SUMMARY OF THE KEY FINDINGS ON THE STUDY ON THE WILLING-SELLER, WILLING-BUYER APPROACH AND SHARPENING LAND ACQUISITION STRATEGIES

1. BACKGROUND

The review of the "Willing seller-Willing buyer" (WSWB) document, arose out of recommendations proposed at the Land Summit in 2005. The first draft was available in 2008 and then reviewed in 2009/2010.The Land Summit affirmed several issues which Government and other stakeholders had begun to flag as areas needing a rethink by both policy makers and implementers of land and agrarian reform. Prior to the Land Summit, the 10-year review of land and agrarian reform implementation pointed to a number of gaps in the policy and legislative framework. Most of the gaps were echoed by the Land Summit participants. The following is a summary of the main areas of resolution and recommendations which emerged from the Land Summit and that were analysed as part of the WSWB approach in 2008:

- Commitment by all to the redistribution of at least 30% of white owned agricultural land by the year 2014.

- Government aims to reduce poverty and unemployment by half over the next decade. It was clear from the summit that there is a strong association between a more equitable distribution of land and higher living standards, lower levels of rural poverty, stronger growth performance and a more equal distribution of the national income. Therefore, land reform is necessary not only to undo the injustices of the past but also to contribute towards economic transformation, and towards the achievement of accelerated and shared growth.

- Current approaches are not delivering land at the scale required to achieve this target and are also not realising the full potential of developmental benefits associated with land reform. The need to change the approach in order to deliver land at scale although in an orderly manner cannot be over-emphasised.

- The state needs to assume a proactive and leading role in ensuring accelerated and sustainable land and agrarian reform. Markets alone will not achieve the kind of structural change required.

- Reform should aim to restructure the dominant models of land use and agricultural production. Fundamental changes to the patterns of land ownership are required. This includes support for small-scale agriculture, the active promotion of sub-division of agricultural land and the need to reverse the growing concentration of land holdings, and changing the current farm size culture.

- The principle of willing seller-willing buyer as the basis for land reform was overwhelmingly rejected. Market-based land acquisitions entail reliance on the existing land market system which is characterised by a number of distortions and imperfections, such as restrictions on land subdivisions, the absence of an effective land tax, unequal access to capital markets and information, as well as contradictory requirements in respect of municipal zoning regulations. The free

market mechanism is also open to abuse through price inflation. The state needs to review its market driven approach with a view to establishing alternative land acquisition instruments such as expropriation, land ceilings, land tax and the state's right of first refusal in all land transactions.

- To meet the obligation for accelerated land redistribution, the state's capacity and resources need to be substantially enhanced in all three spheres of government.

- Government needs to be capacitated to target beneficiaries, to identify and acquire land for redistribution and to support beneficiaries with a range of mechanisms that enable them to become independent.

- Furthermore the achievement of this target requires strategic partnerships, in which government, landless people, farming communities and other components of civil society act together for sustainable land and agrarian reform. In particular stronger collaborative relationships need to be built between the state, social movements and other stakeholders at a local level.

- There has been little real change in the lives of people living and working on commercial farms. The new approach to land reform must also ensure that farm-dwellers derive benefits from land reform and the scale of evictions and the ongoing violation of human rights on farms must receive urgent attention.

- Key principles underlying implementation of the land and agrarian reform should include the decentralisation of the land reform process, participatory and people-centered methods which are area-based, and the integration of land and agrarian transformation into wider development priorities, particularly through the Integrated Development Plans (IDPs) of local and district municipalities. Land reform should promote sustainable development by providing land for production and settlement, in both rural and urban areas.

- The state needs to conduct a land audit on private and state land and make this information publicly available.

- The state must regulate the ownership of land by foreigners to contribute to increased access to productive land for land reform purposes.

In 2009, the Department of Land Affairs (DLA) was reconstituted into the Department of Rural Development and Land Reform. The Land Summit proposals as well as work done by the erstwhile DLA since the Summit were considered as part of the development of the Green Paper on Land and Agrarian Reform. In the absence of approved alternatives to the WSWB, the DRDLR had to consider "sharpening" its existing acquisition strategy, the Proactive Land Acquisition Strategy (PLAS).

2. KEY FINDINGS OF THE WILLING SELLER WILLING BUYER REVIEW

The methodology adopted during the review process was essentially a desktop exercise, evidence from two limited case studies undertaken by three academics and anecdotal evidence

collected through telephonic interviews from 1 provincial land reform office. The results therefore were not conclusive enough at that stage to generate concrete policy proposals.

2.1 Re-statement of the rationale for the review

The thrust of the rationale for the review of the WSWB principle remains. However, the ANC's' Polokwane Conference resolutions, adopted in 2007, can be considered a clear arbiter for change in land policy. The conference recognized that the WSWB "*has constrained the pace and efficacy of land reform*" and that "*the market is unable to effectively alter the patterns of land ownership in favour of an equitable and efficient distribution of land*".

While the Land Summit delegates "rejected" the principle of the WSWB, the Polokwane resolutions are **cautious** by proposing regulatory and policy changes **within the ambit of the Constitution** to combat what it terms "*monopolistic practices in the markets for agricultural land, inputs, finance and outputs.*" The resolutions reiterate the following proposals of the Land Summit:

- the use of expropriation "where necessary" in accordance with the Constitution
- Introduction of a special land tax and other progressive tax measures
- Repeal of any legislation which impedes the subdivision of agricultural land and other policies which promote the concentration of land and the under-utilisation of land.

It is therefore important to stress that Polokwane Resolutions highlights the shortcomings of the approach and proposes a suite of mechanisms that will accelerate land delivery to the poor.

2.2 The Meaning and Operation of 'Willing Seller-Willing Buyer' in the Context of Land Reform

The document discusses at length the meaning and operation of the term WSWB in the context of the land reform programme and deduces that land reform transactions are in many respects not 'normal real estate transactions'. The document claims that it was difficult to state whether the aberrations of the WSWB principle impacted on the pace of land reform delivery because the Department had managed to spend its land reform budget since 2005-2009 but obtained significantly less in terms of hectares despite the increased budget over that period. The document also noted that the price per hectare paid in the restitution programme were significantly higher than normal market transactions in those areas. In contrast, a farm land price trend analysis revealed that the prices paid by the Department for land for land redistribution beneficiaries has tended to be below market prices for reasons that are not clear but could be based on 3 possible reasons:

-inferior quality of land purchased through the programme;
-poor state of infrastructure on the farms leading to sellers lowering prices; and
-the pace of redistribution in certain areas that tempered the markets in those areas.

2.3 The proposed models

The document evaluates 11 models in terms of impact, implementation and broader consequences (see Table below for summary):

- Model A: Increasing the Use of Land Expropriation
- Model B: Offering Below-market Compensation
- Model C: The State's Right of First Refusal
- Model D: Imposition of Land Ceilings and the Principle of One Farm – One Farmer
- Model E: Imposition of a Land Tax
- Model F: Regulation of Foreign Land Ownership in South Africa
- Model G: Scrapping Restrictions on the Sub-division of Agricultural Land
- Models H and I: 'Use it or lose it' and 'retiring farmer buy outs'
- Model J: Proactive Land Acquisition
- Model K: Concentrated Land Purchasing.

The authors of the document state that the models, though not mutually exclusive and some could be used as a suite of options together, could have the following effects:

- avoid the market mechanism altogether;
- increase land availability;
- reduce prices by means of reducing the value/profitability of agriculture; and
- reduce prices/increase availability by means of improving beneficiaries'/ state's bargaining effectiveness.

	How great is the potential impact of the model?	How implementable is the model?	What are the broader implications of the model?	Other comments
Model A: Increasing the Use of Land Expropriation	In the absence of below-market compensation (Model B) the impact of this model is unclear. Presently restitution is budget-constrained, and while expropriation could speed up settlement on individual claims, it is not clear how this would accelerate the model overall; unless the absence of expropriation means that government is over-paying for farms, which is uncertain.	The more selectively the model is applied the more implementable it will be.	Provided that it is done professionally and skilfully, the broader impact will be positive, unless combined with below-market compensation, in which case see comments in relation to Model B below.	Should focus on unblocking restitution and possibly on strategic acquisition for redistribution.
Model B: Offering Below-market Compensation	Only applicable in instances where land is expropriated. Otherwise, impact will depend on how far below market value the compensation is; going modestly below market value will only make a modest difference, while compensation very far below market value will make a large difference. However, possibility of a 'carrot and stick' strategy whereby owners agreeing readily to gov't offer get market value, whereas if go to expropriation	The potential weakness of this approach is that to the extent it is perceived as unfair by expropriatees, it might result in large numbers of legal battles.	This approach is likely to be perceived as punitive and therefore alienate the white commercial farming sector, making cooperation more difficult. A policy of very low compensation would likely negatively affect the banking sector.	Difficult to determine whether will accelerate restitution or slow it down; depends in part on how targeted, and how much owners will challenge in court. Will be politically sensitive and, if drastically below-market, hugely so. Justification for getting owners to 'pay for land reform' is weak. However, the

	then offer is in terms of 25(3)-based compensation formula. This would have the added benefit of reducing the reliance on expropriation.			'carrot and stick' approach whereby lower compensation is given to owners who resist a fair offer, might work very well, provided the offers are *demonstrably* fair; this strategy however shifts the focus from extended the buying power of the budget, to accelerating agreements with owners; this in itself will not accelerate the overall pace of restitution in the short term, but possibly in the medium term. It will also help assess the cost of finalising restitution.
Model C: The State's Right of First Refusal	Possibly efficacious for redistribution if applied selectively in areas where markets are thin; elsewhere it would be superfluous and result in an administrative burden.	If done on selective basis it is implementable, but would require new legislation.	If done selectively and efficiently, little or no broader implications.	
Model D: Imposition of Land Ceilings and the Principle of One Farm – One Farmer	If done then possible an effective way of manipulating the land market and driving prices down.	Difficult to implement effectively because relatively easy to evade	If pursued aggressively then potentially very negative impacts on the agricultural sector. Imposition of the one farmer-one farm principle (which is a variation of the ceilings approach), if applied literally, would be disastrous for the economy in general.	Not advisable model at this stage.
Model E: Imposition of a Land Tax	Minimal impact if applied at level affordable to most commercial farmers; if applied at higher level, then impact could be dramatic.	If done 'through' the existing property rates policies and infrastructure, quite easy; a separate, additional tax would require long period of legal development.	If applied at a modest rate, little or no broader implications.	Municipalities around the country are presently in the process of levying rates on farmland, mostly for the first time; plans to influence the way in which rates are levied on farmland can begin to make them closely resemble a strategic land tax, but impact for land reform will not be great and will be very difficult to measure.
Model F: Regulation of Foreign Land	Probably minimal or no impact in most of the country, but uncertain because of	Very feasible. Moreover, the Expert Panel's recommendations	Regulations could act as a deterrent to some kinds of desirable investment,	Regulations should be supported more on the grounds of

Ownership in South Africa	inadequacy of information.	regarding the need for Deeds to keep track of race, gender and nationality of buyers should be put into effect even if ownership regulations for foreigners are not.	not because of the regulation as such but if their administration is such that compliance is complex and time-consuming.	preventing possible future problems with foreigners buying land than in order to accelerate land reform right now.
Model G: Scrapping Restrictions on the Sub-division of Agricultural Land	Uncertain whether making subdivision easier will increase the supply of land to land reform or decrease it, but overall the effect will probably be modest to minimal.	Very feasible.	Uncertain. It could result in more agricultural land going out of farming, because subdivision raises the saleability of land for lifestyle purposes especially, notwithstanding the intention to have zoning regulations in place.	The focus here should be on clarifying the (non-legal) obstacles to subdivision as well as learning how to effect subdivision more inexpensively.
Models H and I: 'Use it or lose it' and 'retiring farmer buy outs'	Model H is potentially very effective if combined with expropriation, and Model I is an unnecessary variation on the right of first refusal model. The question in respect of Model H is whether it is more effective than simply encouraging sales on the market. The relationship to the price mechanism is unclear.	See comments above in respect of Model A.	See comments above in respect of Model A.	See comments above in respect of Model A.
Model J: Proactive Land Acquisition	Experience to date does not suggest that this approach helps depress land prices, but used differently (e.g. in conjunction with Model A or Model K) the prospects are better. Will have to test and refine.	PLAS has already occurred on a wide scale; what has not happened is the use of PLAS as part of a well-designed negotiation or spatially-planned strategy.	There are no obvious wider implications of this model.	Much depends on whether the new approach to PLAS is approved and put into practice.
Model K: Concentrated Land Purchasing.	Experience to date suggests this approach can be highly effective in accelerating land acquisition for redistribution and keeping prices low. There is no evidence that it can lead to absolute price declines, and there is reason to suppose that if this were a stated objective it would encounter resistance and thus falter.	Highly and demonstrably feasible: requires no new legislation, lends itself to partnerships (thus expanding gov't limited capacity), and fits into other initiatives such as area-based planning. Can work in demand-led mode or via PLAS.	There are no obvious wider implications of this model. One of the advantages of this model is that it is area-focused, thus it does not 'disturb' areas where land is not actively being sought for land reform purposes.	There is a need to experiment with this model to understand it better and to refine it; it possibly has limitations that are not presently evident, and/or lends itself to variations appropriate to different circumstances.

Without advocating for a possible combination of models, the document seems to favour the following models:

- Expropriation;
- Proactive Land Acquisition; and
- Concentrated Land Purchases
- Right of first refusal in areas where the markets are thin

Expropriation

In relation to expropriation, the issue of compensation has always presented a conundrum. Certain authors have interpreted Section 25(3) of the Constitution to imply that expropriating required land against compensation at a level below market value is constitutionally viable. Some have stated that Section 25(3) is vague and that the three aspects of compensation (amount, time and manner of payment) must be "just and equitable" without properly defining what is "just and equitable". Zimmerman[1] points out that land reform is "constitutionally special" when it comes to the calculation of compensation and that the compensation balance is weighted toward the public interest in land reform from the start. Others like Professor AJ van der Walt state that the authority vests in the courts to interpret Section 25 and "consider all circumstances very carefully in every individual case and then decide how compensation should be determined, rather than working on the assumption that the section favours land reform and that a blanket discount is therefore in order".[2]

However, after 13 years of the courts interpretation of Section 25, clear policy directives need to be put forward to enable the state to meet its redistributive goals within the ambit of Section 25(3) of the Constitution. There is also some debate among legal scholars on whether Section 36 of the Constitution (the so-called general limitations clause) applies to Section 25. This debate has relevance for any new compensation formula that is proposed because it also has to be tested against the factors listed in Section 36(1)[3]. Van der Walt's[4] conclusion that these two provisions do not conflict and apply cumulatively is supported.

The WSWB document quite rightly points out that the compensation formula currently used in expropriation cases focuses on Section 25(3)(c) *the market value of the property* and (d) *the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property*, of the Constitution. However it should be noted that these two factors are the only quantifiable factors in relation to the calculation of compensation in expropriation cases. The problematic Gildenhuys formula was refined by the DLA in 2000[5] but the new formula was also problematic as historical information on interest rate subsidies (one of the factors used in the calculation) was scant and departmental attempts to obtain this data has been futile.

The document mentions 1 variable that could be looked at in the possible amendment of the compensation formula:

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[1] Zimmerman J, 2005. "Property on the line: is expropriation-centered land reform constitutionally permissible," South African Law Journal 122 (pp 378-418).

[2] Van der Walt A J, 1997. "The Constitutional Property Clause: A comparative analysis of Section 25 of the South African Constitution of 1996," Juta, Cape Town

[3] Section 36(1) of the Constitution provides for the limitation of the rights in the Bill of Rights and reads as follows : "The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including-
(a) the nature of the right;
(b) the importance of the purpose of the limitation;
(c) the nature and extent of the limitation;
(d) the relation between the limitation and its purpose; and
(e) less restrictive means to achieve the purpose."

[4] ibid.

[5] Department of Land Affairs, 2000, "DLA Handbook on Property Valuation", unpublished.

- *A land reform discount*: a discount can be considered if the land is owned by a foreigner, if the land exceeds a proposed land ceiling or if the land was not utilized productively.

International Human Rights law shows a leniency towards compensation below market value in certain circumstances. Two cases in point are *James v UK*[6] and *Lithgow v UK*[7], where the European Court of Human Rights sanctioned a discount approach. Of particular relevance to the South African land reform agenda, *James v UK*, a case involving the transference of property ownership as opposed to long term leaseholders at rates which subtracted the average value of the leaseholders investments in the properties, the European Court held that "eliminating what are judged to be social injustices is an example of the functions of a democratic legislature. More especially, modern societies considering housing of the population to be a prime social need, the regulation of which cannot be entirely left to the play of market forces". Although it is acknowledged that South African courts are reluctant to consider foreign jurisprudence, it should be acknowledged that such jurisprudence can assist in the formulation of policy directives in determining an improved compensation formula.

The WSWB document does not propose the extent of the discount. The document also does not explore the possibility that the formula can be adjusted for different categories of land e.g. where one farmer owns more than 1 farm or for farms that have been underutilized. There is no academic evidence or legal precedence on what a "discount" should constitute. This would have to be a policy decision that the Minister must approve. One suggestion is to apply an arbitrary uniform discount between 1% and 30% or the discount can be based on the average Consumer Price Index (CPI) or a defined Land Price Index[8], adjusted annually in January.

The Constitution does not provide any guidance on what is "market value". Land Claim Court judgments provide some guidance by looking at the "comparable sales" methods of valuation to arrive at the market value but does not provide guidance on what valuation method should be used when there is a shortage of comparable sales. The DLA, during informal discussions held with Treasury officials in 2002, agreed that, for purposes of disposing agricultural state land where there were no comparable sales, production value would be used as the appropriate market-related value in terms of the Public Finance Management Act (PFMA), 1999. Further in some expropriation cases the so-called Point Gourde[9] principle is utilized in order to strike a balance between the public interest and the expropriatee's interest.

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[6] *James v United Kingdom* 98 European Court of Human Rights (ser A) at 9 (1986)
[7] *Lithgow v United Kingdom* 102 European Court of Human Rights (ser A) at 329 (1986)

[8] A land price index would need to be established by an economist who would then need to arrive at an index after a proper land market study in all provinces. The problem with this approach is that there would be differing indices across the provinces.
[9] The Land Claims Court in *Ex parte Former Highlands Residents; in Re: Ash and Others v Department of Land Affairs* (2000) 2 All SA 26 (LCC) adopted a test known to Commonwealth expropriation jurisprudence as the "Point Gourde" principle where it is stated that market value at the time of expropriation must be determined by disregarding any increase or decrease in the market value of the expropriated property arising from the proposed or completed expropriation process i.e. the use of voluntary sales in the area must be used as a basis for comparison.

The issue of market value methodology versus production value methodology has sparked rigorous debate within the Department but more in relation to the disposal of state land/state assets. This debate was put to rest after two audits pointed out that the sale of state assets is governed in terms of the PFMA, which states that a market related value should be obtained for state assets and that approval should be sought from the relevant treasury should assets be disposed off below market value. This is inconsistent with Municipal Supply Chain Regulations (issued in terms of the Municipal Finance Management Act). In terms of the **Disposal and letting of State assets**, these regulations state:

40(2)(b)(i) *"immovable property may be sold only at market related prices except when the public interest or the plight of the poor demands otherwise"*

40(2)(c)(i) *"immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise"*

The WSWB document points out the inconsistencies between the Expropriation Act and Section 25 (3) of the Constitution. It is worrying to note that because of the shelving of the Expropriation Bill, the compensation issue will continue to be applied inconsistently and that the higher compensation either in terms of the Constitution or the Act will always be favoured because it will be deemed to be "just and equitable".

Badenhorst (1998)[10] states that "just and equitable" compensation is the sum of the total value of the interest of those affected by expropriation minus the public's interest. For the purposes of application of such a formula, the various factors mentioned in Section 25(3) of the Constitution can be classified under the following heads of interest:

The interests of those affected

(a) current use of the property
(b) market value of the property
(c) own contributions of the affected party
(d) other interests of the affected party; and
(e) other positive factors which are deemed to be relevant to the court

The public's interests

(a) history of acquisition
(b) historical use
(c) direct state investment and subsidies
(d) purpose of expropriation
(e) other negative factor which are deemed relevant (may include land held for speculative purposes, underutilized land, unproductive land, etc).

The cold reality of this boils down to rands and cents- these factors would need to be quantified. There is no doubt from the literature and the current document that "**what price should we pay**" should be balanced with the "**nation's commitment to land reform**". There is a definite need to

[10] Badenhorst P J, 1998, "Compensation for the purposes of the property clause in the new South African Constitution," *De Jure* 251-270

quantify factors so that a "just and equitable" compensation formula is arrived at. The solution is simple: revise the current compensation formula by agreeing on a fixed land reform discount.

Proactive Land Acquisition Strategy

Until relatively recently, the manner in which land redistribution has proceeded has been almost exclusively demand-led, meaning that people approach government in search of grant funding with which to acquire land that they have identified. The Proactive Land Acquisition Strategy (PLAS), which began implementation in 2007, is a complementary mechanism for conducting redistribution, in which land is acquired by government in advance of identifying the specific individuals who will benefit from it. In this approach, land may be identified for acquisition on the basis of its strategic properties, e.g. advantageous location, high quality, etc.
While the land acquired by means of PLAS is generally private land purchased in line with the willing buyer-willing seller principle (though here it is unambiguous that the willing buyer is the State), PLAS allows for means of tapping into the markets that are not so readily available through the demand-led approach. This might for example be in order to realise the vision generated through an area-based planning, which should seek, *inter alia*, to understand the nature of land need and demand in a particular area.

PLAS has been used to negotiate purchase of large commercial farms in areas where land demand among aspirant land reform beneficiaries is particularly high. Many such areas are found along the periphery of the former homelands. Applied in this manner, PLAS could be used to meaningfully contribute to the decongestion of former homelands, which although one of the stated aims of redistribution, is very difficult to accomplish by means of the farm-by-farm demand-led approach. Another particular area where PLAS has particular potential is in areas with a high concentration of labour tenancy. With the introduction of legislation essentially outlawing labour tenancy, a large proportion of such farms have become economically marginal if not unviable, because landowners are now required to offer cash wages to labourers who previously worked mainly for modest land access. As with the areas bordering former homelands, these areas offer the opportunity for negotiating with groups of landowners, thereby changing ownership of large blocks of land with relative efficiency. The Qedusizi/Besters initiative in KwaZulu-Natal is proof of the efficacy of this approach, which the Department is currently exploring through its *strategically located land approach.*

Concentrated Land Purchasing

The genesis for this model is the observation that there are some areas of the country where land reform has proceeded relatively swiftly, inviting the question as to what accounts for these instances. Research indicates that in some of these cases there was a deliberate strategy to focus on a particular area (e.g. Elliot District, Eastern Cape); in other cases, the process occurred unintentionally, but with similar results (e.g. Mangaung Local Municipality, Free State); in some, the concentration of restitution claims was such that the attempts to acquire land for land reform were necessarily concentrated (e.g. Levubu Valley and eastern Molemole Local Municipality, both in Limpopo); and in still others, the concentration of labour tenant farms rendered the land market unusually soft, which local stakeholders and the Department capitalised upon (e.g. Qedusizi/Besters in KwaZulu-Natal, as mentioned above).
Despite the diverse features of these cases, there are three significant common denominators: i) negotiations between land owners and buyers tended to happen collectively rather than

individually (the exception is Mangaung); ii) at least for a while, the process was self-sustaining if not self-reinforcing, either pushing land prices down or suppressing their increase; and iii) owners felt that the payments on offer were 'fair'. In effect, what happened in these cases was that a 'buyer's market' was created. There appears to be anecdotal evidence in these cases that landowners have not been overcompensated.

Right of First Refusal

At the National Land Summit, held in Johannesburg in 2005, participants resolved that in order to fast track land reform, the state must have the right of first refusal in all land sales. The Housing Act, 1997 (Act No. 107 of 1997), in terms of Sections 10A and 10B, places restrictions on the voluntary (10A) and involuntary (10B) sale of state-subsidised housing. Section 10(A) provides for an eight- (8) year restriction to be placed on the sale or alienation (including leasing) of the houses. The houses must first be offered to the Provincial Departments of Human Settlements. There are no mechanisms to bind the clients to the prescripts of the Housing Act and illegal sales continue unabated. Neither the Act nor the National Housing Code makes provision for the Provincial Departments of Human Settlements acceptance or refusal of such offer/s.

A ROFR would empower the Minister for Rural Development and Land reform to have greater control in relation to the sale of agricultural landholdings to meet the objectives of the land reform agenda. The ROFR may prevent private land owners and land reform beneficiaries from holding onto prime agricultural land for speculative reasons. The ROFR would contribute to the land reform target of redistributing 30% of commercial agricultural land by 2014. The ROFR may level the playing field with the government taking on the role of a "proactive buyer" to make informed purchases for sustainable land reform. This approach may work well in places where markets are especially thin such as in the Western Cape.

3. APPLICABILITY OF THE RESEARCH IN RELATION TO THE CURRENT GREEN PAPER ON LAND AND AGRARIAN REFORM

As stated, the WSWB review was limited in its findings and testing of a combination of models. The current Green Paper process requires a much more evidence-based approach, more in depth case studies and research. The Minister has set up a consultative body, the National Reference Group (NAREG) to discuss, refine and influence policy and legislative proposals made by the Department. Six workstreams emerged from this consultative body structured along the following six themes:

- Office of the Valuer-General
- Land Management Commission
- Land Rights Management Boards
- Three Tier Tenure System
- Communal Property Associations
- Communal Land Tenure

The workstreams have been meeting since October 2011 and consist of representation from organized agriculture (AGRISA, AFASA, NAFU, NERPO, TAU, etc), Agri-Business Chamber, other national government departments such as CogTA, Public Works, Department of Agriculture,

Forestry and Fisheries, land reform beneficiary representatives, National House of Traditional Leaders, CONTRALESA, academics and independent consultants/researchers.

The workstreams have presented policy, strategy and legislation proposals to the NAREG twice since October 2011. Some of the models presented as part of the WSWB are being further researched as a combination or suite of tools to sharpen land acquisition, lower land prices and result in sustainable land and agrarian reform through the Green Paper workstream process. These include:

a. ***Land ceilings (partially completed research):*** Various countries have imposed land ceilings with different levels of success. The primary reasons used for imposing land ceilings have been to break down large land holdings; in some cases prevent their emergence and to ensure that there would be more land available for distribution in a land reform programme. The workstream is examining research that delves into the experiences of land ceilings of eight selected countries, namely Mexico, Chile, Zimbabwe, Taiwan, the Philippines, Romania, Egypt and India. These countries have implemented land ceilings in varying context and scope. This research will be combined with a legal and constitutional analysis of this approach in those countries and what legal and constitutional impacts such an approach would have on South Africa. In addition an econometric modeling exercise would be undertaken using the latest agricultural statistics on each commodity based on a simulation of land ceilings in particular districts. This will only be finalized in June 2012.

b. ***Progressive land taxes*** (partially complete research to be finalized in June 2012)

c. ***Targeted expropriation*** (including proposed legislative amendments to the Expropriation Act) and proposed price determination formula (not yet complete)

d. ***Efficient and long term use of state land through the PLAS*** (policy being revised) coupled with Recapitalisation and Development Policy

e. ***Foreign Land "ownership"*** legislative measures (policy and bill- first draft available in June 2012 but due in Cabinet in August 2012)

f. ***Equity schemes and partnership models*** (research completed and policy being revised with the Department of Agriculture)

g. ***Institutional reforms:***

    a. Land Management Commission
    b. Land Rights Management Boards
    c. Office of the Valuer-General

The following policy proposals will be finalized as part of the 2012 Legislation Programme:

- Foreign Land Ownership;
- Land Management Commission;
- Land Rights Management Boards; and
- Office of the Valuer-General