARY

|                  |                                                                                                                                                                                        |
|------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| DLA              | National Department of Land Affairs                                                                                                                                                    |
| PDLA             | Regional Department of Land Affairs in the Provinces                                                                                                                                   |
| NDA              | National Department of Agriculture                                                                                                                                                     |
| PDA              | Provincial Department of Agriculture                                                                                                                                                   |
| NEMA             | National Environmental Management Act, 107 of 1998                                                                                                                                     |
| ECA              | Environmental Conservation Act, 73 of 1989                                                                                                                                             |
| CEC              | Committee for Environmental Coordination in terms of NEMA Act, 107 of 1998                                                                                                             |
| DLA-DANCED       | South African Department of Land Affairs and Danish Corporation for Environment and Development Project: <i>The Integration of Environmental Planning into the Land Reform Process</i> |
| CIU              | Coordination and Implementation Unit in the Executive Deputy President's office                                                                                                        |
| DFA              | Development Facilitation Act, 67 of 1995                                                                                                                                               |
| DPC              | National Development and Planning Commission                                                                                                                                           |
| PPAC             | Provincial Project Approval Committee in terms of the Provision of Land and Assistance Act, 126 of 1993                                                                                |
| CPAs             | Communal Property Associations                                                                                                                                                         |
| EIA              | Environmental Impact Assessment                                                                                                                                                        |
| FEED             | Forum for Effective Planning and Development                                                                                                                                           |
| LDO              | Land Development Objective in terms of the Development Facilitation Act, 67 of 1995                                                                                                    |
| IDP              | Integrated Development Plan in terms of the Local Government Transition Act, 200 of 1993                                                                                               |
| SDI              | Spatial Development Initiative                                                                                                                                                         |
| Spatial Planning | The organisation of space, rather than land planning which sought to plan all land parcels comprehensively                                                                             |
| SACTRP           | South African Council for Town and Regional Planners                                                                                                                                   |
| IEM              | Integrated Environmental Management in terms of NEMA Act, 107 of 1998                                                                                                                  |
| DE&T             | National Department of Environmental Affairs and Tourism                                                                                                                               |
| SLAG             | Settlement and Land Acquisition Grant                                                                                                                                                  |
| EI&MP            | Environmental Implementation Plans and Environmental Management Plans in terms of NEMA Act, 107 of 1998                                                                                |
| Commission       | Commission on Restitution of Land Rights                                                                                                                                               |
| TLC              | Transitional Local Councils                                                                                                                                                            |
| M&E              | Monitoring and Evaluation section of the DLA                                                                                                                                           |
| MEC              | Member of Executive Council for a Province: Department of Local Government                                                                                                             |
| RLCC             | Regional Land Claims Commission                                                                                                                                                        |
| MTEF             | Medium Term Expenditure Framework                                                                                                                                                      |
| RDP              | Reconstruction and Development Programme                                                                                                                                               |
| ULTRA            | The Upgrading of Land Tenure Rights Act, 1991                                                                                                                                          |
| PTO              | Permission to Occupy                                                                                                                                                                   |
| TBVC States      | Transkei, Bophuthatswana, Venda, Ciskei, former homeland states                                                                                                                        |
| SGT              | Self-governing Territories                                                                                                                                                             |

## Chapter One: Mandate and Functions

### 1.1 Objectives of this Report

The Department of Land Affairs' (DLA) *First Edition Consolidated Environmental Implementation and Management Plan* report, as required by NEMA (National Environmental Management Act, Act 107 of 1998, Chapter 3), is in support of cooperative governance in environmental management and towards sustainable development of South Africa.

In addressing sustainable development, land and developmental issues cannot be separated, especially when trying to achieve social equity and welfare. Improving the quality of life and achieving sustainable development in land reform involves all three spheres of government and various departments. Thus coordination between spheres and departments is essential. In order to make a contribution to cooperative governance in land and environmental issues, through the First DLA Consolidated E&MP Report, it is important to have a firm understanding of the mandates and functions of DLA as laid down by the executive powers of the South African Government.

On the basis of the understanding of the functions and priorities of the DLA it will then be possible, through the processes of the Committee for Environmental Coordination (CEC) to identify potential gaps and potential duplication which needs to be addressed. Consequently, this report provides the first necessary step in order to facilitate the discussions with "environmental management cooperative partners", from which improved cooperative governance and management of our environment will stem.

It is important however to point out that this report does not represent a plan for integrated environmental management. It should not be confused with requirements of Chapter 5 of NEMA (as pointed out in the *Guidelines for Preparation of the First Edition Environmental Implementation and Management Plans November 1999*). Chapter 5 of this report will focus on recommendations and proposals as required in Chapter 3 of NEMA for integrated environmental management (IEM), which will then be incorporated into the broader programme of IEM to be addressed at the CEC. Recommendations for cooperative governance, which are important from a broader governance perspective, will be presented in Chapter 4.

This report will serve as an invaluable tool for establishing the mechanisms of cooperative governance in environmental management in order to achieve sustainable livelihoods. For those members of the CEC, public and other stakeholders who are either interested or concerned with the DLA this document will provide an accessible, transparent and detailed account of Land Affairs and environmental management.

*This report is neither a plan for integrated environmental management nor a strategy for sustainable development. It is also not a single event but rather an initial step in a progressive process to be driven and guided by the CEC.*

This report has been compiled and drafted following the DEAT Guidelines for Preparation of the First Edition Environmental Implementation Plans and Environmental Management Plans November 1999.

## 1.2 Historical Context

Land ownership and land development patterns strongly reflect the political and economic conditions of the apartheid era. Racially-based land policies were a cause of insecurity, landlessness and poverty amongst black people, and a cause of inefficient land administration and land use (Land Policy White Paper, 1997).

At the outset, it must be emphasised that the central thrust of South Africa's land policy since 1994 has been the *land reform programme*, given the historical context. The South African government's land reform policy has tried to address the following:

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

The three aspects of the land reform programme are:

- *Land Tenure Reform*: to improve the security of tenure of all South Africans and to accommodate diverse forms of tenure.
- *Land Restitution*: to restore land and/or provide other remedies (such as compensation) to people dispossessed by racially discriminatory legislation and practice (since 19 June 1913).
- *Land Redistribution*: to provide the poor with access to land for residential or productive purposes in order to improve their livelihoods.

## 1.3 Government Priorities in terms of Land Reform

Land Reform is a *South African Government* priority. The inclusion of three clauses in our Constitution, which relate directly to the three key aspects of the land reform programme mentioned above, support this. The constitutional provisions are (The Constitution of the Republic of South Africa, 1996, Chapter 2):

A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws and practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress (s25(6)).

A person or community dispossessed of property after June 19 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either restitution of that property, or to equitable redress (s25(7)).

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(s25(5)).



The Constitution also makes provision for environmental rights:

- Everyone has the right-*
- (a) to an environment that is not harmful to their health or well-being; and
  - (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures the
  - (i) prevent pollution and ecological degradation;
  - (ii) promote conservation; and
  - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development (s24).

The Constitution is clear that development and service provision is the responsibility of Provincial and Local governments who are the lead agents in this area. Provincial governments have concurrent competencies with National government with regard to critical areas such as rural and urban development and agriculture, which impacts directly on the sustainability of Land Reform.

In addition, the case for the government's rural Land Reform programme and its scope and content were clearly set out in the Reconstruction and Development Programme in 1994 (RDP: A Policy Framework, ANC, 1994). Amongst others, statements such as "a national land reform programme is the central and driving force of a programme of rural development" and "The RDP must implement a fundamental land reform programme" supports the view that land reform is a South African Government priority.

It was acknowledged at the outset of the Land Reform programme that the successes of the programme are dependent on more than merely access to land. The provision of support services, infrastructural and other development programmes, are essential to improve the quality of life and the employment opportunities resulting from land reform. The successful delivery of Land Reform depends not only on integrated government policy and delivery systems, but also on constructive partnerships between the different spheres of government as well as between the state and private and non-governmental sectors.

The intentions of the Land Reform programme (mentioned in the previous section) are broad governmental aims, which cannot be achieved by DLA alone.

#### 1.4 The Mandate and Functions of DLA

The DLA, as listed by NEMA, exercises both "functions which may affect the environment" and "functions involving the management of the environment". Functions, which may affect the environment, are largely associated with Land Reform and functions which involve the management of the environment have been categorised as those components dealing with Land Development Facilitation, Spatial Planning and State Land Management.

The DLA's mission is to enact, establish and maintain an equitable and sustainable land dispensation in support of reconstruction, growth and development. The core business of DLA is:

- Registration of Land Rights
- Cartographic and Mapping Services

- Cadastral Surveys
- Restitution of Land Rights
- Redistribution of Land
- Land Tenure Reform and Protection of Land Rights
- Management of certain State Land; and
- Spatial Planning and Information

#### 1.4.1 Land Reform

Land reform is a national competency. It is the responsibility of national government to ensure a more equitable distribution of land ownership, to support the work of the Commission on Restitution of Land Rights and to ensure that a programme of land tenure and land administration reform is implemented.

The DLA is responsible for ensuring that Land Reform and land administration services are delivered effectively and speedily through accessible and efficient institutions. Land Reform however has been seen, as the sole responsibility of DLA and the necessary coordination and integration with other departments and spheres of government has not occurred optimally.

At the same time DLA has defined its Land Reform core business as "the delivery of land rights", with DLA's role officially ending upon transfer of the land.

The DLA is however, undergoing a major transformation process and the manner in which it implements its core business is being clarified. The three basic legs of Land Reform remain, but more emphasis will be placed on the following (only those issues relevant to this report are listed):

- Better integration and coordination with other government departments and spheres; Contributing to an integrated rural development strategy to address development and settlement at the local level;
- Land Reform will be integrated into local development planning and the point of delivery will be the district level. New District Councils will therefore be capacitated to deliver land reform;
- Unlocking economic opportunities to improve the lives of beneficiaries by addressing social and economic development;
- More in-depth consideration of the land use needs of beneficiaries (food security/sustainable livelihoods net; settlement; small scale commercial agriculture) and the land use needs of society;
- Speeding up of restitution claims, and focussing on rural claims;
- Addressing equity and development in a sustainable manner; and
- Consolidating and rationalising tenure legislation and that tenure reform should lay the foundation for integrated economic development, sustainable land use and agricultural development by providing the basis for secure investment in land by rural households, private entrepreneurs and local government.

With respect to *environmental cooperative governance*, the issue of DLA's mandate and responsibilities versus those of other departments and spheres has severe implications for sustainable development and is central to this report.

Land Reform "functions which may affect the environment", are Land Restitution, Redistribution and Tenure. In tenure related projects emphasis has been on legal matters relating to prevention of evictions, securing people's land rights where they are or upgrading of land tenure status *in situ*. In these cases the focus is on the existing land conditions and issues are related to present land use as well as the well-documented problems of open access. Land Restitution and Redistribution projects are more often associated with movement and influxes of people onto land and the often related potential change in land use and resource utilisation.

#### *Relative scope of impact DLA's jurisdiction over land*

It is important to put into perspective the "footprint" of Land Reform in South Africa. Land Reform is a small government programme when compared to water, infrastructure and housing programmes. For example, the 1999/2000 Land Reform budget was R567 million which is 0.34% of the national budget. Posts available for Land Reform are 697 which is 0.063% of the national public service. To date (March 2000), a total of 773 363 hectares of land has been redistributed and transferred through 465 projects (redistribution and tenure) and 173 805 hectares has been restored through 1651 claims (restitution). This accounts for a total of 0.65% and 0.15% of the total land surface in South Africa, respectively. Consequently, the actual footprint of DLA projects is relatively small when put in context. However small it is a very important component of government policy. Although the DLA is a small impactor, the effect of DLA policies and programmes due to the direct linkage with sustainable livelihoods, has the potential to influence social welfare and land management (from a productivity perspective) and have long term implications.

With respect to total land, DLA is responsible for managing about 11% of the total land surface of South Africa (including the former TBVC states and SGT), while the State as a whole owns about 25% of the country. This is principally done through State Land Management policies and programmes. Large portions of this land are the subjects of tenure and land administration reform. As many of governments development programmes, for example Spatial Development Initiatives (SDI's), fall within these areas DLA's impact in these cases can be significant.

#### *1.4.2 Land Development Facilitation*

The South African planning system has stemmed and emerged as a consequence of the historical context, influences of the ruling government of the past and is complexly fragmented.

The National Department of Land Affairs is responsible for policy and legislation on land development planning and land management, and to provide support to Provincial and Local government in their implementation of policy and legislation, notably the Development Facilitation Act of 1995 (DFA). Provinces may also draft their own planning legislation and regulations in accordance with National policies and principles. Planning mechanisms for implementation of the DFA are the Land Development Objectives (LDOs) and Provincial Development Tribunals which may decide on land development applications made in terms of the DFA. Local Government planning ordinances will not be addressed in the DLA report since that is the mandate of Local Government and will be potentially represented in the appropriate Report to the CEC.

Planning is constitutionally a responsibility of all three spheres of government, each playing a different role. The National government is responsible for setting norms and standards but is not responsible for management or implementation. However, planning is fragmented and very complex. For these reasons the National Development Planning Commission (DPC) in close collaboration with the Department produced a Green Paper on Development and Planning (also herein referred to as the Green Paper). The Green Paper, which is normative in nature, sets out to align and provide a framework for integrated spatial planning in South Africa. The planning division within the DLA, Land Development Facilitation Directorate has become a priority directorate of the Department and will in future be capacitated to enhance and fulfill the requirements of this work. Consequently the linkages and involvement of the cooperative government partners (such as Local Authorities and departments of DEA&T and Agriculture) in decision making on land use and land management is of great importance.

#### 1.4.3 Other Functions

Other Departmental functions are not further described in this report, since they are not seen as having a potentially directly significant affect on the environment. It must however be stressed that the maintenance of an efficient Deeds and Survey System for the country, as a whole and particularly the extension of this to comprehensively cover the former homeland areas, is seen as an essential base for effective governance at National, Provincial and Local Government spheres. Other Departmental functions, which will not be dealt with in this report, are:

##### • Deeds

The function of the 9 (nine) Deeds offices in the country is to register land in the name of its owner to protect and record security of title.

##### • Cadastral Surveys (and National Spatial Information Network)

The offices of the four Surveyor's General in the country, amongst other tasks, maintains the country's Cadastral Survey System by accurately identifying the position of each registered land parcel and the extent of rights over such a land parcel. These offices examine and approve all cadastral surveys for the registration of ownership of property and real rights in land.

##### • Surveys and Mapping

This section is responsible for maintaining the Integrated National Control Survey System (which is the backbone to the surveys and mapping industry), the national mapping programme (map production), the national aerial photography programme and associated geo-spatial products.

This report focuses on *Land Reform* as the priority function that DLA exercises which may affect the environment and *Spatial Planning* and *State Land Management* as the priority functions that DLA exercises involving management of the environment.



## 1.5 Integration of Land, Rights, Values and Ownership Concepts

Common law land ownership is traditionally perceived as having absolute control over a parcel of land to the exclusion of all outsiders. Any interference with the rights of the landowner is seen as a risk to the owner and as an exception to the absolute control the owner has over their property. Ownership is perceived of in terms of rights with no obligations attached to it.

This concept is strengthened by the perception that there is a clear distinction between the public and private spheres of law, with ownership falling within the sphere of private law over which the State has no control.

The constitutional right to a healthy environment and sustainable conservation however, blurs this distinction. The environmental effects of land use go beyond the legally surveyed borders of a parcel of land. It is not the landowner or land user who suffers the effects of injudicious land use, but the wider public who have to bear the brunt of its effects. These effects are cumulative and difficult to trace back to a particular person and are especially important when considering future generations and potential landowners.

Once environmental damage has been done, the negative effects are often permanent and rehabilitation is costly. The best defense against environmental degradation is prevention. Prevention in the interest of the public which includes landowners as users and controllers of land, a valuable resource which has to be managed not only to the exclusive interest of the owner, but in the interest of the country as a whole.

The Constitution protects the right to compensation in the event of expropriation and not the right to property per se. Expecting a landowner to meet certain obligations set by the state in respect of land use in the interest of sound environmental management is not in any way expropriation. It defines the content of the rights to ownership that include obligations in the legal concept of ownership, a concept that has implications beyond the sphere of the private individual.

No rights are absolute and the rights of owners are no exception to this. In terms of section 39 of the Constitution common law needs to be interpreted in a manner which is consistent with the rights conferred by chapter two of the Constitution, the Bill of Rights. Section 24 confers on all the right to a healthy environment. The rights of ownership need to be shaped in accordance with this right.

Cooperative governance for sustainable development and environmental management needs to embrace and address the above issues, through interdepartmental, government and civil society debates and directives. The concept of a paradigm shift in the understanding of what it means to be a landowner as a key player and manager of land resources needs to go beyond the current practice. South Africa requires a paradigm shift to a "duty of care responsibility" associated with land ownership. This needs to be fostered not only with Land Affairs but by a dialogue between government departments and civil society.



## 1.6 The Concept of a Sustainable Development and Environment in terms of Land

Land is a fundamental natural resource that is important both in terms of human settlement and economic production. For the purposes of this report, DLA's responsibility for sustainable environmental management has two aspects:

Firstly, in terms of land reform, a sustainable environment is necessary to support sustainable livelihoods of the beneficiaries and surrounding community. Therefore, environmental management for land reform needs to consider the linkages between natural resources, environmental quality and poverty.

Secondly, in the case of land development, the major considerations for a sustainable environment relate to ensuring that land use activities conducted on that land do not degrade the natural resource base and ecological systems beyond their natural ability to recover and that human beings are protected from adverse impacts. This may be done through proactive planning of land development and through authorisation of land use change.

NEMA defines the environment as:

"the surroundings within which humans exist and that are made up of-

- (i) the land, water and atmosphere of the earth;
- (ii) micro-organisms, plant and animal life;
- (iii) any part or combination of (i) or (ii) and the interrelationships among and between them; and
- (iv) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being;".

NEMA defines sustainable development as:

"the integration of social, economic and environmental factor into planning, implementation and decision-making so as to ensure that development serves present and future generations,"

The above definitions are aligned with the DLA's interpretation and understanding of the environment and sustainable development and views the two definitions as integral to the success of DLA policy, programmes and plans.

## 1.7 Process followed for compilation of the Report

The Process followed for compiling the Department's Report<sup>1</sup> involved the following key steps of detailed structured interviews, documentation review, drafting and workshops:

### *Overview and Steps of Process followed*

- Project initiated in December 1999
- Consultants appointed to assist and work in very close collaboration with Department Project Manager who drives the entire process
- Reviewed Departmental structure and functions
- Reviewed and analysed key policies and documentation

<sup>1</sup> This document was compiled by Greta Pech (Pegasus Strategic Management) and Ruth Beukman (DLA), with input from a number of DLA contributors, under the auspices of the Directorate Land Development Facilitation.

- Designed questionnaire identifying key aspects per chapter for the First Edition Report (chapter template as per DEA&T Guidelines document)
- Series of structured interviews of key officials, sections, projects and all provinces
- Developed a framework for compiling the report
- Framework submitted to DEA&T
- Internal departmental brainstorming session
- Prioritisation of information, through interviews and brainstorming sessions, to be submitted in First Edition report
- Quick research and write-ups based on prioritisation by department representatives
- Presentation of results of interviews to Planning Network forum
- Compilation of Draft Report
- Departmental review of First Draft
- Department Workshop
- Finalise Report based on workshop and draft inputs and comments
- Consultants submit Finalised Report to Department Project Manager
- Presentation to Acting Director General on report and process of submission (17/03/00)
- Department submits First Edition Consolidated report to CEC in March, for tabling at CEC meeting of the 14<sup>th</sup> April 2000
- CEC Sub-Committee reviews and provides comments on report on 23<sup>rd</sup> May
- Department resubmits report with revisions and inputs on 4<sup>th</sup> July 2000
- Report is tabled for adoption at CEC

#### List of departmental interviews planned and conducted

| No | Date    | Time     | Interview*                    | Place            |
|----|---------|----------|-------------------------------|------------------|
| 1  | 7 Jan   | 9:00am   | Monitoring & Evaluation       | Pretoria         |
| 2  | 10 Jan  | 1:00pm   | Western Cape Province         | Cape Town        |
| 3  | 11 Jan  | 10:00am  | Eastern Cape Province         | East London      |
| 4  | 13 Jan  | 9:30am   | State Land/Pub Inventory      | Pretoria         |
| 5  | 14 Jan  | 10:00am  | DLA-Danced Project Team       | Pretoria         |
| 6  | 17 Jan  | 2:00pm   | Land Development              | Pretoria         |
| 7  | 18 Jan  | 10:00am  | Redistribution                | Pretoria         |
| 8  | 20 Jan  | 5:00pm   | Restitution & Land Commission | Pretoria         |
| 9  | 21 Jan  | 2:00pm   | Tenure(Land Rights Bill)      | Pretoria         |
| 10 | 26 Jan  | 3:00pm   | D-Director General's          | Pretoria         |
| 11 | 28 Jan  | 10:00am  | KwaZulu/Natal                 | Pietermaritzburg |
| 12 | -       | Document | Northern Cape                 | Kimberly         |
| 13 | 31 Jan  | 11:00am  | Northern Province             | Pietersburg      |
| 14 | 1 Feb   | 10:00am  | Free State Province           | Bloemfontein     |
| 15 | 2 Feb   | 9:00am   | Gauteng                       | Pretoria         |
| 16 | 3 Feb   | 9:00am   | Project Brainstorming         | Pretoria         |
| 17 | 4 Feb   | 11:00am  | North West                    | Mabatho          |
| 18 | -       | Document | Mpumalanga                    | Nelspruit        |
| 19 | 8 Feb   | 9:00am   | Brainstorming session         | Pretoria         |
| 20 | 21 Feb  | 2:00pm   | DEA&T - Stakeholder           | Pretoria         |
| 21 | 24 Feb  | 1:00pm   | Planning Network Forum        | Pretoria         |
| 22 | 6 March | 9:00am   | DLA E&EMP Workshop            | Pretoria         |

\* Internal project meetings with Project Manager are not itemised.

## 1.8 The Structure of this Report

This report has been compiled using the *DEAT Guidelines for Preparation of the First Edition Environmental Implementation Plans and Environmental Management Plans November 1999*, wherein the proposed template for Consolidated Plans is detailed. The order of chapters has however been changed in order to facilitate the flow of information that is presented to be more accessible.

The report focuses on:

- Land Reform as "functions which may affect the environment" (NEMA:3s11(1)); and
- Land Development, State Land Management and Spatial Planning as "functions involving the management of the environment" (NEMA:3s11(2)).

There is an immense amount of information with regard to DLA's core business, policies, strategies, implementation approaches particular to each Province, guidelines and results of projects. In researching and compiling this report it became evident that a strategic and generic approach needed to be adopted, especially as this report is not an audit of DLA, but needed to serve the purposes and objectives of the CEC. In particular the information presented in this report is to provide the CEC with the overarching information (inclusive of specific details where necessary) for cooperative governance in environmental management. The information provided in this report is therefore of a generic and concise nature, to allow the CEC to identify any gaps, duplication or key areas that require coordination for sustainable land and environmental management.

Based on this, the following structure has been adopted for the DLA Consolidated Report:

- *Chapter One* provides the mandates and functions of the Department and focuses on the priority issues.
- *Chapter Two* provides information, policies, plans and programmes on the Land Reform programme as functions affecting the environment or the environmental implementation plan requirement.
- *Chapter Three* discusses the land development and management policies, plans and programmes as reflecting the environmental management aspect of DLA.
- *Chapter Four* discusses the institutional arrangements of both Land Reform and Land Development and Spatial Planning and provides recommendations for cooperative governance pertinent to successful implementation and sustainability of DLA's functions.
- *Chapter Five* outlines recommendations and proposals for integrated environmental management, as described in Chapter 5 of NEMA, for Land Reform and Land Development and Spatial Planning, respectively.

## Chapter Two: Land Reform Policies, Plans and Programmes

### 2.1 Introduction

There are many land reform policies, plans, programmes and laws for each specific component of land reform (Redistribution, Restitution and Tenure). All of these originate from the overall guiding Land Policy White Paper of 1997.

### 2.2 DLA'S Land Reform Policies

This section gives an overview of the intentions and considerations of sustainable development and the "environment" in the Land Reform programme (as stated in the Land Policy White Paper of 1997). In addition, an account is given of actual implementation of policies and procedures for Redistribution and Restitution. Tenure and tenure related projects will also be provided as a significant function of the DLA. These aspects of Land Reform address the issues of DLA's priority functions which "have an effect" on the environment.

The intentions and considerations of environmental sustainability in the land policy are as follows (Land Policy White Paper, 1997):

- "land policy must deal with the need for sustainable use of the land;
- environmental issues need to be addressed if land policy is to be effective;
- land reform will allow people more control over their lives and their environment, which is expected to reduce the risk of environmental degradation;
- land reform aimed at the alleviation of poverty, should ameliorate the current levels of environmental destruction associated with the crowding of large numbers of poor people on marginal, erodible and often dangerous land;
- land reform can have important favourable environmental impacts in both urban and rural areas (tenure security is a precondition for people to invest in land improvements and encourages environmentally sustainable land use practices; and
- one of the challenges of land reform is to relieve land pressure without extending environmental degradation over a wide area. Unless projects are properly planned and the necessary measures are put in place to govern zoning, planning and the ultimate use of the land, the programme could result in land being used unsustainably" (Land Policy White Paper).

An assessment of the implementation and impacts of Land Reform has been performed for a proportion of the total projects to date (10% of all projects). The results of the study (Quality of Life Report) performed by the Monitoring and Evaluation Division in the DLA has indicated that in some cases, the above intentions and assumptions have not been met in the implementation of land reform, for a range of reasons. This is explained further in the sections below.

### 2.2.1 Tenure issues, policy and legislation

- **Background**  
Under apartheid laws, black people were prevented from retaining and/or acquiring rights in land. Land for black occupation was registered as property of the government or the South



African Development Trust. Approximately 17 million hectares, 13% of the country, is still held in this manner and includes most of the so-called former *homelands* and coloured reserves (Land Policy White Paper, 1997). Black people living on "white" farm land were very vulnerable and subject to arbitrary evictions which left them homeless and destitute.

• *Land rights not legally enforceable*

In some of these areas, groups and tribes have strong underlying rights, which were not registered in their name due to discriminatory laws. This had led to long-standing disputes between government and traditional leaders about who owns and therefore controls the land. This often inhibits the implementation of appropriate land use practices and development, which can have a negative affect on the environment. In some cases, occupants are not treated as decision-makers on land that they have occupied for decades.

In urban areas, large informal settlements exist where rights are also not clearly delineated. Surveying, registration and upgrading of tenure rights is required. This enables Local Authorities to manage these areas - to be able to charge and thus provide for basic services and implement land use planning measures and controls.

• *Overcrowding and overlapping rights*

Other difficulties are severe overcrowding, poverty and pressure on the land resulting from forced resettlement under apartheid and from the eviction of farm occupants. This has led to overlapping rights, since the original occupants who had strong underlying rights, have had to accommodate new residents, who have then obtained rights as permit holders or tenants. In some cases, it is very difficult to understand who has what rights to what piece of land. Lack of clarity on land rights can lead to open access and negative consequences for the environmental. Coupled with actual overcrowding, the land upon which these people were settled was mostly marginal, with a very limited natural resource base off which they could depend.

• *Land administration and land management*

In each of the former homelands, different laws and authorities administer land and there is a complex and dysfunctional mixture of old and new institutions and practices. Generally, the systems of administration and record keeping have broken down. People are often confused about the real extent and nature of their rights or about what institutions and laws affect them. Getting approval for developments is very complex and time consuming. In some cases unlawful permission to develop land is granted which results in environment problems. For example the well-known case of the Transkei holiday cottages where individuals got permission from headmen to erect shacks on vulnerable parts of the coastline. The government had to spend large resources to investigate and take legal proceedings against these people.

Due to this, people have to plan development and use land without legal clarity on who has rights to use, occupy and invest in the land. The fundamental right to legitimately exclude others from one's property is diminished, as enforcement of legal and administrative provisions does not occur. This situation has had a negative effect on initiatives such as the Spatial Development Initiatives (SDIs) with investors being wary to be involved in a situation where there is no legal clarity and no effective and efficient system of land administration.

• *Tenure insecurity on farm land*

The bulk of people living on farmland with the consent of the owner did not enjoy any form of tenure security until 1998 with the passage of the Extension of Security of Tenure Act. (ESTA). People who had been on the land for generations, those who had worked the land for years and those providing seasonal labour were all subject to illegal and arbitrary evictions. Evictions were common where there were labour disputes, the farm changed hands or the elderly were no longer seen as a viable source of labour. Those evicted would either squat on any piece of land or join the ranks of those moving to the cities and towns to swell the ranks of the informal settlements. This created difficulties in urban areas for development and the environment.

#### *The aim of tenure policy*

The primary aim of tenure reform is to improve tenure security of all South Africans, to accommodate diverse forms of tenure and to develop an efficient, integrated system of land administration and management. Effective tenure reform will provide the basis on which sustainable economic development and good governance can occur. The use of land is a key issue that is defined through tenure rights and tenure underlies all development potential.

• Tenure reform deals with land rights where people are living now.  
• Restitution deals with land rights where people used to live in the past, often involving people choosing to return to their original tenure system.  
• Redistribution deals with land rights where people will live after acquiring new land, involving people choosing a tenure system appropriate to their needs on their new land.

It is therefore important to note that Tenure is central to all Land Reform projects.

#### *Recent Policy Direction on Tenure*

The Minister for Agriculture and Land Affairs has recently indicated that the following aspects of tenure reform will be prioritized over the next year:

- To rationalise and consolidate land administration laws and create a unitary system of land tenure – ownership and statutory rights which can be legally registered;
- Government must be divested of ownership in the former homelands;
- A framework document is to be prepared to guide future legislative developments on the transfer of land to tribes and the administration of tribal land under the new local government dispensation; and
- The developmental aspect of ESTA will receive primary focus.

#### *Tenure legislation and procedures*

- *Legislation to address tenure issues affecting mainly the former homelands;*  
This item cannot be expanded on at this current time as the framework legislation is in the process of being prepared.

- *Legislation addressing tenure insecurity*  
Legislation to establish a basic level of tenure security for “occupiers”, farm workers/labour

tenants, and residents of the former homelands has been passed. These Acts give occupiers of land who have the consent of the owner to be on the land, rights in land. Arbitrary and illegal evictions are made a criminal offense. Legal evictions can still occur, mostly where suitable alternative accommodation is available. The relevant acts are:

- The Interim Protection of Informal Land Rights Act, 31 of 1996 (IPILRA);
- The Extension of Security of Tenure Act, 1998 (ESTA); and
- The Land Reform Labour Tenants Act, 1996 (LTA).

#### • *Legislation to regulate communal ownership of land*

In many land reform projects, land is collectively acquired, held and managed by communities or groups under a written constitution. This is made possible through the Communal Property Associations Act, 28 of 1996 that enables group ownership systems to be recognised. The Act requires a land holding group to draft a constitution which sets out the rules governing access to and management of the jointly owned land. This constitution is then attached to the title deed of the property.

#### • *Legislation for tenure upgrades*

The Upgrading of Land Tenure Rights Act, 1991 (ULTRA) was enacted by the pre-1994 government with the intention of upgrading informal land tenure rights and Permissions to Occupy (PTOs) to ownership. ULTRA was amended to bring it more in line with the South African Land Policy and is only implemented if certain criteria are met. These relate to (amongst other things) integrating tenure upgrades with broader development and planning initiatives and ensuring that no one is compromised in the upgrade.

#### • *Procedures*

DLA's role and the procedures that are followed for the above types of tenure projects include facilitation, information provision, conflict management, administering applications and ensuring that the laws are followed. The emphasis is on reaching agreements within community groups, or landowner and "occupiers", tenants or farm-workers - to secure tenure. Tenure rights are secured where people are, or on alternative nearby land. Government subsidies can be used to create either "on-site" or "off-site" settlement and development. More consideration for environmental and livelihood issues will be included in future procedures.

#### *Summary of environmental and local planning issues relating to tenure*

#### • *Land Administration and open access*

There are a number of negative consequences due to the fact that no efficient land administration (land allocation and management) framework or legislation is in place in the former homelands.

There are long-standing disputes between provincial and/or local governments and traditional leaders about who owns and therefore controls the land. The uncertainty as to who has rights and who can take decisions hinders development planning and investment projects. This means that opportunities for employment, access to essential services, health care and education are lost.

Most of the former homelands consist of over-crowded, disconnected fragments of marginal

lands, where a poor natural resource base limits opportunities for sustainable livelihood creation. Problems of inefficient land use and ineffective management of common property resources (due to the lack of clarity in relation to rights and the lack of effective institutions on the ground) leads to environmental degradation. Over-grazing, over-exploitation of natural resources (such as woodland resources), inappropriate agricultural practices and inappropriate use and management of water resources are common problems. Without the authority to exclude "outsiders" from using limited natural resources in a communal area, it is almost impossible to manage the resources effectively.

A similar problem has been experienced in land reform projects where land has been acquired, held and managed by large groups (through the Communal Property Associations Act). The problem is two-fold. Often the land resource cannot adequately support the number of people in the group so natural resources are over-exploited and poorly managed. Secondly, the CPA constitution that sets out how the land is to be managed may not specify natural resource access and use rights within the group. Even if this is specified, the constitution is not necessarily adhered to.

#### • *Tenure security and upgrades*

Land tenure policies and legislation principally secure people's rights to land that they currently occupy. Tenure security is therefore obtained for the *status quo*, which in some cases is an unsafe and unhealthy environment. The importance of the environment to livelihoods, safety and quality of life is not emphasised.

In the past situations have occurred where DLA has assisted people to secure their tenure where they are, without being able to secure support from other spheres of government to cater for improved livelihoods, development, employment opportunities or service provision.

In some cases, Local Authorities do not consider themselves responsible for delivering services to land beneficiaries. There is also a lack of clarity around whether any secure tenure status or full title (ownership) is necessary to secure the provision of services by the Local Authority. Many people insist that the latter is needed and therefore insist upon full title as their tenure option. This is a costly and time consuming process and also can give rise to conflicts with the tribal leaders.

More recently, the approach adopted in DLA has been towards partnerships with Local Authorities and Provincial government in tenure upgrade and residential settlement projects. DLA secures tenure rights (this involves negotiation and conflict resolution between Local Authorities and tribal leaders and the people themselves) and the Local Authority undertakes the provision of services. It remains a concern however, that settlements may be upgraded in areas where it is not safe or habitable for people. In such cases alternative land should rather be obtained but often this is not possible.

Tenure is central to all Land Reform projects. The primary aim of tenure reform is to improve tenure security of all South Africans. This is important for environmental justice and equity as this relates to the access to and opportunity to utilise resources sustainably. The aim is further to accommodate diverse forms of tenure and to develop an efficient, integrated system of land administration and management.



## 2.2.2 Redistribution Policy, Products and Procedures

### Policy and Legislation

The purpose of the redistribution policy is to provide access to land for residential and productive uses and thereby to improve livelihoods and quality of life. The policy targets the rural poor, farm workers, labour tenants, women and new entrants to agriculture.

The legislation under which redistribution takes place is the Provision of Land and Assistance Act, 126 of 1993.

The institutional arrangements for delivery of redistribution have always been to provide access to services at District and Local spheres, to build partnerships with other spheres of government, NGOs and beneficiaries, and to allow for a diversity of institutional arrangements that should match provincial needs.

It is within this context that redistribution projects were to be developed, planned and implemented. It was always assumed that to improve livelihoods and the quality of life of land reform beneficiaries, economic and environmental sustainability would be given attention. However, reality indicates that this is not always the situation.

### Products

The redistribution program responds to different needs, with a wide variety of different projects being implemented. Five broad categories of redistribution products have emerged over the past four years. These are:

- *Commonage*: where land is purchased by a municipality (through the assistance of a Grant for the Acquisition of Municipal Commonage administered by DLA) for use by local poor residents to supplement their income, keep their livestock or for small farmers to use as a stepping stone to becoming independent producers;
- *Farmer worker equity schemes*: where DLA assists farm workers to buy into existing farming enterprises;
- *Group production*: a group of beneficiaries pool their grant to purchase a farm for productive purposes;
- *Individual/family farms*: same as above except on an individual or family scale; and
- *Settlement*: where families or groups access land primarily for settlement, through the assistance of DLA legislation and grants.

The DLA has also designed a new supply led approach to redistribution. This is in order to be more proactive and to manage the allocation of land coupled with a more strategic use of grants to support the government's Integrated Rural Development Strategy. It is expected that the District and Local government sphere will play a key role in planning for and prioritising land redistribution opportunities. The DLA has consequently set new priorities in terms of redistribution and will pay particular attention to environment, economic, financial, management and social viability, as well as sustainability of farming enterprises for which government grant funding will be solicited. In future projects that will be eligible

for grant funding, will be commonage areas, communal areas and commercial farming areas. The policy and grant specifically for commonages are currently being reviewed.

#### *New direction for Redistribution Grants*

There are three important new approaches to redistribution grants, namely:

- Grant for Settlement. The grant shall be used for urban poor and rural communities who wish to access land primarily for settlement purposes;
- Food Safety Net. The DLA has in addition prioritised a grant for purposes of a Food Safety Net. This is a grant that is targeted for poor sections of communities who do not have land and cannot sustain themselves. The grant is intended to give them both land and food security;
- Land Reform Grants. The SLAG grant shall be replaced by the Land Reform Grant for emerging farmers; and
- Grant for equity purchases are being reviewed.

#### *Official Procedures*

Although the redistribution programme has different products, generic procedures are still applicable. The implementation of the redistribution program is based on a generic *Project Cycle* i.e. 'how to develop and implement a redistribution project'.

The project cycle has four phases:

- Phase 1: Project Identification;
- Phase 2: Feasibility Assessment and Project Business Planning;
- Phase 3: Approvals and Land Transfer; and
- Phase 4: Development Support.

For each phase certain milestones were developed, to ensure that social, economic, environmental and financial issues are addressed in land reform project planning. To ensure that a project is environmentally sustainable the following mechanisms/guidelines were put in place:

#### • *Identification of suitable land*

When land parcels are needed to be identified a land resources appraisal is conducted to determine the following: the current use of the land; potential use of the land; and possible resource constraints. There are two ways in which this is done.

Once a parcel of land has been identified, a valuation must be done to determine the market value of the land. A well-documented valuation will already indicate what the land is currently used for and what the land can be used for, including a potentially comprehensive resource assessment of the land. There are however limitations within which DLA officials operate, such as problems associated with availability for land for projects and the dependence on land that is put on the market (willing seller and willing buyer). In other words and in the many cases, unsuitable, or problematic, land is marketed and thus available for projects. An additional limitation is the size of parcels of land that are available. The DLA is also dependent on the availability of a macro-plan or vision, associated with the

LDO's for the Districts in which projects have been proposed. These however may not exist and where they do exist do not address Land Reform issues.

The business plan (drawn up by an external consultant with the assistance of a DLA official) includes a description of the current land use, the land potential and a land resource assessment. This should address environmental aspects that might affect the sustainability of the project. A natural environment and a human environment checklist forms an appendix of the Redistribution Manual, which is supposed to be followed in the implementation of redistribution projects. Both the DLA official and the appointed consultant can therefore identify and address any environmental issues early on in the project.

#### • *Significant changes in land use*

Where there might be a significant change in land use (for larger projects), an Environmental Impact Assessment (EIA) may be required in compliance with the Department of Environmental Affairs and Tourism's EIA Regulations (ECA Act 73 of 1989). This however has proven very difficult for Land Reform implementation and especially for land beneficiaries since there are financial implications. This is discussed further in Chapter 5 of this report.

#### • *To ensure co-operative governance and 'buy-in' for the project*

The Provincial Projects Approval Committee (PPAC) is established per regional office and is responsible for scrutinizing and approving the project proposal. The PPAC, except in KwaZulu/Natal, consists of relevant stakeholders including the relevant provincial government departments. The KwaZulu/Natal regional office liaises with other departments prior to the PPAC in the project steering committee, however the PPAC does still formally approve and process projects. PPAC members are identified and invited to the meetings early in the project cycle. In some regional office support from key stakeholders such as the District Council is sought in writing prior to the PPAC. Based on the nature of the project, relevant stakeholders are involved in the project and committee and this is often when the Provincial departments of Environmental Affairs and/or Conservation Authorities are invited to participate in the PPAC meetings.

#### • *Actual Procedures: Reality check*

Based on the above the question may be asked: if there are policies, mechanisms and guidelines in place to allow for sustainability in projects, why have some of the implemented land reform projects not addressed environmental sustainability?

Firstly, project planning and implementation do not generally adhere to the existing mechanisms/guidelines that cater for environmental planning. There is no enforcement of the "environment specific" procedures. Most land reform project business plans have a section that refers to environmental issues but if completed, it does not form an integral part of the business plan rather it is included as an add on. This is largely due to the poor understanding amongst DLA officials of what the significance of the "environment" is in rural land reform. It appears that it is not yet understood that land provides a natural resource base on which rural livelihoods are dependent. The importance of this is generally not included in the terms of reference for the external consultants appointed to develop the business plans particularly as there is a requirement for an independent EIA.

In addition, the existing mechanisms/guidelines do not adequately address environmental planning and sustainability issues. This was acknowledged by DLA in 1996 when a study was commissioned to investigate the "environment and land reform" (LAPC, 1996). This process later developed into the project "The Integration of Environmental Planning into the Land Reform Process", discussed in Section 2.3.

Pooling of the Settlement and Land Acquisition Grant (SLAG) by land beneficiaries in order to enable them to purchase a farm, encourages the packing of too many people on the land. This however is under policy review. Often Communal Property Associations (CPA's) are formed. There is often much mismanagement in these CPA's with powerful individuals preventing real democratic decision-making.

DLA's internal performance management systems has rewarded officials in terms of "quantity" i.e. hectares and households and spending their financial budget. They were not rewarded for "quality" i.e. delivery of sustainable land reform and sustainable livelihoods. This system does not necessarily encourage sustainable delivery of land or improved livelihoods.

The involvement of key stakeholders such as DEA&T (National and Provincial), Department of Water Affairs and Forestry (DWAF), Provincial Department of Agriculture (PDA) and Local Government in the planning and implementation of a project affects the sustainability of the project. This is elaborated on in Chapter 4: Institutional Arrangements and Cooperative Governance Recommendations.

#### *Summary of Environmental Issues in selected Land Redistribution projects*

The following are summarised assessments of a selected number of projects (19) in 3 (three) Provinces from the Monitoring and Evaluation Directorate's Environmental Impact Surveys (name to change to Environmental Sustainability Assessments). Issues were also raised through interviews conducted with Provincial Land Affairs officials through the DLA EIA&MP process and recent project reviews undertaken in some of the provinces. Similar studies would need to be performed for a greater number of projects in more Provinces in order to provide a more complete and thorough understanding. Consequently the following provides a quick scan and overview of some of the project issues found to date.

- Poor access to water resources, in particular inadequate quantity and quality. Water is often a scarce resource on or nearby the project (farm), or on the other hand if there is adequate supply it is sometimes polluted on-site (livestock), or by those living up-stream (off-site);
- Soil erosion, due to land use activities on highly erodible soils and land already with poor basal (vegetation) cover thereby becoming exposed and more prone to erosion;
- Overgrazed veld and associated bush encroachment which results in palatable species being rapidly reduced, fire hazards and inappropriate (and uncontrolled) burning regimes;
- Overstocking of cattle, since communal grazing areas are shrinking. In some places this is due to tribal state land being made available for housing developments;
- Limited nearby source of wood for fuel, if available, it is often over exploited due to the high numbers of people being dependent on the woodland resource for firewood and basic household construction;



- Inadequate sanitation and solid waste management system resulting in the risk of water-borne diseases to be high. Other impacts such as livestock death due to eating plastic as a result of no solid waste disposal system and severe litter problems;
- Settlement being developed in unsafe areas such as floodplains, and agricultural development in wetlands; and
- Generally poor land use management practices (crop and livestock related) as a result of ignorance or inadequate knowledge coupled with lack of agricultural extension service support.

*Summary of some general issues which often lead to environmental problems*

Apart from internal DLA issues raised earlier, the following are also apparent:

- Inappropriate land purchased for beneficiary land use needs, which due to political pressure in some cases, may have been selected without the necessary resource assessment studies;
- Inadequate resource assessments can in some instances lead to too many people and/or overstocking of the land;
- In some commonage projects, the TLC support does not adequately lead to successful implementation of projects, which sometimes come to a standstill. In these cases usually there are no land use management plans and/or inadequate enforcement (problems with open access) are drawn up, which results in people using the commonage areas as they please;
- Often the roles and responsibilities of stakeholders are unclear and/or role players change or are not *bona fide*;
- Land beneficiaries often have a limited grasp of the environment, sound land use practices appropriate for the parcel of land, lack of leadership and vision, and waste management knowledge;
- In the past, there has often been a political imperative to deliver land above quality;
- Lack of other spheres and departments of government fulfilling their supportive roles;
- Lack of capital to implement a business plan;
- Lack of integrated planning and development;
- Lack of technical assistance either due to lack of capacity in Provincial government or because of an unwillingness to cater for land reform beneficiaries;
- Business plans are in some cases problematic;
- Even if sound business plans have been drawn up and approved leading to land transfer, they are often not adhered to by the land beneficiaries - DLA has assisted in the transfer of the land and officially has no authority over the new private land owners;
- In communal areas no formal land allocation procedures are in place and land management systems often do not exist, resulting in *ad hoc* local decisions being made. (The legal vacuum to address land allocation and management in communal areas in the former homelands compounds these problems);
- State Land Management is often unable to manage and control certain state land which compounds the above mentioned issue;
- Tenure related issues and problems of open access; and
- Lack of follow-up support after delivery of the land has taken place also referred to as post-transfer support by the line function departments.

The purpose of redistribution policy is to provide access to land for residential and productive uses to improve livelihoods and quality of life. The DLA has formalised processes and products for redistribution, which rely on an intergovernmental participation and decision making process in the planning and implementation of projects.

## 2.2.3 Restitution Policy and Procedures

### Restitution Policy and Legislation

Land Restitution involves returning, or compensating for, land which was lost since 19 June 1913 due to racially discriminatory laws and practices.

Restitution project procedures are guided by the legislative principles set out in the Restitution of Land Rights Act 22 of 1994. Restitution is principally a legal process to restore land rights to people dispossessed of those rights. In this regard, the pursuit of restoring rights and compliance with legal procedures to fulfill restoration is the principal role of the DLA wherein environmental considerations are often only viewed as a priority on a case specific basis.

### Restitution procedures

There are 6 phases to the Restitution procedures. These are:

1. Lodgment of claim: A claim is lodged against the State and followed up by the relevant Regional Land and Claims Commission office.
2. Screening and categorisation: This involves the investigation of elementary evidence pertaining to the claim. Once a claim has been initially screened a preliminary options assessment (between project staff and claimants) is carried out (if it appears that the claim will be accepted by the Regional Land and Claims Commission - *prima facie* evidence of a *valid claim*). This assessment also aims to determine what the claimants want and their subsequent options, which allows the claim to be categorised. An advanced screening phase is then entered into where the details of the interested and affected parties are obtained, as well as any other necessary information. The claim is then prioritised according to certain criteria in terms of section 6(2)(d), a substantial number of persons or person who have suffered substantial losses, and as developed within each RLCC office.
3. Acceptance of claim: Once validated, the claim can be gazetted. All interested and affected parties are then notified. Depending on the specifics of a claim, this may also require advertisements to be published in the local newspapers and/or put up in a suitable public place. Following gazetting the Commission will accept comments from interested and affected parties.
4. Preparation for negotiations and settlement: During this phase issues of feasibility of the various options are discussed (restoration, alternative land and/or monetary compensation). These choices are guided primarily by legal and financial factors. During this phase a negotiating 'position' is established from which actual negotiations with the relevant stakeholders will take place.
5. Negotiations: The Commission convenes and manages the negotiations process in an attempt to achieve a settlement out of court. The process can include multiparty discussions, bilaterals, mediation (in cases of dispute), etc. Negotiations can lead to an out-of-court settlement, a partial settlement or no settlement. The case is referred to the Land Claims Court in the case of the latter.

6. Implementation: In this phase, consultants are hired, a business plan is developed and approvals for the land settlement and land uses are obtained. Transfer of the land together with required deeds and subsequent registration occurs in this phase. The RLCC is however not responsible for implementing the settlement agreement. Following this, the business plan is implemented. DLA's Monitoring & Evaluation directorate takes the responsibility of monitoring the implementation of the business plan.

Given the existing restitution procedures, six key issues need to be further discussed. These are:

- What constitutes an informed choice and "options";
- The late stage at which land use plans and business plans are developed;
- Commitment to setting in place mechanisms for the development of land use plans and business plans;
- The lack of involvement in some cases or the lack of commitment of relevant stakeholders (especially other departments and local government);
- The issue of "feasibility" in Restitution projects where restoration is the preferred option; and
- The policy shift in DLA concerning "maximising development potential" for restitution projects.

The informed choice and considerations of options appear to be narrowly related to information from archive files, deeds and claimant testimony which guides the type of settlement "options" i.e. whether restoration or alternative land or monetary compensation should be pursued. It is an exercise that involves only the claimants, the Commission and DLA Restitution staff. The options considered at this stage in no way relate to land use or livelihood options since no information about the natural resource base has been considered. Should the claimants insist upon restoration as their option, they are doing so from an *uninformed* position since they have no idea of what livelihood options or services are possible on the land they want restored. A land claim that does not involve conservation land is often not subject to an assessment/evaluation that looks at environmental sustainability or natural resource issues during project planning and development.

A preliminary natural resource base assessment should be undertaken to enable informed choices by claimants. Only once a settlement is reached, does a development plan get produced, and then only if deemed necessary. This is far too late in the process since it is only here, almost at the end of the process where natural resource base limitations or opportunities and limited or potential livelihood opportunities will be discovered. There should be commitment to address the issue of producing development plans and feasibility assessments (or similar inputs) at an early stage of investigation and negotiation, in order to ensure that these could be raised in frameworks for settlement to the Minister.

Regarding the involvement of other stakeholders and government departments, no advice or guidance is actively sought from outside to facilitate the "options" process. Other departments, like the Provincial departments of Housing, Agriculture, Environmental Affairs and Tourism and Water Affairs and Forestry, as well as Local Authorities, could potentially add value to the restitution process if they were brought on board much earlier on in the process (prior to negotiations). This would allow a more comprehensive 'informed' choice to



be made. DLA and the Commission alone do not have the expertise to advise on options which consider livelihood opportunities and a safe living environment for the claimants. Their involvement earlier on would also encourage more support during implementation since current levels of buy-in for restitution projects are low since they have been isolated or alienated from a exclusively DLA-Commission process. This jeopardises the future support for claimants post-transfer of the land.

It has been mentioned that one of the reasons for the relative success of Makuleke and St Lucia restitution claims was because the claims were on conservation land and this necessitated the involvement of the conservation authorities. Conservation authorities in turn spent a large amount of time with claimants raising awareness on the relevant issues and were extensively involved in drafting of the business plans.

The Restitution Act sets out factors that the Land Claims Court may take into consideration when making an award in restitution (section 33 of the Act). One of these factors is *feasibility* in claims where *restoration* is the preferred option. This concept can cover the suitability of the land for agricultural purposes or the availability of sufficient water or development possibilities. Feasibility does not influence the validity of the claim but the outcome. Feasibility cannot deny a claimant's right to restitution if the claim meets the acceptance criteria laid down on the Restitution Act. Feasibility goes to the resolution of the claim and to the process to be followed in cases where restoration is the outcome.

The Kranspoort case LCC26/98 gives clear guidelines as to how these issues are to be dealt with. In this case, the Land Claims Court granted restoration subject to the claimants drawing up a business plan which reflected the conservation status of the land. The case clearly indicated that restoration of land must take place within the development framework set by Local and Provincial government. All these issues pertain to feasibility of restoration.

It was stated that it is the Commission's responsibility to raise issues around feasibility, and that in some cases the relevant commissioner did this. Other parties can and should raise issues of feasibility, especially other government institutions that must assist in post settlement development. Matters such as the delivery of bulk services are important for sustainability of the project if restoration occurs.

Restitution Policy (RP) Directorate is currently busy drafting a document that will define the 'feasibility' section of the Restitution Act. Central to this document will be the establishment of 'factors' that should be taken into account during the assessment of a restitution project where restoration is the preferred option.

There is a shift in policy in DLA with respect to restitution projects in that one of the aims will be to 'maximise the development potential'. All types of land reform must be supportive of development in terms of land development objectives set at local government level. Other government departments should become involved to provide assistance and information as regards schemes aimed at development. In this way, claimants will make informed choices regarding possible opportunities (and constraints) related to the resolution of land claims. With maximising development opportunities, restoration of land needs to be seen not as an end in itself but a means to an end. *Restoration of land or access to land rights should never be an end in itself unfortunately a lot of Land Reform has resulted in this. Land needs to*



serve as the basis for development and the process should not stop with handing over of the land.

Restitution deals with land rights where people were illegally and/or forcibly removed during the apartheid era. People often choose to return to their original land. Restitution can be in the form of returned land, compensation, alternate land or combination of the various options. Feasibility studies are performed where land is returned.

## 2.3 Plans and Programmes to ensure Environmental Integration and Sustainability

### 2.3.1 The DLA-DANCED Project

From the above account of Tenure, Redistribution and Restitution policies and procedures, it is clear that DLA has much to attend to regarding the "environment and land reform". For this reason DLA has invested R1.5 million in the implementation of a project entitled: *The Integration of Environmental Planning into the Land Reform Process*. The project is largely supported by a Danish donor agency, the Danish Corporation for Environment and Development (DANCED). DANCED is contributing approximately R11 million towards the project over a two and a half year period. The project commenced in September 1998 and will continue until March 2001.

#### • Project Objectives

The primary objectives of this project are to develop appropriate procedures, guidelines and policies for the incorporation of environmental planning into Land Reform. Content for procedures, guidelines and policies will be derived from "on the ground experience" from existing land reform projects in two demonstration areas (in the North Eastern Free State and Nelspruit area of Mpumalanga).

#### • Guidelines and Procedures

Guidelines Approach: Simple and practical, participatory land use planning approach has been followed in developing the guidelines. The guidelines focus on environmental planning and not environmental management due to DLA's role and mandate in *land reform planning* prior to land transfer. The guidelines do not duplicate existing procedures developed by other departments but have been developed to fit within the land reform context specifically.

Guidelines Content: The General Guiding Principles contain the overarching approach and procedures to be followed. Three specific sets of guidelines catering for specific land reform products or types have also been drafted. The first draft guidelines have been developed for certain Redistribution projects (including Commonage, Individual, Family and Group farming as well as Settlement projects) and Restitution. The specific guideline procedures fit within the procedures designed for the implementation of specific land reform projects. The guidelines are being tested and implemented on the ground in existing land reform projects in Free State and Mpumalanga for the next 6 months. They will be modified based on what is experienced in the field. The guidelines have to follow the generic Project Cycle (described earlier).

Procedures and guidelines are being developed in this project to incorporate environmental assessments in the project procedures prior to securing tenure rights. The General Guidelines and the Settlement Guidelines are relevant in the tenure context. The guidelines also address sustainability issues in relation to the broader planning and land development context, especially at the local level.

The project has also developed guidelines on the establishment of common property resource management regimes, which can be applied to CPA constitutions as well as communal areas in the former homelands.

The environmental economics component of the guidelines includes a strong motivational message to be used as a communication strategy within DLA regarding the natural environment and promoting rural livelihoods in Land Reform. Not only is it necessary to develop appropriate guidelines and procedures, it is even more crucial that perspectives of the role and value of the natural environment in the livelihoods of land reform beneficiaries are changed within DLA. It is pointless to keep developing and introducing new policies and procedures unless there is willingness and understanding and supportive institutional environment to implement the policies and procedures.

In addition, a simple decision-support tool that assesses the demand and supply of ecosystem services provided by the natural resources on a particular piece of land has been developed. This tool caters for examining existing land use and possible land use changes based on beneficiary needs or desires (once the land is transferred) and is designed to assess the impacts on the natural environment. There is provision for mitigation in the tool especially for identified negative impacts. In these instances better methods or even other land use options are sought to minimise or eliminate the identified negative impacts in order to enhance project benefits.

In summary, this is a participatory decision-support tool that assesses:

- the current state of the natural environment in terms of what natural services can support the beneficiaries;
- it examines the possible impacts on these natural services should the land use change; and it allows the assessors to consider both the *intended results* (i.e. the aims of the project to improve the quality of life of beneficiaries through land use opportunities) AND the *unintended results* (such as the environmental costs) associated with a land use change or intensity change. Information on whether benefits outweigh costs or *vice versa* is therefore available to inform decision-makers prior to land transfer about the likelihood of success of a particular land reform project.

The tool will be tested in the field in the next 6 months and then accordingly modified. DLA officials and other service providers will be trained in the methodology developed. This tool needs to be aligned with project cycle and therefore the other guidelines developed through the DLA-DANCED project.

The outputs of the above-mentioned project are discussed again briefly in Chapter 5: Proposals / Recommendations for IFM.

• *Institutional Arrangements*

The project also needs to address the strengthening of institutional arrangements towards sustainable land reform. Guidelines are given on how to create successful partnerships at the project level. Institutional arrangements are discussed further in Chapter 4.

• *Capacity and Training*

Another objective is to build capacity and skills in environmental planning for various target groups which include land beneficiaries, service providers (other government departments mainly) and local authorities. The training budget for this project over 2.5 years is about R4.4 million to forge collaboration with other departments and local government through joint training exercises. To date the courses developed by the external training consultants are Foundation Courses in:

- Environmental Issues in Land Reform;
- Sustainable Use of Natural Resources; and
- The Environmental Dimensions of LDOs/IDPs.

*Project-based training:* Implemented for project teams consisting of DLA staff, other service providers and beneficiaries and are trained specifically on technical project related issues as well as facilitating project processes and problem solving.

*Guidelines in Action training:* Conducted for predominantly DLA officials to form the direct link between the outputs of the research component of the project and the training component.

In addition, to date approximately 70 provincial government officials from various line departments have participated in the training courses. Participants include officials from provincial departments of Agriculture (40), Local Government and Housing (10), Environmental Affairs (10), other departments (5) and regional representatives from the Department of Water Affairs and Forestry (5).

Approximately 30 local government representatives have undertaken some of the courses (from TLC's in Hartismith, Clarens and Nelspruit and certain District Councils in the project areas). A further 60 local government officials will be trained in "The Environmental Dimensions of LDOs and IDPs" over the period March - May 2000. By the end of the DLA-DANCED project, a total of 500 people will be trained of which 200 are DLA officials, 100 are provincial government officials, 100 are local government officials and 100 are land beneficiaries.

The aim is to integrate this DLA-DANCED project into other departmental initiatives, so as to avoid duplication as well as foster relations towards both the incorporation of Land Reform into local planning and for Land Reform support post-transfer. Key partners in the project are those departments that have responsibilities in environmental and/or planning fields. The programme post-March 2001 will predominantly consist of the incorporation of the various training modules into in-house DLA training modules. This will also be made available to other departments should they be interested.



The DLA-DANCED project's primary objective is to develop appropriate procedures, guidelines and policies for the incorporation of environmental planning into Land Reform. The project is due for completion in March 2001. The project will address sustainability issues ranging from broad planning and development to local implementation.

### 2.3.2 *Monitoring the Environmental Impact of Land Reform*

DLA is responsible for transferring land. The responsibility for planning and implementing the development, as well as post transfer support, rests with Provincial and Local government. DLA does however, perform a monitoring and evaluation (M&E) function regarding the socio-economic and environmental aspects of land transfers. Currently, the M&E reporting mechanism and document titled, the Quality of Life Report, is not integrated with the environmental assessments, which are separately reported on. A system to integrate the two is in the process of being developed for future reporting. The DEA&T will be invited to provide inputs and comments on the integrated system.

Monitoring of environmental impacts is focused on post transfer of land. DLA's M&E Directorate commissioned the University of Durban-Westville to develop a practical and simple methodology which would enable DLA M&E officials to monitor the environmental impacts of Land Reform. Although the developed methodology is called an Environmental Impact Assessment, the methodology is not inclusive of all the requirements that make up an EIA and is instead a monitoring tool. Consequently, the name will be changed to "Environmental Sustainability Assessments" to avoid confusion with formal EIA's. The methodology includes an assessment of the following:

- Soil erodibility status;
- Soil resources – in relation to current land use practices;
- Water resources – quantity and quality;
- Waste management practices;
- Veld condition and management practices;
- Natural resource utilisation practices (such as woodlands for firewood);
- Livestock condition and management practices;
- Field observations; and
- Social parameters of resource use.

This system should not only be used as an in-house monitoring tool to feedback into refining land reform policies and implementation procedures. It needs to cater for follow up and referral of identified environmental problems detected in Land Reform projects, with the relevant Provincial department. This could be Department of Water Affairs and Forestry, Provincial Agriculture, Provincial Environmental Affairs or the Local Authorities. This is discussed again briefly in Chapter 4 of this report.

The DLA has benefited from the above exercise from both a capacity building and training point of view and raising of environmental awareness in Land Reform through this process. Approximately 20 DLA officials were trained in this methodology and therefore have a deeper understanding of how the environment affects people's quality of lives.

This report focuses on *Land Reform* as the priority function that DLA exercises which may affect the environment and *Spatial Planning and State Land Management* as the priority functions that DLA exercises involving management of the environment. The DLA is responsible for policies and programmes relating to access to land



## 2.4 Evaluation in Terms of NEMA Principles

The following NEMA principles will be addressed by the DLA-DANCED project and have been evaluated according to the Land Reform principles of the White Paper on South African Land Policy 1997 (page 12).

- **Principle 2(2):** Environmental Management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably. Since beneficiaries and land rights are central to land reform the DLA-DANCED project adds the environmental management component to an already strongly people orientated programme. Land Reform principle of social justice seeks to redress unacceptable inequalities of the past in the distribution of land.
- **Principle 3:** Development must be socially, environmentally and economically sustainable and these are land reform principles. In addition participatory land use planning approach coupled with business planning and enforcing environmental considerations in the DLA-DANCED project procedures.

- **Principle 4 (a):** Sustainable development requires the consideration of all relevant factors including subsection (ii) referring to pollution and degradation of the environment is stated in Land Policy White Paper, and subsection (viii) referring to negative impacts where people and the environment is addressed in the DLA-DANCED guidelines. The DLA Monitoring and Evaluation programme of "Quality of Life reporting" will in future be aligned to environmental sustainability criteria.

- **Principle 4(b):** Environmental Management must be integrated and refers to best practicable environmental options, which is incorporated in the DLA's policies and focus for implementation.

- **Principle 4 (i):** There must be intergovernmental coordination and harmonisation of policies, legislation and actions relating to the environment. The DLA's firm commitment to cooperative governance and compilation of the Consolidated EIA&MP is a demonstration of the application of this principle.

These principles are addressed in DLA policies however implementation of the principles is limited due to lack of strategy and programme development of the principles. It is expected that this will be addressed by the DLA-DANCED project and be formally adopted into the Policies of the Department.

### Summary Table of Land Reform Policies, Plans and Programmes

|                             |                                           |                                                                                     |                                                 |
|-----------------------------|-------------------------------------------|-------------------------------------------------------------------------------------|-------------------------------------------------|
| <b>Land Reform Function</b> | <b>Relevant Policies and Legislation</b>  | <b>Plans and Programmes (activities)</b>                                            | <b>Partners</b>                                 |
| Restitution                 | Restitution of Land Rights Act 22 of 1994 | 6 Phased approached on page 33<br>DLA-DANCED project<br>environmental interventions | All relevant Departments<br>and Organs of state |

|        |                                             |                                                      |                                                                                                                                                     |                                            |
|--------|---------------------------------------------|------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|
| Tenure | Redistribution                              | Provision of Land and Assistance Act 126 of 1993     | Commonages<br>Farmer equity schemes<br>Group Products<br>Individual/family farms<br>Settlement<br>DLA-DANCED project<br>environmental interventions | National, Provincial and Local Authorities |
|        | Extension of Security of Tenure Act of 1998 | Interim Protection of Informal Rights Act 31 of 1996 | Tenure security                                                                                                                                     | National, Provincial and Local Authorities |
|        |                                             | Upgrading of Land Tenure Rights Act of 1991          | Tenure security                                                                                                                                     | National, Provincial and Local Authorities |
|        |                                             | Land Reform Labour Tenants Act of 1996               | Tenure security                                                                                                                                     | National, Provincial and Local Authorities |
|        |                                             |                                                      |                                                                                                                                                     |                                            |

The following table summarises DLA functions and activities and information, which address the NEMA Principles.

### Summary Table of Compliance with NEMA Principles

| NEMA Principles             |                                                                                                            | DLA Functions                                                                                              |                                                                                                            |                                  |                                                                                                                                                                 |
|-----------------------------|------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|----------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Restitution                 |                                                                                                            | Redistribution                                                                                             | Tenure                                                                                                     |                                  |                                                                                                                                                                 |
| Sustainable development     | Feasibility studies<br>Linkages to LDO<br>Plans<br>Design of Development                                   | Feasibility studies<br>Linkages to LDO<br>Plans<br>Design of Development                                   | Tenure integral to sustainable development<br>Design of Development<br>Plans                               | Integration into decision making | Participation is integral to all of DLA functions<br>DLA-DANCED project<br>conducts capacity building<br>Land Reform policy is key to equity and justice issues |
| Environ. Justice and equity | Land Reform policy is key to equity and justice issues                                                     | Land Reform policy is key to equity and justice issues<br>DLA Food Safety net programme                    | Land Reform policy is key to equity and justice issues                                                     | Participation                    | Participation is integral to all of DLA functions<br>DLA-DANCED project<br>conducts capacity building<br>Land Reform policy is key to equity and justice issues |
| Ecological integrity        | Conduct Natural Resource Base Assessment studies                                                           | Conduct Natural Resource Base Assessment studies                                                           |                                                                                                            | Ecological integrity             | Conduct Natural Resource Base Assessment studies                                                                                                                |
| International               | Partner to internal convention programmes<br>Inter-governmental coordination and cooperation is key to DLA | Partner to internal convention programmes<br>Inter-governmental coordination and cooperation is key to DLA | Partner to internal convention programmes<br>Inter-governmental coordination and cooperation is key to DLA | International                    | Partner to internal convention programmes<br>Inter-governmental coordination and cooperation is key to DLA                                                      |

## Chapter Three: Spatial Planning Policies, Plans and Programmes

### 3.1 The DFA and Spatial Planning

In addressing spatial planning and proposing a proactive and integrated planning system for South Africa, the *Green Paper on Development and Planning* defines spatial planning as: "a public sector activity which creates a public investment and regulatory framework within which private-sector decision making and investment occurs. The public sector activity of spatial planning has two broad dimensions: pro-active planning which defines desirable directions, actions and outcomes; and land development management, which is concerned essentially with regulating land use change . . . ."

The Development Facilitation Act (Act 67 of 1995) prescribes the current requirements for spatial planning, which can be separated into land development objectives (i.e. proactive spatial planning) and land development management. It is important to note that the Development Facilitation Act (DFA) defines land development as "any procedure aimed at changing the use of land for purpose of using the land mainly for residential, industrial, business, small-scale farming, community or similar purposes". However, the DFA does not incorporate the term spatial planning.

For the purposes of DLA's Consolidated E&MP, Spatial Planning, Land Development and State Land Management relates to the EMP component (or "functions involving the management of the environment"), because procedures for land use planning and management provide a means of ensuring a sustainable environment. This Chapter therefore describes the policies, plans and programmes for Spatial Planning, Land Development and State Land Management, distinguishing between planning and management, and evaluates them in terms of their role in environmental management.

DLA is only responsible for formulating national policy and legislation for land development, while Provincial government and Local Authorities are primarily responsible for implementation of proactive spatial planning and land development management. The DFA introduced an interim planning system for South Africa, which is policy led and normative in nature. This system forms the basis on which Provinces can develop their own planning laws. The DFA and the Green Paper currently provides the legislative framework and norms and standards for spatial planning, which provincial government may use to develop land development legislation and regulations. The following discussion therefore focuses on the DFA, taking account of the recommendations of the recent *Green Paper on Development and Planning*. It should be noted that the White Paper stemming from the Green Paper will create a new planning system for South Africa and will result in the necessary legislative reform.

Planning and management of land development in South Africa must be in accordance with the principles for land development set out in Chapter 1 of the DFA (please see Annexure B). In terms of DLA's Consolidated E&MP, these principles fundamentally address the requirements for a sustainable environment, and are consistent with the NEMA Section 2 environmental management principles. In particular:

- **Section 3(1)c** requires the promotion of efficient and integrated land development, which encourages environmentally sustainable land development practices.

- Section 3(1)h requires the promotion of sustainable land development, in terms promoting fiscal, institutional and administrative feasibility, promoting viable communities, promoting sustained protection of the environment, meeting basic needs, and ensuring safe utilisation of land.

The land development principles are the principal "norm and standard" used for land development management and spatial planning. They provide a set of interrelated intentions (desirable directions) to guide land development planning and management in South Africa. The principles apply to all forms of planning which affect land development including:

- spatial planning and policy formulation;
- the planning of whole settlements as well as parts or elements thereof;
- decisions of all public authorities affecting land development under any law, including those of traditional leaders; and
- all legislation, including all land use control systems and instruments affecting the development of land.

The principles are also binding on all future actions of legislatures at national, provincial and local government levels. This means that all laws, regulations and by-laws which are passed or changed must conform to and be consistent with the principles.

The land development principles are normative, rather than prescriptive, and are underpinned by two sets of values. Firstly, *being people-centred* to foster positive human development and to improve the quality of life of all people, with particular attention on achieving social justice. Secondly, *the concern with environmental resources*, which provide the basis for human life.

Although DLA (through the National Development and Planning Commission) has produced guidelines for interpreting the land development principles, as with the NEMA environmental management principles, the normative nature of these principles results in problems with interpretation and application, especially with regard to environmental sustainability. The *White Paper* (currently being drafted from the *Green Paper on Development and Planning*) should consider providing greater clarity on environmental sustainability in the land development and management context. The DLA (through the Development and Planning Commission) has developed Chapter 1 Principles Guidelines (a Resource Document and a Manual) in order to make them more specific and enforceable. This is being even further developed and re-worked.

The DFA does incorporate environmental management requirements, which are specified in regulations. In terms of regulation 19,3(e) of the DFA Regulations (gazetted on the 7 January 2000) requires environmental sustainability considerations to be taken into account in deciding on the award of a land availability agreement. Regulation 31 of the DFA Regulations requires environmental evaluations to be performed and provides detailed requirements on the content, extent and aspects of the environment potentially affected by the development (regulation 31 (6)(a-n)). It is important to note that Regulation 31(1) requires that environmental evaluations be prepared in accordance with the EIA guidelines or other requirements which may be issued by DEA&T for time to time. The DLA has, in consultation with DEA&T attempted to bring the new Regulations in line with the ECA



Regulations. This is a clear incorporation of IEM in land development applications in terms of the DFA. The DLA shall monitor and enforce the use of DFA Chapter 1 principles and its regulations and would require the support of DEA&T. Bilateral discussions between DLA and DEA&T should be a priority.

### 3.2 DLA's Spatial Planning Policies

#### 3.2.1 Spatial Planning

The DFA addresses land development planning at a local authority level, by requiring the compilation of Land Development Objectives (LDOs) by Local Authorities. The subject matter of LDOs is specified in Chapter IV of the DFA, although Provincial MECs may formulate additional requirements in terms of Provincial LDO regulations.

LDOs set out the qualitative and quantitative objectives of the relevant authority in terms of the access to and standard of services for land development, the growth and form of the area and associated development strategies. LDOs are concerned with promoting equity, promoting efficiency, protecting the public good, ensuring the good use of scarce resources and protecting the environment, which are all consistent with the NEMA environmental management principles. In particular, objectives relating to "the sustained utilisation of the environment" and "the optimum utilisation of natural resources" should be developed.

Integrated Development Plans, similar to LDOs but more focussed on administration and finance, are required to be drafted by local authorities in terms of the Local Government Transitional Act. The Green Paper on Development and Planning proposes a single, integrated planning process for Local Authorities, inclusive of the IDPs and LDOs, which will satisfy the requirements of all the different laws which need to be taken into account. This would in essence allow for an integrated plan which not only fulfils the requirements of the IDPs and LDOs but also Local Authority/municipal planning such as water, transport and environment. It is important to note that LDOs are a local application of the Chapter 1 principles and once approved by the MEC are binding on all land development decisions.

The Minister of Land Affairs inherited the administration of planning laws for example the Physical Planning Act etc and hence has the national spatial planning function. This function however needs to be strengthened. Provincial Planning is an exclusive legislative competence of the Provinces and the DLA consequently only plays a supporting and advisory role to the Provinces. This has contributed to uncoordinated and inconsistent approach to spatial planning. The Green Paper addresses this and proposes that the DLA is best equipped to take on the challenge of spatial planning due to the inherent and current responsibilities as the lead/coordinating agent for spatial planning. The White Paper will consequently, clearly define the role of DLA as the lead agent in National government with regards to spatial planning. The Green Paper makes a strong argument for the term "spatial planning" referring to the spatial considerations and is proactive in nature.

Spatial Planning Policies are housed within the DFA, which are underpinned by the Chapter 1 Principles. These principles provide a set of interrelated intentions to guide land development planning and management. They are binding on all present and future actions of all legislation at National, Provincial and Local governments.

### 3.2.2 Land Development Management

Land Development Management involves the more reactive element to planning. Land development management has the following two commonly agreed upon goals, which are achieved through the determination, allocation and restriction of rights to use and develop land:

- Effective protection of both the natural environment and public from negative impacts of land development and land use changes; and
- Providing a reliable degree of certainty to developers regarding the use of land.

Nothing that land development refers to approvals for change in land use for settlements and business (including small-scale farming), land development management may be separated into the following categories:

- The management of the development of vacant or open land (agriculture or pristine land); and
- The management of ongoing changes to existing land use.

This distinction is particularly important in terms of the spheres of government and departments that need to be involved in the decision about land development (see Chapter 4). For example, nature conservation bodies have a particular interest in changes from undeveloped (pristine or fallow) land, while agricultural departments have a particular interest in changes from agricultural land. Locals Authorities and development oriented Provincial government departments tend to have an interest in the second category, developed land use changes.

Currently, the legislative environment that governs the processes of land development is extremely complex. Typically, the former white urban areas are managed by means of town planning or zoning schemes based on the provincial town planning ordinances. In contrast, proclamations like for example R188 of 1969 and R293 of 1962 still form the legal basis for the regulation of land use and ownership in the former homeland areas. This situation is further complicated by the existence of laws at a national level, such as the Less Formal Township Establishment Act, Removal of Restrictions Act and the Physical Planning Acts of 1967 and 1991, that also impact on land development management.

The DFA introduced a system in which land use management could be considered in the context of the Chapter 1 principles, local plans (LDOs) and the decision making body created by the DFA, namely the Development Tribunal. The Development Tribunal has extra-ordinary power including the powers to suspend the application of some laws in land development areas.

It is stated in the Green paper that there is a tendency in South Africa for sectoral issues to be considered in isolation, which resulted in most national government departments prescribing policies that impact on spatial planning. These include the Environmental Conservation Act (ECA) that *inter alia* gives the Minister of Environmental Affairs and Tourism the power to establish procedures for land development applicants to obtain environmental permissions to undertake certain land uses or to change the use of land. Regulations promulgated in terms of the ECA, listed uses for which environmental permissions are required as well as the process to obtain such permissions.

The Development Tribunal provided for by the DFA, incorporates environmental criteria through requiring that environmental sustainability be addressed with all tribunal applications and can require the applicant to perform detailed Environmental Impact Assessments and evaluations as well as impose conditions on the applicant relating to environment and to be performed for proposed projects. On the other hand however, the Development Tribunals do have the powers to suspend the requirement for EIA's.

The legislative environment governing the processes of land development is extremely complex. The DFA introduced a system based on the Chapter 1 Principles to resolve some of the issues and allowed for the creation of autonomous provincial Development Tribunals. However land development is still largely being processed through old legislation which was not repealed by the DFA. In addition not all Provinces implement the DFA, however in these cases they do adhere to the Chapter 1 Principles.

### 3.3 Plans and Programmes for Implementing Land Development

#### 3.3.1 Implementation of Land Development Management

The DFA land development principles acknowledge that environmental considerations are very important and furthermore emphasise the importance of environmental sustainability. The Green Paper is adamant that the Principles should be central to the entire planning system in South Africa. It should inform the pro-active integrated development plans that are drawn up and should form the primary criteria against which applications for land use changes can be assessed.

It is, however, acknowledged within the Green Paper that the land development principles to date have had a disappointing impact on planning. A lack of knowledge and difficulties with interpretation, are cited as possible contributing factors. The DFA furthermore does not currently provide for a interventionist role, nor a mechanism for DLA (as the national department responsible for its administration), to enforce or encourage compliance with these principles by other national departments, provincial and local government. In order to address these problems with the implementation of the land development principles, the following recommendations were made in the Green Paper:



- The existing principles should be reordered and reworded;
- The Minister of Land Affairs as well as the Premiers should be encouraged to make use of power they have in terms of the DFA to add to and elaborate on the existing principles to maximise their impact;

- Principles specifically dealing with land use management should be added, addressing issues like for example how land use management in an area must be made compatible with spatial dimensions of the IDPs;

- DLA should conduct a two yearly national audit taking the form of a sample of different spheres of government involving a review of plans and decisions taken to monitor their compliance with the land development principles;

- Development and Appeal Tribunals should be required to provide short summaries of the reasons for their decisions on a case-by-case basis - with specific reference to the way in which the DFA Chapter 1 Principles have informed the outcomes. These should then routinely be forwarded to the unit within DLA responsible for monitoring compliance. This unit will be responsible for compiling a progress report that together with the national audit results should be submitted to the Minister of Land Affairs every two years.
- The South African Council for Town and Regional Planners (SACTRP) should be statutorily required to report to the Minister of Land Affairs on progress made with the implementation of the land development principles. This would serve to monitor the professions that are statutorily responsible, and would actively assist in making the land development principles central to the national planning system.

- The Department of Provincial and Local Government should be requested to include the monitoring of the land development principles as part of its broader function of monitoring local authorities. It is proposed that officials from that department report to the national monitoring unit within DLA on a two-yearly basis.

The Directorate Land Development Facilitation does not have adequate capacity to fulfil the roles and functions described above should it be tasked to do so. Both the political and senior management of DLA have however acknowledged that the spatial planning role of the department has been neglected, but that it has now been identified by the Minister as one of the priority functions of DLA. Departmental capacity will need to be increased to do this role justice.

The Green Paper also proposes that different sectoral procedural requirements be aligned or streamlined so as to facilitate the co-ordination and integration of the various approvals needed to undertake land development. The current situation of dual planning and environmental applications leads to legal uncertainty regarding the granting of land use rights, as different authorities may reach conflicting decisions regarding applications. The alignment of planning approvals and environmental approval in terms of the ECA is being considered in the White Paper drafting process currently being undertaken by DLA and it would thus be premature to speculate on the precise strategies that will be employed. DLA is, however, committed to encouraging the implementation of environmentally sustainable development and will seek to promote this approach in the White Paper.

Capacity building for Tribunal members in terms of environmental issues has been incorporated within the broader DFA training but not specific to it. Capacity building and formal training on DFA procedures and processes is provided by the DLA and takes place on



a regular basis for Development Tribunal Registrars and Designated Officers and Provincial Tribunal members in the Provinces.

The effectiveness of Development Tribunals in implementing environmental management and sustainability principles depends upon two issues. Firstly, the Tribunals are largely dependent on the inputs, expertise and support of the Provincial Departments of Environment who are required by the DFA to submit comments on the applications. Secondly, within the composition of the Tribunal members, there should be environmental expertise to evaluate and assess the environmental information submitted as part of the application and to deliberate and make a decision at the Hearing. Capacity within the Tribunals in terms of environmental expertise is however often thus a concern and varies between Provinces.

### 3.3.2 *Implementation of Spatial Planning and development planning*

Local authorities, in accordance with procedures determined by the responsible Provincial MEC compile Land Development Objectives (LDOs). The Local Authority submits draft LDOs to the MEC for approval before implementation. The MEC has to ensure that the subject matter of the DFA has been adequately addressed and that the procedures to draft LDOs as identified in the Provincial regulations, have been followed before approval of LDOs. The DFA has no direct responsibility for the drafting or approval of the LDOs. However, the DFA provides guidance to Provincial governments and municipalities on the interpretation of the subject matter of LDOs. In addition, assistance is provided to Provincial governments to draft suitable procedures for setting LDO regulations.

In an effort to support the drafting of LDOs, DFA made a Grant available to poor and under-resourced Local Authorities to partly fund the drafting process. The conditions attached to the Grant provided an opportunity for DFA to promote the integration of Land Reform issues within the LDOs. The business plans of qualifying Local Authorities were assessed by the national and relevant regional offices of DFA to ensure compliance with the conditions of the Grant. Qualifying Local Authorities have to:

- indicate the manner in which land reform will be integrated into the planning process;
- indicate the extent of relative poverty of the area;
- provide information about the degree to which the Local Authority is under resourced;
- provide information about the nature and extent of planning need;
- indicate its technical competence and capacity for sound financial management; and
- provide a cost estimate of the process.

An investigation commissioned by DFA, into the LDO endeavour in the provinces of Gauteng and the North-West, indicated that land reform issues were not sufficiently addressed in the LDO documents. Local Authorities did not seize the opportunity to draft a strategic vision to address land reform issues. In most instances, basic information on the extent of landlessness in their areas of jurisdiction was absent. Local Authorities were constantly monitored to produce LDOs but once these documents were submitted for approval not much legal pressure was placed on Provincial government to finalise the approval process. Other Provincial government departments did not contribute sufficiently to the process to allow for the integration of their development objectives in the LDO drafting process. DFA's lack of participation was evident as the process failed to link LDOs with

DLA's land reform programme. Effective measures to promote co-ordination will have to be put in place.

Proposals to promote integration and co-operative governance are currently the focus of debate in drafting the White Paper on Development and Planning. The Green Paper proposes the identification of a political home for co-ordination at a national level that should be followed by a clarification of the roles and relationships that the different spheres of government should play. In this regard it is proposed that DLA revise the relevant sections of the DFA to clarify the requirements of LDOs and the spatial elements of integrated development plans drafted by Local Authorities.

Although the DFA requires environmental components and considerations for LDOs, the compliance by local authorities throughout South Africa has been highly varied. Unfortunately, DLA does not currently have a mandate to monitor and ensure compliance, although this issue will be addressed in the White Paper process.

DLA has not yet provided focused capacity building to provincial government and local authorities in terms of incorporating environmental considerations into the LDO process. However, the DLA-DANCED project will be providing capacity building on this issue over the next year. A specific training course entitled "*The Environmental Dimensions of LDOs/IDPs*" has been developed by the project and designed to cater for local government decision-makers. DLA officials will be trained with local government officials so as to encourage greater understanding and appreciation for the incorporation of environmental issues into LDO process.

In summary the following should occur:

- Environmental planning should be addressed in the Land Reform process;
- Land Reform should be integrated into local planning (LDOs); and
- Environmental issues should be integrated into local planning (LDOs).

### 3.4 State Land Management (SLM)

In South Africa the State is the biggest landowner in the country. It is estimated that in total the state owns approximately 24.3 million hectares of land (approximately 20% of the land surface, excluding land held in trust – please refer to Annexure C). State land referred to in this report concerns State Land registered in the name of the Minister of Land Affairs as well as land held in trust by the Minister (nominally owned state land). However, nominally owned state land is strictly speaking not regarded as state land, and the state can not dispose thereof, without the consent of the community or individual. This land is mainly situated in the former TBVC-states and Self-governing Territories and the former Coloured Rural Areas. This land comprises land that is settled and beneficially occupied by tribal groupings and communities (approximately 11.8 million hectares); and about 1 million hectares of state-owned agricultural land that is managed under various lease agreements and which is available for redistribution. The departments of Public Works, the South African National Defence Force (SANDF), National Parks, Provincial governments and Local Authorities also have jurisdiction over other state land but this is not discussed in this report.

### 3.4.1 Policy Issues

Policy issues on state and public land indicate the following. Firstly, that assets should be effectively managed in the public's best interest; secondly, that tenure rights of those who beneficially occupy public land should be secure and registered; and thirdly that available public land should be properly allocated for Land Reform and development.

One of government's key responsibilities pertinent to this report is to ensure the release of state land as a resource for sustainable development. Recently in DLA, much emphasis has been placed on policy, procedures and institutional arrangements for the efficient disposal of state land to address sustainable development in the Land Reform context.

#### *Key functions of DLA in relation to state land:*

The following are key functions of DLA relevant to state land namely:

- Disposing of state land under the Minister of Land Affairs;
- Awarding and managing leases of state land;
- Maintenance of state land;
- Eviction of unlawful occupiers;
- Provision of advice for prospecting and mining leases;
- Processing and providing advice on applications for servitudes;
- Issuing item 28(1) certificates as per the Constitution: this provides for the vesting of State land in either national government or a provincial government;
- Dealing with land development applications on state land;
- Provision of information;
- Identification and delivery of saleable property for Land Reform purposes (compilation and maintenance of asset registers and Public Land Inventory Geographical Information System);
- Powers of Attorney for land administrations to Provincial governments; and
- The establishment of inter-departmental State Land Disposal committees in all provinces.

### 3.4.2 Implementation of state land management functions

State land management is an "environmental management" function. However there has been very little emphasis on environmental management *per se* within the DLA in implementing these functions. Consequently, there is limited information for reporting purposes. This is explained below.

#### *Disposing of state land under the Minister of Land Affairs*

The purpose of state land disposal is to make land available for Land Reform, where beneficiaries should be the previously disadvantaged people, groups, communities or tribes.

Based on applications received for state land disposal, the Provincial State Land Disposal Committees (PSLDCs) make recommendations on the appropriateness and feasibility of the proposal. Whether "optimal use of the land" has been addressed is a key consideration in the recommendation outcome. Provincial and the National State Land Committee advise the Minister on the disposal of the land. Departments represented on the PSLDCs include DLA,



Public Works, Provincial Department of Agriculture and Local government. Recent policy proposals indicate that in the future this group may be extended to include the Department of Water Affairs and Forestry, the Land Bank and traditional leaders.

DLA undertakes a preliminary scan of the land in question. This involves identifying current and potential land use activities based on a landscape assessment of the environmental and infrastructural resources. The Department of Agriculture undertakes a more detailed assessment at a later stage, if necessary. For unencumbered agricultural state land, the MEC for Agriculture has full responsibility to make a decision on the disposal. Suitable emerging black farmers will be given preference.

• *Awarding and managing leases of state land*

DLA does not consider environmental issues in the awarding of leases. DLA only investigates tenure issues prior to providing *pro forma* lease agreements. DLA does not actively monitor or manage the state land once it is leased out. However, the lessee would be responsible for obtaining authorisation for any regulated activity from the relevant environmental management authority (DMEA and Provincial DEA&T).

• *Provision of advice for prospecting and mining leases*

In providing advice for prospecting and mining leases, DLA works closely with the Department of Minerals and Energy (DMEA). Local authorities, Provincial government and DMEA are all required to give consent to the application prior to DLA making a recommendation to the Minister for approval or not. There are no environmental assessment requirements or conditions issued by DLA. DLA depends on DMEA for this sort of support. DLA only investigates tenure issues on the land being investigated. In the event of the mining lease being approved, the prospector / developer is responsible for undertaking an Environmental Management Programme Report (EMPR, in terms of the Minerals Act). Should mining activities go ahead, the land is still the responsibility of DLA but there is no monitoring of the activities, or implementation of any requirements by the department.

• *Processing and providing advice on applications for servitudes*

With regard to servitude applications by potential developers DLA will only investigate tenure related issues that may be relevant on that land. DLA processes the application and submits it to the Minister for approval. Again, it is the responsibility of the developer to have an EIA undertaken. Monitoring and managing the land thereafter is not actively undertaken by DLA.

• *Dealing with land development applications*

The DLA facilitates negotiations between tribal authorities and potential developers. This does not involve any environmental assessments but DLA will not approve the land development unless the development is in line with the Land Development Objectives (LDOs) set in that area (where they exist). Environmental considerations are included from a local planning perspective as well as the impacts of the development since the developer is responsible for EIAs. An issue of concern that has been raised is that tribal land made available for development purposes means that communal land such as grazing land is lost. This obviously leads to overgrazing in already resource poor and potentially degraded areas.

• *Delivery of saleable property for Land Reform purposes*



This is primarily an information support function whereby a Public Land Inventory (GIS based) and asset registers are compiled and maintained.

• *Maintenance of state land*

DLA does not actively maintain state land due to lack of capacity and resources. Only in the event of a concern raised by another government department or the general public, will DLA follow up with the Department of Agriculture for assistance. This may be for example, firebreaks or fencing issues.

In summary, most of the above functions relating to management of state land do not cater for any active monitoring or management of the state land once leases or servitudes have been granted. Although it is the responsibility of the other relevant line function departments to authorise and monitor particular activities and users, associated with water, mining, agriculture, etc. In fact it appears that there are significant numbers of hectares of state land not being proactively managed by any department. There may be serious environmental degradation occurring and hazardous situations being created, but nothing is known about this unless it is discovered and brought to the attention of DLA on a case by case basis.

There is a lack of clarity around the active management of state land particularly when tribes or communities who are the de facto "owners" of the land beneficially occupy it. However ultimately DLA remains responsible since this is land registered or held in trust by the Minister of Land Affairs. This will be the case until such time as the land is registered in the name of its rightful owner. As a matter of urgency, DLA needs to address its management role and develop and agree upon the required institutional arrangements with various National and Provincial departments. The urgency of concluding tenure reform policy and implementing it effectively and fairly will be a key step in resolving the locus of responsibility in the management of these large areas of land. It is the responsibility of DLA to drive these processes.

State Land Management falls within the ambit of several departments namely, DLA, Public Works, South African National Defence Force, National Parks, Provincial governments and Local Authorities. It is consequently a cooperative governance challenge and opportunity.

The table below provides a summary of the DLA land authorisations and the relevant decision making authority.

*Summary Table of DLA Land authorisations*

| Name of Act                                | Nature of authorisation         | Decision making authority                   |
|--------------------------------------------|---------------------------------|---------------------------------------------|
| Physical Planning Act, 1991                | Land use decisions              | Decision making power assigned to Provinces |
| Development Facilitation Act, 1995         | Land development decision       | Development Tribunals                       |
| Provision of Land and Assistance Act, 1993 | Designation (land use)          | Minister of Land Affairs                    |
| Extension of Security of Tenure Act, 1998  | Land use (off farm settlements) | Minister of Land Affairs                    |

The following table summarises the EMP functions as performed by DLA.

*Policies, Plans and Programmes*

| DLA Function          | Relevant Policies and Legislation                                                  | Plans and Programmes (activities)             | Partners                                                        |
|-----------------------|------------------------------------------------------------------------------------|-----------------------------------------------|-----------------------------------------------------------------|
| Spatial Planning      | Development Facilitation Act 67 of 1995<br>Green Paper on Development and Planning | Land Development Objectives<br>DFA Principles | All relevant Departments and Organs of state                    |
| Land Development      | Development Facilitation Act 67 of 1995<br>Green Paper on Development and Planning | Land Development Objectives<br>DFA Principles | Local Authorities, All relevant Departments and Organs of state |
| State Land Management | Development Facilitation Act 67 of 1995                                            | Land Development Objectives<br>DFA Principles | All relevant Departments and Organs of state                    |

The following table summarises DLA functions and activities and information contained within the report, which address the NEMA Principles.

*Compliance with NEMA Principles*

| DLA Functions         |                                                                                      | NEMA Principles                  |                                                                                      |
|-----------------------|--------------------------------------------------------------------------------------|----------------------------------|--------------------------------------------------------------------------------------|
| State Land Management | Application of Environmental based DFA Principles                                    | Sustainable development          | Application of Environmental based DFA Principles                                    |
|                       | DFA Principles require integration                                                   | Integration into decision making | DFA Principles require integration                                                   |
|                       | DFA Principles require full participation                                            | Participation                    | DFA Principles require full participation                                            |
|                       | DFA Principles are based on (1) Human centered & (2) Natural resource base integrity | Environ. Justice and equity      | DFA Principles are based on (1) Human centered & (2) Natural resource base integrity |
|                       | EIA's are required to be performed for proposed development                          | Ecological integrity             | DFA Principles are based on (1) Human centered & (2) Natural resource base integrity |
|                       | Inter-governmental coordination and cooperation is key to DLA                        | International                    | Inter-governmental coordination and cooperation is key to DLA                        |

## Chapter Four: Institutional Arrangements & Cooperative Governance Recommendations

### 4.1 Introduction

Cooperative governance is a priority for the DLA as reflected in the Green Paper on Development and Planning. It is therefore anticipated that cooperative governance from a planning perspective will be further developed in the pending White Paper.

With regard to the internal DLA institutional arrangements it is important to outline the departmental structure and functions. Land Affairs is a National competency with regional offices in all the Provinces also referred to as provincial offices in this report, but which must not be confused with Provincial government structures.

#### 4.1.1 Department structure

The departmental structures described below have been limited to those that are applicable to the drafting of the Consolidated EIS&MP for the First Edition submission. DLA (National and Regional Offices) is currently undergoing restructuring and transformation. Consequently, it is not possible to present a definitive organisational organogram, rather a generic description is provided below.

In terms of the official existing structures in DLA the following units are of relevance in the context of this report:

- *The Land Reform Policy Branch*

Consisting of the Chief Directorate Redistribution, Land Rights and Development and Directorates: Redistribution Policy and Systems and Land Development Facilitation (Land Development Policy sub-directorate managing the DLA-DANCED project and environmental and sustainability policy matters generally). This branch also consists of the Chief Directorate: Tenure Reform and Public Land Management.

Policies are developed in the Land Reform Policy Branch in consultation with the 9 provincial (regional) offices of the Land Reform Implementation Branch. Policies have to officially get approved by the Minister and Director-General after recommendations from the Policy Committee with representation from all 3 branches.

- *The Land Reform Implementation Branch*

Consisting of nine Provincial Offices and their respective District Offices, the number of which varies from province to province, and the Monitoring and Evaluation Directorate. The nine provincial offices are tasked with implementing land reform using policies and procedures developed in the Land Reform Policy Branch.

The Monitoring and Evaluation Directorate (M&E) is responsible for monitoring and evaluating the implementation of land reform using M&E systems such as "The Quality of Life" and "Environmental Impact" Monitoring systems. M&E are managed from the National office with provincial M&E officers represented in all 9 provincial offices.

- *The Restitution Branch*  
Consisting of the former Chief Directorate: Restitution and the Directorates: Restitution Policy and Restitution Research. The Commission on Restitution of Land Rights (consisting of the Chief Land and Claims Commissioner's office and 5 Regional Land Claims Commission offices) are also part of this Branch.

The restitution component which formerly constituted the Restitution Chief Directorate provides policy and research support to the Commission's work. The Restitution Policy Task Team, which is part of the Branch, submits policies to the Departmental Policy Committee. The Research Directorate researches restitution claims that have been lodged. All units work closely in developing policy, undertaking research towards processing of restitution claims. While the Commission is officially incorporated into DLA, the Commissioners retain certain independent statutory powers.

#### 4.1.2 Inter-departmental Government Programmes

For information purposes, the DLA has been involved with three environmental inter-departmental programmes namely:

- *The International Convention on Deserification*, with the National Department of Environmental Affairs and Tourism as the lead department. The DLA played a supporting role on the Steering Committee attending meetings and supplying information when required.
- *Partnership Project for the Working for Water Programme*, with the Department of Water Affairs and Forestry to provide benefits by including land reform beneficiaries in the Working for Water Programme. Job creation opportunities were created while enabling the beneficiaries to improve the quality of their land. The DLA allocated R25 million from its 1998/9 budget part of which, was to provide an independent evaluation of the partnership itself to indicate the value of this type of initiative and provide guidance for similar initiatives in the spirit of cooperative governance.

- *The Land Care Project*, with the National Department of Agriculture (DOA) as the lead department. The DLA's role in the project is currently only on an ad hoc basis due to lack of clarity from DOA on the role of other stakeholders.

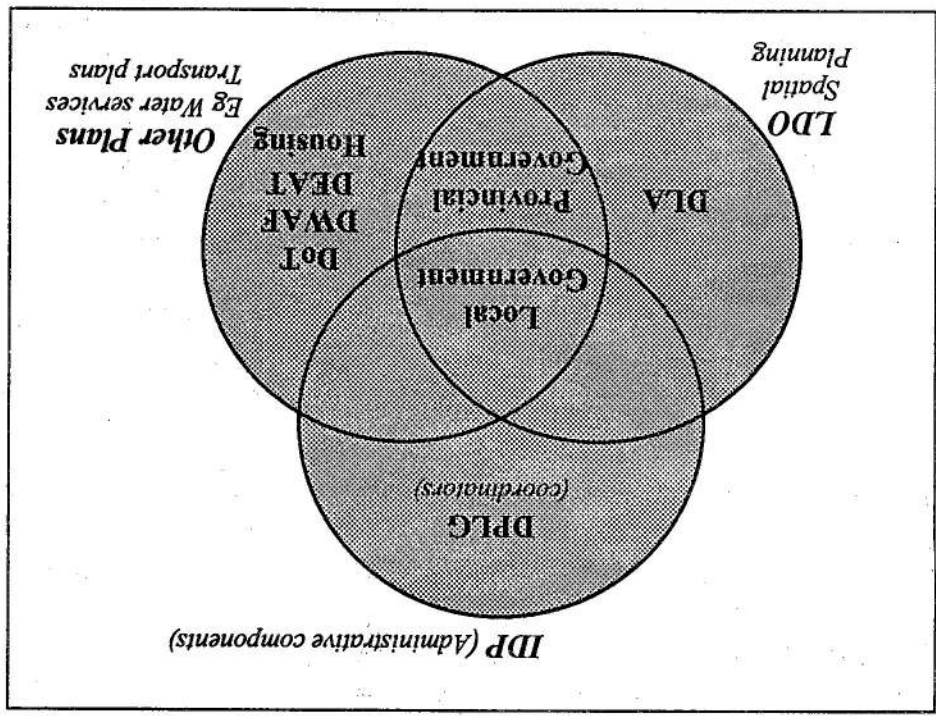
#### 4.2 Institutional Arrangements for Spatial Planning and Land Development

The Directorate: Land Development Facilitation is responsible for all DLA's functions in terms of land development planning and management. DLA's responsibilities are dictated by the DFA, which is largely that of setting of policies and norms and standards. The Green Paper proposes a monitoring and auditing role with an expanded area of responsibility to ensure effective integrated spatial planning within the DLA. Implementation takes place at the local government sphere with provincial government responsible for provincial planning. The Western Cape and KwaZulu/Natal provinces have both drafted Provincial Planning legislation which clarifies the roles of the spheres of government and planning mechanisms in respect of the provinces.



4.2.1 Spatial Planning

In terms of Land Development Objectives (LDO's), provincial government (MEC) further develops the national land development planning requirements and approves the LDOs that local authorities have prepared. Currently, DLA does not even have a monitoring and evaluation role, which limits the possibility of ensuring compliance with the environmental requirements of the DFA, even though the land development Chapter 1 principles must be adhered to in all land development planning process.



Departments involved in the local authority planning environment

The linkage between LDOs and Integrated Development Plans<sup>2</sup> (IDP) implies that cooperative governance is required between DLA and a number of national government departments requiring plans of Local government. This is particularly important to ensure consistent requirements for Local Authorities, including the environmental component. The roles and relationships of these departments, particularly in terms of local authority planning and environmental considerations, is currently unclear, as is their combined role with respect to ensuring compliance with environmental considerations as part of local authority planning. The White Paper on Planning and Development should engage this issue. The following National departments are relevant:

- Department of Provincial and Local Government (DPLG)
- Department of Water Affairs and Forestry (DWAFF)
- Department of Housing (Housing)

<sup>2</sup> It is important to note that, the Department of Provincial and Local Government (responsible for IDPs) does not need to submit a Environmental Management Plan, or Environmental Implementation Plan, as per the First Edition NEMA Chapter 3 requirements.

- Department of Transport (DoT)
- Department of Environmental Affairs and Tourism (DEA&T)
- CIU in Presidents Office

The role of the Coordination and Implementation Unit (CIU) in the President's Office is to address the problems currently experienced on integration, implementation and coordination of programmes relevant to development planning. The Forum for Effective Planning and Development (FEPD), on which some of the above departments are represented, attempts to coordinate and integrate the national and provincial planning responsibilities. This forum however, is currently no longer active. The Green Paper proposes that a new forum the National Planning Coordination Committee (NPCC) replaces the FEPD and its relationship with the CEC should be elaborated. The NPCC's purpose is to coordinate spatial planning across sectors and across the different spheres of government. The relationship and linkages with bodies such as the CEC are currently being discussed through the Green and White Paper processes.

#### 4.2.2 Land Development Management

The DFA makes provision for the establishment of Provincial Development Tribunals which currently exist in seven provinces. Provinces, which do not implement the DFA (such as Western Cape), do however align their policies with the Chapter 1 principles of the DFA. The DFA Task Team is constituted as a formal structure for communication between the DFA and Provinces. The DFA does play a supportive role by conducting regular meetings and capacity building sessions with Development Tribunal Registrars and Designated Officers (refer to Chapter 3).

The Tribunal Decisions which are made at the Hearings often have implications for other government departments and are of a cooperative governance nature. However there does not seem to be a mechanism to ensure compliance or monitoring of the decisions, in relation to the implementation and monitoring of the decisions. For example the Department of Water Affairs and Forestry (DWAF) may be implicated in a decision on a settlement or township establishment decision (at which they might not be present) in a water sensitive area. There appears to be no mechanism for DWAF to directly acquire and accommodate the necessary actions from a cooperative governance perspective. Consequently developments may be implemented without the proactive and reactive involvement of key departments due to the overarching and powerful decisions of the Tribunals.

### 4.3 Institutional Arrangements for Land Reform

#### 4.3.1 Internal DLA cooperation

The intention of this section is to describe the internal mechanisms and procedures to ensure that sustainable development and therefore environmental policies are put into place. Since a detailed account is already given of Land Reform implementation and issues, the application of policy and procedures with respect to environmental considerations (in Chapter 2), this will not be repeated here.

It is important to note that *official DLA environmental policy* has not yet been developed and will be one of the DLA-DANCED project outputs to be developed by March 2001. This policy will address all aspects of Land Reform and will follow the normal policy development and submission route for all land reform policies. This includes extensive consultation with national and provincial staff and a formal submission via the Policy Committee for approval.

An assessment of internal compliance of DLA's environmental policy at this stage (for the First Edition Consolidated E&MP report) is therefore not possible but will be addressed in future editions of the Consolidated E&MP Report. This section of the report also needs to indicate what capacity (human and financial) and resources are allocated to environmental functions within DLA.

The DLA-DANCED project structure, human resources and finances are therefore briefly described. In addition, a brief account is given of other staff in national and provincial (regional) offices who have environmental backgrounds and can put their training to use, given their functions in the department.

Within the DLA-DANCED project, there are three project teams:

- One national team, consisting of two DLA officials (one coordinator and one planner) who both have post-graduate environmental training and one Chief Technical Adviser (external foreign land use planning consultant);
- Two provincial teams (one in each province of Mpumalanga and Free State), each consisting of a Provincial Technical Adviser (local external, environmental consultants) and two DLA officials (one coordinator and one planner).

All technical advisers spend 100% of their time on the project. The national coordinator and the national planner share a 50% time allocation on the project. The remainder of their time is dedicated to environment and sustainable development policy matters. Liaison with other national departments' policy processes is an important function.

Provincial coordinators spend 20% of their time on the DLA-DANCED project, whilst the planners spend 50% of their time on the project as per project requirements. The Planner for the Mpumalanga PDLA has recently been increased to 100%. Project teams were structured so as to facilitate the transfer of skills between the consultants and DLA staff. The positive impacts of this arrangement have recently become evident.

With respect to financial resources set aside for the project, DLA has committed R1.5 million over two and a half years and DANCED has committed R11 million over this period.

Apart from DLA-DANCED project staff there are only three known staff members at National Office who have environmental training and are in a position to apply their skills in their work. One is in the Redistribution Systems and Policy directorate and two in the M&E directorate. Through the DLA-DANCED project training (mentioned in Chapter 2) 100 DLA officials in total (from the provinces and national office) have received environmental training to date. A further 100 DLA officials will be enrolled in the courses that are scheduled for the remainder of the project life-span (one more year). This training coupled with a major

internal communication programme on natural resources and rural livelihoods will definitely improve the environmental capacity of DLA officials and management.

It should be noted that the aim of the training is NOT to develop environmental experts out of DLA officials, but to equip them with a sound, practical understanding of the environment and land reform. The project also needs to ensure that DLA planners have the necessary skills to draft appropriate terms of reference for business planning consultants, for them to be in a position to make a judgement on the consultant's reports and to assess the quality and content of documentation in terms of sustainability considerations. It is anticipated the Planners in the regional offices will become key players in environmental management for the DLA and capacity would need to be developed accordingly.

However, it is unlikely that DLA will have adequate human resources to be able to build a strong environmental unit at National level. The aim is to build the skills of the implementers of land reform (so that more sustainable land reform can be achieved) and to forge supportive relations with the relevant role players in provincial and local government. Duplication of skills and functions is to be avoided.

#### 4.3.2 External DLA cooperative governance arrangements

The regional offices of the DLA are key institutions in the implementation of the Land Reform programme. They are responsible for liaising with provincial government in Land Reform matters for ensuring that the programme is coordinated with broader provincial development plans and priorities and that supportive relationships are built with provincial and local government so that they may assist land beneficiaries post transfer. The specific allocation of functions between the DLA regional offices and the provincial authorities varies according to negotiated arrangements as dictated by the local conditions.

The following is reflected in Chapter 3 of the South African Land Policy (1997):

*"Provincial governments have responsibilities in a number of functional areas related to land reform. These are mainly where national and provincial governments have concurrent responsibility in terms of Schedule 4 of the Constitution. These are mainly agriculture, environment, soil, conservation, housing, regional planning and urban and rural development. Local governments also have constitutional functions which affect land use and planning.*

*There is a need to coordinate the functions of the different spheres of government not only because of the constitutional requirement of cooperative governance, but also to achieve effective government.*

*It is the responsibility of provincial governments to provide complementary development support (such as infrastructure and agricultural support services) to those participating in the land reform programme. In this respect there must be close cooperation between national and provincial governments to ensure that beneficiaries of land reform enjoy services provided by the provinces, as envisaged by Schedules 4 and 5 of the Constitution".*

Despite the words in the Land Policy White Paper and the Constitution, Land Reform and its beneficiaries have unfortunately not enjoyed adequate support and services from the Provinces and Local government.



The following government departments are essential partners of DLA for the implementation of sustainable Land Reform (the nature of support is indicated in brackets):

- National and Provincial Departments of Agriculture (technical assessments for farming potential, extension support, support mechanisms to farmers to access infrastructure/inputs);
- National Department of Housing and Provincial Local Government and Housing departments (Rural housing / infrastructure for land reform settlement projects);
- National Department of Water Affairs and Forestry and its Regional offices (technical support regarding water management and services both locally and regionally; forestry extension support, including rehabilitation/problem solving);
- National and Provincial Departments of Public Works (in disposal of state land);
- National Department of Environmental Affairs and Tourism and Provincial Government Units responsible for environmental functions (technical advice and on the ground support relating to integrated environmental management and Land Reform project "feasibility" and environmental impacts, environmental management support to beneficiaries including capacity building and rehabilitation programmes); and
- Local Authorities and District Councils, inclusive of metros where applicable (to cater for land reform in local development and planning to ensure adequate provision of basic services as well as maximising economic and social development opportunities for land beneficiaries). The District and Local Authorities will in future become the driver of Land Reform;
- The Coordination and Implementation Unit in the Executive Deputy Presidents Office, (for coordination, implementation and alignment of programmes);
- Department of Provincial and Local Government (IDPs and local economic development);
- National Department of Minerals and Energy (where mineral rights are involved in land transfers and possibly where land needs to be rehabilitated due to abandoned mine dumps);
- National Department of Finance (especially with regard to grants);
- Other departments such as National Trade and Industry and Transport (where Spatial Development Initiatives and National Projects impact on land reform);
- National Department of Defence, SANDF (South African National Defence Force);
- National Parks and Provincial Conservation Authorities of which some may be parastats;
- National Monuments Council and newly established Heritage council; and
- Provincial Departments of Traditional Affairs (for cooperation and facilitation especially with regard to communal resource management and development projects).

#### 4.3.3 *Agreements and Memorandums of Understanding*

Agreements between the DLA and National Departments relate specifically to the core business areas of the department and not to environmental management. For example there is an agreement between departments of Finance, Transport, DWAF, PALG, Housing and DLA to align subsidies and avoid duplication. There is also an agreement between the Department of Public Works and DLA on the Disposal of State Land. The agreement clarifies the roles, responsibilities, administration and disposal functions of each department.

#### 4.3.4 Organs of State

The DLA relates to a variety of organs of state on an ongoing basis. However this is presented for information purposes as there is not in all cases a direct relationship between the Department and the organ of state.

- The Parliamentary Portfolio Committee for Land and Agriculture;
- Land Bank, (it is not known whether there are specific environmental requirements for loan approvals);
- Development Tribunals in Provinces where the DFA is implemented (not all Provinces has established Tribunals yet);
- Development and Planning Commission (to be possibly decommissioned but has worked closely with the Department);
- National Archives; and
- Khula Enterprises, which manages the Land Reform credit facility by agreement with DLA.

#### 4.3.5 National, Provincial and District level arrangements of Land Reform

In a recently released policy statement (11 February 2000) by the Minister for Agriculture and Land Affairs, the importance of an integrated approach to Land Reform, in close collaboration with other departments (particularly departments of Agriculture and Housing) was emphasised. The Minister also indicated that DLA must actively work with provincial governments and district councils to build the capacity of the latter to undertake Land Reform and land development planning. Cooperative governance towards sustainable Land Reform and livelihoods will therefore be a priority for DLA in the next year.

DLA's regional offices have established various forms of inter-departmental committees and decision-making systems within each Province in close collaboration with appropriate Provincial departments and with most District Councils.

Sustainability of Land Reform projects is dependent on stakeholders' input in the planning process and their provision of development support and aftercare. The Provincial Project Approval Committee (PPAC), which meets on a monthly basis, has been constituted and should be representative of all key stakeholder departments in each Province. The PPAC is established through Act 126 regulations and is required to be approved by the Director-General of the DLA. The PPAC reviews and approves the Business Plans and Memorandums for Land Reform projects, which are then submitted to the National office and Minister for approval. The mechanism of attaining stakeholder approval may vary between the regional offices of the DLA, for example some may be a district level. The process may also vary where for example other departments inputs are coordinated prior the PPAC sitting thereby reducing the time and resources spent at each PPAC sitting.

The PPAC can be at either District or Provincial sphere dependent on the requirements of the local conditions. Representativity from a functional perspective, on the PPAC is not consistent throughout the Provinces. In some Provinces other departments play vital roles in the process and planning of projects, while in some Provinces key departments are absent. If the relevant

stakeholders do not attend PPAC and planning meetings, the provincial office has little alternative but to proceed with the project, without their involvement.

In addition, even though certain departments may participate in PPAC meetings and approve the project and promise support, in reality budgets, human resources and varying departmental priorities prevent any real support of the actual land reform project post transfer. It is a generally the case that the Provincial Departments of Agriculture in most provinces, do not have the financial resources and human capacity to provide the necessary training, support and extensions services to land beneficiaries.

The following should be considered in trying to establish more effective institutional arrangements between DLA and provincial and local government:

- Commitment to cooperate needs to be driven at the level of Premiers and MEC's;
- Land Reform should fit in with provincial and local strategic planning and development priorities (this is more difficult with Restitution cases);
- Land Reform support needs to be budgeted for in other departments and human resources allocated; and / or
- Flexible approaches for inter-governmental transfer of funds and other resources – especially where support is required from local government.

The National State Land Disposal Committee and Provincial State Land Disposal Committees consist of the departments of Public Works, Provincial governments and DLA regarding State Land Disposal inclusive of procedures, advise, records and policy issues.

Throughout the country, various committees have been established to facilitate integration and cooperation between DLA and other government departments or spheres either at political level or project level. In practice, their effectiveness varies widely and some have been discontinued (for example the FEPPD).

In summary, internal and external DLA cooperative structures are based on projects and reliant on the Provincial inputs of Departments on a voluntary basis. Internally within the DLA there is no "platform" from a committee perspective at which environmental issues are specifically taken up. In this regard, the DLA rather relies on the business plans and project cycle to include criteria on a project basis as compiled by provincial DLA planners. This highlights the importance of expanding the environmental role of these planners.

#### 4.3.6 Proposed cooperative governance arrangements for Land Reform and the environment

It is proposed that the Provincial Departments of Environmental Affairs (structured differently in each Province) become more involved in the administration and planning of Land Reform projects through the existing Provincial Planning Approval Committees (PPAC). This will allow for environmental consideration to be considered at an earlier stage. The DLA-DANCED project will provide input to the format and content of the Business Plans however it is also recommended that the Environmental Departments provide an endorsement of the process and formatted contents.



The Environmental Departments together with the Agricultural Departments should further become more involved with monitoring of implementation of the projects and post transfer support. The particulars of which may need to be formalised within a Memorandum of Understanding detailing resources such as budgets and personnel. To this effect, Environmental Management plans could be compiled for sensitive or "problematic" projects to be monitored by the Environmental (or Agricultural) departments for progressive development and achievement of sustainable development.

With reference to rehabilitation, abandoned mine dumps and historical soil conservation problems are of significant concern. However, it is not clear at this stage which department is responsible for rehabilitation.

#### 4.4 Recommendations for Cooperative Governance

- ! The following recommendations summarise the main institutional issues around cooperative governance and environmental management that are not relevant for the purposes of IBM in Chapter 5. There is a need for an:
- Integrated Planning System, as proposed by the Green Paper on Development and Planning;
  - Enhancement of capacity of National government to enforce the above planning system and to monitor the implementation of the DFA Chapter 1 principles;
  - New institutional frameworks for Land Reform where the District Council are responsible for Land Reform implementation. Necessary resources would be transferred to the District Council to support this process;
  - A review of and possible amending of the Conservation of Agricultural Resources Act (Act 43 of 1983) so as to align it effectively and make it more applicable to Land Reform;
  - Enforcement of relevant legislation by the provincial departments of Agriculture and Environmental affairs;
  - Training and education for government, beneficiaries and service providers in Environment and Land Reform, and DFA Chapter 1 principles; and
  - NEMA Chapter 5 guidelines needs to be developed to ensure quality and not



## Chapter Five: Recommendations & Proposals for NEMA: Chapter 5

### 5.1 Introduction

In 1998, Minister to Minister communications on Environmental Impact Assessments and Land Reform were initiated between the Department of Environmental Affairs and Tourism and the Department of Land Affairs.

DLA raised the following concerns:

- That farmers opposed to Land Reform were using the "environmental argument" to prevent previously disadvantaged people from becoming their neighbours;
- That the "land-use change" clause in Government Notice R1182 of 05 September 1997 was too broad (with no consideration of intensity or scale of the land use change) and that many Land Reform projects would be subject to EIAs, although not strictly necessary;
- That time frames involved in getting approval from the relevant Provincial Department of Environmental Affairs were not spelt out in the regulations and that this could cause unnecessary delays in already time consuming and complex Land Reform projects. These delays could also mean that an opportunity to purchase a property would be lost; and
- That poor land beneficiaries cannot afford to pay for an independent consultant to conduct an EIA and that it was a matter of great concern if poor people were excluded from benefiting from Land Reform for this reason. Though DLA makes a Planning Grant available to Land Reform applicants to undertake the planning necessary to develop a sustainable project, this money is not sufficient to cover the costs of an EIA.

The matter was referred to the two respective Directors-General and inter-departmental discussions proceeded. But despite debating the issues for almost two years, no mutually acceptable approach could be agreed upon. The purpose of this section is to suggest a way forward on the topic, in the spirit of environmental cooperative governance. Initial discussions on the above issues were held with the National Department of Environmental Affairs and Tourism on 21 February 2000.

### 5.2 DLA-DANCED Project Guidelines

The purpose of these guidelines is to integrate environmental planning into the Land Reform process. The project team has undertaken a preliminary cross-referencing exercise between the approach, principles and procedures of IEM and the draft DLA-DANCED project guidelines.

The draft guidelines are generally in line with the following IEM principles and procedures and is being further developed:

- Informed decision-making (generating accurate and timely information for sharing among stakeholders in order for informed decisions to be made is emphasised in the draft guidelines);
- An open participatory approach in planning (participatory planning processes are advocated throughout the draft guidelines);

- Consultation with interested and affected parties (the draft guidelines promote the identification and involvement of multiple stakeholders;
- Due consideration of alternative options (the land-use planning approach adopted in the draft guidelines promotes the identification of alternative options);
- An attempt to mitigate negative impacts and enhance positive aspects of proposals (the simple decision support tool developed in the resource economics component of the draft guidelines is based on examining the intended and unintended impacts of land reform projects and follows an iterative approach to enhance the more positive aspects);
- An attempt to ensure that the "social costs" of development proposals are outweighed by the "social benefits" (this principle forms the essence of the decision-support tool developed in the resource economics component of the draft guidelines);
- Democratic regard for individual's rights and obligations (the guidelines uphold those provisions of the Constitution, as well as those of the Land Policy White Paper of 1997);
- Compliance with these principles during the planning and implementation of proposals (the draft guidelines propose a stepped approach and each step is intended to make a contribution to uphold these principles); and
- The opportunity for public and specialist input in the decision process (the participation of land users, consultation with experts from government as well as the private sector is upheld in the draft guidelines through the proposed planning teams).

With respect to actual EIM procedures and specifically EIA procedures, the draft guidelines require further input. It has been agreed between DLA and national DE&T that the draft guidelines will be made available to National and Provincial Environmental Affairs offices for in-depth comment and technical input. In this way, the guidelines will be further in-line with EIM procedures and DE&T will be providing direct technical support to DLA.

### 5.3 Recommendations in Terms of EIP and Land Reform

So as to build sustainable Land Reform and an effective and supportive relationship between DE&T, it is proposed that land reform specific EIA regulations should be drafted and agreed to by the two departments of DLA and DE&T. These should replace the existing EIA regulations as far as land reform projects are concerned.

DLA is committed to environmental sustainability in Land Reform and would like to self-regulate as far as possible. The advantages of this approach are:

- from a management perspective within DLA this will ensure better responsibility and ownership for environment management as part of Land Reform;
- integration of environmental considerations with the planning process improves the changes of holistic and sustainable Land Reform; and
- this will allow for more streamlined and efficient delivery of Land Reform.

Regarding the content of these regulations the following is suggested:

- The DLA-DANCED project guidelines, once tested, provide the basis;
- DE&T, both National and Provincial, provide substantive input into these guidelines;

- Procedures must be streamlined to increase efficiency;
  - The roles of DEA&T and DLA must be clear, with as much self-regulation by DLA as possible; and
  - The appointment of an appropriate consultant is optional due to the cost involved and that alternatives be considered.
- There are two ways in which these land reform specific regulations could be drafted:

- **Option 1:** DLA and DEA&T jointly draft land reform specific regulations to amend the EIA regulations. DEA&T issues them in terms of NEMA. This environmental impact function will then become part of DLA's EIP component and be audited accordingly.

In terms of the EIA regulations, there is a need to distinguish between activities and procedures (or process) either one of which may be amended to become Land Reform sensitive. Out of this comes the possibility to change or adapt the *procedures* required for EIA regulated Land Reform, and to give more responsibility to DLA in the process which will be done in consultation with DEA&T.

This might require that a DLA planner (suitably qualified) is used rather than an independent consultant, possibly supported by an appropriate committee and/or individual (from the environmental regulator). This would include EIA-type activities such as site visits, check lists and assessments for evaluating the severity of potential environmental impacts. This process would be part to the Land Reform planning process and reporting, which would improve the integration of environmental and sustainability issues into the current planning assessment. This approach is based on an alignment of procedures concept, in which the EIA is part of the planning assessment as opposed to being an add-on or separate report as is currently the situation.

Some implications for DEA&T, with this approach, are that DEA&T will need to provide resources (personnel and budget) to ensure its implementation, as the revised approach will still be under NEMA. This would then need to be incorporated as part of the DEA&T Consolidated EIP&MP Report and be audited according to compliance with DEA&T regulations, and will from DLA's perspective be part of the DLA's EIP component of the Consolidated EIP&MP reporting.

The option may involve a change to the definition of *activities* as per existing EIA regulations and make them Land Reform specific, which will still need to be done by DEA&T.

- **Option 2:** DLA and DEA&T jointly draft land reform specific regulations which are issued by DLA in terms of existing Land Reform legislation. Potential implications of self-regulation for the DLA are that it provides additional motivation for DLA to provide resources and build capacity for this function. This environmental management function would need to be reported upon as the EMP of DLAs Consolidated EIP&MP report and would need to be audited annually.

The effect of this option would be to exclude Land Reform projects from DEA&T regulation and to instead promulgate DLA environmental regulations in terms of requirements as part of the planning procedure using DLA legislation. There may be variations specific to types of



projects within this option that could be explored. For example, there may be a conditional exclusion, which may include a DE&T role in the assessment process and/or an auditing role. This implies a form of self regulation by DLA and an auditing role for the DE&T. Auditing would then become part of the annual reporting process associated with the DE&T Consolidated E&MP.

Potential implications of self-regulation for the DLA are that it provides additional motivation for DLA to provide resources (budget and personnel) and build capacity for this function as part of the MTEF. Furthermore, it would then represent an environmental management function and would need to be reported upon as the EMP of the DLA Consolidated E&MP report and would need to be audited annually. DLA reporting on Land Reform implementation will then be done through the EMP component of the Consolidated Report.

! DLA preference in terms of Land Reform EIA options is Option 2: DLA and DE&T jointly draft land reform specific regulations which are issued by DLA in terms of existing Land Reform legislation.

#### 5.4 Proposals in terms of EMP and Spatial Planning

Spatial planning is interpreted as relating to the EMP component of DLA's Consolidated E&MP, consequently Section 14(g) of NEMA requires proposals for the promotion of objectives and plans for the implementation of ... Chapter 5 (Integrated Environmental Management) of NEMA. The implementation of IEM specified in Section 24 of NEMA refers to activities that require authorisation.

Land Development Objectives (LDOs) are instruments for strategic spatial planning at a Local Authority level, and therefore are not relevant for Chapter 5 of NEMA. Nevertheless, the relevant national departments involved in the various components of Integrated Development Plans (IDPs) should engage the issue of incorporating environmental considerations into the local authority planning (IDP-LDO) process, in terms of both policy, design and implementation. The processes leading to the *White Paper on Development and Planning* (DLA) and the *Municipal Systems Bill* (DPLG) should address these issues.

On the other hand, land development management, and particularly the land development authorisations under the DFA (or other provincial planning legislation), directly relates to authorisation of activities. Clarity is required on the ambiguity between the DFA land development authorisation process and the environmental regulations under ECA (and in the future, IEM procedures and regulations under Chapter 5 of NEMA). The process, scope and role of these authorisation requirements must be aligned. The alignment issues will be addressed by the DLA in consultation with the DE&T.

One of the main factors that contribute to the slowness of the process of obtaining planning approvals for development applications are the requirements that land development applicants need to obtain different types of approvals from different authorities. These processes tend to duplicate each other and there has been no effort to align them. The effect



of this has been that land development applications have been long drawn and are consequently expensive. The DFA intention is to speed up the development approval process to an approximate 120-day process regulated by the DFA regulations.

The following proposals do not seek to eliminate all the different types of approvals that have to be sought, but rather to how those that are linked to spatial planning should be aligned. Approvals such as for access to provincial and national roads, as well as detailed building plan approvals are not regarded as planning approvals in terms of this mandate and therefore will not be dealt with here.

The main approval routes that have to be aligned are the planning approvals as applied for in terms of the different laws, as well as environmental approvals in terms of the Environmental Conservation Act. It will be worthwhile to explain the purpose of these approvals. The Environmental Conservation Act (ECA) was passed, *inter alia* to give the Minister of Environmental Affairs the power to establish procedures for land development applicants to obtain environmental permissions in order to undertake certain land uses or to change the use of land. The regulations promulgated in terms of the ECA listed land uses for which environmental permissions are required as well as the process to obtain such permissions. The Minister of Environmental Affairs and Tourism gives or withholds these approvals, with certain approval powers delegated to the provincial MECs responsible for environmental affairs. It is clear from the ECA that it was intended that it would be possible for the environmental approvals to be granted by Local Authorities but no such delegations have been made to date.

It must be acknowledged that environmental considerations are indeed very important and no planning system can be sustainable without due consideration being given to environmental management. The Chapter 1 principles of the DFA also make this quite clear. It should also be mentioned that due to current capacity constraints, particularly at local government level, it is unlikely that the vast majority of Local Authorities will be able to exercise the function of being environmental authorities in the short to medium term, in the event of this function being delegated to local government. The Green Paper on Development and Planning does however correctly propose that most planning decisions should be taken at the local sphere of government. This would be a long term proposal as it is not entirely possible for environmental and planning decisions to be taken at that sphere of government currently. What needs to be done is that the two approval processes need to be more closely aligned, both in terms of process and the consistency of decisions taken by different authorities.

Two proposals are made in this regard.

- The first proposal is based on the DFA model of decision making. In terms of this proposal, the procedures for planning applications would include environmental procedures, as the present DFA regulations do. The land development applicants would conduct environmental investigations as part of the preparation of the land development application. The environmental investigation would be submitted as part of the land development application. The environmental authority (Provincial Environmental Affairs) and the Local Authority would evaluate the application simultaneously and one decision could be reached which would cover both issues. The conditions that could be imposed on the approval would cover both planning and environmental issues. There are, however, a few problems with this proposal. In terms of the ECA, the power to grant environmental

approvals can be delegated to the provincial MEC responsible for environmental affairs or to the officials of the environmental department. An environmental approval is also sought prior to the Tribunal Hearing.

- The second proposal would be for the environmental and planning approval processes to be dealt with separately, but to be aligned in terms of process. What this will involve is that land development applicants which require environmental approvals will first have to obtain the environmental approval by complying with the ECA regulations. Having obtained such environmental permission, the land development applicant can then proceed to apply for a planning permission. The principle here will be that the planning authority will not consider land development applications if no environmental permission has been given, where such is required. This process does not integrate the two approval processes and certainly does not solve the time problem, but it simply aligns the two processes such that the problem of legal uncertainty is removed.

There seems to be a change in the approach towards environmental management in the country. This change is made clear by the National Environmental Management Act. This Act recognises the need for cooperative environmental management and there is recognition for government departments, other than DEA&T, as environmental *affectors* and environmental *managers*. This allows scheduled departments to put in place environmental management procedures and systems particular to their needs. This moves us a step towards integrating planning authorities and environmental authorities. Until there is integration with the authorities and for the time being however, one of the two above proposed processes will need to be further developed.

! DLA preference in terms of land development authorisation options is the second proposal. *the environmental and planning approval processes to be dealt with separately, but to be aligned in terms of process.*

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## Annexure A: Indicators

### Sustainable Development Indicators

There is currently no clear consensus (international or national) on what constitutes sustainable development, however the achievement of the objective is a priority, and increasingly this is becoming more possible with growing experience in the field. In order to achieve the goal it is useful for policies and programmes to be aligned to some form of indicator. The DLA-DANCED project currently in progress shall be drafting an Environmental Policy from which indicators will be derived. The policy shall be available in March 2001 and the indicators thereafter. In addition the Quality of Life report produced by the Monitoring and Evaluation unit, is currently being revised to incorporate environmental provision in the estimation of sustainable livelihoods. Both of the documents and process shall be reported on to the CEC in the First Annual Report.

In the interim the Department of Land Affairs is striving for and fulfilling its commitment to sustainable development has identified the following characteristics that may be used as indicators to achieve sustainable development within its sphere and constitutional responsibilities.

### Indicators for sustainability

#### *The Integration of environmental objectives into broader development goals:*

- LDO requirements stipulate the requirement for the process and plans to be human centered and based on an understanding of the natural environmental integrity of the local area.
- DFA Chapter 1 Principles require Environmental Impact Assessments to be performed and include an assessment of the natural environment and environmental expertise in the processes of adjudication by Development Tribunals on land development applications.
- Public participation is a stipulated requirement of LDOs and DFA Chapter 1 Principles. The Development Tribunals adjudication process is empirically based on the active participation of civil society, government and stakeholders. This process is therefore dependent on the active participation by all decision-makers and organs of state for sustainable development to take place.
- Environmental considerations are required in feasibility studies for Land Reform as well as in Project life cycles.

#### *Improvement of institutional coordination*

- The DLA is responsible for policy and setting of norms and standards in spatial planning. The Green Paper on Development and Planning outlines and clarifies institutional responsibilities in the currently fragmented planning arena.
- Inter-departmental committees for planning of Land Reform projects are a statutory requirement but are dependent on active involvement by several key departments.
- The DLA is conducting capacity building modules for both internal DLA officials and external departmental officials on in order to integrate Land Reform and Spatial Planning LDO process with the environment.



***Establishment of consistent and transparent legislation***

- The DLA has through the development of normative and principle bases legislation sought to establish consistent and transparent legislation. Often by the nature of the legislative process terminology and concepts are complex. Where this is the case the Department has drafted series of Guidelines, resource documents and manuals, as was done for the DFA Chapter 1 Principles.

**Annexure B:****Development Facilitation Act, 1995: Chapter 1 Principles****GENERAL PRINCIPLES FOR LAND DEVELOPMENT AND CONFLICT RESOLUTION**

(ss 2-4)

**2 Application of principles for land development**

The general principles set out in section 3 apply throughout the Republic and-

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

- (i) Chapter II, serve as the general framework within which the Commission shall perform its functions and make recommendations and within which those recommendations shall be considered by any competent authority;
- (ii) Chapter III, serve as principles by reference to which a tribunal shall reach decisions;
- (iii) Chapter IV, provide the guidelines with which the formulation and implementation of land development objectives of local government bodies and the carrying out of land development projects shall be consistent;
- (iv) Chapters V and VI, guide the consideration of land development applications and the performance of functions in relation to land development; and
- (v) Chapter VII, guide the administration of the registration of land tenure rights.

**3 General principles for land development**

- (1) The following general principles apply, on the basis set out in section 2, to all land development:
  - (a) Policy, administrative practice and laws should provide for urban and rural land development and should facilitate the development of formal and informal, existing and new settlements.
  - (b) Policy, administrative practices and laws should discourage the illegal occupation of land, with due recognition of informal land development processes.
  - (c) Policy, administrative practice and laws should promote efficient and integrated land development in that they-

- (i) promote the integration of the social, economic, institutional and physical aspects of land development;
- (ii) promote integrated land and development in rural and urban areas in support of each other;
- (iii) promote the availability of residential and employment opportunities in close proximity to or integrated with each other;
- (iv) optimise the use of existing resources including such resources relating to agriculture, land, minerals, bulk infrastructure, roads, transportation and social facilities;
- (v) promote a diverse combination of land uses, also at the level of individual erven or subdivisions of land;
- (vi) discourage the phenomenon of 'urban sprawl' in urban areas and contribute to the development of more compact towns and cities;
- (vii) contribute to the correction of the historically distorted spatial patterns of settlement in the Republic and to the optimum use of existing infrastructure in excess of current needs; and

- (viii) encourage environmentally sustainable land development practices and processes.
- (d) Members of communities affected by land development should actively participate in the process of land development.
- (e) The skills and capacities of disadvantaged persons involved in land development should be developed.
- (f) Policy, administrative practice and laws should encourage and optimise the contributions of all sectors of the economy (government and non-government) to land development so as to maximise the Republic's capacity to undertake land development and to this end, and without derogating from the generality of this principle -
- (i) national, provincial and local governments should strive clearly to define and make known the required functions and responsibilities of all sectors of the economy in relation to land development as well as the desired relationship between such sectors; and
- (ii) a competent authority in national, provincial or local government responsible for the administration of any law relating to land development shall provide particulars of the identity of legislation administered by it, the posts and names of persons responsible for the administration of such legislation and the addresses and locality of the offices of such persons to any person who requires such information.
- (g) Laws, procedures and administrative practice relating to land development should -
- (i) be clear and generally available to those likely to be affected thereby;
- (ii) in addition to serving as regulatory measures, also provide guidance and information to those affected thereby;
- (iii) be calculated to promote trust and acceptance on the part of those likely to be affected thereby; and
- (iv) give further content to the fundamental rights set out in the Constitution.
- (h) Policy, administrative practice and laws should promote sustainable land development at the required scale in that they should -
- (i) promote land development which is within the fiscal, institutional and administrative means of the Republic;
- (ii) promote the establishment of viable communities;
- (iii) promote sustained protection of the environment;
- (iv) meet the basic needs of all citizens in an affordable way; and
- (v) ensure the safe utilisation of land by taking into consideration factors such as geological formations and hazardous undermined areas.
- (i) Policy, administrative practice and laws should promote speedy land development.
- (j) Each proposed land development area should be judged on its own merits and no particular use of land, such as residential, commercial, industrial, community facility, mining, agricultural or public use, should in advance or in general be regarded as being less important or desirable than any other use of land.
- (k) Land development should result in security of tenure, provide for the widest possible range of tenure alternatives, including individual and communal tenure, and in cases where land development takes the form of upgrading an existing settlement, not deprive beneficial occupiers of homes or land or, where it is necessary for land or homes occupied by them to be utilised for other purposes, their interests in such land or homes should be reasonably accommodated in some other manner.
- (l) A competent authority at national, provincial and local government level should co-ordinate the interests of the various sectors involved in or affected by land development so as to minimise conflicting demands on scarce resources.
- (m) Policy, administrative practice and laws relating to land development should stimulate the effective functioning of a land development market based on open competition between suppliers of goods and services.

- (2) The Minister may by notice in the Gazette—
- (a) prescribe any principle for land development in addition to, but not inconsistent with, the principles set out in subsection (1); and
- (b) prescribe any principle set out in subsection (1) in greater detail, but not inconsistent therewith,
- whereupon such principle shall apply throughout the Republic on the basis set out in section 2.
- (3) The Premier of a province may by proclamation in the Provincial Gazette—
- (a) prescribe any principle for land development in addition to, but not inconsistent with, the principles set out in subsection (1) or prescribed by the Minister under subsection (2);
- (b) prescribe any principle set out in subsection (1) or prescribed by the Minister under subsection (2) in greater detail, but not inconsistent therewith; and
- (c) publish for general information provincial policy relating to land development or any aspect thereof which is consistent with the principles set out in or prescribed under subsections (1) and (2) and paragraphs (a) and (b).
- whereupon such principle or policy shall apply in the province on the basis set out in section 2.
- (4) (a) The Minister shall, before prescribing any principle under subsection (2), cause a draft of such principle to be published in the Gazette and shall consider any comment on such draft principle received from any person during the period 30 days after such publication.
- (b) A list of principles prescribed under subsection (2) shall be laid upon the Table of Parliament in the same manner as the list referred to in section 17 of the Interpretation Act, 1957 (Act 33 of 1957), and if Parliament by resolution disapproves of any such principles or any provision thereof, such principles or provision shall cease to be of force and effect, but without prejudice to the validity of anything done in terms of such principles or such provision before it so ceased to be of force and effect.
- (5) (a) The Premier shall, before prescribing any principle or policy under subsection (3), cause a draft of such principle or policy to be published in the Provincial Gazette and shall consider any comment on such draft principle or policy received from any person during the period thirty days after such publication.
- (b) A list of principles and policies prescribed under subsection (3) shall be submitted to the provincial legislature, and if such provincial legislature by resolution disapproves of any such principle or policy, or any provision thereof, such principles or policy, or provision, shall cease to be of force and effect, but without prejudice to the validity of anything done in terms of such principles, policy or such provision before it so ceased to be of force and effect, or to any right or liability acquired or incurred in terms of such principles, policy or such provision before it so ceased to be of force and effect.

#### 4 General principles for decision-making and conflict resolution

(1) The general principles set out in subsection (2) apply—

(a) to any decision which a competent authority, including a tribunal, may make in respect of any application to allow land development, or in respect of land development which affects the rights, obligations or freedoms of any person or body, whether the application is made or the development undertaken in terms of this Act or, subject to paragraph (c), in terms of any other law;

(b) without derogating from the generality of paragraph (a), to any decision—

(i) on the question whether any illegal use of land should henceforth be regarded as lawful;



- (ii) approving or disapproving of any proposed change to the use of land in the course of proposed land development;
- (iii) relating to the level or standard of engineering services that are to be provided in respect of land development;
- (iv) relating to the permitted periods within which comments or objections should be provided and governmental decisions are to be taken during the course of land development procedures; and
- (v) relating to the consequences for any land development or for the rights and obligations of any person or body of a failure to provide any comment, make any decision or perform any other act within a period of time contemplated in subparagraph (iv); and
- (c) where a decision referred to in paragraphs (a) and (b) is made under any other law, only when such decision is made during the course of the administration of a law made after the commencement of this Act by the legislature of a province or by a local government body, including such a law which is inconsistent with Chapter III.

- (2) The decisions contemplated in subsection (1) shall be taken in accordance with the following general principles:

- (a) The decisions shall be consistent with the principles or a policy set out in or prescribed under section 3.
- (b) The decisions shall be made by at least one appropriate officer in the service of a provincial administration or local government body, and experts in the field of agriculture, planning, engineering, geology, mining, environmental management, law, survey or such other field as may be determined by the Premier.
- (c) The officer and experts shall, before conducting a hearing or reaching a decision, enquire into and consider the desirability of first referring any dispute between two or more parties in relation to land development to mediation and if they-

- (i) consider mediation appropriate, they shall refer the dispute to mediation; or
- (ii) consider mediation inappropriate, or if mediation has failed, the officer and experts shall conduct a hearing appropriate in the circumstances and reach a decision binding upon persons or bodies affected thereby, including the State or any local government body.

- (d) The hearing conducted by the officer and experts is open to the public and any person entitled to appear at the hearing may be represented by any other person.

- (e) The officer and experts shall upon request provide written reasons for any decision reached by them.

- (f) The Director-General of a provincial administration shall keep a record of reasons provided in terms of paragraph (e), make such record available for inspection by members of the public and permit the publication of such reasons by any person or body.

- (g) A decision made by the officer and experts shall be subject to review by any division of the Supreme Court of South Africa having jurisdiction.

## THE EXTENT OF STATE LAND IN THE REPUBLIC OF SOUTH AFRICA (ha) \*

## NATIONAL STATE LAND PER PROVINCE

## PROVINCIAL STATE LAND

National Department of Public Works

National Department of Land Affairs

(the nine provincial governments)

| PROVINCE          | SANDP   | SAPS   | DCS    | WATER AFFAIRS & FORESTRY | AGRI-CULTURE (FALA-land) | SOUTH AFRICAN NATIONAL PARKS | OTHER NATIONAL STATE LAND (2) | EX-TRVC STATES & SGT's | EX-SADT (2) | NATURE RESERVES & PROTECTED AREAS | OTHER PROVINCIAL STATE LAND (4) | RSA - TOTAL |
|-------------------|---------|--------|--------|--------------------------|--------------------------|------------------------------|-------------------------------|------------------------|-------------|-----------------------------------|---------------------------------|-------------|
| Eastern Cape      | 17 550  | 4 985  | 13 195 | 189 768                  | 15 621                   | 125 417                      | 279 700                       | 4 761 048              | 82 813      | 458 444                           | 128 120                         | 6 076 661   |
| Northern Province | 16 735  | 2 720  | 7 890  | 13 202                   | 8 405                    | 1 025 940                    | 350 000                       | 3 113 389              | 310 170     | 335 602                           | 120 020                         | 5 304 073   |
| North West        | 34 134  | 1 715  | 2 435  | 3 200                    | 6 390                    | 0                            | 225 000                       | 3 129 011              | 90 300      | 240 119                           | 184 400                         | 3 916 704   |
| Mpumalanga        | 10 251  | 4 410  | 3 000  | 81 356                   | 1 936                    | 955 670                      | 181 000                       | 644 773                | 119 499     | 209 878                           | 173 740                         | 2 385 513   |
| KwaZulu-Natal     | 7 690   | 4 205  | 17 700 | 79 982                   | 8 029                    | 0                            | 355 900                       | 0                      | 457 841     | 783 786                           | 218 390                         | 1 933 523   |
| Western Cape      | 47 959  | 5 750  | 20 755 | 382 500                  | 17 380                   | 196 812                      | 256 000                       | 0                      | 0           | 812 964                           | 173 370                         | 1 913 490   |
| Northern Cape     | 254 812 | 490    | 1 300  | 3 975                    | 27 251                   | 1 038 697                    | 230 500                       | 0                      | 18 788      | 57 267                            | 105 600                         | 1 738 680   |
| Free State        | 31 325  | 475    | 3 085  | 1 020                    | 1 682                    | 11 633                       | 99 700                        | 159 384                | 63 754      | 198 418                           | 65 000                          | 635 776     |
| Gauteng           | 14 176  | 15 395 | 14 975 | 3 777                    | 0                        | 4                            | 155 500                       | 0                      | 36 762      | 42 191                            | 146 890                         | 429 670     |
| TOTAL             | 434 632 | 40 145 | 84 335 | 758 780                  | 86 694                   | 3 354 173                    | 2 133 300                     | 11 807 605             | 1 179 927   | 3 138 669                         | 1 315 530                       | 24 333 790  |

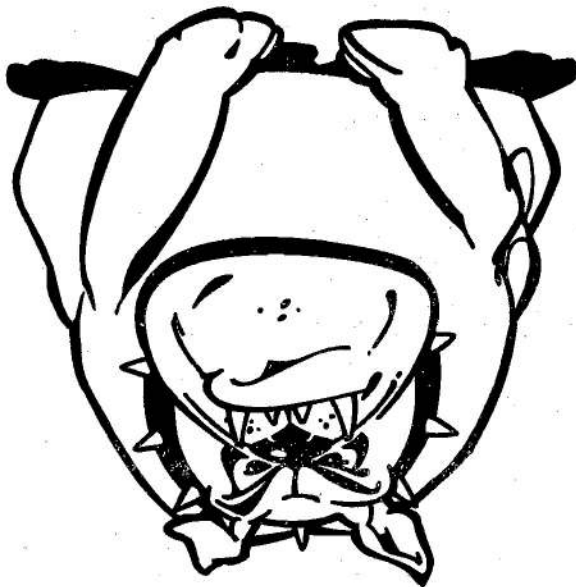
Notes:-  
 Number of central and provincial government properties (including foreign properties): 240 000  
 \* *Excluding the following:-*

- unsurveyed, unregistered state land (e.g. coastal areas)
- foreign properties (e.g. SA embassies)
- offshore islands (e.g. Robben Island)
- land held in trust by the state (e.g. former Coloured Rural Areas)
- parastatal land (e.g. Transnet)
- former KwaZulu land (now Ingonyama Trust land - 2 902 056 ha)
- land leased for state domestic or other national purposes (e.g. Richtersveld National Park)

- (1) FALA-land refers to Financial Assistance Land (land bought in from insolvent farmers and ex-PWD agricultural land). The FALA-land is presently administered by DLA. Legality PWD still has a power of attorney with the National Department of Agriculture, and this needs to be addressed.
- (2) Includes unreserved PWD-land, and other smaller holder departments (e.g. Home Affairs, Justice, Mineral & Energy Affairs and experimental farms)
- (3) Ex-SADT - refers to South-African Development Trust land *outside* the geographical boundaries of the former homelands and Self Governing Territories.
- (4) Includes provincial agricultural land, as well as school and hospital land.

*compiled by the Department of Land Affairs, Directorate Public Land Inventory*

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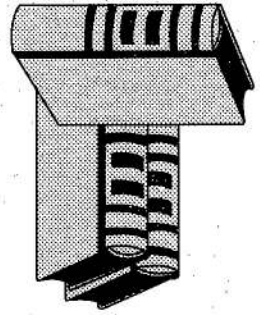
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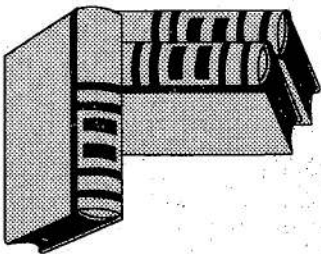
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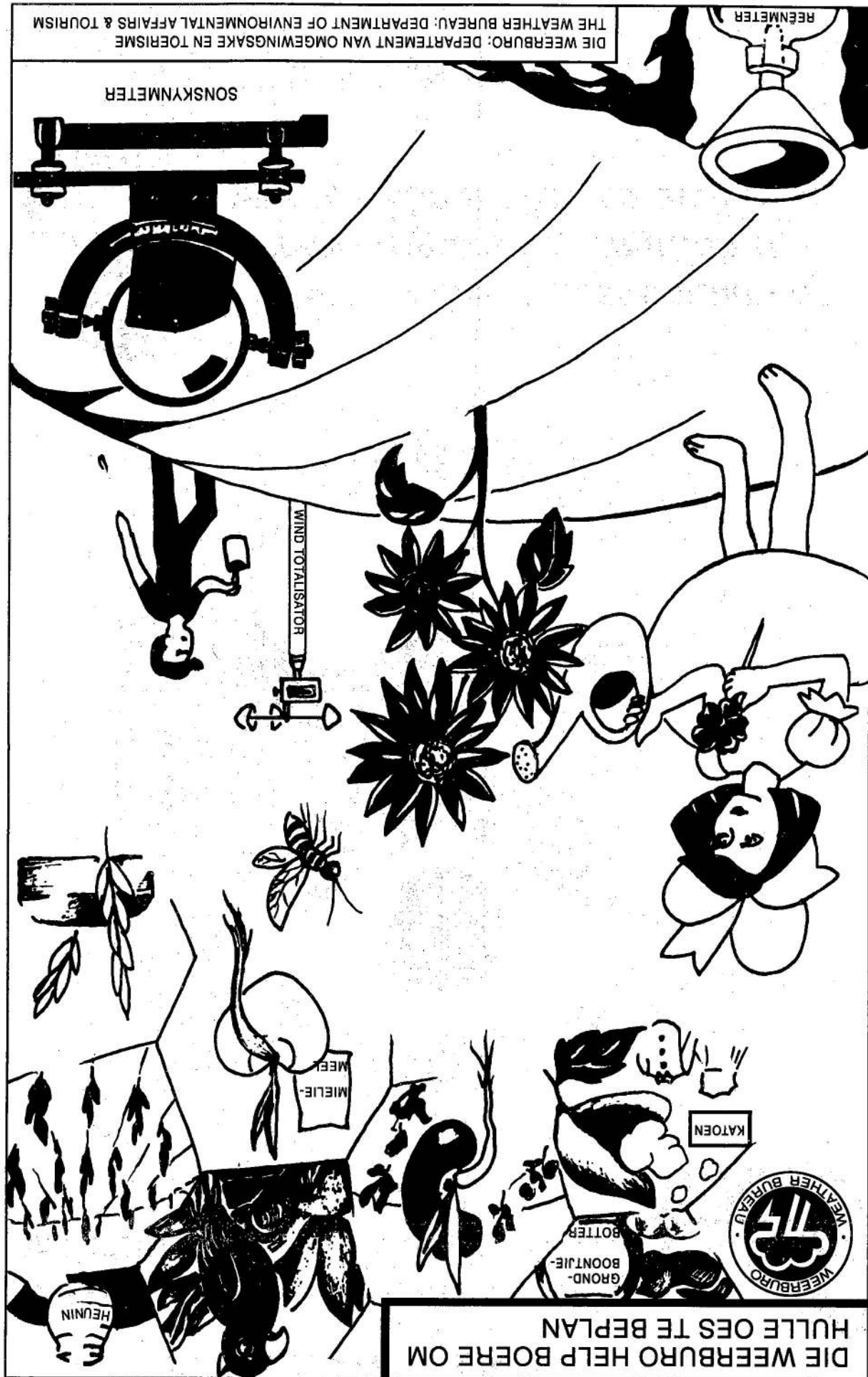
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