



**SALGA**

*South African Local Government Association*

**SALGA comments on the draft Green paper on  
Land Reform (September 2011)**

## **1. Introduction**

The draft green paper deals with one of the key issues (land reform) that has a direct and significant bearing on the developmental role of the state (including the local government sector). The notion of a developmental local government as per the 1998 White Paper on local government, defines developmental local government as “local government committed to working with citizens and groups within the community to find sustainable ways to meet their social, economic and material needs and improve the quality of their lives.” Policy initiatives that deal with land reform are therefore inextricably linked to the developmental role of local government, given that there are wall to wall municipalities in the Republic and that there is a direct relationship between land tenure reform in particular and the creation of sustainable and vibrant rural livelihoods. The role of the local government sector in institutional arrangements that deal with land reform issues requires articulation in a manner that will give effect to the developmental mandate of the sector.

Whilst issues of land reform cut across both urban and rural areas (no matter how rural and urban areas are defined), the dynamics and complexities affecting and defining how land is accessed, administered and utilized as well as the institutional arrangements that are in place in different parts of the country underscores the need for a differentiated approach to issues of land reform. Thus, the green paper on land reform needs to be anchored by principles that are not only informed by the “vision for land reform”, but also by the historic and socio-political realities and institutional arrangements that have defined and shaped the plethora of current land tenure systems throughout the Republic.

The comments made in this document must be viewed as preliminary submissions dealing with broad issues that are deemed relevant to the local government sector and should not be construed as comprehensive comments from all the municipalities. Individual municipalities will still submit their detailed comments on the draft green paper.

## **2. General Comments**

### **2.1 Consultation**

As already mentioned in the introductory remarks, land reform initiatives have a direct bearing on the developmental role of the local government sector and has in certain instances been identified as a major challenge with regards to the implementation of municipal integrated development plans. In order for the local government sector to meaningfully participate in the green paper consultation process, it is SALGA’s view that advertising the green paper in the press for a sixty day period does not constitute proper consultation with the local government sector. The fact that the draft green paper is scant on specifics as well as being silent on the role of the local government sector makes it very difficult to make any meaningful comments. It would have been preferable for a consultation process that involves roundtable discussions where the contents of the green paper could be discussed and clarity provided in areas where the green paper is silent or vague. SALGA would therefore require further consultation with municipalities that will hopefully provide an opportunity to clarify the role of the local government sector in the

land reform process as well as the relationship between municipalities and the various institutional arrangements proposed in the green paper.

## **2.2 Terms and definitions**

It is noted that there are no definitions provided in the green paper for the key terms that are used, which makes it difficult to comprehend what is meant or intended by some of the suggestions in the green paper. Whilst reading through the green paper gives one the impression that there is a strong bias towards the rural/farming areas (which is understandable) there is however no indication on the intended contextual application of policy proposals in the green paper.

## **3. Comments on specific sections in the Green Paper**

### **3.1 Vision for land reform**

- Whilst the need for a “single, coherent four tier system of tenure” may be less complex to administer and understand, it is not clear whether such a system is differentiated enough to deal with the various permutations that are currently in operation in the Republic. Without a background analysis of the various land tenure systems that are in place, it is difficult to understand what the implications of this proposal will be. The reference to “particularly rural blacks” gives the impression that the green paper policy proposals are indeed applicable in both rural/urban and urban areas, but gives emphasis to rural areas. However, the reference in clause 3.4 to “effective land use planning and regulatory systems which promote optimal land utilization in all areas and sectors; and; effectively administered rural and urban lands and sustainable rural production systems” again creates the impression that the scope of application for the green paper policy proposals is indeed in both urban and rural areas. If indeed that is the case, the need for a differentiated approach that takes into account the different circumstances of different areas must find resonance throughout the green paper. There is no mention of how the vision of the green paper is linked or consistent with other legislative initiatives that also seek to regulate the management of land, such as the Spatial Planning and Land Use Management Act.

### **3.2 Principles underlying land reform**

- There is need for institutional and individual capacity development to be part of the principles that must underpin land reform in order to ensure sustainability

### **3.3 Current challenges and weaknesses: rationale for change**

- The role of the local government sector has not been articulated even though it is the sphere of government that is closest to the people. There is therefore a need to not only engage the local government sector and define its role in land reform, but also identify the necessary support that will ensure that the sector will be able to perform its developmental mandate. This needs to be acknowledged as a challenge that requires attention.

### **3.4 An improved trajectory for land reform**

- Whilst there could be a myriad of reasons as to why the land reform initiatives have thus far failed to deliver the results that were expected, the absence of effective institutional support systems for the new land reform beneficiaries could have also compromised the productivity of the land reform farms. The development of appropriate support structures that must include the local government sector is therefore as crucial as the other identified programmes and institutions.
- Since there is no explanation on the proposed four tier land ownership system or an indication of what type of land will be affected by such a system, it is difficult to comment on what the implications of such a system maybe for the local government sector.
- The green paper does also not indicate how the proposed system of land ownership will be implemented.
- The reference to the Land Management Commission being “autonomous, but not independent of the Department of Rural Development and Land Reform” is questionable, given the fact that the people serving on the commission will be appointed by the Minister or Rural Development and Land Reform.
- There is no indication of who “the stakeholders in land” are, who will sit on the Land Management Commission

### **3.5 Functions of the Land Management Commission (LMC)**

- The relationship of the LMC and the municipalities is not defined and one can only assume that the local government sector is included in the “state organs”.
- It is unclear how the LMC will ensure the coordination of the various initiatives from the different land management agencies.
- There are no details on what the auditing and land regulatory functions of the LMC will entail and whether those functions will overlap with similar functions being exercised by municipalities. This matter needs explanation in order for the local government sector to make meaningful comment.

### **3.6 Powers of the LMC**

- The powers of the LMC to invalidate individual or corporate title deeds appear to be too wide and possibly legally problematic. There is no contextual explanation of when and how the LMC will exercise the listed powers, which makes it difficult to make meaningful comment on the LMC.

### **3.7 Land Rights Management Committees (LRMCs)**

- There is mention of the composition of LRMCs which includes municipal councils, but there is no mention of what the functions of the LRMCs will be and therefore difficult to make meaningful comment.

### **3.8 The Land-Valuer-General (LVG)**

- The lack of clarity on the scope of application of the green paper policy proposals makes it difficult to understand the functional context of most of the institutions that are being proposed including that of the LVG. It is not clear as to when the LVG will be required to provide “fair and consistent land values for rating and taxing purposes” and when it will be necessary to provide “specialist valuation”. The

relationship of the LVG and municipalities is not explained even though there is a potential overlap between the proposed functions of the LVG and those of the local government. Again, due to the lack of detail regarding the proposed institutional arrangements, it is difficult to make any meaningful comment.

#### **4. Concluding remarks**

The green paper on land reform provides an opportunity to articulate an overarching strategy to deal with one of the most complex and significant issues affecting millions of people in the Republic, that is land. Whilst there is a plethora of issues that need to be addressed at a policy level, (which the green paper is silent on) a key issue such as tenure security must form an integral part of land reform policy. There is need for alignment of the proposals in the green paper with other legislative policy initiatives regulating the use of land.

In the absence of a contextual analysis of the both the historical and current land tenure and ownership issues throughout the country, it is difficult to understand the informants of some of the policy proposals in the green paper. The lack of details as well as clarity on a number of issues and the scope of application of the policy proposals in the draft green paper makes it difficult to make substantial and more meaningful comment. It is suggested that the Department of Rural Development and Land Reform convene a series of roundtable discussions throughout the country with relevant stakeholders (including municipalities) as part of refining an understanding of some of the current complexities on land tenure as well as development of policy positions.